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; Pub. L. 100–710, title I, § 102, Nov. 23, 1988, 102 Stat. 4738; Pub. L. 109–304, Oct. 6, 2006, 120 Stat. 1485

Subtitle		Sec.
I.	**GENERAL**	**101**
II.	**VESSELS AND SEAMEN**	**2101**
III.	**MARITIME LIABILITY**	**30101**
IV.	**REGULATION OF OCEAN SHIPPING**	**40101**
V.	**MERCHANT MARINE**	**50101**
VI.	**CLEARANCE, TONNAGE TAXES, AND DUTIES**	**60101**
VII.	**SECURITY AND DRUG ENFORCEMENT**	**70101**
VIII.	**MISCELLANEOUS**	**80101**

AMENDMENTS

2006—Pub. L. 109–304, § 3, Oct. 6, 2006, 120 Stat. 1485, amended title analysis generally, adding item IV, substituting ''50101'' for ''53101'' in item V, adding item VI, substituting ''SECURITY AND DRUG ENFORCEMENT'' for ''MISCELLANEOUS'' in item VII, and adding item VIII.

Pub. L. 109–241, title IX, § 901(k)(2), July 11, 2006, 120 Stat. 565, redesignated item VI ''MISCELLANEOUS'' as item VII.

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.

Disposition Table

(Showing Disposition of Former Sections of Title 46 or Title 46 Appendix)

Title 46 or Title 46 Appendix Former Sections	*Title 46 New Sections*
1	Rep.
2	2103
3 note prec. (Act 12-27-1950, §§ 1, 2).	501
3	Rep.
4	2105
5, 6	Rep.
7	2107
8	2108
9(a), (b)	3316
9(c)	Rep.
9(d)	3316
11, 12	Rep.
13	Rep.
14 (words before last proviso)	12107
14 (last proviso)	12151
15–41	Rep.
42	60103
43–56	Rep.
57	60102
58	Rep.
59	Rep.
60–63	Rep.
65(1)	2101(10)
65(2)	2101(11)
65(3)	2101(34)

Disposition Table—Continued

(Showing Disposition of Former Sections of Title 46 or Title 46 Appendix)

Title 46 or Title 46 Appendix Former Sections	*Title 46 New Sections*
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
65p	12112
65q	12117
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	60105
91a–96	Rep.
97	60106

Disposition Table—Continued

(Showing Disposition of Former Sections of Title 46 or Title 46 Appendix)

Title 46 or Title 46 Appendix Former Sections	*Title 46 New Sections*
98	60109
99	Rep.
100	60107
101, 102	Rep.
103	Rep.
104	60504
105–110	Rep.
111	Elim.
112, 113	Rep.
121 (1st sentence)	60302
121 (2d sentence)	60301
121 (3d sentence related to distress).	60305
121 (3d sentence related to trade).	60306
121 (4th sentence)	60302
121 (5th sentence words before semicolon).	60302
121 (5th sentence words after semicolon).	60304
121 (last sentence words before semicolon).	60312
121 (last sentence words after semicolon).	60302
122	60307
123	60308
124	60309
125	60310
126, 127	Rep.
128, 129	60303
130, 131	Rep.
132	60301
133, 134	60311
135	60312
141	60503
142	60505
143	60506
144, 145	60507
146	60502
151–162	Rep.
163	60101
170	3306(a)(5), Rep. in part
170(14)	2106
170a, 170b	Rep.
171–175	Rep.
178, 179	Rep.
181	30503
182	30504
183(a)	30505
183(b) (1st sentence)	30506
183(b) (last sentence)	30507
183(c)–(e)	30506
183(f) (related to 46 App.:183(b)–(e)).	30506
183(f) (related to 46 App.:183b)	30508
183(g)	30510
183a	Rep.
183b	30508
183c	30509
184	30507
185	30511
186	30501
187	30512
188	30502
189	30505
190	30704
191	30705
192	30706
193	30703
194	30707
195	30702
196	Rep.
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)

Disposition Table—Continued

(Showing Disposition of Former Sections of Title 46 or Title 46 Appendix)

Title 46 or Title 46 Appendix Former Sections	*Title 46 New Sections*
216(d)	9301(1)
216(e), (f)	Rep.
216a	9302(a), (b), (d)
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
224a(2)	7111
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)
246(a)	8302(a)–(d)
246(b)	Rep.
246(c)	7703
247	7101
248	8302
249–249c	Rep.
251, 251a	55114
251b	Rep.
252–262	Rep.
263–276	Rep.
277	12133
278–288	Rep.
289	55103
289a, 289b	55121
289c	55104
290	Rep.
291	55120
292	55109
293–293b	Rep.
294–315	Rep.
316(a), (b)	55111
316(c)	55118
316(d), (e)	80104

Disposition Table—Continued

(Showing Disposition of Former Sections of Title 46 or Title 46 Appendix)

Title 46 or Title 46 Appendix Former Sections	*Title 46 New Sections*
316a	55112
317, 318	Rep.
319	T. 19 § 1706a
320–325	Rep.
326	502
327	503
328	Rep.
329, 330	Rep.
331	2110
332–336	Rep.
351–353	Rep.
354, 355	60104
361	2101(16), (37)
362	2109, 3301(9), 3314
362(a)	3303
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
390(a)	2101(21)(B)
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
391a	3301(10), 3702, 8502
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)
391a(4)	2109
391a(4)(B)	8703(c)
391a(5)	3702
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

Disposition Table—Continued

(Showing Disposition of Former Sections of Title 46 or Title 46 Appendix)

Title 46 or Title 46 Appendix Former Sections	*Title 46 New Sections*
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
391b	Rep.
392	3304–3306
392(b)	3307(3)
393, 394	Rep.
395	3301(6), 3305, 3311
395(d)	3309
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
404–1	3301(3), 3305, 3501
404–1(1)	2101(19)
404–1(4)	2101(21)(C)
404–1(6)	3307(2), (3)
404–1(8)	8301
404a	Rep.
405	2101(40), 3301(9), 3305
405(b)	8104
405(b)(1)(A)	2101(34)
405(b)(2)	8904
405(b)(3)	8905(b)
406	3305
407	3305, 3318
408	3305, 3306, 3318
409	Rep.
410	3318
411, 412	3306
413	3318
414	3310, 7502
415	Rep.
416	2104, 3306
417	(See former 416)
418, 419	Rep.
420	3302, 3306
431–434	Rep.
435	3308, 3313
436	2106, 3318
437–440	Rep.
441(1)	2101(18), 50503
441(2)	2101(31), 50503
442	3302
443	50503
444	8701, 50503
445	2113, 3306
446–446c	50504
446 note (Pub. L. 97–322, § 201)	Rep.
446d	8101
451	3501
452	3501(b), (c)
453	2113
454–457	T. 33 §§ 1233–1236
458	Rep.
459	3306
460, 460a, 461	3502
462	2106, 3501, 3502
463, 463a, 464	Rep.
465	(See former 170)
466	Rep.
466a	3901
466b	3902
466c	T. 15 § 1824a
467–469	Rep.
470, 471	8102

Disposition Table—Continued

(Showing Disposition of Former Sections of Title 46 or Title 46 Appendix)

Title 46 or Title 46 Appendix Former Sections	*Title 46 New Sections*
472	Rep.
473	3306
474–476	Rep.
477–479	3306
480	2301
481	2106, 3306
481(a)	2101(34)
481(c)	2106
481(d)	3318
482, 483	3306
484–488	Rep.
489	3306
490	Rep.
491 (words before semicolon)	30102
491 (words after semicolon)	30103
492	3506
493–496	Rep.
497	2106, 3318, 8502
498	Rep.
511–522	Rep.
526	2101(43)
526a–526d	Rep.
526e	4102(b)
526f	Rep.
526g	4102(a)
526h	4103
526i	4102(c)
526j	4102(d)
526k–526n	Rep.
526*o*	2106, 2107, 4106
526p	2107, 3306, 4104
526q–526t	Rep.
526u	4101
527–527h	Rep.
531	10601
532	Rep. See 11501
533, 534	10602
541–542a	Rep.
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
599(g)	10316
600	10317
601	11108, 11109
602	11111
603–608, 611	Rep.
621	10701, 10702
622	10703
623	10711
624	10704, 10705
625	10706
626	10707
627	10709
628	10708, 10710
641, 642	10310
643	8701, 8702, 10102(c), 10311, 10503
643(a)	7302, 7303, 7318
643(b)	7304

Disposition Table—Continued

(Showing Disposition of Former Sections of Title 46 or Title 46 Appendix)

Title 46 or Title 46 Appendix Former Sections	*Title 46 New Sections*
643(c)	7302, 10306
643(e)	10311
643(f)	7319, 7502
643(h)	7501
643(*l*)	7316, 10103
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)
660	10903(d)
660–1	11101
660a	3305, 3308
660b	3308
661	10321
662	10902(b)
663	Rep.
664	10907
665	10321, 11106(b)–(d)
666	11102(a)
667	11102(b)
668, 669	Rep.
670, 671	11103
672	8701, 8702
672(a)	2101(34)
672(b)	7306
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
672(j)	2106, 8702(e)
672–1, 672–2	Rep.
672a	8103
672b, 672b–1, 672c	Rep.
673	8104
674–677	Rep.
678	11104(a)
679	11104(b)–(d)
680, 681	Rep.
682	10318, 10507
683	10318, 10507
684	11105
685	11106(a)
686, 687	Rep.
688(a)	30104
688(b)	30105
689	2103, 2104
690	8103
691	Sec. 2(f) of Pub. L. 98–89
692	Rep.
701	11501
702	11502
703	11503
704	T. 18 § 2196
705	11504
706	11505
707	10319
708	T. 18 § 2279
709	Rep.
710	11506
710a	Rep.
710b	(See former 239a)
710c	(See former 239b)
711	Rep.
712	11507
713	10101, 10303, 10304
721	80101
722, 723	80103
724	80102
725	80105

Disposition Table—Continued

(Showing Disposition of Former Sections of Title 46 or Title 46 Appendix)

Title 46 or Title 46 Appendix Former Sections	*Title 46 New Sections*
726	80106
727	80107
728	2304
729, 730	80107
731	2304, 80107
732–735	Rep.
738	80301
738a	80302
738b	Rep.
738c	80303
738d	Rep.
740	30101
741 (11th–26th words)	30902
741 (less 11th–26th words)	30908
742 (1st sentence)	30903
742 (2d sentence)	30906
742 (3d sentence)	30903
742 (last sentence)	30906
743 (1st sentence)	30907
743 (2d, 3d sentences)	30911
743 (4th–6th sentences)	30907
743 (last sentence)	30909
743a	Rep.
744	30914
745 (words before 1st proviso)	30905
745 (1st proviso)	30904
745 (2d proviso)	Rep.
745 (last proviso)	30911
746	30910
747	30915
748	30913
749	30912
750	30916
751	30917
752	30918
761(a)	30302
761(b)	30307
762(a)	30303
762(b)	30307
763	Rep.
763a	30106
764	30306
765	30305
766	30304
767	30308
768	Rep.
781	31102
782 (1st sentence)	31104
782 (last sentence words before last comma).	31103
782 (last sentence words after last comma).	31107
783 (words before proviso)	31102
783 (proviso)	31105
784	31110
785	31111
786	31108
787	31109
788	31112
789	31106
790	31113
791–799	Rep.
801	Rep.
802	50501
803	50502
804	Rep.
804a	Rep.
805–807	Rep.
808(4th par., prior to amendment by Pub. L. 100–710).	31328
808(a)	Rep.
808(b)	57109
808(c)–(f)	56101
808a	56101
809–810a	Rep.
811 (1st sentence words before 1st comma).	50105
811 (1st sentence words after 1st comma).	50106
811 (2d sentence words before 2d comma).	50105
811 (2d sentence words after 2d comma).	50107
811 (3d sentence)	50106

Disposition Table—Continued

(Showing Disposition of Former Sections of Title 46 or Title 46 Appendix)

Title 46 or Title 46 Appendix Former Sections	*Title 46 New Sections*
811 (4th sentence)	50109
811 (last sentence)	50111
812–817c	Rep.
817d(a) (1st–5th, 29th–last words).	44103
817d(a) (6th–28th words)	44101
817d(b)	44103
817d(c)	44104
817d(d)	44106
817d(e)	44105
817e(a) (1st–14th, 37th–last words).	44102
817e(a) (15th–36th words)	44101
817e(b)	44102
817e(c)	44104
817e(d)	44106
817e(e)	44105
818–832	Rep.
833, 833a	Rep.
834	60108
835	56102
836, 837	56105
838	31306
839 (1st par.)	56103
839 (last par.)	56104
840–841c	Rep.
842	Rep.
843–848	Rep.
861	50101
862–864	Rep.
864a	Rep.
864b	57108
865	Rep.
865a	53101 note
866	Rep.
867	50302
868, 869	Rep.
870–870d	Rep.
871	57106
872	50304
873, 874	Rep.
875	50304
876(a)(1)	Rep.
876(a)(2)	42101
876(a)(3)	42102
876(b), (c)	42102
876(d)	42103
876(e)	42101
876(f), (g)	42104
876(h)	42105
876(i)	42106
876(j)	42107
876(k)	42108
876(*l*)	42109
877	55101
877 note (Proc. No. 3215, Dec. 12, 1957).	55101
878–880	Rep.
881	3305, 3316, 12119
882	3304
883 (words before 1st proviso)	55102
883 (1st proviso, 2d proviso less meaning of ''rebuilt'').	12132
883 (2d proviso related to meaning of ''rebuilt'').	12101
883 (3d proviso)	55116
883 (4th proviso)	55119
883 (5th proviso)	55117
883 (6th proviso)	55107
883 (7th proviso)	55106
883 (8th proviso)	Rep.
883 (2d–6th sentences, last sentence less provisos).	55105
883 (10th proviso)	55115
883 (11th proviso)	55102
883 (12th proviso)	55110
883 (last proviso)	55108
883 note (Pub. L. 104–324, §1120(f)).	12120
883–1	12118
883a (1st sentence)	12139
883a (2d, last sentences)	12151
883b	Rep.
884	58108

Disposition Table—Continued

(Showing Disposition of Former Sections of Title 46 or Title 46 Appendix)

Title 46 or Title 46 Appendix Former Sections	*Title 46 New Sections*
885	T. 15 § 38
886	Rep.
887–889	Rep.
891	50101
891a	Rep.
891b	57106
891c–891y	Rep.
911(1), (2)	30101(1)
911(3)	Rep.
911(4)	30101(1)
911(5)	31301(3)
921	31321(a)(1), (e)
922(a), (b)	31322(a)(1)
922(b)	31301(6)(A)
922(c), (d)	Rep.
922(e), (f)	31322(c)
923	31324
924	31323(a), (b)
925	31343
925(b)	31321(f), (h)
926(a), (b)	31321(b)
926(c)	Rep.
926(d)	31322(b)
927	31302(1), (2)
941(a)	Rep.
941(b) (1st sentence)	31330(a), (c)
941(b) (last sentence)	31323(c)
941(c)	31304
951 (1st par.)	31325(a), (b)(1), (c), (d)
951 (2d par. less proviso)	31301(6)(B)
951 (2d par. proviso)	31326(b)(2)
952 (1st, 2d sentences)	31325(e)
952 (last sentence)	31308
953(a)	31301(5)
953(b)	31326(a), (b)(1)
954(a)	31325(b)(2)
954(b)	31303
961(a)	Rep.
961(b)	31327
961(c)	31326(a)
961(d), (e)	31328
961(f)	31329
971	31342
972	31341
973	31341(a)
974	31305
975	31307
981–984	Rep.
1011	Rep.
1012	31321(a)(2)
1013, 1014	Rep.
1101	50101
1111(a), (b)	Rep.
1111(c) (related to seal)	301
1111(c) (related to records)	303
1111(c) (related to rules and regulations).	305
1111(d) (related to Commission).	307
1111(d) (related to Secretary)	Rep.
1111(e)	Rep.
1111(f) (1st, last sentences)	Rep.
1111(f) (2d sentence related to Commission).	Rep.
1111(f) (2d sentence related to Secretary).	T. 49 § 109
1111 note (Pub. L. 89–56)	301
1111 note (Reorg. Plan No. 6 of 1949).	301
1111 note (Reorg. Plan No. 21 of 1950, §§ 201, 203, 204).	T. 49 § 109
1111 note (Reorg. Plan No. 7 of 1961, §§ 101, 102(a)–(c), 104, 105(d)).	301
1111 note (Reorg. Plan No. 7 of 1961, § 102(d)).	302
1111 note (Reorg. Plan No. 7 of 1961, § 105(a)–(c)).	304
1111 note (Reorg. Plan No. 7 of 1961, § 201).	T. 49 § 109
1111a–1111c	Rep.
1112	50303
1113	Rep.
1114	Rep.

Disposition Table—Continued

(Showing Disposition of Former Sections of Title 46 or Title 46 Appendix)

Title 46 or Title 46 Appendix Former Sections	*Title 46 New Sections*
1115	58107
1116, 1116a	Rep.
1117 (related to Commission)	Rep.
1117 (related to Secretary)	T. 49 § 109
1118 (related to Commission)	306
1118 (related to Secretary)	50111
1118 note (Pub. L. 106–398, [§ 3506]).	50111
1119	T. 49 § 109
1119a, 1119b	Rep.
1120	50102
1121(a)–(c)	50103
1121(d)	50105
1121(e)	50106
1121(f)	50109
1121(g)	50106
1121(h), (i)	50109
1121(j) (words before 1st semicolon).	50105
1121(j) (words between 1st and 2d semicolons).	50110
1121(j) (words after 2d semicolon).	50109
1121–1	55301
1121–2	50112
1122(a)	50104
1122(b)(1)	50110
1122(b)(2)	50105
1122(c)	50105
1122(d)	50110, T. 49 § 109
1122(e)	Rep.
1122(f)	50108
1122(g)	50111
1122a	50113
1122b	55501
1123	50109
1124	50306
1125	57105
1125 note (Pub. L. 86–518, § 9)	57105, 57506
1125a	57107
1126	Rep.
1126–1(a) (1st sentence)	51101
1126–1(a) (last sentence), (b)	51104
1126a, 1126a–1	Rep.
1126b, 1126b–1	Rep.
1126c, 1126d	Rep.
1127–1128h	Rep.
1131	53101 note
1132 (prior provision)	8103
1132(a) (prior provision)	7102
1132 (added by Pub. L. 104–239)	52101
1141–1144	Rep.
1145	Rep.
1151–1155	53101 note
1155a	Rep.
1156, 1157	53101 note
1158(a)	57102
1158(b)	57103
1159	53101 note
1160(a)	57301
1160(b) (1st sentence)	57302
1160(b) (2d sentence)	57304
1160(b) (3d sentence)	57305
1160(b) (4th–7th sentences)	57306
1160(b) (last sentence)	57302
1160(c)	57303
1160(d)	57305
1160(e)	57307
1160(f)	50111
1160(g)	57308
1160(h)	Rep.
1160(i)	57104
1160(j)	57101
1161(a)	53301
1161(b) (1st sentence words before 6th comma).	53302
1161(b) (1st sentence words between 6th and 10th commas).	53303
1161(b) (1st sentence between 10th and 16th commas).	53302
1161(b) (1st sentence words after 16th comma).	53305
1161(b) (last sentence)	53302
1161(c)	53306

Disposition Table—Continued

(Showing Disposition of Former Sections of Title 46 or Title 46 Appendix)

Title 46 or Title 46 Appendix Former Sections	*Title 46 New Sections*
1161(d)	53307
1161(e)	53308
1161(f)	53309
1161(g), (h)	53310
1161(i)	53311
1161(j)	53312
1161(k)	Rep.
1161(*l*)	53304
1161(m)–(*o*)	53301
1162, 1171–1176	53101 note
1177(a) (1st sentence)	53503
1177(a) (2d sentence related to purpose).	53503
1177(a) (2d sentence related to deposits).	53504
1177(a) (last sentence)	53504
1177(b)(1), (2)	53505
1177(b)(3)	53501
1177(c)	53506
1177(d)	53507
1177(e)	53508
1177(f)	53509
1177(g)	53510
1177(h) (less (2) (last sentence))	53511
1177(h)(2) (last sentence)	53512
1177(i)	53513
1177(j)	53514
1177(k)(1)–(3)	53501
1177(k)(4)	Rep.
1177(k)(5)–(9)	53501
1177(*l*) (1st sentence)	53515
1177(*l*) (2d sentence)	53502
1177(*l*) (last sentence)	53516
1177(m)	53517
1177–1	53501
1177a	Rep.
1178–1181	53101 note
1182	Rep.
1183–1185a	53101 note
1187–1187e	Rep.
1191	57501
1192	57502
1193(a)	57503
1193(b)	57502
1193(c) (related to construction, reconstruction, or reconditioning).	57503
1193(c) (related to chartering)	57512
1194	57504
1195 (1st, 2d sentences)	57505
1195 (last sentence)	57506
1196(a)	57512
1196(b) (1st sentence related to announcement).	57512
1196(b) (1st sentence related to authority).	57515
1196(b) (last sentence)	57513
1197	57515
1198	57516
1199	57517
1200	57518
1201	57511
1202(a)	57519
1202(b), (c)	57520
1202(d)	57521
1203	57514
1204	57531
1205	57532
1206	Rep.
1211, 1212	53101 note
1213(a) (less 3d sentence as related to 1121(a)).	53101 note
1213(a) (3d sentence related to 1121(a)).	50103
1213(b)	T. 49 § 109
1214	Rep.
1221	Rep.
1222	Rep.
1223(a)	58101
1223(b)	58102
1223(c)	Rep.
1223(d)	58103
1223(e)	Rep.
1223(f)	58104

Disposition Table—Continued

(Showing Disposition of Former Sections of Title 46 or Title 46 Appendix)

Title 46 or Title 46 Appendix Former Sections	*Title 46 New Sections*
1224, 1225	Rep.
1226	58105
1227	58106
1228 (1st, 2d pars.)	58109
1228 (last par.)	505
1241(a)	55302
1241(b)	55305
1241(c)	55303
1241–1	55304
1241a, 1241b	50301
1241b note (limitation on funds for fiscal year 1957).	50301
1241c	50301
1241d	55311
1241e	55313
1241f(a)–(d)	55314
1241f(e)	55312
1241g	55315
1241h	55316
1241h note (Pub. L. 100–202, § 101(a) [title V, § 501]).	55316
1241i	Rep.
1241j	55317
1241k–1241n	Rep.
1241*o*	55314
1241p	55318
1241q	55333
1241r	55332
1241s	55334
1241t(a), (c)	55335
1241t(b)	55336
1241u	Rep.
1241v	55331
1242(a) (1st, 2d sentences)	56301
1242(a) (3d sentence)	56303
1242(a) (4th sentence)	56307
1242(a) (last sentence)	56303
1242(b)	56303
1242(c) (1st sentence)	56302
1242(c) (2d sentence)	56304
1242(c) (last sentence)	56303
1242(d) (1st par. words before 2d comma).	56303
1242(d) (1st par. words after 2d comma).	56304
1242(d) (last par.)	56305
1242(e)	56306
1242–1	Rep.
1242a(a)	56501
1242a(b)	56502
1242a(c)	56503
1242a(d)	56504
1242a(e)	56502
1243	Rep.
1244(a)	109
1244(b)	Rep.
1244(c)	50501
1244(d)–(f)	Rep.
1244(g)	114
1245 (1st sentence)	Rep.
1245 (last sentence)	101 note
1246	Rep.
1247	50305
1248, 1249	53101 note
1251–1262	Rep.
1271	53701
1272	53717
1273(a)	53702
1273(b)	53711
1273(c)	53709
1273(d)	53705
1273(e) (1st sentence)	53705
1273(e) (last sentence)	53721, 53722
1273(f)	53704
1273(g)	53732
1273(h)	53704
1273(i), (j)	53706
1273a	53707
1274(a)	53706
1274(b)(1)	53707
1274(b)(2)	53709
1274(b)(3)–(7)	53710
1274(b) (last 2 sentences)	53709
1274(c)(1) (1st sentence)	53711

Disposition Table—Continued

(Showing Disposition of Former Sections of Title 46 or Title 46 Appendix)

Title 46 or Title 46 Appendix Former Sections	*Title 46 New Sections*
1274(c)(1) (last sentence)	53709
1274(c)(2)	53711
1274(d)(1), (2)	53708
1274(d)(3)	53732
1274(d)(4)	53707
1274(d)(5)	Rep.
1274(e)	53714
1274(f)(1)	53713
1274(f)(2), (3)	53708
1274(f)(4)	53713
1274(g)	53717
1274(h)	53710
1274(i)	53709
1274(j)	53732
1274(k)	53712
1274(*l*)	53703
1274(m)	53712
1274(n)	53703
1274a	53734
1275(a)	53721
1275(b)	53722
1275(c)	53724
1275(d)	53723
1275(e)	53725
1275(f)	53722
1276–1279	Rep.
1279a	53715
1279b (prior provision)	Rep.
1279b (added by Pub. L. 107–107).	53716
1279c	53731
1279d	53732
1279e	53733
1279f	53735
1279g	53702
1280	53717
1280a	53733
1280b	53718
1281(a)–(c)	53901
1281(d), (e)	Rep.
1282	53902
1283(a) (1st, 2d sentences)	53903
1283(a) (last sentence)	53910
1283(b) (1st sentence)	53903
1283(b) (last sentence)	53901
1283(c)–(f)	53903
1284	53903
1285	53905
1286	53904
1287	53907
1288, 1288a	53909
1289(a)(1)	53910
1289(a)(2)	53906
1289(b)–(f)	53910
1290	Rep.
1291	50111
1292	53911
1293	53908
1294	53912
1295 (1st sentence)	51101
1295 (last sentence cl. (1))	51103
1295 (last sentence cl. (2))	51104
1295a	51102
1295b(a)	51301
1295b(b)(1)–(3)(C)	51302
1295b(b)(3)(D)	51303
1295b(b)(3)(E)	51305
1295b(b)(3)(F)	51311
1295b(b)(3)(G)	Rep.
1295b(b)(4)	Rep.
1295b(b)(5)–(7)	51304
1295b(b)(8)	51309
1295b(c)	51311
1295b(d)	51308
1295b(e)(1)–(4)	51306
1295b(e)(5)	51310
1295b(f)	51307
1295b(g)	51309
1295b(h)	51312
1295b(i)	51313
1295b(j)	51314
1295c(a)	51501
1295c(b)	51503
1295c(c)(1), (2)	51504

Disposition Table—Continued

(Showing Disposition of Former Sections of Title 46 or Title 46 Appendix)

Title 46 or Title 46 Appendix Former Sections	*Title 46 New Sections*
1295c(c)(3)(A)	51507
1295c(c)(3)(B)	51508
1295c(d)(1)	51505
1295c(d)(2)	51501
1295c(e)	51502
1295c(f)	51506
1295c(g)(1)–(6)	51509
1295c(g)(7)	51510
1295c(g)(8)	51509
1295c(h)	51511
1295c note (Pub. L. 101–115, § 4)	51504
1295c–1	T. 49 § 109
1295d(a), (b)	51703
1295d(c)	51704
1295e	51701
1295f(a), (b)	51702
1295f(c)	2101(17), 3301(2), 3306, 3307(1)
1295f(d)(1)	51702
1295f(d)(2), (3)	3318(g)
1295g(a)	Rep.
1295g(b)–(d)	51103
1295g(e)(1)	2101(17)
1295g(e)(2)–(5)	Rep.
1300–1315	30701 note
1331–1341	Rep.
1351–1364	Rep.
1381–1388	Rep.
1401–1413	Rep.
1451	Rep.
1452(1)(A), (B)	2101(25)
1452(1)(C)	2101(42)
1452(2)	2101(45)
1452(3)	2101(41)
1452(5)	2101(21)(D)
1452(7)	2101(26)
1452(8)	2101(1)
1452(9)	2101(34)
1452(10)	2102(2)
1452(11)	2102(1)
1452(12)	2102(4)
1452(13)	2102(5)
1452(14)	2102(3)
1453	4105, 4301
1454, 1455	4302
1456	4302(a)(3)
1457	4303
1458	4305
1459	4306
1460	4304, 4306
1461(a)	4307(a)
1461(b)	4311(f)
1461(c)	4307(b)
1461(d)	2302(a), (b)
1461(e)	8903
1461(f)	8903, 8905(a)
1462	4308
1463	4309
1464	4310
1464(g)	4302
1465	2303
1466	12301
1467	12302
1468	12303
1469	12304
1470	12305
1471	12306
1472	12307
1473	12308
1474	13101
1475	13102
1476	13103
1477	13104
1478	13105
1479	13106
1479a	13107
1480	13108
1481	13109
1482	13110
1483	2302(b), 4311(a), 12309(a)
1484(a)	4311(b)
1484(b)	2106, 2302(a), (c), 4311(c), 12309(b)
1484(c)	2107
1484(d)	4311(d), 12309(c)
1485	2305, 4311(e)

Disposition Table—Continued

(Showing Disposition of Former Sections of Title 46 or Title 46 Appendix)

Title 46 or Title 46 Appendix Former Sections	*Title 46 New Sections*
1486	6101, 6102
1487	Rep.
1488	4302
1489	4311(g)
1501	80501
1502(a) (related to application of Convention).	80502
1502(a) (related to approval and examination).	80504
1502(b)	Rep.
1503(a)–(c)(1)	80503
1503(c)(2)	80506
1503(c)(3)	80503
1503(d)	80506
1503(e)	80503
1504	80505
1505	80509
1506	80507
1507	80508
1508	Rep.
1601–1603	T. 49 § 109
1604–1608	Rep.
1609	T. 49 § 109 note
1610	Elim.
1701	40101
1702	40102
1703	40301
1704(a)	40302
1704(b)–(d)	40303
1704(e) (less last sentence)	40305
1704(e) (last sentence)	40301
1704(f)	40301
1704(g)	40303
1705(a)–(f)	40304
1705(g)–(i)	41307
1705(j)	40306
1705(k)	41307
1706	40307
1707(a), (b)	40501
1707(c)	40502
1707(d)	40501
1707(e)	40503
1707(f), (g)	40501
1707a	Rep.
1708(a)	40701
1708(b)	40702
1708(c) (1st sentence)	40703
1708(c) (last sentence), (d)	40704
1708(e)	40705
1708(f)	40706
1709(a)	41102
1709(b)(1)–(12)	41104
1709(b)(13), (words after cl. (13)).	41103
1709(c)	41105
1709(d)(1)	41102
1709(d)(2)	41106
1709(d)(3) (related to (b)(10))	41106
1709(d)(3) (related to (b)(13))	41103
1709(d)(4)	41106
1709(d)(5)	41103
1709(e)	41101
1710(a), (b)	41301
1710(c) (1st–3d sentences)	41302
1710(c) (last sentence)	41307
1710(d)–(f)	41302
1710(g) (related to time limit)	41301
1710(g) (less time limit)	41305
1710(h)(1)	41307
1710(h)(2)	41306
1710a(a)	42301
1710a(b), (c)	42302
1710a(d)	42303
1710a(e)(1), (2)	42304
1710a(e)(3)	42306
1710a(f)	42305
1710a(g)	306
1710a(h) (related to 876(a)(2))	42101
1710a(h) (related to 1712(b)(6))	41108
1710a(i)	42307
1711	41303
1712(a)	41107
1712(b)	41108
1712(c)–(f)	41109

Disposition Table—Continued

(Showing Disposition of Former Sections of Title 46 or Title 46 Appendix)

Title 46 or Title 46 Appendix Former Sections	*Title 46 New Sections*
1713(a), (b)	41304
1713(c)	41308
1713(d)	41309
1713(e)	41308, 41309
1714	40104
1715	40103
1716	305
1717	Rep.
1718(a)	40901
1718(b)	40902
1718(c)	40903
1718(d)	40901
1718(e)	40904
1719(a)–(c)	Rep.
1719(d)	40101 note
1719(e)	Rep.
1720	Rep.
1721	Rep.
1801	70302
1802	70306
1803	70303
1804	70304
1805	70305
1806	Rep.
1807	70301
1808	Rep.
1809	70306
1901	Rep.
1902	70501
1903(a)	70503
1903(b), (c)	70502
1903(d)	70505
1903(e)	70503
1903(f)	70504
1903(g)	70506
1903(h)	70503
1903(i)	70502
1903(j)	70506
1904	70507
2001	51901
2002	51901
2003	51902
2004(a)	51903
2004(b)	51904
2004(c)	51907
2004(d)	51901
2005	51905
2006	51906
2007	51908
12101 note (Pub. L. 104–324, § 1117).	55113
12102 note (Pub. L. 105–277, § 203(b)–(e)).	12113
12106 note (Pub. L. 105–383, §§ 502–504).	12121
12119 note (Pub. L. 107–295, § 403).	12138

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'.''

Pub. L. 98–89, § 1, 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' ''.

Legislative Purpose and Construction

Pub. L. 109–304, § 2, Oct. 6, 2006, 120 Stat. 1485, provided that:

''(a) Purpose.—The purpose of this Act [see Tables for classification] is to complete the codification of title 46, United States Code, ''Shipping'', as positive law, by reorganizing and restating the laws currently in the appendix to title 46.

''(b) CONFORMITY WITH ORIGINAL INTENT.—In the codification of laws by this Act, the intent is to conform to the understood policy, intent, and purpose of the Congress in the original enactments, with such amendments and corrections as will remove ambiguities, contradictions, and other imperfections, in accordance with section 205(c)(1) of House Resolution No. 988, 93d Congress, as enacted into law by Public Law 93–554 (2 U.S.C. 285b(1)).''

Pub. L. 109–304, §18, Oct. 6, 2006, 120 Stat. 1709, provided that:

''(a) CUTOFF DATE.—This Act [see Tables for classification] replaces certain provisions enacted on or before April 30, 2005. If a law enacted after that date amends or repeals a provision replaced by this Act, that law is deemed to amend or repeal, as the case may be, the corresponding provision enacted by this Act. If a law enacted after that date is otherwise inconsistent with this Act, it supersedes this Act to the extent of the inconsistency.

''(b) ORIGINAL DATE OF ENACTMENT UNCHANGED.—For purposes of determining whether one provision supersedes another based on enactment later in time, the date of enactment of a provision enacted by this Act is deemed to be the date of enactment of the provision it replaced.

''(c) REFERENCES TO PROVISIONS REPLACED.—A reference to a provision replaced by this Act is deemed to refer to the corresponding provision enacted by this Act.

''(d) LAWS GOVERNING APPLICABILITY OF PRIOR AMENDMENTS.—This Act does not affect any law governing the applicability of an amendment to a provision replaced by this Act, notwithstanding the repeal by this Act of the provision that was amended. To the extent that any such law governed the applicability of a provision replaced by this Act, that law governs the applicability of the corresponding provision enacted by this Act.

''(e) REGULATIONS, ORDERS, AND OTHER ADMINISTRATIVE ACTIONS.—A regulation, order, or other administrative action in effect under a provision replaced by this Act continues in effect under the corresponding provision enacted by this Act.

''(f) ACTIONS TAKEN AND OFFENSES COMMITTED.—An action taken or an offense committed under a provision replaced by this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.''

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

''(a) A reference to a law replaced by section 102 of this Act [see Tables for classification], 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 effect 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.''

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

''(a) Laws effective after January 1, 1986, that are inconsistent with this subtitle [see Tables for classification] 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.''

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

''(a) Laws effective after December 31, 1982, that are inconsistent with this Act [see Tables for classification] 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

Pub. L. 98–89, §2(j), 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

Pub. L. 109–304, §19, Oct. 6, 2006, 120 Stat. 1710, repealed specified laws relating to shipping, except with respect to rights and duties that matured, penalties that were incurred, or proceedings that were begun before Oct. 6, 2006.

Pub. L. 100–710, title I, §106(a), 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.''

Pub. L. 100–710, title I, §106(b), 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 an Effective Date note under section 31301 of this title.

Pub. L. 99–509, title V, subtitle B, §5104(a), 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.''

Pub. L. 99–509, title V, subtitle B, § 5104(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.

Pub. L. 98–89, § 4(a), 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.''

Pub. L. 98–89, § 4(b), 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

Chapter		Sec.
1.	**Definitions**	**101**
3.	**Federal Maritime Commission**	**301**
5.	**Other General Provisions**	**501**

CHAPTER 1—DEFINITIONS

Sec.
101. Agency.
102. Barge.
103. Boundary Line.
104. Citizen of the United States.
105. Consular officer.
106. Documented vessel.
107. Exclusive economic zone.
108. Fisheries.
109. Foreign commerce or trade.
110. Foreign vessel.
111. Numbered vessel.
112. State.
113. Undocumented.
114. United States.
115. Vessel.
116. Vessel of the United States.

§ 101. Agency

In this title, the term ''agency'' means a department, agency, or instrumentality of the United States Government.

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1486.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
101	(no source).	

A definition of ''agency'' is added to avoid having to repeat the substance of the definition at various places in the revised title.

SHORT TITLE OF 2003 AMENDMENT

Pub. L. 108–136, div. C, title XXXV, § 3501, Nov. 24, 2003, 117 Stat. 1789, provided that: ''This title [see Tables for classification] may be cited as the 'Maritime Security Act of 2003'.''

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 [see Tables for classification] may be cited as the 'Maritime Policy Improvement Act of 2002'.''

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106–65, div. C, title XXXVI, § 3601, Oct. 5, 1999, 113 Stat. 975, provided that: ''This title [see Tables for classification] may be cited as the 'Maritime Administration Authorization Act for Fiscal Year 2000'.''

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 [see Tables for classification] may be cited as the 'American Fisheries Act'.''

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–324, title VI, § 601, Oct. 19, 1996, 110 Stat. 3927, provided that: ''This title [see Tables for classification] may be cited as the 'Coast Guard Regulatory Reform Act of 1996'.''

Pub. L. 104–297, title III, § 301, Oct. 11, 1996, 110 Stat. 3615, provided that: ''This title [see Tables for classification] may be cited as the 'Fisheries Financing Act'.''

Pub. L. 104–239, § 1, Oct. 8, 1996, 110 Stat. 3118, provided that: ''This Act [see Tables for classification] may be cited as the 'Maritime Security Act of 1996'.''

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103–206, title V, § 501, Dec. 20, 1993, 107 Stat. 2439, provided that: ''This title [see Tables for classification] may be cited as the 'Passenger Vessel Safety Act of 1993'.''

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–587, title V, § 5301, Nov. 4, 1992, 106 Stat. 5081, provided that: ''This subtitle [subtitle C (§§ 5301–5305) of title V of Pub. L. 102–587, see Tables for classification] may be cited as the 'Abandoned Barge Act of 1992'.''

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–595, title VI, § 601, Nov. 16, 1990, 104 Stat. 2990, provided that: ''This title [see Tables for classification] may be cited as the 'Aleutian Trade Act of 1990'.''

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–424, § 1, Sept. 9, 1988, 102 Stat. 1585, provided that: ''This Act [see Tables for classification] may be cited as the 'Commercial Fishing Industry Vessel Safety Act of 1988'.''

Pub. L. 100–418, title X, § 10001, Aug. 23, 1988, 102 Stat. 1570, provided that: ''This subtitle [subtitle A (§§ 10001–10003) of title X of Pub. L. 100–418, see Tables for classification] may be cited as the 'Foreign Shipping Practices Act of 1988'.''

Pub. L. 100–239, § 1, Jan. 11, 1988, 101 Stat. 1778, provided that: ''This Act [see Tables for classification] may be cited as the 'Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987'.''

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–626, § 1, Nov. 7, 1986, 100 Stat. 3504, provided that: ''This act [see Tables for classification] may be cited as the 'Recreational Boating Safety Act of 1986'.''

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, see Tables for classification] may be cited as the 'Maritime Safety Act of 1984'.''

Pub. L. 98–364, title IV, § 401, July 17, 1984, 98 Stat. 445, provided that: ''This title [see Tables for classification] may be cited as the 'Commercial Fishing Industry Vessel Act'.''

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–31, § 1, Aug. 6, 1981, 95 Stat. 151, provided: ''That this Act [see Tables for classification] may be cited as the 'Maritime Act of 1981'.''

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–372, § 1, July 31, 1976, 90 Stat. 1042, provided: ''That this Act [see Tables for classification] may be cited as the 'Negotiated Shipbuilding Contracting Act of 1976'.''

SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91–469, § 44, Oct. 21, 1970, 84 Stat. 1039, provided that: ''This Act [see Tables for classification] may be cited as the 'Merchant Marine Act of 1970'.''

SHORT TITLE OF 1936 AMENDMENT

Act June 29, 1936, ch. 858, title IX, § 906, 49 Stat. 2016, as amended by Pub. L. 109–304, § 19, Oct. 6, 2006, 120 Stat. 1710, provided that: ''This Act [see Tables for classification] may be cited as the Merchant Marine Act, 1936.''

§ 102. Barge

In this title, the term ''barge'' means a non-self-propelled vessel.

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1486.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
102	46:2101(2).	

§ 103. Boundary Line

In this title, the term ''Boundary Line'' means a line established under section 2(b) of the Act of February 19, 1895 (33 U.S.C. 151).[1]

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1486.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
103	46:2101(3).	

§ 104. Citizen of the United States

In this title, the term ''citizen of the United States'', when used in reference to a natural person, means an individual who is 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)).

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1486.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
104	46:2101(3a).	

The words ''when used in reference to a natural person'' are added because of provisions in the title which treat entities as citizens. The words ''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. 1801 note)'' are omitted because the Covenant referred to became effective November 4, 1986, making citizens of the Northern Mariana Islands citizens or non-citizen nationals of the United States.

§ 105. Consular officer

In this title, the term ''consular officer'' means an officer or employee of the United States Government designated under regulations to issue visas.

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1486.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
105	46:2101(6).	

§ 106. Documented vessel

In this title, the term ''documented vessel'' means a vessel for which a certificate of documentation has been issued under chapter 121 of this title.

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1486.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
106	46:2101(10).	

§ 107. Exclusive economic zone

In this title, the term ''exclusive economic zone'' means the zone established by Presidential Proclamation 5030 of March 10, 1983 (16 U.S.C. 1453 note).

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1487.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
107	46:2101(10a).	

§ 108. Fisheries

In this title, the term ''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.

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1487.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
108	46:12101(a)(1).	

§ 109. Foreign commerce or trade

(a) IN GENERAL.—In this title, the terms ''foreign commerce'' and ''foreign trade'' mean commerce or trade between a place in the United States and a place in a foreign country.

(b) CAPITAL CONSTRUCTION FUNDS AND CONSTRUCTION-DIFFERENTIAL SUBSIDIES.—In the context of capital construction funds under chapter 535 of this title, and in the context of construction-differential subsidies under title V of the Merchant Marine Act, 1936, the terms ''foreign commerce'' and ''foreign trade'' also include, in the case of liquid and dry bulk cargo carrying services, trading between foreign ports in accordance with normal commercial bulk shipping practices in a manner that will permit bulk vessels of the United States to compete freely with

[1] So in original. Probably should be ''(33 U.S.C. 151(b)).''.

foreign bulk vessels in their operation or competition for charters, subject to regulations prescribed by the Secretary of Transportation.

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1487.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
109	46 App.:1244(a).	June 29, 1936, ch. 858, title IX, § 905(a), 49 Stat. 2016; June 23, 1938, ch. 600, § 39(a), 52 Stat. 964; Pub. L. 91–469, § 28, Oct. 21, 1970, 84 Stat. 1034; Pub. L. 92–402, § 2, Aug. 22, 1972, 86 Stat. 617; Pub. L. 97–31, § 12(133)(A), Aug. 6, 1981, 95 Stat. 165.

In subsection (a), the words ''its Territories or possessions, or the District of Columbia'' are omitted because of the definition of ''United States'' in this chapter.

REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in subsec. (b), is act June 29, 1936, ch. 858, 49 Stat. 1985. Title V of the Act enacted provisions set out as notes under section 53101 of this title. For complete classification of this Act to the Code, see Short Title of 1936 Amendment note set out under section 101 of this title and Tables.

§ 110. Foreign vessel

In this title, the term ''foreign vessel'' means a vessel of foreign registry or operated under the authority of a foreign country.

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1487.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
110	46:2101(12).	

§ 111. Numbered vessel

In this title, the term ''numbered vessel'' means a vessel for which a number has been issued under chapter 123 of this title.

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1487.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
111	46:2101(17b).	

§ 112. State

In this title, the term ''State'' means a State of the United States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States.

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1487.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
112	46:2101(36).	

§ 113. Undocumented

In this title, the term ''undocumented'' means not having and not required to have a certificate of documentation issued under chapter 121 of this title.

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1487.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
113	46:2101(41).	

The words ''certificate of documentation'' are substituted for ''document'' for consistency with chapter 121.

§ 114. United States

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

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1487.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
114	46:2101(44). 46 App.:1244(g).	June 29, 1936, ch. 858, title IX, § 905(g), 49 Stat. 2016; as added Pub. L. 96–453, § 3(b), Oct. 15, 1980, 94 Stat. 2008.

The language in 46 App. U.S.C. 1244(g) relating to the areas and installations in the Republic of Panama is omitted because those areas and installations were turned over to Panama by the end of 1999.

§ 115. Vessel

In this title, the term ''vessel'' has the meaning given that term in section 3 of title 1.

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1487.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
115	46:2101(45).	

§ 116. Vessel of the United States

In this title, the term ''vessel of the United States'' means a vessel documented under chapter 121 of this title (or exempt from documentation under section 12102(c) of this title), numbered under chapter 123 of this title, or titled under the law of a State.

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1488.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
116	46:2101(46).	

CHAPTER 3—FEDERAL MARITIME COMMISSION

Sec.
301. General organization.
302. Quorum.
303. Record of meetings and votes.
304. Delegation of authority.

Sec.
305. Regulations.
306. Annual report.
307. Expenditures.

§ 301. General organization

(a) ORGANIZATION.—The Federal Maritime Commission is an independent establishment of the United States Government.

(b) COMMISSIONERS.—

(1) COMPOSITION.—The Commission is composed of 5 Commissioners, appointed by the President by and with the advice and consent of the Senate. Not more than 3 Commissioners may be appointed from the same political party.

(2) TERMS.—The term of each Commissioner is 5 years, with each term beginning one year apart. An individual appointed to fill a vacancy is appointed only for the unexpired term of the individual being succeeded. A vacancy shall be filled in the same manner as the original appointment. When the term of a Commissioner ends, the Commissioner may continue to serve until a successor is appointed and qualified.

(3) REMOVAL.—The President may remove a Commissioner for inefficiency, neglect of duty, or malfeasance in office.

(c) CHAIRMAN.—

(1) DESIGNATION.—The President shall designate one of the Commissioners as Chairman.

(2) GENERAL AUTHORITY.—The Chairman is the chief executive and administrative officer of the Commission. In carrying out the duties and powers of the Commission (other than under paragraph (3)), the Chairman is subject to the policies, regulatory decisions, findings, and determinations of the Commission.

(3) PARTICULAR DUTIES.—

(A) IN GENERAL.—The Chairman shall—

(i) appoint and supervise officers and employees of the Commission;

(ii) appoint the heads of major organizational units, but only after consultation with the other Commissioners;

(iii) distribute the business of the Commission among personnel and organizational units;

(iv) supervise the expenditure of money for administrative purposes; and

(v) assign Commission personnel, including Commissioners, to perform duties and powers delegated by the Commission under section 304 of this title.

(B) NONAPPLICATION.—Subparagraph (A) (other than clause (v)) does not apply to personnel employed regularly and full-time in the offices of Commissioners other than the Chairman.

(4) DELEGATION.—The Chairman may designate officers and employees under the Chairman's jurisdiction to perform duties and powers of the Chairman, subject to the Chairman's supervision and direction.

(d) SEAL.—The Commission shall have a seal which shall be judicially recognized.

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1488.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
301(a)	46 App.:1111 note.	Reorg. Plan No. 7 of 1961, eff. Aug. 12, 1961, § 101, 75 Stat. 840.
301(b)	46 App.:1111 note.	Reorg. Plan No. 7 of 1961, eff. Aug. 12, 1961, § 102(a), (c), 75 Stat. 840; Pub. L. 88–426, title III, § 305(19)(A), Aug. 14, 1964, 78 Stat. 425.
	46 App.:1111 note.	Pub. L. 89–56, June 30, 1965, 79 Stat. 195.
301(c)	46 App.:1111 note.	Reorg. Plan No. 6 of 1949, eff. Aug. 20, 1949, 63 Stat. 1069.
	46 App.:1111 note.	Reorg. Plan No. 7 of 1961, eff. Aug. 12, 1961, §§ 102(b), 104, 105(d), 75 Stat. 840, 841.
301(d)	46 App.:1111(c) (related to seal).	June 29, 1936, ch. 858, title II, § 201(c) (related to seal), 49 Stat. 1986.

In subsection (a), the words ''is an independent establishment'' are substituted for ''shall not be a part of any executive department or under the authority of the head of any executive department'' for consistency with other titles of the United States Code and to eliminate unnecessary words.

In subsection (b)(2), the words ''The term of each Commissioner is 5 years, with each term beginning one year apart'' are substituted for the language about terms in section 102(c) of Reorganization Plan No. 7 of 1961 (46 App. U.S.C. 1111 note) and the Act of June 30, 1965 (Pub. L. 89–56, 79 Stat. 195), for clarity and to eliminate executed and obsolete language.

In subsection (c), section 104 of Reorganization Plan No. 7 of 1961 is omitted as executed.

Subsection (c)(1) is based on section 102(b) of Reorganization Plan No. 7 of 1961. The words ''from time to time'' are omitted as unnecessary.

Subsection (c)(2) is based on section 1 of Reorganization Plan No. 6 of 1949.

Subsection (c)(3) is based on section 2 of Reorganization Plan No. 6 of 1949 and section 105(d) of Reorganization Plan No. 7 of 1961.

Subsection (c)(4) is based on section 3 of Reorganization Plan No. 6 of 1949.

§ 302. Quorum

A vacancy or vacancies in the membership of the Federal Maritime Commission do not impair the power of the Commission to execute its functions. The affirmative vote of a majority of the Commissioners serving on the Commission is required to dispose of any matter before the Commission.

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1489.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
302	46 App.:1111 note.	Reorg. Plan No. 7 of 1961, eff. Aug. 12, 1961, § 102(d), 75 Stat. 840; Pub. L. 105–258, title II, § 202, Oct. 14, 1998, 112 Stat. 1915.

§ 303. Record of meetings and votes

The Federal Maritime Commission, through its secretary, shall keep a record of its meetings and the votes taken on any action, order, contract, or financial transaction of the Commission.

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1489.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
303	46 App.:1111(c) (related to records).	June 29, 1936, ch. 858, title II, § 201(c) (related to records), 49 Stat. 1986.

The words ''true'' and ''yea-and-nay'' are omitted as unnecessary.

§ 304. Delegation of authority

(a) DELEGATION.—The Federal Maritime Commission, by published order or regulation, may delegate to a division of the Commission, an individual Commissioner, an employee board, or an officer or employee of the Commission, any of its duties or powers, including those relating to hearing, determining, ordering, certifying, reporting, or otherwise acting on any matter. This subsection does not affect section 556(b) of title 5.

(b) REVIEW.—The Commission may review any action taken under a delegation of authority under subsection (a). The review may be taken on the Commission's own initiative or on the petition of a party to or an intervenor in the action, within the time and in the manner prescribed by the Commission. The vote of a majority of the Commission, less one member, is sufficient to bring an action before the Commission for review.

(c) DEEMED ACTION OF COMMISSION.—If the Commission declines review, or if review is not sought, within the time prescribed under subsection (b), the action taken under the delegation of authority is deemed to be the action of the Commission.

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1489.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
304	46 App.:1111 note.	Reorg. Plan No. 7 of 1961, eff. Aug. 12, 1961, § 105(a)–(c), 75 Stat. 841.

§ 305. Regulations

The Federal Maritime Commission may prescribe regulations to carry out its duties and powers.

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1489.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
305	46 App.:1111(c) (related to rules and regulations).	June 29, 1936, ch. 858, title II, § 201(c) (related to rules and regulations), 49 Stat. 1986.
	46 App.:1716.	Pub. L. 98–237, § 17, Mar. 20, 1984, 98 Stat. 84.

The words ''to carry out its duties and powers'' are substituted for ''in regard to its procedure and the conduct of its business'' in 46 App. U.S.C. 1111(c) and ''to carry out this chapter'' in 46 App. U.S.C. 1716(a) for consistency in the revised title. The text of 46 App. U.S.C. 1716(b) is omitted as executed and obsolete.

§ 306. Annual report

(a) IN GENERAL.—Not later than April 1 of each year, the Federal Maritime Commission shall submit a report to Congress. The report shall include the results of its investigations, a summary of its transactions, the purposes for which all of its expenditures were made, and any recommendations for legislation.

(b) REPORT ON FOREIGN LAWS AND PRACTICES.—The Commission shall include in its annual report to Congress—

(1) a list of the 20 foreign countries that generated the largest volume of oceanborne liner cargo for the most recent calendar year in bilateral trade with the United States;

(2) an analysis of conditions described in section 42302(a) of this title being investigated or found to exist in foreign countries;

(3) any actions being taken by the Commission to offset those conditions;

(4) any recommendations for additional legislation to offset those conditions; and

(5) a list of petitions filed under section 42302(b) of this title that the Commission rejected and the reasons for each rejection.

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1489.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
306(a)	46 App.:1118 (related to Commission).	June 29, 1936, ch. 858, title II, § 208 (related to Commission), 49 Stat. 1988; Pub. L. 94–273, § 36, Apr. 21, 1976, 90 Stat. 380; Pub. L. 97–31, § 12(65), Aug. 6, 1981, 95 Stat. 159.
306(b)	46 App.:1710a(g).	Pub. L. 100–418, title X, § 10002(g), Aug. 23, 1988, 102 Stat. 1572.

In subsection (a), the words ''a statement of all receipts under this chapter'' are omitted as inapplicable to the Commission.

§ 307. Expenditures

The Federal Maritime Commission may make such expenditures as are necessary in the performance of its functions from funds appropriated or otherwise made available to it, which appropriations are authorized.

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1490.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
307	46 App.:1111(d) (related to Commission).	June 29, 1936, ch. 858, title II, § 201(d) (related to Commission), 49 Stat. 1986; Pub. L. 97–31, § 12(58)(B), Aug. 6, 1981, 95 Stat. 158.

The words ''by this chapter'', ''after June 29, 1936'', and ''further'' are omitted as unnecessary.

CHAPTER 5—OTHER GENERAL PROVISIONS

Sec.
501. Waiver of navigation and vessel-inspection laws.
502. Cargo exempt from forfeiture.
503. Notice of seizure.
504. Remission of fees and penalties.
505. Penalty for violating regulation or order.

§ 501. Waiver of navigation and vessel-inspection laws

(a) ON REQUEST OF SECRETARY OF DEFENSE.—On request of the Secretary of Defense, the head

of an agency responsible for the administration of the navigation or vessel-inspection laws shall waive compliance with those laws to the extent the Secretary considers necessary in the interest of national defense.

(b) BY HEAD OF AGENCY.—When the head of an agency responsible for the administration of the navigation or vessel-inspection laws considers it necessary in the interest of national defense, the individual may waive compliance with those laws to the extent, in the manner, and on the terms the individual prescribes.

(c) TERMINATION OF AUTHORITY.—The authority granted by this section shall terminate at such time as the Congress by concurrent resolution or the President may designate.

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1490.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
501	46 App.:3 note prec.	Dec. 27, 1950, ch. 1155, §§1, 2, 64 Stat. 1120.

In subsection (b), the words ''When the head of an agency . . . considers it necessary'' are substituted for ''either upon his own initiative or upon the written recommendation of the head of any other Government agency, when he deems that such action is necessary'' to eliminate unnecessary words.

§ 502. Cargo exempt from forfeiture

Cargo on a vessel is exempt from forfeiture under this title if—

(1) the cargo is owned in good faith by a person not the owner, master, or crewmember of the vessel; and

(2) the customs duties on the cargo have been paid or secured for payment as provided by law.

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1490.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
502	46 App.:326.	R.S. § 4378.

§ 503. Notice of seizure

When a forfeiture of a vessel or cargo accrues, the official of the United States Government required to give notice of the seizure of the vessel or cargo shall include in the notice, if they are known to that official, the name and the place of residence of the owner or consignee at the time of the seizure.

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1490.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
503	46 App.:327.	R.S. § 4379.

§ 504. Remission of fees and penalties

Any part of a fee, tax, or penalty paid or a forfeiture incurred under a law or regulation relating to vessels or seamen may be remitted if—

(1) application for the remission is made within one year after the date of the payment or forfeiture; and

(2) it is found that the fee, tax, penalty, or forfeiture was improperly or excessively imposed.

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1491.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
504	46:2108.	

This section replaces 46 U.S.C. 2108, which was enacted as part of the codification of subtitle II of title 46 in 1983. That provision was based on section 26 of the Act of June 26, 1884, ch. 121, 23 Stat. 59, which prior to the subtitle II codification appeared at 46 U.S.C. 8 (1982 ed.). In the enactment of 46 U.S.C. 2108, the scope of the 1884 provision was narrowed, presumably inadvertently. This section restores the remissions authority to its prior scope. Note that 19 C.F.R. § 4.24 (2003) still refers to ''the authority to make refunds in accordance with section 26 of the Act of June 26, 1884 (46 U.S.C. 8)'' as if that provision had not been replaced by 46 U.S.C. 2108 in 1983.

§ 505. Penalty for violating regulation or order

A person convicted of knowingly and willfully violating a regulation or order of the Federal Maritime Commission or the Secretary of Transportation under subtitle IV or V of this title, for which no penalty is expressly provided, shall be fined not more than $500. Each day of a continuing violation is a separate offense.

(Pub. L. 109–304, § 4, Oct. 6, 2006, 120 Stat. 1491.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
505	46 App.:1228 (last par.).	June 29, 1936, ch. 858, title VIII, § 806(d); as added Aug. 4, 1939, ch. 417, § 13, 53 Stat. 1187; Pub. L. 97–31, § 12(125), Aug. 6, 1981, 95 Stat. 164.

Subtitle II—Vessels and Seamen

PART A—GENERAL PROVISIONS

Chapter		Sec.
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.	**Repealed.]**	
41.	**Uninspected Vessels Generally**	**4101**
43.	**Recreational Vessels**	**4301**
45.	**Uninspected Commercial Fishing Industry Vessels**	**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**

Chapter Sec.

PART E—MERCHANT SEAMEN LICENSES, CERTIFICATES, AND DOCUMENTS

71. Licenses and Certificates of Registry 7101
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
85. Pilots 8501
87. Unlicensed Personnel 8701
89. Small Vessel Manning 8901
91. Tank Vessel Manning Standards 9101
93. Great Lakes Pilotage 9301

PART G—MERCHANT SEAMEN PROTECTION AND RELIEF

101. General 10101
103. Foreign and Intercoastal Voyages .. 10301
105. Coastwise Voyages 10501
106. Fishing Voyages 10601
107. Effects of Deceased Seamen 10701
109. Proceedings on Unseaworthiness ... 10901
111. Protection and Relief 11101
112. Merchant Mariner Benefits 11201
113. Official Logbooks 11301
115. Offenses and Penalties 11501

PART H—IDENTIFICATION OF VESSELS

121. Documentation of Vessels 12101
123. Numbering Undocumented Vessels 12301
125. Vessel Identification System 12501

PART I—STATE BOATING SAFETY PROGRAMS

131. Recreational Boating Safety 13101

PART J—MEASUREMENT OF VESSELS

141. General 14101
143. Convention Measurement 14301
145. Regulatory Measurement 14501
147. Penalties 14701

AMENDMENTS

2006—Pub. L. 109–304, § 15(1), Oct. 6, 2006, 120 Stat. 1702, in each chapter item, capitalized first letter of each word containing 4 or more letters, struck out item for chapter 39 ''Carriage of animals'', and substituted ''Uninspected Commercial Fishing Industry Vessels'' for ''Fish processing vessels'' in item 45.

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.[1]
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) to (3a) Repealed. Pub. L. 109–304, § 15(2)(A), Oct. 6, 2006, 120 Stat. 1702.]

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

[(6) Repealed. Pub. L. 109–304, § 15(2)(A), Oct. 6, 2006, 120 Stat. 1702.]

[1] Section repealed by Pub. L. 109–304 without corresponding amendment of chapter analysis.

(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 Prevention 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), (10a) Repealed. Pub. L. 109–304, § 15(2)(A), Oct. 6, 2006, 120 Stat. 1702.]

(10b) ''ferry'' means a vessel that is used on a regular schedule—

(A) to provide transportation only between places that are not more than 300 miles apart; and

(B) to transport only—

(i) passengers; or

(ii) vehicles, or railroad cars, that are being used, or have been used, in transporting passengers or goods.

(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) Repealed. Pub. L. 109–304, § 15(2)(A), Oct. 6, 2006, 120 Stat. 1702.]

(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) Repealed. Pub. L. 109–304, § 15(2)(A), Oct. 6, 2006, 120 Stat. 1702.]

(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 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 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;

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

(D) that is a ferry carrying a passenger.

(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.

(26a) ''riding gang member'' means an individual who—

(A) has not been issued a merchant mariner document under chapter 73;

(B) does not perform—

(i) watchstanding, automated engine room duty watch, or personnel safety functions; or

(ii) cargo handling functions, including any activity relating to the loading or unloading of cargo, the operation of cargo-related equipment (whether or not integral to the vessel), and the handling of mooring lines on the dock when the vessel is made fast or let go;

(C) does not serve as part of the crew complement required under section 8101;

(D) is not a member of the steward's department; and

(E) is not a citizen or temporary or permanent resident of a country designated by the United States as a sponsor of terrorism or any other country that the Secretary, in

consultation with the Secretary of State and the heads of other appropriate United States agencies, determines to be a security threat to the United States.

(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'' means the Secretary 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;

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

(E) that is a ferry carrying more than 6 passengers.

[(36) Repealed. Pub. L. 109–304, § 15(2)(A), Oct. 6, 2006, 120 Stat. 1702.]

(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) Repealed. Pub. L. 109–304, § 15(2)(A), Oct. 6, 2006, 120 Stat. 1702.]

(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) to (46) Repealed. Pub. L. 109–304, § 15(2)(A), Oct. 6, 2006, 120 Stat. 1702.]

(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; Pub. L. 109–241, title III, §§ 301, 312(b), July 11, 2006, 120 Stat. 526, 533; Pub. L. 109–304, § 15(2), Oct. 6, 2006, 120 Stat. 1702.)

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

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

AMENDMENTS

2006—Pars. (2) to (3a). Pub. L. 109–304, §15(2)(A), struck out pars. (2), (3), and (3a), which defined ''barge'', ''Boundary Line'', and ''citizen of the United States'', respectively. See sections 102, 103, and 104 of this title.

Par. (6). Pub. L. 109–304, §15(2)(A), struck out par. (6) which read as follows: '' 'consular officer' means an officer or employee of the United States Government designated under regulations to grant visas.'' See section 105 of this title.

Par. (8a). Pub. L. 109–304, §15(2)(B), inserted ''Prevention'' after ''Abuse''.

Pars. (10), (10a). Pub. L. 109–304, §15(2)(A), struck out pars. (10) and (10a) which defined ''documented vessel'' and ''Exclusive Economic Zone'', respectively. See sections 106 and 107 of this title.

Par. (10b). Pub. L. 109–241, §301(a), added par. (10b).

Par. (12). Pub. L. 109–304, §15(2)(A), struck out par. (12) which read as follows: '' 'foreign vessel' means a vessel of foreign registry or operated under the authority of a country except the United States.'' See section 110 of this title.

Par. (17b). Pub. L. 109–304, §15(2)(A), struck out par. (17b) which read as follows: '' 'numbered vessel' means a vessel for which a number has been issued under chapter 123 of this title.'' See section 111 of this title.

Par. (18). Pub. L. 109–304, §15(2)(C), struck out ''those'' after ''including''.

Par. (22)(D). Pub. L. 109–241, §301(b), added subpar. (D).

Par. (26a). Pub. L. 109–241, §312(b), added par. (26a).

Par. (34). Pub. L. 109–304, §15(2)(D), struck out '', except in part H,'' before ''means'' and substituted ''Secretary of'' for ''head of''.

Par. (35)(E). Pub. L. 109–241, §301(c), added subpar. (E).

Par. (36). Pub. L. 109–304, §15(2)(A), struck out par. (36) which read as follows: '' '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.'' See section 112 of this title.

Par. (41). Pub. L. 109–304, §15(2)(A), struck out par. (41) which read as follows: '' 'undocumented' means not having and not required to have a document issued under chapter 121 of this title.'' See section 113 of this title.

Pars. (44) to (46). Pub. L. 109–304, §15(2)(A), struck out pars. (44) to (46), which defined ''United States'', ''vessel'', and ''vessel of the United States'', respectively. See sections 114, 115, and 116 of this title.

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

Pub. L. 102–587, title V, § 5208(c), (d), Nov. 4, 1992, 106 Stat. 5076, 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 31301 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.

FISHING AND FISH TENDER VESSELS

Pub. L. 103–206, title III, § 321, Dec. 20, 1993, 107 Stat. 2427, 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 set out under section 101 of this title].’’

APPLICABILITY DATE FOR REVISED REGULATIONS

Pub. L. 103–206, title V, § 513, Dec. 20, 1993, 107 Stat. 2443, 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 set out under section 101 of this title].

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

§ 2102. Limited definitions

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; Pub. L. 109–304, §§ 15(3), 16(a), Oct. 6, 2006, 120 Stat. 1702, 1705.)

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

2006—Pub. L. 109–304 redesignated subsec. (b) as entire section, substituted ''west'' for ''West'' and ''east'' for ''East'', and struck out subsec. (a) which defined ''eligible State'', ''State'', ''United States'', and ''State recreational boating safety program'' in chapters 37, 43, 51, and 123 of this title and part I of this subtitle.

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.

§ 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 the district court of the United States for any district in which the vessel is found.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 506; Pub. L. 109–304, § 15(4), Oct. 6, 2006, 120 Stat. 1702.)

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.

AMENDMENTS

2006—Pub. L. 109–304 substituted ''the district court of the United States for any district'' for ''a district court of the United States''.

§ 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 subtitle VII or a regulation prescribed under this subtitle or subtitle VII 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 or subtitle VII 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; Pub. L. 109–241, title III, § 306(b), July 11, 2006, 120 Stat. 528.)

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.

AMENDMENTS

2006—Pub. L. 109–241 substituted ''this subtitle or subtitle VII'' for ''this subtitle'' in two places in subsec. (a) and in one place in subsec. (b).

[§ 2108. Repealed. Pub. L. 109–304, § 15(5), Oct. 6, 2006, 120 Stat. 1702]

Section, Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 507, related to refund of penalties unlawfully, improperly, or excessively imposed. See section 504 of this title.

§ 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 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; Pub. L. 109–241, title IX, § 902(e)(1), July 11, 2006, 120 Stat. 567.)

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

2006—Pub. L. 109–241 struck out ''a Coast Guard or'' after ''(except''.

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

§ 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 subtitle 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; 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 fee 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 Homeland Security shall deny the clearance required by section 60105 of this title 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 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; Pub. L. 109–304, § 15(6), Oct. 6, 2006, 120 Stat. 1702.)

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.

AMENDMENTS

2006—Subsec. (a)(2). Pub. L. 109–304, § 15(6)(A), substituted ''part B of this subtitle'' for ''part B of this title''.

Subsec. (b)(2)(A)(iii). Pub. L. 109–304, § 15(6)(B), substituted ''; and'' for period at end.

Subsec. (b)(5). Pub. L. 109–304, § 15(6)(C), substituted ''The fee'' for ''The fees''.

Subsec. (f). Pub. L. 109–304, § 15(6)(D), substituted ''Secretary of Homeland Security shall deny the clearance required by section 60105 of this title'' for ''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)''.

Subsec. (j). Pub. L. 109–304, § 15(6)(E), substituted ''State'' for ''state''.

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

Pub. L. 102–582, title V, § 501(b), Nov. 2, 1992, 106 Stat. 4910, 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 31301 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

Pub. L. 102–587, title V, § 5214, Nov. 4, 1992, 106 Stat. 5077, 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 sub-

title 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 sections 2304 and 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; Pub. L. 109–304, § 15(7), Oct. 6, 2006, 120 Stat. 1702.)

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 operating 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

2006—Pub. L. 109–304 substituted ''sections 2304 and'' for ''section''.

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)
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)(1) 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.

(2) Paragraph (1) does not apply to a vessel of war or a vessel owned by the United States Government appropriated only to a public service.

(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; Pub. L. 109–304, § 15(8), Oct. 6, 2006, 120 Stat. 1703.)

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.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–304 designated existing provisions as par. (1) and added par. (2).

§ 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 50113 of this title 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; amended Pub. L. 109–304, § 15(9), Oct. 6, 2006, 120 Stat. 1703.)

AMENDMENTS

2006—Subsec. (a)(2). Pub. L. 109–304 substituted ''section 50113 of this title'' for ''section 212(A) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1122a),''.

EFFECTIVE DATE

Pub. L. 98–498, title II, § 214, Oct. 19, 1984, 98 Stat. 2306, 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

Pub. L. 98–89, § 2(g)(1), 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

Pub. L. 99–36, § 2, May 15, 1985, 99 Stat. 68, 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

Pub. L. 98–623, title VII, § 701(b), (c), Nov. 8, 1984, 98 Stat. 3413, 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.

Sec.
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

Pub. L. 104–324, title VI, § 602(c), Oct. 19, 1996, 110 Stat. 3930, 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 tanker, 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 Homeland Security shall withhold or revoke the clearance required by section 60105 of this title 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; amended Pub. L. 109–304, § 15(10), Oct. 6, 2006, 120 Stat. 1703.)

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–304, which directed the substitution of ''Secretary of Homeland Security shall withhold or revoke the clearance required by section 60105 of this title'' for ''Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes (46 App. U.S.C. 91)'', was executed by making the substitution for text which included ''(46 U.S.C. App. 91)'' rather than ''(46 App. U.S.C. 91)'', to reflect the probable intent of Congress.

CHAPTER 33—INSPECTION GENERALLY

Sec.
3301. Vessels subject to inspection.

Sec.
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.

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

Pub. L. 104–324, title XI, § 1122, Oct. 19, 1996, 110 Stat. 3979, 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, 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, the following fish tender vessels are exempt from section 3301(1), (6), (7), (11), and (12) of this title:

(A) 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.

(B) A vessel engaged in the Aleutian trade that is not more than 2,500 gross tons as measured under section 14302 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.

(B) A fish tender vessel of not more than 500 gross tons as measured under section 14502 of this title, or less than 500 gross tons as measured under section 14502 of this title, or is less than 2,500 gross tons as measured under section 14302 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 less than 500 gross tons as measured under section 14502 of this title, or is less than 2,500 gross tons as measured under section 14302 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 vessel 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 chapter 515 of this title.

(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.

(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; Pub. L. 109–241, title III, § 311, July 11, 2006, 120 Stat. 530; Pub. L. 109–304, § 15(11), Oct. 6, 2006, 120 Stat. 1703.)

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

2006—Subsec. (b). Pub. L. 109–304, § 15(11)(A), inserted comma after ''fishing vessel''.

Subsec. (c)(2). Pub. L. 109–241, § 311(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''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.''

Subsec. (c)(3)(B), (4)(A). Pub. L. 109–241, § 311(b), substituted ''or less than 500 gross tons as measured under section 14502 of this title, or is less than 2,500 gross tons as measured under section 14302 of this title'' for ''or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title''.

Subsec. (j)(2)(B). Pub. L. 109–304, § 15(11)(B), substituted ''chapter 515 of this title'' for ''section 1304 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295c)''.

Subsec. (*l*)(1)(C). Pub. L. 109–304, § 15(11)(C), substituted ''Inc.'' for ''Inc..''.

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''.

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

Pub. L. 98–364, title IV, § 403, July 17, 1984, 98 Stat. 450, 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

Pub. L. 98–89, § 2(i), 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; Pub. L. 109–241, title IX, § 901(f), July 11, 2006, 120 Stat. 564.)

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

2006—Subsec. (a)(2). Pub. L. 109–241 realigned margins.

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 accommoda-

tions 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 51102 of this title), 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; Pub. L. 109–304, § 15(12), Oct. 6, 2006, 120 Stat. 1703.)

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 sup-

ply vessels consideration must be given to the special nature of their operations.

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–304 substituted ''section 51102 of this title'' for ''section 1302(3) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295a(3))''.

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

Pub. L. 103–206, title V, § 512(b), (c), Dec. 20, 1993, 107 Stat. 2442, 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

Pub. L. 104–324, title VI, § 604(b), Oct. 19, 1996, 110 Stat. 3931, 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 en-

sure 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 inspection, 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 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.

(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; Pub. L. 109–304, § 15(13), Oct. 6, 2006, 120 Stat. 1703.)

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

2006—Subsec. (f). Pub. L. 109–304 struck out period after ''felony''.

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 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.

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. 445; 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

Pub. L. 99–307, § 1(7)(B), May 19, 1986, 100 Stat. 445, 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 prescribed 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.
3702. Application.
3703. Regulations.
3703a. Tank vessel construction standards.
3704. Coastwise trade vessels.
3705. Crude oil tanker minimum standards.
3706. Product carrier minimum standards.
3707. Tanker minimum standards.
3708. Self-propelled tank vessel minimum standards.
3709. Exemptions.
3710. Evidence of compliance by vessels of the United States.
3711. Evidence of compliance by foreign vessels.
3712. Notification of noncompliance.
3713. Prohibited acts.
3714. Inspection and examination.
3715. Lightering.
3716. Tank washings.
3717. Marine safety information system.
3718. Penalties.
3719. Reduction of oil spills from single hull non-self-propelled tank vessels.

AMENDMENTS

2006—Pub. L. 109–304, § 15(14), Oct. 6, 2006, 120 Stat. 1703, inserted ''single hull'' before ''non-self-propelled'' in item 3719.

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.

[(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 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). 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 Representatives 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 as a wrecked vessel under section 12112 of this title.

(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 as a wrecked vessel under section 12112 of this title before January 1, 1994, may not operate in the navigable waters or the Exclusive Economic Zone of the United States after Janu-

ary 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 as a wrecked vessel under section 12112 of this title 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; Pub. L. 109–304, § 15(15), Oct. 6, 2006, 120 Stat. 1703.)

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

2006—Subsec. (c)(1)(C), (2), (3). Pub. L. 109–304 substituted ''documentation as a wrecked vessel under section 12112 of this title'' for ''documentation under section 4136 of the Revised Statutes of the United States (46 App. U.S.C. 14)''.

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

Pub. L. 101–380, title IV, § 4115(b), Aug. 18, 1990, 104 Stat. 520, 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; Pub. L. 109–241, title IX, § 901(n), July 11, 2006, 120 Stat. 565, 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 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 chapter 551 of this title 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; Pub. L. 109–304, § 15(16), Oct. 6, 2006, 120 Stat. 1703.)

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.

AMENDMENTS

2006—Pub. L. 109–304 substituted ''chapter 551 of this title'' for ''section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883),''.

§ 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[1]

(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

[1] So in original. The word ''and'' probably should not appear.

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

Pub. L. 98–89, § 2(g)(2), 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 Homeland Security, upon the request of the Secretary, shall with respect to such vessel refuse or revoke any clearance required by section 60105 of this title.

(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; Pub. L. 109–304, § 15(17), Oct. 6, 2006, 120 Stat. 1703.)

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

2006—Subsec. (e)(1). Pub. L. 109–304 substituted ''Secretary of Homeland Security'' and ''section 60105 of this title'' for ''Secretary of the Treasury'' and ''section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91)'', respectively.

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

Pub. L. 104–324, title IX, § 901(b), Oct. 19, 1996, 110 Stat. 3946, 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

Pub. L. 104–324, title IX, § 902(b), Oct. 19, 1996, 110 Stat. 3947, 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.
4301. Application.
4302. Regulations.
4303. Inspection and testing.
4304. Importation of nonconforming vessels and equipment.
4305. Exemptions.
4306. Federal preemption.
4307. Prohibited acts.
4308. Termination of unsafe operation.
4309. Investigation and reporting.
4310. Repair and replacement of defects.
4311. Penalties and injunctions.

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 licensed 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 sub-

division 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 uniform 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 equipment 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 com-

ment. 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; Pub. L. 109–241, title IX, § 901(e), July 11, 2006, 120 Stat. 564.)

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

2006—Subsec. (b)(1). Pub. L. 109–241 inserted a space after ''4307(a)''.

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

Pub. L. 100–424, § 7, Sept. 9, 1988, 102 Stat. 1592, 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 Inter-

national 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

Pub. L. 101–595, title VI, § 602(f), Nov. 16, 1990, 104 Stat. 2992, 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

Pub. L. 100–424, § 5(a), Sept. 9, 1988, 102 Stat. 1591, 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.

Pub. L. 100–424, § 5(b), Sept. 9, 1988, 102 Stat. 1591, 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 or-

ganization 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; Pub. L. 109–241, title IX, § 901(g), July 11, 2006, 120 Stat. 564.)

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

2006—Subsec. (e)(1). Pub. L. 109–241 amended directory language of Pub. L. 108–293, § 418(a). See 2004 Amendment note below.

2004—Subsec. (e)(1). Pub. L. 108–293, § 418(a), as amended by Pub. L. 109–241, substituted ''on September 30, 2010'' for ''on September 30, 2005''.

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.

EFFECTIVE DATE OF 2006 AMENDMENT

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

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

Pub. L. 100–424, § 2(b), Sept. 9, 1988, 102 Stat. 1589, 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''.

APPLICATION TO CERTAIN BARGES

Pub. L. 102–587, title V, § 5303, Nov. 4, 1992, 106 Stat. 5083, 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

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.

(Added Pub. L. 102–587, title V, § 5302, Nov. 4, 1992, 106 Stat. 5082; amended Pub. L. 109–304, § 15(18), Oct. 6, 2006, 120 Stat. 1703.)

AMENDMENTS

2006—Pub. L. 109–304 struck out subsec. (a) designation before ''An owner''.

§ 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) A barge removal contractor and its subcontractor are not liable for damages that result from actions taken or omitted to be taken in the course of removing a barge under this chapter.

(b) Subsection (a) does not apply—

(1) with respect to personal injury or wrongful death; or

(2) 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; amended Pub. L. 109–304, § 15(19), Oct. 6, 2006, 120 Stat. 1703.)

AMENDMENTS

2006—Pub. L. 109–304 in subsec. (a) struck out par. (1) designation before ''A barge removal'' and substituted ''subcontractor are not'' for ''subcontractor not'', redesignated par. (2) as subsec. (b) and subpars. (A) and (B) of former par. (2) as pars. (1) and (2) of subsec. (b), respectively, and substituted ''Subsection (a)'' for ''Paragraph (1)''.

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.
5103. Load line requirements.
5104. Assignment of load lines.
5105. Load line surveys.
5106. Load line certificate.
5107. Delegation of authority.
5108. Special exemptions.
5109. Reciprocity for foreign vessels.
5110. Submersible vessels.
5111. Providing loading information.
5112. Loading restrictions.
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 requirements ''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 60105 of this title 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; Pub. L. 109–304, § 15(20), Oct. 6, 2006, 120 Stat. 1703.)

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.

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–304 substituted ''section 60105 of this title'' for ''section 4197 of the Revised Statutes (46 App. U.S.C. 91)''.

§ 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) 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.

(h)(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.

(i) 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; Pub. L. 109–241, title IX, § 901(*o*), July 11, 2006, 120 Stat. 565; Pub. L. 109–304, § 15(21), Oct. 6, 2006, 120 Stat. 1704.)

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

2006—Subsecs. (g) to (i). Pub. L. 109–241 and Pub. L. 109–304 amended section identically, redesignating the second subsec. (g), relating to electronic publishing of marine casualty reports, and subsec. (h) as (h) and (i), respectively.

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.

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.
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

Pub. L. 98–89, §2(h), 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 Reor-

ganization 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, including 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.

(b) Any member or employee 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. 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.

(c) 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 subsections (a) and (b), and shall not be considered the report of an expert under the Federal Rules of Civil Procedure.

(d) The information referred to in subsections (a), (b), and (c) 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; amended Pub. L. 109–241, title IX, § 902(e)(2)–(4), July 11, 2006, 120 Stat. 567.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (c), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–241, § 902(e)(2)(B), added subsec. (a) and struck out former subsec. (a) which read as follows: ''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.''

Subsec. (b). Pub. L. 109–241, § 902(e)(2)(B), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 109–241, § 902(e)(2)(A), (3), redesignated subsec. (b) as (c) and substituted ''subsections (a) and (b)'' for ''subsection (a)''. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 109–241, § 902(e)(2)(A), (4), redesignated subsec. (c) as (d) and substituted ''subsections (a), (b), and (c)'' for ''subsections (a) and (b)''.

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.
7110. Exhibiting licenses.
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

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source section (U.S. Code)*
	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 second-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

Pub. L. 101–380, title IV, § 4102(d), Aug. 18, 1990, 104 Stat. 510, 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.

Sec.
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 section 30305(b)(5) of title 49, any information contained in the National Driver Register related to an offense described in section 30304(a)(3)(A) 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 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; Pub. L. 109–241, title IX, § 901(h)(1), (2), July 11, 2006, 120 Stat. 564.)

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

2006—Subsec. (c). Pub. L. 109–241, § 901(h)(1), amended directory language of Pub. L. 108–293, § 609(1). See 2004 Amendment note below.

Pub. L. 109–241, § 901(h)(2), inserted ''section'' before ''30305(b)(5)'' and before ''30304(a)(3)(A)''.

2004—Subsec. (c). Pub. L. 108–293, § 609(1), as amended by Pub. L. 109–241, § 901(h)(1), 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 2006 AMENDMENT

Pub. L. 109–241, title IX, § 901(h)(1), July 11, 2006, 120 Stat. 564, provided that the amendment made by section 901(h)(1) is effective Aug. 9, 2004.

EFFECTIVE DATE OF 1990 AMENDMENT

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

ocations 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.
7702. Administrative procedure.
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 preemployment (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—

(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

[1] See References in Text note below.

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;

(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; Pub. L. 109–241, title IX, §901(h)(3), July 11, 2006, 120 Stat. 564.)

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

2006—Par. (3). Pub. L. 109–241 struck out ''(23 U.S.C. 401 note)'' after ''of title 49''.

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).

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)

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source section (U.S. Code)*
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.
8106. Riding gangs[1]

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.

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

AMENDMENTS

2006—Pub. L. 109–241, title III, § 312(d), July 11, 2006, 120 Stat. 534, added item 8106.

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) Except as otherwise provided in this title, 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—

(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

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

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)).

(j) RIDING GANG MEMBER.—This section does not apply to an individual who is a riding gang member.

(k) CREW REQUIREMENTS FOR LARGE PASSENGER VESSELS.—

(1) CITIZENSHIP AND NATIONALITY.—Each unlicensed seaman on a large passenger vessel shall be—

(A) a citizen of the United States;

(B) an alien lawfully admitted to the United States for permanent residence;

(C) an alien allowed to be employed in the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), including an alien crewman described in section 101(a)(15)(D)(i) of that Act (8 U.S.C. 1101(a)(15)(D)(i)), who meets the requirements of paragraph (3)(A) of this subsection; or

(D) a foreign national who is enrolled in the United States Merchant Marine Academy.

(2) PERCENTAGE LIMITATION FOR ALIEN SEAMEN.—Not more than 25 percent of the unlicensed seamen on a vessel described in paragraph (1) of this subsection may be aliens referred to in subparagraph (B) or (C) of that paragraph.

(3) SPECIAL RULES FOR CERTAIN UNLICENSED SEAMEN.—

(A) QUALIFICATIONS.—An unlicensed seaman described in paragraph (1)(C) of this subsection—

(i) shall have been employed, for a period of not less than 1 year, on a passenger vessel under the same common ownership or control as the vessel described in paragraph (1) of this subsection, as certified by the owner or managing operator of such vessel to the Secretary;

(ii) shall have no record of material disciplinary actions during such employment, as verified in writing by the owner or managing operator of such vessel to the Secretary;

(iii) shall have successfully completed a United States Government security check of the relevant domestic and international databases, as appropriate, or any other national security-related information or database;

(iv) shall have successfully undergone an employer background check—

(I) for which the owner or managing operator provides a signed report to the Secretary that describes the background checks undertaken that are reasonably and legally available to the owner or managing operator including personnel file information obtained from such seaman and from databases available to the public with respect to the seaman;

(II) that consisted of a search of all information reasonably available to the owner or managing operator in the seaman's country of citizenship and any other country in which the seaman receives employment referrals, or resides;

(III) that is kept on the vessel and available for inspection by the Secretary; and

(IV) the information derived from which is made available to the Secretary upon request; and

(v) may not be a citizen or temporary or permanent resident of a country designated by the United States as a sponsor of terrorism or any other country that the Secretary, in consultation with the Secretary of State and the heads of other appropriate United States agencies, determines to be a security threat to the United States.

(B) RESTRICTIONS.—An unlicensed seaman described in paragraph (1)(C) of this subsection—

(i) may be employed only in the steward's department of the vessel; and

(ii) may not perform watchstanding, automated engine room duty watch, or vessel navigation functions.

(C) STATUS, DOCUMENTATION, AND EMPLOYMENT.—An unlicensed seaman described in subparagraph (C) or (D) of paragraph (1) of this subsection—

(i) is deemed to meet the nationality requirements necessary to qualify for a merchant mariners document notwithstanding the requirements of part 12 of title 46, Code of Federal Regulations;

(ii) is deemed to meet the proof-of-identity requirements necessary to qualify for a merchant mariners document, as prescribed under regulations promulgated by the Secretary, if the seaman possesses—

(I) an unexpired passport issued by the government of the country of which the seaman is a citizen or subject; and

(II) an unexpired visa issued to the seaman, as described in paragraph (1)(C);

(iii) shall, if eligible, be issued a merchant mariners document with an appropriate annotation reflecting the restrictions of subparagraph (B) of this paragraph; and

(iv) may be employed for a period of service on board not to exceed 36 months in the aggregate as a nonimmigrant crewman described in section 101(a)(15)(D)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(D)(i)) on vessels engaged in domestic voyages notwithstanding the departure requirements and time limitations of such section and the regulations and rules promulgated thereunder.

(4) MERCHANT MARINER'S DOCUMENT REQUIREMENTS NOT AFFECTED.—This subsection shall not be construed to affect any requirement under Federal law that an individual must hold a merchant mariner's document.

(5) DEFINITIONS.—In this subsection:

(A) STEWARD'S DEPARTMENT.—The term ''steward's department'' means the department that includes entertainment personnel and all service personnel, including wait staff, housekeeping staff, and galley workers, as defined in the vessel security plan approved by the Secretary pursuant to section 70103(c) of this title.

(B) LARGE PASSENGER VESSEL.—The term ''large passenger vessel'' means a vessel of more than 70,000 gross tons, as measured under section 14302 of this title, with capacity for at least 2,000 passengers and documented with a coastwise endorsement under chapter 121 of this title.

(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; Pub. L. 109–241, title III, §312(c)(1), July 11, 2006, 120 Stat. 533; Pub. L. 109–304, §15(22), Oct. 6, 2006, 120 Stat. 1704; Pub. L. 109–364, div. C, title XXXV, §3509, Oct. 17, 2006, 120 Stat. 2518.)

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 subsecs. (i)(1)(C) and (k)(1)(C), is act June 27, 1952, ch. 477, 66 Stat. 163, 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.

AMENDMENTS

2006—Pub. L. 109–163, § 515(f)(3)(B), substituted ''Navy Reserve'' for ''Naval Reserve'' in section catchline.

Subsec. (a). Pub. L. 109–304 substituted ''Except as otherwise provided in this title, only'' for ''Only''.

Subsec. (g). Pub. L. 109–163, § 515(f)(3)(A), substituted ''Navy Reserve'' for ''Naval Reserve''.

Subsec. (j). Pub. L. 109–241 added subsec. (j).

Subsec. (k). Pub. L. 109–364 added subsec. (k).

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

Pub. L. 104–208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009–41, provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–239, § 5(a)(3), Jan. 11, 1988, 101 Stat. 1780, 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].''

Pub. L. 100–239, 5(d)(2), Jan. 11, 1988, 101 Stat. 1781, 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

Pub. L. 101–595, title III, § 317, Nov. 16, 1990, 104 Stat. 2988, 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 less than 500 gross tons as measured under section 14502 of this title, or is less than 2,500 gross tons as measured under section 14302 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 less than 500 gross tons as measured under section 14502 of this title, or is less than 2,500 gross tons as measured under section 14302 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; Pub. L. 109–241, title III, § 311(b), July 11, 2006, 120 Stat. 530.)

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

2006—Subsec. (*o*). Pub. L. 109–241, which directed the substitution of ''or less than 500 gross tons as measured under section 14502 of this title, or is less than 2,500 gross tons as measured under section 14302 of this title'' for ''or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' in subsec. (*o*), was executed by making the substitution in both pars. (1) and (2) to reflect the probable intent of Congress.

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.

§ 8106. Riding gangs

(a) IN GENERAL.—The owner or managing operator of a freight vessel of the United States on voyages covered by the International Convention for Safety of Life at Sea, 1974 (32 UST 47m) shall—

(1) ensure that—

(A) subject to subsection (d), each riding gang member on the vessel—

(i) is a United States citizen or an alien lawfully admitted to the United States for permanent residence; or

(ii) possesses a United States nonimmigrant visa for individuals desiring to enter the United States temporarily for business, employment-related and personal identifying information, and any other documentation required by the Secretary;

(B) all required documentation for such member is kept on the vessel and available for inspection by the Secretary; and

(C) each riding gang member is identified on the vessel's crew list;

(2) ensure that—

(A) the owner or managing operator attests in a certificate that the background of each riding gang member has been examined and found to be free of any credible information indicating a material risk to the security of the vessel, the vessel's cargo, the ports the vessel visits, or other individuals onboard the vessel;

(B) the background check consisted of a search of all information reasonably available to the owner or managing operator in the riding gang member's country of citizenship and any other country in which the riding gang member works, receives employment referrals, or resides;

(C) the certificate required under subparagraph (A) is kept on the vessel and available for inspection by the Secretary; and

(D) the information derived from any such background check is made available to the Secretary upon request;

(3) ensure that each riding gang member, while on board the vessel, is subject to the same random chemical testing and reporting regimes as crew members;

(4) ensure that each such riding gang member receives basic safety familiarization and basic safety training approved by the Coast Guard as satisfying the requirements for such training under the International Convention of Training, Certification, and Watchkeeping for Seafarers, 1978;

(5) prevent from boarding the vessel, or cause the removal from the vessel at the first available port, and disqualify from future service on board any other vessel owned or operated by that owner or operator, any riding gang member—

(A) who has been convicted in any jurisdiction of an offense described in paragraph (2) or (3) of section 7703;

(B) whose license, certificate of registry, or merchant mariner's document has been suspended or revoked under section 7704; or

(C) who otherwise constitutes a threat to the safety of the vessel;

(6) ensure and certify to the Secretary that the sum of—

(A) the number of riding gang members on board a freight vessel, and

(B) the number of individuals in addition to crew permitted under section 3304,

does not exceed 12;

(7) ensure that every riding gang member is employed on board the vessel under conditions that meet or exceed the minimum international standards of all applicable international labor conventions to which the United States is a party, including all of the merchant seamen protection and relief provided under United States law; and

(8) ensure that each riding gang member—

(A) is supervised by an individual who holds a license issued under chapter 71; and

(B) only performs work in conjunction with individuals who hold merchant mari-

ners documents issued under chapter 73 and who are part of the vessel's crew.

(b) PERMITTED WORK.—Subject to subsection (f), a riding gang member on board a vessel to which subsection (a) applies who is neither a United States citizen nor an alien lawfully admitted to the United States for permanent residence may not perform any work on board the vessel other than—

(1) work in preparation of a vessel entering a shipyard located outside of the United States;

(2) completion of the residual repairs after departing a shipyard located outside of the United States; or

(3) technical in-voyage repairs, in excess of any repairs that can be performed by the vessel's crew, in order to advance the vessel's useful life without having to actually enter a shipyard.

(c) WORKDAY LIMIT.—

(1) IN GENERAL.—The maximum number of days in any calendar year that the owner or operator of a vessel to which subsection (a) applies may employ on board riding gang members who are neither United States citizens nor aliens lawfully admitted to the United States for permanent residence for work on board that vessel is 60 days. If the vessel is at sea on the 60th day, each riding gang member shall be discharged from the vessel at the next port of call reached by the vessel after the date on which the 60-workday limit is reached.

(2) CALCULATION.—For the purpose of calculating the 60-workday limit under this subsection, each day worked by a riding gang member who is neither a United States citizen nor an alien lawfully admitted to the United States for permanent residence shall be counted against the limitation.

(d) EXCEPTIONS FOR WARRANTY WORK.—

(1) IN GENERAL.—Subsections (b), (c), (e), and (f) do not apply to a riding gang member employed exclusively to perform, and who performs only, work that is—

(A) customarily performed by original equipment manufacturers' technical representatives;

(B) required by a manufacturer's warranty on specific machinery and equipment; or

(C) required by a contractual guarantee or warranty on actual repairs performed in a shipyard located outside of the United States.

(2) CITIZENSHIP REQUIREMENT.—Subsection (a)(1)(A) applies only to a riding gang member described in paragraph (1) who is on the vessel when it calls at a United States port.

(e) RECORDKEEPING.—In addition to the requirements of subsection (a), the owner or managing operator of a vessel to which subsection (a) applies shall ensure that all information necessary to ensure compliance with this section, as determined by the Secretary, is entered into the vessel's official logbook required by chapter 113.

(f) FAILURE TO EMPLOY QUALIFIED AVAILABLE U.S. CITIZENS OR RESIDENTS.—

(1) IN GENERAL.—The owner or operator of a vessel to which subsection (a) applies may not employ a riding gang member who is neither a United States citizen nor an alien lawfully admitted to the United States for permanent residence to perform work described in subsection (b) unless the owner or operator determines, in accordance with procedures established by the Secretary to carry out section 8103(b)(3)(C), that there is not a sufficient number of United States citizens or individuals lawfully admitted to the United States for permanent residence who are qualified and available for the work for which the riding gang member is to be employed.

(2) CIVIL PENALTY.—A violation of paragraph (1) is punishable by a civil penalty of not more than $10,000 for each day during which the violation continues.

(3) CONTINUING VIOLATIONS.—The maximum amount of a civil penalty for a violation under this subsection shall not exceed—

(A) $50,000 if the violation occurs in fiscal year 2006;

(B) $75,000 if the violation occurs in fiscal year 2007; and

(C) $100,000 if the violation occurs after fiscal year 2007.

(4) DETERMINATION OF AMOUNT.—In determining the amount of the penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, the history of prior offenses, the ability to pay, and such other matters as justice may require.

(5) COMPROMISE, MODIFICATION, AND REMITTAL.—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty imposed under this section.

(Added Pub. L. 109–241, title III, § 312(a), July 11, 2006, 120 Stat. 530.)

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.

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 sub-

ject 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 crewmember (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 meas-

ured 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 mariner'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)

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source section (U.S. Code)*
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

Pub. L. 104–208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009–41, provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

CONSTRUCTION

Pub. L. 100–239, § 5(f)(3), Jan. 11, 1988, 101 Stat. 1781, 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

Pub. L. 99–640, § 12(b), Nov. 10, 1986, 100 Stat. 3551, 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.

Sec.
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 applicable 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 follows: ''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. The Secretary shall establish new pilotage rates by March 1 of each year. The Secretary shall establish base pilotage rates by a full ratemaking at least once every 5 years and shall conduct annual reviews of such base pilotage rates, and make adjustments to such base rates, in each intervening year.

(g) The Secretary shall ensure that a sufficient number of individuals are assigned to carrying out subsection (f).

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 558; Pub. L. 104–324, title VII, § 735, Oct. 19, 1996, 110 Stat. 3941; Pub. L. 109–241, title III, § 302, July 11, 2006, 120 Stat. 527.)

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

2006—Subsec. (f). Pub. L. 109–241, § 302(1), inserted at end ''The Secretary shall establish new pilotage rates by March 1 of each year. The Secretary shall establish base pilotage rates by a full ratemaking at least once every 5 years and shall conduct annual reviews of such base pilotage rates, and make adjustments to such base rates, in each intervening year.''

Subsec. (g). Pub. L. 109–241, § 302(2), added subsec. (g).

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 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.).

(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; Pub. L. 109–304, § 15(23), Oct. 6, 2006, 120 Stat. 1704.)

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

2006—Subsec. (b)(2)(A). Pub. L. 109–304 substituted ''the President'' for ''The President''.

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.
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 or to riding gang members.

(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; Pub. L. 109–241, title III, § 312(c)(2), July 11, 2006, 120 Stat. 533.)

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

2006—Subsec. (b). Pub. L. 109–241 inserted ''or to riding gang members'' after ''voyage''.

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 requirement 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
Birthplace
Age
Height:
Feet
Inches
Description:
Complexion
Hair
Wages each month
Wages each voyage
Advance wages
Amount of monthly allotment
Time of service:
Months
Days
Hospital money
Whole wages
Wages due
Place and time of entry
Time at which seaman is to be on board
In what capacity
Allotment payable to
Conduct qualifications

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

Pub. L. 99–36, § 1(b), May 15, 1985, 99 Stat. 68, 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 sea-

man 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.

Sec.
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' duration 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

SUBCHAPTER I—GENERAL

Sec.
12101. Definitions.
12102. Vessels requiring documentation.
12103. General eligibility requirements.
12104. Applications for documentation.
12105. Issuance of documentation.
12106. Surrender of title and number.
12107. Wrecked vessels.

SUBCHAPTER II—ENDORSEMENTS AND SPECIAL DOCUMENTATION

12111. Registry endorsement.
12112. Coastwise endorsement.
12113. Fishery endorsement.
12114. Recreational endorsement.
12115. Temporary endorsement for vessels procured outside the United States.
12116. Limited endorsements for Guam, American Samoa, and Northern Mariana Islands.
12117. Oil spill response vessels.
12118. Owners engaged primarily in manufacturing or mineral industry.
12119. Owners engaged primarily in leasing or financing transactions.
12120. Liquified gas tankers.
12121. Small passenger vessels and uninspected passenger vessels.

SUBCHAPTER III—MISCELLANEOUS

12131. Command of documented vessels.
12132. Loss of coastwise trade privileges.
12133. Duty to carry certificate on vessel and allow examination.
12134. Evidentiary uses of documentation.
12135. Invalidation of certificates of documentation.
12136. Surrender of certificates of documentation.
12137. Recording of vessels built in the United States.
12138. List of documented vessels.
12139. Reports.

SUBCHAPTER IV—PENALTIES

12151. Penalties.
12152. Denial or revocation of endorsement for nonpayment of civil penalty.

CODIFICATION

This chapter was originally enacted by Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 584, and amended by Pub. L. 98–364, July 17, 1984, 98 Stat. 440; Pub. L. 98–454, Oct. 5, 1984, 98 Stat. 1732; Pub. L. 99–36, May 15, 1985, 99 Stat. 67; Pub. L. 99–307, May 19, 1986, 100 Stat. 444; Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1874; Pub. L. 99–570, Oct. 27, 1986, 100 Stat. 3207; Pub. L. 100–239, Jan. 11, 1988, 101 Stat. 1778; Pub. L. 100–710, Nov. 23, 1988, 102 Stat. 4735; Pub. L. 101–225, Dec. 12, 1989, 103 Stat. 1908; Pub. L. 101–380, Aug. 18, 1990, 104 Stat. 484; Pub. L. 101–595, Nov. 16, 1990, 104 Stat. 2979; Pub. L. 102–388, Oct. 6, 1992, 106 Stat. 1520; Pub. L. 102–587, Nov. 4, 1992, 106 Stat. 5039; Pub. L. 104–208, Sept. 30, 1996, 110 Stat. 3009; Pub. L. 104–324, Oct. 19, 1996, 110 Stat. 3901; Pub. L. 105–277, Oct. 21, 1998, 112 Stat. 2681; Pub. L. 105–383, Nov. 13, 1998, 112 Stat. 3411; Pub. L. 106–31, May 21, 1999, 113 Stat. 57; Pub. L. 107–20, July 24, 2001, 115 Stat. 155; Pub. L. 107–206, Aug. 2, 2002, 116 Stat. 820; Pub. L. 107–295, Nov. 25, 2002, 116 Stat. 2064; Pub. L. 108–136, Nov. 24, 2003, 117 Stat. 1392; Pub. L. 108–293, Aug. 9, 2004, 118 Stat. 1028; Pub. L. 109–241, July 11, 2006, 120 Stat. 516. This chapter is shown here, however, as having been enacted by Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1491, without reference to those intervening amendments because of the general amendment of this chapter by Pub. L. 109–304.

SUBCHAPTER I—GENERAL

§ 12101. Definitions

(a) REBUILT IN THE UNITED STATES.—In this chapter, a vessel is deemed to have been rebuilt in the United States only if the entire rebuilding, including the construction of any major component of the hull or superstructure, was done in the United States.

(b) RELATED TERMS IN OTHER LAWS.—When the following terms are used in a law, regulation, document, ruling, or other official act referring to the documentation of a vessel, the following definitions apply:

(1) REGISTRY ENDORSEMENT.—The terms ''certificate of registry'', ''register'', and ''registry'' mean a certificate of documentation with a registry endorsement issued under this chapter.

(2) COASTWISE ENDORSEMENT.—The terms ''license'', ''enrollment and license'', ''license for the coastwise (or coasting) trade'', and ''enrollment and license for the coastwise (or coasting) trade'' mean a certificate of documentation with a coastwise endorsement issued under this chapter.

(3) YACHT.—The term ''yacht'' means a recreational vessel even if not documented.

(Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1491.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12101(a)	46:12101(a)(2). 46 App.:883 (2d proviso related to meaning of ''rebuilt'').	June 5, 1920, ch. 250, § 27 (2d proviso related to meaning of ''rebuilt''), 41 Stat. 999; July 2, 1935, ch. 355, 49 Stat. 442; July 14, 1956, ch. 600, § 1, 70 Stat. 544; Pub. L. 86–583, § 1, July 5, 1960, 74 Stat. 321; Pub. L. 100–239, § 6(c)(1), Jan. 11, 1988, 101 Stat. 1782.
12101(b)	46:12101(b).	

In subsection (a), the words ''its territories'' and ''or its possessions'' are omitted because of the definition of ''United States'' in chapter 1 of the revised title. The words ''(not including trust territories)'' are omitted because the Trust Territory of the Pacific Islands has terminated. See 48 U.S.C. 1681 note prec.

PRIOR PROVISIONS

A prior section 12101, 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, originally derived from section 65w of former Title 46, Shipping, related to definitions and related terms in other laws, prior to the general amendment of this chapter by Pub. L. 109–304. See this section and section 108 of this title.

§ 12102. Vessels requiring documentation

(a) IN GENERAL.—Except as otherwise provided, a vessel may engage in a trade only if the vessel has been issued a certificate of documentation with an endorsement for that trade under this chapter.

(b) VESSELS LESS THAN 5 NET TONS.—A vessel of less than 5 net tons may engage in a trade without being documented if the vessel otherwise satisfies the requirements to engage in the particular trade.

(c) BARGES.—A barge qualified to engage in the coastwise trade may engage in the coastwise trade, without being documented, on rivers, harbors, lakes (except the Great Lakes), canals, and inland waters.

(Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1492.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12102(a)	46:12106(b). 46:12108(b). 46:12110(a).	
12102(b)	46:12102(a) (related to tonnage).	
12102(c)	46:12110(b).	

PRIOR PROVISIONS

A prior section 12102, 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, originally derived from section 65b of former Title 46, Shipping, related to vessels eligible for documentation, prior to the general amendment of this chapter by Pub. L. 109–304. See this section and sections 12103, 12111, and 12113 of this title.

§ 12103. General eligibility requirements

(a) IN GENERAL.—Except as otherwise provided, a certificate of documentation for a vessel may be issued under this chapter only if the vessel is—

(1) wholly owned by one or more individuals or entities described in subsection (b);

(2) at least 5 net tons as measured under part J of this subtitle; and

(3) not documented under the laws of a foreign country.

(b) ELIGIBLE OWNERS.—For purposes of subsection (a)(1), the following are eligible owners:

(1) An individual who is a citizen of the United States.

(2) An association, trust, joint venture, or other entity if—

(A) each of its members is a citizen of the United States; and

(B) it is capable of holding title to a vessel under the laws of the United States or a State.

(3) A partnership if—

(A) each general partner is a citizen of the United States; and

(B) the controlling interest in the partnership is owned by citizens of the United States.

(4) A corporation if—

(A) it is incorporated under the laws of the United States or a State;

(B) its chief executive officer, by whatever title, and the chairman of its board of directors are citizens of the United States; and

(C) no more of its directors are noncitizens than a minority of the number necessary to constitute a quorum.

(5) The United States Government.

(6) The government of a State.

(c) TEMPORARY CERTIFICATES PRIOR TO MEASUREMENT.—Notwithstanding subsection (a)(2), the Secretary may issue a temporary certificate of documentation for a vessel before it is measured.

(Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1492.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12103(a)	46:12102(a) (less ownership), (b) (1st sentence).	
12103(b)	46:12102(a) (related to ownership)	
12103(c)	46:12102(b) (last sentence).	

PRIOR PROVISIONS

A prior section 12103, 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, originally derived from section 65e of former Title 46, Shipping, related to certificates of documentation, prior to the general amendment of this chapter by Pub. L. 109–304. See sections 12104, 12105, and 12133 of this title.

A prior section 12103a, added Pub. L. 107–295, title IV, § 422(b)(1), Nov. 25, 2002, 116 Stat. 2125, related to issuance of temporary certificate of documentation by third parties, prior to the general amendment of this chapter by Pub. L. 109–304. See section 12105 of this title.

§ 12104. Applications for documentation

(a) IN GENERAL.—An application for a certificate of documentation or endorsement under this chapter must be filed by the owner of the vessel. The application must be filed in the manner, be in the form, and contain the information prescribed by the Secretary.

(b) APPLICANT'S IDENTIFYING INFORMATION.—The Secretary shall require the applicant to provide—

(1) if the applicant is an individual, the individual's social security number; or

(2) if the applicant is an entity—

(A) the entity's taxpayer identification number; or

(B) if the entity 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 entity and who signs the application.

(Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1493.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12104(a)	46:12103(a) (related to filing by owner), (b)(1).	
12104(b)	46:12103(b)(2).	

PRIOR PROVISIONS

A prior section 12104, 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, originally derived from section 65g of former Title 46, Shipping, related to effect of documentation, prior to the general amendment of this chapter by Pub. L. 109–304. See section 12134 of this title.

§ 12105. Issuance of documentation

(a) IN GENERAL.—Except as provided in section 12152 of this title, the Secretary, on receipt of a proper application, shall issue a certificate of documentation or a temporary certificate of documentation for a vessel satisfying the requirements of section 12103 of this title. The certificate shall contain each endorsement under subchapter II of this chapter for which the owner applies and the vessel is eligible.

(b) TEMPORARY CERTIFICATES FOR RECREATIONAL VESSELS.—The Secretary may delegate, subject to the supervision and control of the Secretary and under terms prescribed 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 eligible under section 12103 of this title. A temporary certificate issued under this subsection is valid for not more than 30 days.

(c) INFORMATION TO BE INCLUDED IN CERTIFICATE.—A 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) PROCEDURES TO ENSURE INTEGRITY AND ACCURACY.—The Secretary shall prescribe procedures to ensure the integrity of, and the accuracy of information contained in, certificates of documentation.

(Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1493.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12105(a)	46:12103(a) (less filing by owner).	
12105(b)	46:12103a.	
12105(c)	46:12103(c).	
12105(d)	46:12103(d).	

In subsection (b), the words ''eligible under'' are substituted for ''if the applicant for the certificate of documentation meets the requirements set out in'' for consistency in the chapter and to eliminate unnecessary words.

PRIOR PROVISIONS

A prior section 12105, 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; Pub. L. 109–241, title III, § 310, July 11, 2006, 120 Stat. 529, originally derived from section 65h of former Title 46, Shipping, related to registry endorsements, prior to the general amendment of this chapter by Pub. L. 109–304. See section 12111 of this title.

§ 12106. Surrender of title and number

(a) IN GENERAL.—A documented vessel may not be titled by a State or required to display numbers under chapter 123 of this title, and any

certificate of title issued by a State for a documented vessel shall be surrendered as provided by regulations prescribed by the Secretary.

(b) VESSELS COVERED BY PREFERRED MORTGAGE.—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.

(Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1494.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12106	46:12124.	

PRIOR PROVISIONS

A prior section 12106, 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, originally derived from section 65i of former Title 46, Shipping, related to coastwise endorsements, prior to the general amendment of this chapter by Pub. L. 109–304. See sections 12102, 12112, 12116, 12117, and 12119 of this title.

§ 12107. Wrecked vessels

(a) REQUIREMENTS.—A vessel is a wrecked vessel under this chapter if it—

(1) was wrecked on a coast of the United States or adjacent waters; and

(2) has undergone repairs in a shipyard in the United States equal to at least 3 times the appraised salvage value of the vessel.

(b) APPRAISALS.—The Secretary may appoint a board of three appraisers to determine whether a vessel satisfies subsection (a)(2). The costs of the appraisal shall be paid by the owner of the vessel.

(Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1494.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12107	46 App.:14 (words before last proviso).	R.S. § 4136 (words before last proviso); Feb. 24, 1915, ch. 57, 38 Stat. 812; Pub. L. 103–182, title VI, § 686(a)(4), Dec. 8, 1993, 107 Stat. 2220.

The words ''The Secretary of Transportation may issue a certificate of documentation with a coastwise endorsement'' and ''when purchased by a citizen or citizens of the United States'' are omitted as unnecessary because section 12112, as revised by the bill, provides the requirements for a wrecked vessel to obtain a coastwise endorsement.

In subsection (c)(1), the words ''or her possessions'' are omitted as unnecessary because of the definition of ''United States'' in chapter 1 of the revised title.

PRIOR PROVISIONS

A prior section 12107, 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, originally derived from section 65j of former Title 46, Shipping, related to Great Lakes endorsements, prior to being repealed by Pub. L. 104–324, title XI, § 1115(a), Oct. 19, 1996, 110 Stat. 3972.

A prior section 12108, 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, originally derived from section 65k of former Title 46, Shipping, related to fishery endorsements, prior to being omitted in the general amendment of this chapter by Pub. L. 109–304. See sections 12102, 12113, and 12116 of this title.

A prior section 12109, 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, originally derived from section 65*l* of former Title 46, Shipping, related to recreational endorsements, prior to being omitted in the general amendment of this chapter by Pub. L. 109–304. See section 12114 of this title.

A prior section 12110, 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, originally derived from section 65m of former Title 46, Shipping, related to limitations on operations authorized by certificates, prior to being omitted in the general amendment of this chapter by Pub. L. 109–304. See sections 12102, 12114, and 12131 of this title.

SUBCHAPTER II—ENDORSEMENTS AND SPECIAL DOCUMENTATION

§ 12111. Registry endorsement

(a) REQUIREMENTS.—A registry endorsement may be issued for a vessel that satisfies the requirements of section 12103 of this title.

(b) AUTHORIZED ACTIVITY.—A vessel for which a registry endorsement is issued may engage in foreign trade or trade with Guam, American Samoa, Wake, Midway, or Kingman Reef.

(c) CERTAIN VESSELS OWNED BY TRUSTS.—

(1) NONAPPLICATION OF BENEFICIARY CITIZENSHIP REQUIREMENT.—For the issuance of a certificate of documentation with only a registry endorsement, the beneficiaries of a trust are not required to be citizens of the United States if the trust qualifies under paragraph (2) and the vessel is subject to a charter to a citizen of the United States.

(2) REQUIREMENTS FOR TRUST TO QUALIFY.—

(A) IN GENERAL.—Subject to subparagraph (B), a trust qualifies under this paragraph with respect to a vessel only if—

(i) each trustee 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) AUTHORITY OF NON-CITIZENS.—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.

(C) OWNERSHIP BY NON-CITIZENS.—Subparagraphs (A) and (B) do not prohibit a person that is not a citizen of the United States from holding more than 25 percent of the beneficial interest in a trust.

(3) CITIZENSHIP OF PERSON CHARTERING VESSEL.—If a person chartering a vessel from a trust that qualifies under paragraph (2) is a citizen of the United States under section 50501 of this title, the vessel is deemed to be owned by a citizen of the United States for purposes of that section and related laws, except chapter 531 of this title.

(Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1494; Pub. L. 109–241, title III, § 310, July 11, 2006, 120 Stat. 529.)

AMENDMENT NOT SHOWN IN TEXT

This section was derived in part from former section 12105 of this title, which was amended by Pub. L. 109–241, title III, § 310, July 11, 2006, 120 Stat. 529. For applicability of that amendment to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Former section 12105 was amended by adding a new subsection which read as follows:

''(c)(1) Only a vessel for which a certificate of documentation with a registry endorsement is issued may engage in—

''(A) the setting, relocation, or recovery of the anchors or other mooring equipment of a mobile offshore drilling unit that is located over the outer Continental Shelf (as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a))); or

''(B) the transportation of merchandise or personnel to or from a point in the United States from or to a mobile offshore drilling unit located over the outer Continental Shelf that is not attached to the seabed.

''(2) Nothing in paragraph (1) authorizes the employment in the coastwise trade of a vessel that does not meet the requirements of section 12106 [now principally 12112] of this title.''

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12111(a)	46:12105(a).	
12111(b)	46:12105(b).	
12111(c)	46:12102(d).	

PRIOR PROVISIONS

A prior section 12111, 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, originally derived from section 65*o* of former Title 46, Shipping, related to surrender and invalidation of certificates of documentation, prior to the general amendment of this chapter by Pub. L. 109–304. See sections 12135 and 12136 of this title.

§ 12112. Coastwise endorsement

(a) REQUIREMENTS.—A coastwise endorsement may be issued for a vessel that—

(1) satisfies the requirements of section 12103 of this title;

(2)(A) was built in the United States; or

(B) if not built in the United States—

(i) was captured in war by citizens of the United States and lawfully condemned as prize;

(ii) was adjudged to be forfeited for a breach of the laws of the United States; or

(iii) qualifies as a wrecked vessel under section 12107 of this title; and

(3) otherwise qualifies under the laws of the United States to engage in the coastwise trade.

(b) AUTHORIZED ACTIVITY.—Subject to the laws of the United States regulating the coastwise trade, a vessel for which a coastwise endorsement is issued may engage in the coastwise trade.

(Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1495.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12112(a)	46:12106(a).	
12112(b)	46:12106(b).	

In subsection (b), the word ''only'' is omitted because section 12102(a), as revised by the bill, contains a general requirement for appropriate documentation to engage in any trade.

PRIOR PROVISIONS

A prior section 12112, 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, originally derived from section 65p of former Title 46, Shipping, related to vessels procured outside the United States, prior to the general amendment of this chapter by Pub. L. 109–304. See section 12115 of this title.

CERTAIN VESSELS ENGAGED IN ALASKA COASTWISE TRADE

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) [now section 12103(a), (b)] of title 46, United States Code, section 2 of the Shipping Act, 1916 ([former] 46 U.S.C. App. 802) [see

46 U.S.C. 50501], and section 27 of the Merchant Marine Act, 1920 ([former] 46 U.S.C. App. 883) [see Disposition Table preceding section 101 of this title], 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 [former] 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 [former] 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) [now section 12112(a)] of title 46, United States Code.''

§ 12113. Fishery endorsement

(a) REQUIREMENTS.—A fishery endorsement may be issued for a vessel that—

(1) satisfies the requirements of section 12103 of this title and, if owned by an entity, the entity satisfies the ownership requirements in subsection (c);

(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 engage in the fisheries.

(b) AUTHORIZED ACTIVITY.—

(1) IN GENERAL.—Subject to the laws of the United States regulating the fisheries, a vessel for which a fishery endorsement is issued may engage in the fisheries.

(2) USE BY PROHIBITED PERSONS.—A fishery endorsement is invalid immediately if the vessel for which it is issued is used as a fishing vessel while it 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.

(c) OWNERSHIP REQUIREMENTS FOR ENTITIES.—

(1) IN GENERAL.—A vessel owned by an entity is eligible for a fishery endorsement only if at least 75 percent of the interest in the entity, at each tier of ownership and in the aggregate, is owned and controlled by citizens of the United States.

(2) DETERMINING 75 PERCENT INTEREST.—In determining whether at least 75 percent of the interest in the entity is owned and controlled by citizens of the United States under paragraph (1), the Secretary shall apply section 50501(d) of this title, except that for this purpose the terms ''control'' or ''controlled''—

(A) include the right to—

(i) direct the business of the entity;

(ii) 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; or

(iii) direct the transfer, operation, or manning of a vessel with a fishery endorsement; but

(B) do 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, except 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) EXCEPTIONS.—This subsection does not apply to a vessel when it is engaged in the 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 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 law that was in effect on October 1, 1998. A fishery endorsement issued pursuant to this paragraph is valid for engaging only in the activities described in this paragraph.

(d) REQUIREMENTS BASED ON LENGTH, TONNAGE, OR HORSEPOWER.—

(1) APPLICATION.—This subsection applies to a vessel that—

(A) is greater than 165 feet in registered length;

(B) is more than 750 gross registered tons as measured under chapter 145 of this title or 1,900 gross registered tons as measured under chapter 143 of this title; or

(C) has an engine or engines capable of producing a total of more than 3,000 shaft horsepower.

(2) REQUIREMENTS.—A vessel subject to this subsection is not eligible for a fishery endorsement 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 October 21, 1998; and

(iii) if the fishery endorsement is invalidated after October 21, 1998, application is made for a new fishery endorsement within 15 business days of the invalidation; or

(B) the owner of the vessel demonstrates to the Secretary that the regional fishery management council of jurisdiction established under section 302(a)(1) of the Magnu-

son-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)) has recommended after October 21, 1998, and the Secretary of Commerce has approved, conservation and management measures in accordance with the American Fisheries Act (Public Law 105–277, div. C, title II) (16 U.S.C. 1851 note)[1] to allow the vessel to be used in fisheries under the council's authority.

(e) VESSELS MEASURING 100 FEET OR GREATER.—

(1) IN GENERAL.—The Administrator of the Maritime Administration shall administer subsections (c) and (d) 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 on an annual basis to demonstrate compliance with those provisions.

(2) REGULATIONS.—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 shall be written in a manner to allow the owner of the vessel to satisfy any annual renewal requirements for a certificate of documentation for the vessel and to comply with this subsection and subsections (c) and (d), and shall not be required to be notarized.

(3) TRANSFER OF OWNERSHIP.—Transfers of ownership and control of vessels subject to subsection (c) or (d), which are 100 feet or greater in registered length, shall be rigorously scrutinized for violations of those provisions, with particular attention given to—

(A) leases, charters, mortgages, financing, and similar arrangements;

(B) the control of persons not eligible to own a vessel with a fishery endorsement under subsection (c) or (d), over the management, sales, financing, or other operations of an entity; and

(C) contracts involving the purchase over extended periods of time of all, or substantially all, of the living marine resources harvested by a fishing vessel.

(f) VESSELS MEASURING LESS THAN 100 FEET.—The Secretary shall establish reasonable and necessary requirements to demonstrate compliance with subsections (c) and (d), 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 those vessels.

(g) VESSELS PURCHASED THROUGH FISHING CAPACITY REDUCTION PROGRAM.—A vessel purchased by the Secretary of Commerce through a fishing capacity reduction program under the Magnuson-Stevens Fishery Conservation Management Act[1] (16 U.S.C. 1801 et seq.) or section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107) is not eligible for a fishery endorsement, and any fishery endorsement issued for that vessel is invalid.

[1] See References in Text note below.

(h) REVOCATION OF ENDORSEMENTS.—The Secretary shall revoke the fishery endorsement of any vessel subject to subsection (c) or (d) whose owner does not comply with those provisions.

(i) REGULATIONS.—Regulations to implement subsections (c) and (d) and sections 12151(c) and 31322(b) of this title shall prohibit impermissible transfers of ownership or control, specify any transactions that require prior approval of an implementing agency, identify transactions that do not require prior agency approval, and to the extent practicable, minimize disruptions to the commercial fishing industry, to the traditional financing arrangements of that industry, and to the opportunity to form fishery cooperatives.

(Pub. L. 109–304, §5, Oct. 6, 2006, 120 Stat. 1495.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12113(a)	46:12108(a).	
12113(b)(1) ..	46:12108(b).	
12113(b)(2) ..	46:12102(c)(3).	
12113(c)(1) ..	46:12102(c)(1).	
12113(c)(2) ..	46:12102(c)(2).	
12113(c)(3) ..	46:12102(c)(4).	
12113(d)	46:12102(c)(5).	
12113(e)	46:12102 note.	Pub. L. 105–277, div. C, title II, §203(c), Oct. 21, 1998, 112 Stat. 2681–619.
12113(f)	46:12102 note.	Pub. L. 105–277, div. C, title II, §203(d), Oct. 21, 1998, 112 Stat. 2681–619.
12113(g)	46:12108(d).	
12113(h)	46:12102 note.	Pub. L. 105–277, div. C, title II, §203(e), Oct. 21, 1998, 112 Stat. 2681–619.
12113(i)	46:12102 note.	Pub. L. 105–277, div. C, title II, §203(b), Oct. 21, 1998, 112 Stat. 2681–619.

In subsection (b)(1), the word ''only'' is omitted because section 12102(a), as revised by the bill, contains a general requirement for appropriate documentation to engage in any trade.

In subsection (c)(1), the word ''entity'' is substituted for ''corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other entity'' to eliminate unnecessary words.

In subsection (e)(3), the words ''After October 1, 2001'' are omitted as obsolete.

In subsection (i), the first two sentences of section 203(b) of Public Law 105–277 are omitted as obsolete.

REFERENCES IN TEXT

The American Fisheries Act (Public Law 105–277, div. C, title II) (16 U.S.C. 1851 note), referred to in subsec. (d)(2)(B), probably should be a reference to the Magnuson-Stevens Fishery Conservation and Management Act (see note below). Subsec. (d)(2)(B) of this section was derived from former section 12102(c)(5)(B) of this title in the general amendment of this chapter by Pub. L. 109–304, §5, Oct. 6, 2006, 120 Stat. 1491. As part of that amendment, the reference to the American Fisheries Act was substituted for a reference to ''such Act'' which had been preceded by references to both of the above named Acts. See the Historical and Revision Notes above and section 2 of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

The Magnuson-Stevens Fishery Conservation Management Act, referred to in subsec. (g), probably means the Magnuson-Stevens Fishery Conservation and Management Act, Pub. L. 94–265, Apr. 13, 1976, 90 Stat. 331, 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.

PRIOR PROVISIONS

A prior section 12113, Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 588, originally derived from section 65a of former

Title 46, Shipping, related to ports of documentation, prior to being repealed by Pub. L. 100–710, title I, §§106(b)(5), 107(a), Nov. 23, 1988, 102 Stat. 4752, effective Jan. 1, 1989.

INAPPLICABILITY OF SUBSECTION (d) 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 12113(d)] 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.''

EXCEPTION TO BUILD REQUIREMENT FOR PRIOR VESSELS

Pub. L. 100–239, §4, Jan. 11, 1988, 101 Stat. 1779, 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) [now section 12113(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.''

DEFINITIONS

Pub. L. 100–239, §6(d), Jan. 11, 1988, 101 Stat. 1782, provided that: ''The terms in this Act [see Tables for classification] have the same meaning as in subtitle II [now also sections 114 and 115] of title 46, United States Code (as amended by this Act).''

§ 12114. Recreational endorsement

(a) REQUIREMENTS.—A recreational endorsement may be issued for a vessel that satisfies the requirements of section 12103 of this title.

(b) AUTHORIZED ACTIVITY.—A vessel operating under a recreational endorsement may be operated only for pleasure.

(c) APPLICATION OF CUSTOMS LAWS.—A vessel for which a recreational endorsement is issued may proceed between a port of the United States and a port of a foreign country without entering or clearing with the Secretary of Homeland Security. However, a recreational vessel is subject to the requirements for reporting arrivals under section 433 of the Tariff Act of 1930 (19 U.S.C. 1433), and individuals on the vessel are subject to applicable customs regulations.

(Pub. L. 109–304, §5, Oct. 6, 2006, 120 Stat. 1498.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12114(a)	46:12109(a).	
12114(b)	46:12109(c). 46:12110(c).	
12114(c)	46:12109(b).	

In subsection (c), the words ''Secretary of Homeland Security'' are substituted for ''Customs Service'' because the functions of the Customs Service and of the Secretary of the Treasury relating thereto were transferred to the Secretary of Homeland Security by section 403(1) of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2178).

PRIOR PROVISIONS

A prior 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, originally derived from section 65c of former Title 46, Shipping, related to home ports, prior to being repealed by Pub. L. 100–710, title I, §§106(b)(5), 107(a), Nov. 23, 1988, 102 Stat. 4752, effective Jan. 1, 1989.

§ 12115. Temporary endorsement for vessels procured outside the United States

(a) GENERAL AUTHORITY.—The Secretary 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 and meeting the ownership requirements of section 12103 of this title.

(b) AUTHORIZED ACTIVITY.—Subject to limitations the Secretary may prescribe, a vessel documented under this section may proceed to the United States and engage en route in foreign trade or trade with Guam, American Samoa, Wake, Midway, or Kingman Reef.

(c) APPLICATION OF UNITED STATES JURISDICTION AND LAWS.—A vessel documented under this section is subject to the jurisdiction and laws of the United States. However, if the Secretary considers it to be in the public interest, the Sec-

retary 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.

(d) SURRENDER OF CERTIFICATE.—On the vessel's arrival in the United States, the certificate of documentation shall be surrendered as provided by regulations prescribed by the Secretary.

(Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1498.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12115(a)	46:12112(a).	
12115(b)	46:12112(b) (1st sentence).	
12115(c)	46:12112(c).	
12115(d)	46:12112(b) (last sentence).	

PRIOR PROVISIONS

A prior section 12115, Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 589, originally derived from section 65d of former Title 46, Shipping, related to names of vessels, prior to being repealed by Pub. L. 100–710, title I, §§ 106(b)(5), 107(a), Nov. 23, 1988, 102 Stat. 4752, effective Jan. 1, 1989.

§ 12116. Limited endorsements for Guam, American Samoa, and Northern Mariana Islands

(a) ENDORSEMENTS.—A vessel satisfying the requirements of subsection (b) may be issued—

(1) a coastwise endorsement to engage in the coastwise trade of fisheries products between places in Guam, American Samoa, and the Northern Mariana Islands; or

(2) 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.

(b) REQUIREMENTS.—An endorsement may be issued under subsection (a) for a vessel that—

(1) satisfies the requirements of section 12103 of this title;

(2) was not built in the United States, except that for an endorsement under subsection (a)(2), the vessel must not have been built or rebuilt in the United States;

(3) is less than 200 gross tons as measured under section 14502 of this title, or an alternate tonnage as measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title; and

(4) otherwise qualifies under the laws of the United States to engage in the coastwise trade or the fisheries, as the case may be.

(Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1499.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12116	46:12106(c). 46:12108(c).	

PRIOR PROVISIONS

A prior section 12116, Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 589, originally derived from section 65f of former Title 46, Shipping, related to numbers, signal letters, and identification markings, prior to being repealed by Pub. L. 100–710, title I, §§ 106(b)(5), 107(a), Nov. 23, 1988, 102 Stat. 4752, effective Jan. 1, 1989.

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.

§ 12117. Oil spill response vessels

(a) REQUIREMENTS.—A coastwise endorsement may be issued for a vessel that—

(1) satisfies the requirements for a coastwise endorsement, except for the ownership requirement otherwise applicable without regard to this section;

(2) is owned by a not-for-profit oil spill response cooperative or by members of such a cooperative that dedicate the vessel to use by the cooperative;

(3) is at least 50 percent owned by individuals or entities described in section 12103(b) of this title; and

(4) is to be used only for—

(i) deploying equipment, supplies, and personnel to recover, contain, or transport oil discharged into the navigable waters of the United States or the exclusive economic zone; or

(ii) training exercises to prepare to respond to such a discharge.

(b) DEEMED OWNED BY CITIZENS.—A vessel satisfying subsection (a) is deemed to be owned only by citizens of the United States under sections 12103, 12132, and 50501 of this title.

(Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1499.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12117	46:12106(d).	

PRIOR PROVISIONS

A prior section 12117, 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, originally derived from section 65q of former Title 46, Shipping, related to recording of United States built vessels, prior to the general amendment of this chapter by Pub. L. 109–304. See section 12137 of this title.

§ 12118. Owners engaged primarily in manufacturing or mineral industry

(a) DEFINITIONS.—In this section:

(1) BOWATERS CORPORATION.—The term ''Bowaters corporation'' means a corporation that has filed a certificate under oath with the Secretary, in the form and at the times prescribed by the Secretary, establishing that—

(A) the corporation is incorporated under the laws of the United States or a State;

(B) a majority of the officers and directors of the corporation are individuals who are citizens of the United States;

(C) at least 90 percent of the employees of the corporation are residents of the United States;

(D) the corporation is engaged primarily in a manufacturing or mineral industry in the United States;

(E) the total book value of the vessels owned by the corporation is not more than 10 percent of the total book value of the assets of the corporation; and

(F) the corporation buys or produces in the United States at least 75 percent of the raw materials used or sold in its operations.

(2) PARENT.—The term ''parent'' means a corporation that has filed a certificate under oath with the Secretary, in the form and at the times prescribed by the Secretary, establishing that the corporation—

(A) is incorporated under the laws of the United States or a State; and

(B) controls, directly or indirectly, at least 50 percent of the voting stock of a Bowaters corporation.

(3) SUBSIDIARY.—The term ''subsidiary'' means a corporation that has filed a certificate under oath with the Secretary, in the form and at the times prescribed by the Secretary, establishing that the corporation—

(A) is incorporated under the laws of the United States or a State; and

(B) has at least 50 percent of its voting stock controlled, directly or indirectly, by a Bowaters corporation or its parent.

(b) DEEMED CITIZEN.—A Bowaters corporation is deemed to be a citizen of the United States for purposes of chapters 121, 551, and 561 and section 80104 of this title.

(c) ISSUANCE OF DOCUMENTATION.—A certificate of documentation and appropriate endorsement may be issued for a vessel that—

(1) is owned by a Bowaters corporation;

(2) was built in the United States; and

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

(B) is not self-propelled.

(d) EFFECTS OF DOCUMENTATION.—

(1) IN GENERAL.—Subject to paragraph (2)—

(A) a vessel documented under this section may engage in the coastwise trade; and

(B) the vessel and its owner and master are entitled to the same benefits and are subject to the same requirements and penalties as if the vessel were otherwise documented or exempt from documentation under this chapter.

(2) TRANSPORTATION OF PASSENGERS OR MERCHANDISE.—A vessel documented under this section may transport passengers or merchandise for hire in the coastwise trade only—

(A) as a service for a parent or subsidiary of the corporation owning the vessel; or

(B) when under a demise or bareboat charter, at prevailing rates for use not in the domestic noncontiguous trades, from the corporation owning the vessel to a carrier that—

(i) is subject to jurisdiction under subchapter II of chapter 135 of title 49;

(ii) otherwise qualifies as a citizen of the United States under section 50501 of this title; and

(iii) is not owned or controlled, directly or indirectly, by the corporation owning the vessel.

(e) VALIDITY OF CORPORATE CERTIFICATE.—A certificate filed by a corporation under this section remains valid only as long as the corporation continues to satisfy the conditions required of the corporation by this section. When a corporation no longer satisfies those conditions, the corporation loses its status under this section and immediately shall surrender to the Secretary any documents issued to it based on that status.

(f) PENALTIES.—

(1) FALSIFYING MATERIAL FACT.—If a corporation knowingly falsifies a material fact in a certificate filed under subsection (a), the vessel (or its value) documented or operated under this section shall be forfeited.

(2) TRANSPORTING MERCHANDISE.—If a vessel transports merchandise for hire in violation of this section, the merchandise shall be forfeited to the United States Government.

(3) TRANSPORTING PASSENGERS.—If a vessel transports passengers for hire in violation of this section, the vessel is liable for a penalty of $200 for each passenger so transported.

(4) REMISSION OR MITIGATION.—A penalty or forfeiture incurred under this subsection may be remitted or mitigated under section 2107(b) of this title.

(Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1500.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12118(a)(1) ..	46 App.:883–1 (1st par. words through cl. (e) less citizenship, 4th par. 1st sentence).	June 5, 1920, ch. 250, § 27A, as added Pub. L. 85–902, Sept. 2, 1958, 72 Stat. 1736; Pub. L. 104–88, title III, § 321(2), Dec. 29, 1995, 109 Stat. 950; Pub. L. 104–324, title VII, § 706, Oct. 19, 1996, 110 Stat. 3934.
12118(a)(2), (3).	46 App.:883–1 (2d par., 4th par. 2d sentence).	
12118(b)	46 App.:883–1 (1st par. related to citizenship).	
12118(c)	46 App.:883–1 (3d par. words before 5th comma).	
12118(d)(1) ..	46 App.:883–1 (3d par. words after 5th comma).	
12118(d)(2) ..	46 App.:883–1 (1st par. words after cl. (e)).	
12118(e)	46 App.:883–1 (last par.).	
12118(f)	46 App.:883–1 (4th par. 3d–6th sentences).	

In this section, the word ''Secretary'' is substituted for ''Secretary of the Treasury'', thereby incorporating the definition of ''Secretary'' in section 2101 of title 46. The functions of the Secretary of the Treasury relating to the Coast Guard previously were transferred to the Secretary of Transportation by section 6(b) of the Department of Transportation Act (Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 938). The Coast Guard and the functions of the Secretary of Transportation relating to the Coast Guard were again transferred to the Department of Homeland Security by section 888(b) of the Homeland Security Act of 2002 (Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2135).

In subsection (a)(1), the words ''seeking hereunder to document a vessel under the laws of the United States or to operate a vessel exempt from documentation under the laws of the United States'' are omitted as unnecessary because of the reorganization of the section.

Subsection (d)(1)(B) is substituted for ''together with their owners or masters, shall be entitled to all the other benefits and privileges and shall be subject to the same requirements, penalties, and forfeitures as may

be applicable in the case of vessels built in the United States and otherwise documented or exempt from documentation under the laws of the United States'' to eliminate unnecessary words.

In subsection (d)(2), the words before subparagraph (A) are substituted for ''no vessel owned by any such corporation shall engage in the fisheries or in the transportation of merchandise or passengers for hire between points in the United States, including Territories, Districts, and possessions thereof, embraced within the coastwise laws, except'' to eliminate unnecessary words. See the definition of ''United States'' in chapter 1 of the revised title.

PRIOR PROVISIONS

A prior section 12118, Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 589, originally derived from section 65r of former Title 46, Shipping, related to registration of funnel marks and house flags, prior to being repealed by Pub. L. 100–710, title I, §§ 106(b)(5), 107(a), Nov. 23, 1988, 102 Stat. 4752, effective Jan. 1, 1989.

§ 12119. Owners engaged primarily in leasing or financing transactions

(a) DEFINITIONS.—In this section:

(1) 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 that 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.

(2) CARGO.—The term ''cargo'' does not include cargo to which title is held for non-commercial reasons and primarily for the purpose of evading the requirements of subsection (c)(3).

(3) OIL.—The term ''oil'' has the meaning given that term in section 2101(20) of this title.

(4) PASSIVE INVESTMENT.—The term ''passive investment'' means an investment in which neither the investor nor any affiliate of the 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.

(5) QUALIFIED PROPRIETARY CARGO.—The term ''qualified proprietary cargo'' means—

(A) oil, petroleum products, petrochemicals, or liquefied natural gas cargo that is beneficially owned by the person that submits to the Secretary an application or annual certification under subsection (c)(3), or by an affiliate of that person, immediately before, during, or immediately after the cargo is carried in coastwise trade on a vessel owned by that person;

(B) oil, petroleum products, petrochemicals, or liquefied natural gas cargo not beneficially owned by the person that submits to the Secretary an application or an annual certification under subsection (c)(3), or by an affiliate of that person, but which is carried in coastwise trade by a vessel owned by that person and which is part of an arrangement in which vessels owned by that 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 that person, or by an affiliate of that person, is carried in coastwise trade on one or more other vessels, not owned by that person, or by an affiliate of that person, if the other vessel or vessels are also part of the same arrangement;

(C) in the case of a towing vessel associated with a non-self-propelled tank vessel where both vessels function as a single self-propelled vessel, oil, petroleum products, petrochemicals, or liquefied natural gas cargo that is beneficially owned by the person that owns both the towing vessel and the non-self-propelled tank vessel, or any United States affiliate of that person, immediately before, during, or immediately after the cargo is carried in coastwise trade on either of those vessels; or

(D) 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 the vessel to the owner of the vessel after December 31, 1999; and

(ii) was purchased by a person for the purpose, and with the reasonable expectation, of transporting on the vessel liquefied natural gas or unrefined petroleum beneficially owned by the owner of the vessel, or an affiliate of the owner, from Alaska to the continental United States.

(6) 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.

(b) REQUIREMENTS.—A coastwise endorsement may be issued for a vessel if—

(1) the vessel satisfies the requirements for a coastwise endorsement, except for the ownership requirement otherwise applicable without regard to this section;

(2) 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 (c);

(3) 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 under section 50501 of this title for engaging in the coastwise trade; and

(4) the demise charter is for a period of at least 3 years or a shorter period as may be prescribed by the Secretary.

(c) OWNERSHIP CERTIFICATION.—

(1) IN GENERAL.—A person meets the requirements of this subsection if the 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 that operates any vessel for hire; and

(D) is independent from, and not an affiliate of, any charterer of the vessel or any other person that 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 the person and United States affiliates of the person does not exceed 10 percent of the aggregate book value of all assets owned by the person and its United States affiliates;

(ii) not more than 10 percent of the aggregate revenues of the 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 the person and its United States affiliates and documented with a coastwise endorsement is qualified proprietary cargo;

(iv) any cargo other than qualified proprietary cargo carried by all vessels owned by the person and its United States affiliates and documented with a coastwise endorsement consists of oil, petroleum products, petrochemicals, or liquified natural gas;

(v) no vessel owned by the person or any of its United States affiliates and documented with a coastwise endorsement carries molten sulphur; and

(vi) the person owned one or more vessels documented under this section as of August 9, 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 at least 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 both vessels function as a single self-propelled vessel.

(d) FILING OF DEMISE CHARTER.—The demise charter and any amendments to the charter shall be filed with the certification required by subsection (b)(3) or within 10 days after filing an amendment to the charter. The charter and amendments shall be made available to the public.

(e) CONTINUATION OF ENDORSEMENT AFTER TERMINATION OF CHARTER.—When a charter required by subsection (b)(3) is terminated for default by the charterer, the Secretary may continue the coastwise endorsement for not more than 6 months on terms and conditions the Secretary may prescribe.

(f) DEEMED OWNED BY CITIZENS.—A vessel satisfying the requirements of this section is deemed to be owned only by citizens of the United States under sections 12103 and 50501 of this title.

(Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1501.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12119(a)	46:12106(f)(4).	
12119(b)	46:12106(e)(1).	
12119(c)	46:12106(f)(1)–(3).	
12119(d)	46:12106(e)(2).	
12119(e)	46:12106(e)(3).	
12119(f)	46:12106(e)(4).	

In subsection (b), in paragraph (1), the words ''satisfies the requirements for a coastwise endorsement, except for the ownership requirement otherwise applicable without regard to this section'' are substituted for ''otherwise eligible for documentation under this section'' in 46 U.S.C. 12106(e)(1)(E) for clarity. Subparagraph (A) of 46 U.S.C. 12106(e)(1) is omitted as redundant to the general requirements in revised section 12112 on coastwise endorsements.

In subsection (c)(3), the words ''documented with a coastwise endorsement'' are substituted for ''documented under this section'' because former section 12106 is being divided into multiple sections.

Subsection (e) is substituted for ''(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'' for clarity and to eliminate unnecessary words.

PRIOR PROVISIONS

A prior section 12119, 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, originally derived from sections 65s and 881 of former Title 46, Shipping, related to list of documented vessels, prior to the general amendment of this chapter by Pub. L. 109–304. See section 12138 of this title.

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 provisions from which this section was derived], 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) [now section 12119(b), (d)–(f)] 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 coast-

wise 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) [now section 12119(c)(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.''

§ 12120. Liquified gas tankers

Notwithstanding any agreement with the United States Government, the Secretary may issue a certificate of documentation with a coastwise endorsement for a vessel to transport liquified natural gas or liquified petroleum gas to Puerto Rico from other ports in the United States, if the vessel—

(1) is a foreign built vessel that was built before October 19, 1996; or

(2) was documented under this chapter before that date, even if the vessel is placed under a foreign registry and subsequently redocumented under this chapter for operation under this section.

(Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1504.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12120	46 App.:883 note.	Pub. L. 104–324, title VII, § 1120(f), Oct. 19, 1996, 110 Stat. 3978.

The words ''Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), section 12106 of title 46, United States Code, section 506 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1156)'' are omitted as unnecessary. The words ''the Commonwealth of'' are omitted as unnecessary and for consistency in the revised title.

PRIOR PROVISIONS

A prior section 12120, 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; Pub. L. 109–241, title III, § 308, July 11, 2006, 120 Stat. 528, originally derived from section 65t of former Title 46, Shipping, related to reports, prior to the general amendment of this chapter by Pub. L. 109–304. See section 12139 of this title.

§ 12121. Small passenger vessels and uninspected passenger vessels

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE VESSEL.—The term ''eligible vessel'' means a vessel that—

(A) was not built in the United States and is at least 3 years old; or

(B) if rebuilt, was rebuilt outside the United States at least 3 years before the certificate requested under subsection (b) would take effect.

(2) 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 those terms in section 2101 of this title.

(b) ISSUANCE OF CERTIFICATE AND ENDORSEMENT.—Notwithstanding sections 12112, 12113, 55102, and 55103 of this title, the Secretary may issue a certificate of documentation with an appropriate endorsement for employment in the coastwise trade as a small passenger vessel or an uninspected passenger vessel in the case of an eligible vessel authorized to carry no more than 12 passengers for hire if the Secretary of Transportation, 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 that employs vessels built in the United States in that business.

(c) REVOCATION.—

(1) FOR FRAUD.—The Secretary shall revoke a certificate or endorsement issued under subsection (b) if the Secretary of Transportation, after notice and an opportunity for a hearing, determines that the certificate or endorsement was obtained by fraud.

(2) OTHER PROVISIONS NOT AFFECTED.—Paragraph (1) does not affect—

(A) the criminal prohibition on fraud and false statements in section 1001 of title 18; or

(B) any other authority of the Secretary to revoke a certificate or endorsement issued under subsection (b).

(Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1504.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12121	46:12106 note.	Pub. L. 105–383, title V, §§ 502–504, Nov. 13, 1998, 112 Stat. 3445; Pub. L. 107–295, title II, § 207(c)(2), Nov. 25, 2002, 116 Stat. 2097.

The definition of ''Secretary'' is omitted for consistency in the chapter.

PRIOR PROVISIONS

A prior section 12121, Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 589, originally derived from section 65v(2) of former Title 46, Shipping, related to the authority of the Secretary to prescribe regulations to carry out this

chapter, prior to being repealed by Pub. L. 100–710, title I, §§106(b)(5), 107(a), Nov. 23, 1988, 102 Stat. 4752, effective Jan. 1, 1989.

A prior section 12122, 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, originally derived from sections 65n and 65u(a) of former Title 46, Shipping, related to penalties, prior to the general amendment of this chapter by Pub. L. 109–304. See section 12151 of this title.

A prior section 12123, added Pub. L. 102–587, title V, §5213(a)(3), Nov. 4, 1992, 106 Stat. 5077, related to denial and revocation of endorsements, prior to the general amendment of this chapter by Pub. L. 109–304. See section 12152 of this title.

Another 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.

A prior section 12124, added Pub. L. 105–383, title IV, §401(a)(2), Nov. 13, 1998, 112 Stat. 3424, related to surrender of title and number, prior to the general amendment of this chapter by Pub. L. 109–304. See section 12106 of this title.

EFFECT OF REPEAL

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 [now 46 U.S.C. 12121(b)].''

SUBCHAPTER III—MISCELLANEOUS

§ 12131. Command of documented vessels

(a) IN GENERAL.—Except as provided in subsection (b), a documented vessel may be placed under the commmand[1] only of a citizen of the United States.

(b) EXCEPTIONS.—Subsection (a) does not apply to—

(1) a vessel with only a recreational endorsement; or

(2) an unmanned barge operating outside of the territorial waters of the United States.

(Pub. L. 109–304, §5, Oct. 6, 2006, 120 Stat. 1505.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12131	46:12110(d).	

§ 12132. Loss of coastwise trade privileges

(a) SOLD FOREIGN OR PLACED UNDER FOREIGN REGISTRY.—A vessel of more than 200 gross tons (as measured under chapter 143 of this title), eligible to engage in the coastwise trade, and later sold foreign in whole or in part or placed under foreign registry may not thereafter engage in the coastwise trade.

(b) REBUILT OUTSIDE THE UNITED STATES.—A vessel eligible to engage in the coastwise trade and later rebuilt outside the United States may not thereafter engage in the coastwise trade.

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

(Pub. L. 109–304, §5, Oct. 6, 2006, 120 Stat. 1505.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12132(a)	46 App.:883 (1st proviso).	June 5, 1920, ch. 250, §27 (1st proviso, 2d proviso less meaning of ''rebuilt''), 41 Stat. 999; July 2, 1935, ch. 355, 49 Stat. 442; July 14, 1956, ch. 600, §1, 70 Stat. 544; Pub. L. 86–583, §1, July 5, 1960, 74 Stat. 321; Pub. L. 100–239, §6(c)(1), Jan. 11, 1988, 101 Stat. 1782; Pub. L. 104–324, title XI, §1120(e), Oct. 19, 1996, 110 Stat. 3978.
12132(b)	46 App.:883 (2d proviso less meaning of ''rebuilt'').	

In subsection (a), the words ''eligible to engage in the coastwise trade'' are substituted for ''having at any time acquired the lawful right to engage in the coastwise trade, either by virtue of having been built in, or documented under the laws of the United States'', and the words ''thereafter engage'' are substituted for ''hereafter acquire the right to engage'', to eliminate unnecessary words.

In subsection (b), the words ''eligible to engage in the coastwise trade'' are substituted for ''which has acquired the lawful right to engage in the coastwise trade, by virtue of having been built in or documented under the laws of the United States'', and the words ''thereafter engage'' are substituted for ''have the right thereafter to engage'', to eliminate unnecessary words. See section 12101 for the meaning of ''rebuilt in the United States''.

§ 12133. Duty to carry certificate on vessel and allow examination

(a) DUTY TO CARRY.—The certificate of documentation of a vessel shall be carried on the vessel unless the vessel is exempt by regulation from carrying the certificate.

(b) AVAILABILITY.—The owner or individual in charge of a vessel required to carry its certificate of documentation shall make the certificate available for examination at the request of an officer enforcing the revenue laws or as otherwise required by law or regulation.

(c) CRIMINAL PENALTY.—A person willfully violating subsection (b) shall be fined under title 18, imprisoned for not more than one year, or both.

(Pub. L. 109–304, §5, Oct. 6, 2006, 120 Stat. 1505.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12133	46:12103(e). 46 App.:277.	R.S. §4336; Aug. 5, 1935, ch. 438, title III, §312, 49 Stat. 528; Pub. L. 85–237, §2, Aug. 30, 1957, 71 Stat. 518; Pub. L. 103–182, title VI, §686(a)(5), Dec. 8, 1993, 107 Stat. 2220.

This section consolidates and clarifies the requirements contained in the source provisions. The specific civil penalties are omitted as unnecessary because of the general civil penalty in section 12151(a) of the revised title. See also 19 U.S.C. 1581.

§ 12134. Evidentiary uses of documentation

A certificate of documentation is—

(1) conclusive evidence of nationality for international purposes, but not in a proceed-

ing conducted under the laws of the United States;

(2) conclusive evidence of qualification to engage in a specified trade; and

(3) not conclusive evidence of ownership in a proceeding in which ownership is in issue.

(Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1506.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12134	46:12104.	

§ 12135. Invalidation of certificates of documentation

A certificate of documentation or an endorsement on the certificate 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 the certificate or endorsement; or

(2) is placed under the command of an individual not a citizen of the United States in violation of section 12131 of this title.

(Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1506.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12135	46:12111(a).	

In paragraph (2), the words ''except for a recreational endorsement'' are omitted as unnecessary because a recreational endorsement does not permit a vessel to engage in a trade.

§ 12136. Surrender of certificates of documentation

(a) SURRENDER.—An invalid certificate of documentation, or a certificate with an invalid endorsement, shall be surrendered as provided by regulations prescribed by the Secretary.

(b) CONDITIONS FOR SURRENDER.—

(1) VESSELS OVER 1,000 TONS.—The Secretary may condition approval of the surrender of the certificate of documentation for a vessel over 1,000 gross tons.

(2) VESSELS COVERED BY MORTGAGE.—The Secretary may approve the surrender of the certificate of documentation of a vessel covered by a mortgage filed or recorded under section 31321 of this title only if the mortgagee consents.

(3) NOTICE OF LIEN.—The Secretary may 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.

(c) CONTINUED APPLICATION OF CERTAIN LAWS.—

(1) IN GENERAL.—Notwithstanding subsection (a), 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 56101 and 56102(a)(2) and chapter 563 of this title; and

(C) any other law of the United States identified by the Secretary by regulation as a law to which the Secretary applies this subsection.

(2) EXCEPTION.—This subsection does not apply when a vessel is forfeited or sold by order of a district court of the United States.

(Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1506.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12136(a)	46:12111(b).	
12136(b)(1) ..	46:12111(d)(2).	
12136(b)(2) ..	46:12111(c)(3).	
12136(b)(3) ..	46:12111(d)(1).	
12136(c)(1) ..	46:12111(c)(1).	
12136(c)(2) ..	46:12111(c)(2).	

In subsection (a), the words ''or a certificate with an invalid endorsement'' are added for clarity.

DOCUMENTATION SURRENDER AND INVALIDATION

Pub. L. 101–225, title III, § 301(b), Dec. 12, 1989, 103 Stat. 1922, provided that: ''Section 12111(c)(3) [now section 12136(b)(2)] 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.''

§ 12137. Recording of vessels built in the United States

The Secretary may provide for recording and certifying information about vessels built in the United States that the Secretary considers to be in the public interest.

(Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1507.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12137	46:12117.	

§ 12138. List of documented vessels

(a) IN GENERAL.—The Secretary 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.

(b) VESSELS FOR CABLE LAYING, MAINTENANCE, AND REPAIR.—

(1) IN GENERAL.—The Secretary of Transportation shall develop, maintain, and periodically update an inventory of vessels that are documented under this chapter, are at least 200 feet in length, and have the capability to lay, maintain, or repair a submarine cable, without regard to whether a particular vessel is classed as a cable ship or cable vessel.

(2) INFORMATION TO BE INCLUDED.—For each vessel listed in the inventory, the Secretary of Transportation shall include in the inventory—

(A) the name, length, beam, depth, and other distinguishing characteristics of the vessel;

(B) the abilities and limitations of the vessel with respect to laying, maintaining, and repairing a submarine cable; and

(C) the name and address of the person to whom inquiries regarding the vessel may be made.

(3) PUBLICATION.—The Secretary of Transportation shall publish in the Federal Register an updated inventory every 6 months.

(Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1507.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12138(a)	46:12119.	
12138(b)	46:12119 note.	Pub. L. 107–295, title IV, § 403, Nov. 25, 2002, 116 Stat. 2114.

In subsection (b), the word ''Secretary'' is substituted for ''Secretary of Transportation'' for consistency in the chapter.

§ 12139. Reports

(a) IN GENERAL.—To ensure compliance with this chapter and laws governing the qualifications of vessels to engage in the coastwise trade and the fisheries, the Secretary may require owners, masters, and charterers of documented vessels to submit reports in any reasonable form and manner the Secretary may prescribe.

(b) VESSELS REBUILT OUTSIDE UNITED STATES.—

(1) IN GENERAL.—Under regulations prescribed by the Secretary, if a vessel exceeding the tonnage specified in paragraph (2) and documented or last documented under the laws of the United States is rebuilt outside the United States, the owner or master shall submit a report of the rebuilding to the Secretary.

(2) TONNAGE.—The tonnage referred to in paragraph (1) is—

(A) 500 gross tons as measured under section 14502 of this title; or

(B) an alternate tonnage as measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title.

(3) TIMING OF SUBMISSION.—If the rebuilding is completed in the United States, the report shall be submitted when the rebuilding is completed. If the rebuilding is completed outside the United States, the report shall be submitted when the vessel first arrives at a port in the customs territory of the United States.

(Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1507; Pub. L. 109–241, title III, § 308, July 11, 2006, 120 Stat. 528.)

AMENDMENT NOT SHOWN IN TEXT

Subsection (a) of this section was derived from former section 12120 of this title, which was amended by Pub. L. 109–241, title III, § 308, July 11, 2006, 120 Stat. 528. For applicability of that amendment to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Former section 12120 was amended by striking ''owners, masters, and charterers'' and inserting ''owners, masters, charterers, and mortgagees''.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12139(a)	46:12120.	
12139(b)	46 App.:883a (1st sentence).	July 14, 1956, ch. 600, § 2 (1st sentence), 70 Stat. 544; Pub. L. 86–583, § 2, July 5, 1960, 74 Stat. 321; Pub. L. 104–324, title VII, § 707, Oct. 19, 1996, 110 Stat. 3934.

In subsection (b)(1), the word ''Secretary'' is substituted for ''Secretary of the Treasury'', thereby incorporating the definition of ''Secretary'' in section 2101 of title 46. The functions of the Secretary of the Treasury relating to the Coast Guard previously were transferred to the Secretary of Transportation by section 6(b) of the Department of Transportation Act (Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 938). The Coast Guard and the functions of the Secretary of Transportation relating to the Coast Guard were again transferred to the Department of Homeland Security by section 888(b) of the Homeland Security Act of 2002 (Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2135). The words ''rebuilt outside the United States'' are substituted for ''and any part of the rebuilding, including the construction of major components of the hull and superstructure of the vessel, is not effected within the United States, its Territories (not including trust territories) or its possessions'' because of the definition of ''rebuilt'' in section 12101, and the definition of ''United States'' in chapter 1, of the revised title.

SUBCHAPTER IV—PENALTIES

§ 12151. Penalties

(a) IN GENERAL.—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 a continuing violation is a separate violation.

(b) SEIZURE AND FORFEITURE OF VESSELS.—A vessel and its equipment are liable to seizure by and forfeiture to the Government if—

(1) the owner of the 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 of the vessel or in applying for documentation of the vessel;

(2) a certificate of documentation is knowingly and fraudulently used for the vessel;

(3) the vessel is operated after its endorsement has been denied or revoked under section 12152 of this title;

(4) the vessel is employed in a trade without an appropriate endorsement;

(5) the vessel has only a recreational endorsement and is operated other than for pleasure;

(6) the vessel is a documented vessel and is placed under the command of a person not a citizen of the United States, except as authorized by section 12131(b) of this title; or

(7) the vessel is rebuilt outside the United States and a report of the rebuilding is not submitted as required by section 12139(b) of this title.

(c) ENGAGING IN FISHING AFTER FALSIFYING ELIGIBILITY.—In addition to other penalties

under this section, the owner of a documented vessel for which a fishery endorsement has been issued is liable to the Government for a civil penalty of not more than $100,000 for each day the vessel engages in fishing (as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)) within the exclusive economic zone, 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, about the eligibility of the vessel under section 12113(c) or (d) of this title in applying for or applying to renew the fishery endorsement.

(Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1508.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12151(a)	46:12122(a).	
12151(b)	46:12122(b).	
	46 App.:14 (last proviso).	R.S. § 4136 (last proviso); Feb. 24, 1915, ch. 57, 38 Stat. 812; Pub. L. 103–182, title VI, § 686(a)(4), Dec. 8, 1993, 107 Stat. 2220.
	46 App.:883a (2d, last sentences).	July 14, 1956, ch. 600, § 2 (2d, last sentences), 70 Stat. 544; Pub. L. 86–583, § 2, July 5, 1960, 74 Stat. 321.
12151(c)	46:12122(c).	

In subsection (b), in restating 46 App. U.S.C. 883a (2d, last sentences), the penalty of $200 for the owner and master of the vessel is omitted because subsection (a) provides a general civil penalty for violation of this chapter. The authority to remit or mitigate a penalty under section 2107(b) is omitted because section 2107(b) applies to subtitle II and this section is in subtitle II.

§ 12152. Denial or revocation of endorsement for non-payment of civil penalty

If the owner of a vessel fails to pay a civil penalty imposed by the Secretary, the Secretary may deny the issuance or renewal of an endorsement, or revoke the endorsement, on a certificate of documentation issued for the vessel under this chapter.

(Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1508.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
12152	46:12123.	

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 sec-

tion 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.

(Added Pub. L. 100–710, title I, § 101(a), Nov. 23, 1988, 102 Stat. 4735; amended 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 31301 of this title.

RECORDS AND OTHER INFORMATION; ESTABLISHMENT, CENTRALIZATION AND COMPUTERIZATION

Pub. L. 100–710, title I, § 104(e)(2), Nov. 23, 1988, 102 Stat. 4751, 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 31301 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

Pub. L. 100–710, title I, § 104(g), Nov. 23, 1988, 102 Stat. 4751, 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.

(Added 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

Pub. L. 100–710, title I, § 104(f), Nov. 23, 1988, 102 Stat. 4751, 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 delegate 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.

(Added Pub. L. 100–710, title I, § 101(a), Nov. 23, 1988, 102 Stat. 4736; amended 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; Pub. L. 109–304, § 15(24), Oct. 6, 2006, 120 Stat. 1704.)

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

2006—Subsec. (a). Pub. L. 109–304 substituted ''delegate'' for ''delegee'' in introductory provisions.

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.

(Added Pub. L. 100–710, title I, § 101(a), Nov. 23, 1988, 102 Stat. 4736; amended 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.

(Added Pub. L. 100–710, title I, §101(a), Nov. 23, 1988, 102 Stat. 4737; amended 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

Pub. L. 100–710, title I, §104(e)(1), Nov. 23, 1988, 102 Stat. 4751, 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.

(Added 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.

(Added 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. Definitions.
13102. State recreational boating safety programs.
13103. Program acceptance.
13104. Allocations.
13105. Availability of allocations.
13106. Computation decisions about State amounts expended.
13107. Authorization of appropriations.
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

2006—Pub. L. 109–304, § 16(b)(3), Oct. 6, 2006, 120 Stat. 1705, added item 13101 and redesignated former items 13101 to 13106 as 13102 to 13107, respectively.

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. Definitions

In this chapter:

(1) ELIGIBLE STATE.—The term ''eligible State'' means a State that has a State recreational boating safety program accepted by the Secretary.

(2) STATE RECREATIONAL BOATING SAFETY PROGRAM.—The term ''State recreational boating safety program'' means education, assistance, and enforcement activities conducted for maritime casualty prevention, reduction, and reporting for recreational boating.

(Pub. L. 109–304, § 16(b)(2), Oct. 6, 2006, 120 Stat. 1705.)

HISTORICAL AND REVISION NOTES

Section 16 of the bill [H.R. 1442, which became Pub. L. 109–304] moves the definitions relating to the recreational boating safety program from section 2102(a)(1) and (3) to chapter 131 because the terms only appear in chapter 131.

Section 16 of the bill also eliminates the special definitions of ''State'' and ''United States'' in section 2102(a)(2) as including the Trust Territory of the Pacific Islands because the Trust Territory has been terminated. See the definitions of ''State'' and ''United States'' in section 2101, which are being moved to chapter 1 and being made applicable title-wide. Those definitions already include the Northern Mariana Islands, the only component of the former Trust Territory still under United States sovereignty.

PRIOR PROVISIONS

A prior section 13101 was renumbered section 13102 of this title.

§ 13102. 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 13104 of this title.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 592, § 13101; 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; renumbered § 13102 and amended Pub. L. 109–304, § 16(b)(1), (c)(3), Oct. 6, 2006, 120 Stat. 1705, 1706.)

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.

PRIOR PROVISIONS

A prior section 13102 was renumbered section 13103 of this title.

AMENDMENTS

2006—Pub. L. 109–304, § 16(b)(1), renumbered section 13101 of this title as this section.

Subsec. (c). Pub. L. 109–304, § 16(c)(3), substituted ''section 13104'' for ''section 13103''.

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

Pub. L. 98–369, div. A, title X, subtitle B, part I, subpart A (§§ 1010–1013), § 1013, July 18, 1984, 98 Stat. 1014, 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.''

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) [now section 13107(a)(1)] of title 46, United States Code (as amended by this Act).''

CONGRESSIONAL DECLARATION OF POLICY FOR 1984 AMENDMENT

Pub. L. 98–369, div. A, title X, subtitle B, part I (§§ 1010–1017), § 1010, July 18, 1984, 98 Stat. 1012, 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.]

§ 13103. 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 (26 U.S.C. 9504) 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, undocu-

mented 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 13107 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, § 13102; 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; renumbered § 13103 and amended Pub. L. 109–304, §§ 15(25), 16(b)(1), (c)(4), Oct. 6, 2006, 120 Stat. 1704–1706.)

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.

PRIOR PROVISIONS

A prior section 13103 was renumbered section 13104 of this title.

AMENDMENTS

2006—Pub. L. 109–304, § 16(b)(1), renumbered section 13102 of this title as this section.

Subsec. (a). Pub. L. 109–304, § 15(25), inserted ''(26 U.S.C. 9504)'' after ''Internal Revenue Code of 1986''.

Subsec. (c). Pub. L. 109–304, § 16(c)(4), substituted ''section 13107'' for ''section 13106''.

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 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.

§ 13104. 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, § 13103; 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; renumbered § 13104, Pub. L. 109–304, § 16(b)(1), Oct. 6, 2006, 120 Stat. 1705.)

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.

PRIOR PROVISIONS

A prior section 13104 was renumbered section 13105 of this title.

AMENDMENTS

2006—Pub. L. 109–304 renumbered section 13103 of this title as this section.

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 related to retention of amounts appropriated for

State recreational boating safety programs prior to making allocations for a fiscal year, was repealed by Pub. L. 100–448, § 6(b)(1)(B), Sept. 28, 1988, 102 Stat. 1840.

§ 13105. 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, § 13104; 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; renumbered § 13105, Pub. L. 109–304, § 16(b)(1), Oct. 6, 2006, 120 Stat. 1705.)

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.

PRIOR PROVISIONS

A prior section 13105 was renumbered section 13106 of this title.

AMENDMENTS

2006—Pub. L. 109–304 renumbered section 13104 of this title as this section.

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.

§ 13106. 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, § 13105; 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; renumbered § 13106, Pub. L. 109–304, § 16(b)(1), Oct. 6, 2006, 120 Stat. 1705.)

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.

PRIOR PROVISIONS

A prior section 13106 was renumbered section 13107 of this title.

AMENDMENTS

2006—Pub. L. 109–304 renumbered section 13105 of this title as this section.

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.

§ 13107. 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 13104 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, § 13106; 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; renumbered § 13107 and amended Pub. L. 109–304, § 16(b)(1), (c)(5), Oct. 6, 2006, 120 Stat. 1705, 1706.)

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.

PRIOR PROVISIONS

A prior section 13107, Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 596, established the National Recreational Boating Safety and Facilities Improvement Fund, prior to repeal by Pub. L. 98–369, div. A, title X, § 1016(c)(1), July 18, 1984, 98 Stat. 1020. See section 9504 of Title 26, Internal Revenue Code.

AMENDMENTS

2006—Pub. L. 109–304, § 16(b)(1), renumbered section 13106 of this title as this section.

Subsec. (a)(1). Pub. L. 109–304, §16(c)(5), substituted ''section 13104'' for ''section 13103''.

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 fa-

cilities 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.''

§ 13108. Computing amounts allocated to States and State records requirements

(a) Amounts allocated and distributed under section 13104 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 13106 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; Pub. L. 109–304, § 16(c)(6), Oct. 6, 2006, 120 Stat. 1706.)

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

2006—Subsec. (a). Pub. L. 109–304 substituted ''section 13104'' for ''section 13103'' in introductory provisions and ''section 13106'' for ''section 13105'' in par. (1).

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

Pub. L. 100–448, § 20(b), Sept. 28, 1988, 102 Stat. 1846, 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 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.]

IMPLEMENTATION OF 1986 AMENDMENT

Pub. L. 99–626, § 3(b)(3), Nov. 7, 1986, 100 Stat. 3505, 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.

(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, 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.

(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.

(Pub. L. 99–509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1920; 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.

(Pub. L. 99–509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1920; 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

Pub. L. 99–509, title V, § 5103(g), Oct. 21, 1986, 100 Stat. 1927, 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.

(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.

(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.

(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 of this subtitle and section 12116 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 30506 of this title;

(6) sections 12118 and 12132 of this title;

(7) section 12139(b) of this title;

(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.

(Pub. L. 99–509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1921; Pub. L. 109–304, § 15(26), Oct. 6, 2006, 120 Stat. 1704.)

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.

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.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–304, § 15(26)(A), substituted ''of this subtitle and section 12116'' for ''and sections 12106(c) and 12108(c)''.

Subsec. (a)(5). Pub. L. 109–304, § 15(26)(B), substituted ''section 30506 of this title'' for ''section 4283 of the Revised Statutes of the United States (46 App. U.S.C. 183)''.

Subsec. (a)(6). Pub. L. 109–304, § 15(26)(C), substituted ''sections 12118 and 12132 of this title'' for ''sections 27 and 27A of the Act of June 5, 1920 (46 App. U.S.C. 883 and 883–1)''.

Subsec. (a)(7). Pub. L. 109–304, § 15(26)(D), substituted ''section 12139(b) of this title'' for ''Act of July 14, 1956 (46 App. U.S.C. 883a)''.

§ 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.

(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.

(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.
14501. Application.
14502. Measurement.
14503. Certificate of measurement.
14504. Remeasurement.

SUBCHAPTER II—FORMAL SYSTEMS

14511. Application.
14512. Standard tonnage measurement.
14513. Dual tonnage measurement.

SUBCHAPTER III—SIMPLIFIED SYSTEM

14521. Application.
14522. Measurement.

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.

(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.

(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.

(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.

(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.

(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.

(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, respectively, of the former Appendix to this title and were repealed by Pub. L. 99–509, title V, § 5104(b), Oct. 21, 1986, 100 Stat. 1928.

§ 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.

(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 Secretary 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 former Appendix to this title and was repealed by Pub. L. 99–509, title V, § 5104(b), Oct. 21, 1986, 100 Stat. 1928.

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.

(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.

(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.

(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.

(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

Chapter		Sec.
301.	**General Liability Provisions**	**30101**
303.	**Death on the High Seas**	**30301**
305.	**Exoneration and Limitation of Liability**	**30501**
307.	**Liability of Water Carriers**	**30701**
309.	**Suits in Admiralty Against the United States**	**30901**
311.	**Suits Involving Public Vessels**	**31101**
313.	**Commercial Instruments and Maritime Liens**	**31301**

AMENDMENTS

2006—Pub. L. 109–304, § 6(a), Oct. 6, 2006, 120 Stat. 1509, amended subtitle analysis generally, substituting ''General Liability Provisions'' for ''General'' in item for chapter 301, striking out ''[Chapters 303–311—Reserved]'' after item for chapter 301, adding items for chapters 303, 305, 307, 309, and 311, and striking out ''[Chapter 315—Reserved]'' after item for chapter 313.

CHAPTER 301—GENERAL LIABILITY PROVISIONS

Sec.
30101. Extension of jurisdiction to cases of damage or injury on land.
30102. Liability to passengers.
30103. Liability of master, mate, engineer, and pilot.
30104. Personal injury to or death of seamen.
30105. Restriction on recovery by non-citizens and non-resident aliens for incidents in waters of other countries.
30106. Time limit on bringing maritime action for personal injury or death.

PRIOR PROVISIONS

A prior chapter 301, consisting of section 30101, provided definitions for purposes of this subtitle, prior to repeal by Pub. L. 109–304, § 6(b), Oct. 6, 2006, 120 Stat. 1509.

§ 30101. Extension of jurisdiction to cases of damage or injury on land

(a) IN GENERAL.—The admiralty and maritime jurisdiction of the United States extends to and includes cases of injury or damage, to person or property, caused by a vessel on navigable waters, even though the injury or damage is done or consummated on land.

(b) PROCEDURE.—A civil action in a case under subsection (a) may be brought in rem or in personam according to the principles of law and the rules of practice applicable in cases where the injury or damage has been done and consummated on navigable waters.

(c) ACTIONS AGAINST UNITED STATES.—

(1) EXCLUSIVE REMEDY.—In a civil action against the United States for injury or damage done or consummated on land by a vessel on navigable waters, chapter 309 or 311 of this title, as appropriate, provides the exclusive remedy.

(2) ADMINISTRATIVE CLAIM.—A civil action described in paragraph (1) may not be brought until the expiration of the 6-month period after the claim has been presented in writing to the agency owning or operating the vessel causing the injury or damage.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1509.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30101	46 App.:740.	June 19, 1948, ch. 526, 62 Stat. 496.

In subsections (b) and (c), the words ''civil action'' are substituted for ''suit'' for consistency with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.).

In subsection (c)(1), the words ''for all causes of action arising after June 19, 1948, and for all causes of action where suit has not been hitherto filed under the Federal Tort Claims Act'' are omitted as obsolete.

PRIOR PROVISIONS

A prior section 30101, Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4738, provided definitions for purposes of this subtitle, prior to repeal by Pub. L. 109–304, § 6(b), Oct. 6, 2006, 120 Stat. 1509.

SHORT TITLE

This section is popularly known as the Admiralty Extension Act.

§ 30102. Liability to passengers

(a) LIABILITY.—The owner and master of a vessel, and the vessel, are liable for personal injury to a passenger or damage to a passenger's baggage caused by—

(1) a neglect or failure to comply with part B or F of subtitle II of this title; or

(2) a known defect in the steaming apparatus or hull of the vessel.

(b) NOT SUBJECT TO LIMITATION.—A liability imposed under this section is not subject to limitation under chapter 305 of this title.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1509.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30102	46 App.:491 (words before semicolon).	R.S. § 4493 (words before semicolon).

In subsection (a), before paragraph (1), the words ''or either of them'' are omitted as unnecessary. The words ''are liable for personal injury to a passenger or damage to a passenger's baggage'' are substituted for ''Whenever damage is sustained by any passenger or his baggage'' and ''shall be liable to each and every person so injured'' for clarity and to eliminate unnecessary words. The words ''from explosion, fire, collision, or other cause'' are omitted as unnecessary. The words ''caused by'' are substituted for ''if it happens through'' to eliminate unnecessary words. In paragraph (1), the words ''part B or F of subtitle II of this title'' are substituted for ''title 52 of the Revised Statutes'' because of the prior codification of subtitle II of title 46. In paragraph (2), the word ''imperfections'' is omitted as included in ''defect''.

Subsection (b) is substituted for ''to the full amount of damage'' for clarity. See *Hines v. Butler*, 278 F. 877, 880, 881 (4th Cir. 1921), cert. denied, 257 U.S. 659 (1922); *The Annie Faxon*, 75 F. 312, 317–319 (9th Cir. 1896).

§ 30103. Liability of master, mate, engineer, and pilot

A person may bring a civil action against a master, mate, engineer, or pilot of a vessel, and recover damages, for personal injury or loss caused by the master's, mate's, engineer's, or pilot's—

(1) negligence or willful misconduct; or

(2) neglect or refusal to obey the laws governing the navigation of vessels.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1510.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30103	46 App.:491 (words after semicolon).	R.S. § 4493 (words after semicolon).

Before paragraph (1), the words ''bring a civil action'' are substituted for ''sue'' for consistency with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.). In paragraph (1), the word ''carelessness'' is omitted as included in ''negligence''.

§ 30104. Personal injury to or death of seamen

(a) CAUSE OF ACTION.—A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman may elect to bring a civil action at law, with the right of trial by jury, against the employer. Laws of the United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section.

(b) VENUE.—An action under this section shall be brought in the judicial district in which the employer resides or the employer's principal office is located.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1510.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30104(a)	46 App.:688(a) (1st sentence).	Mar. 4, 1915, ch. 153, § 20(a), 38 Stat. 1185; June 5, 1920, ch. 250, § 33, 41 Stat. 1007; Pub. L. 97–389, title V, § 503(a)(1), Dec. 29, 1982, 96 Stat. 1955.
30104(b)	46 App.:688(a) (last sentence).	

In subsection (a), the words ''A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman'' are substituted for ''Any seaman who shall suffer personal injury in the course of his employment'' and ''in case of the death of any seaman as a result of any such personal injury the personal representative'' to eliminate unnecessary words. The words ''bring a civil action'' are substituted for ''maintain an action'' for consistency with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.). The words ''for damages'' are omitted as unnecessary. The words ''against the employer'' are added for clarity. The words ''Laws of the United States regulating recovery for personal injury to, or death of, a railway employee'' are substituted for ''all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees'' and ''all statutes of the United States conferring or regulating the right of action for death in the case of railway employees'' to eliminate unnecessary words.

In subsection (b), the words ''An action under this section shall be brought'' are substituted for ''Jurisdiction in such actions shall be under'' because 46 App. U.S.C. 688(a) (last sentence) provides for venue, not jurisdiction. *Panama R.R. Co. v. Johnson*, 264 U.S. 375 (1924). As to the relationship between 46 App. U.S.C. 688(a) (last sentence) and 28 U.S.C. 1391(c), see *Pure Oil Co. v. Suarez*, 384 U.S. 202 (1966).

§ 30105. Restriction on recovery by non-citizens and non-resident aliens for incidents in waters of other countries

(a) DEFINITION.—In this section, the term ''continental shelf'' has the meaning given that term in article I of the 1958 Convention on the Continental Shelf.

(b) RESTRICTION.—Except as provided in subsection (c), a civil action for maintenance and cure or for damages for personal injury or death may not be brought under a maritime law of the United States if—

(1) the individual suffering the injury or death was not a citizen or permanent resident alien of the United States at the time of the incident giving rise to the action;

(2) the incident occurred in the territorial waters or waters overlaying the continental shelf of a country other than the United States; and

(3) the individual suffering the injury or death was employed at the time of the incident by a person engaged in the exploration, development, or production of offshore mineral or energy resources, including drilling, mapping, surveying, diving, pipelaying, maintaining, repairing, constructing, or transporting supplies, equipment, or personnel, but not including transporting those resources by a vessel constructed or adapted primarily to carry oil in bulk in the cargo spaces.

(c) NONAPPLICATION.—Subsection (b) does not apply if the individual bringing the action estab-

lishes that a remedy is not available under the laws of—

(1) the country asserting jurisdiction over the area in which the incident occurred; or

(2) the country in which the individual suffering the injury or death maintained citizenship or residency at the time of the incident.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1510.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30105(a)	46 App.:688(b)(1) (last sentence).	Mar. 4, 1915, ch. 153, § 20(b), as added Pub. L. 97–389, title V, § 503(a)(2), Dec. 29, 1982, 96 Stat. 1955.
30105(b)	46 App.:688(b)(1) (less last sentence).	
30105(c)	46 App.:688(b)(2).	

In subsection (b), before paragraph (1), the words ''civil action'' are substituted for ''action'' for consistency with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.). The words ''under subsection (a) of this section or under any other'' are omitted as unnecessary. In paragraph (2), the words ''its territories, or possessions'' are omitted as unnecessary because of the definition of ''United States'' in chapter 1 of the revised title. In paragraph (3), the word ''person'' is substituted for ''enterprise'' for consistency in the revised title.

REFERENCES IN TEXT

The 1958 Convention on the Continental Shelf, referred to in subsec. (a), was done at Geneva, April 29, 1958, and entered into force for the United States, June 10, 1964. See 15 UST 471; TIAS 5578.

§ 30106. Time limit on bringing maritime action for personal injury or death

Except as otherwise provided by law, a civil action for damages for personal injury or death arising out of a maritime tort must be brought within 3 years after the cause of action arose.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1511.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30106	46 App.:763a.	Pub. L. 96–382, § 1, Oct. 6, 1980, 94 Stat. 1525.

The words ''civil action'' are substituted for ''suit'' for consistency with rule 2 of the Federal Rules or Civil Procedure (28 App. U.S.C.). The words ''or both'' are omitted as unnecessary. The words ''must be brought'' are substituted for ''shall not be maintained unless commenced'' for clarity and consistency. The word ''arose'' is substituted for ''accrued'' for consistency in the revised title.

CHAPTER 303—DEATH ON THE HIGH SEAS

Sec.
30301. Short title.
30302. Cause of action.
30303. Amount and apportionment of recovery.
30304. Contributory negligence.
30305. Death of plaintiff in pending action.
30306. Foreign cause of action.
30307. Commercial aviation accidents.
30308. Nonapplication.

§ 30301. Short title

This chapter may be cited as the ''Death on the High Seas Act''.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1511.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30301	46 App.:761 note.	

SHORT TITLE

Act Mar. 30, 1920, ch. 111, 41 Stat. 537, which enacted chapter 21 (§ 761 et seq.) of the former Appendix to this title, was popularly known as the ''Death on the High Seas Act'', prior to being repealed and restated in this chapter by Pub. L. 109–304, §§ 6(c), 19, Oct. 6, 2006, 120 Stat. 1509, 1710.

§ 30302. Cause of action

When the death of an individual is caused by wrongful act, neglect, or default occurring on the high seas beyond 3 nautical miles from the shore of the United States, the personal representative of the decedent may bring a civil action in admiralty against the person or vessel responsible. The action shall be for the exclusive benefit of the decedent's spouse, parent, child, or dependent relative.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1511.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30302	46 App.:761(a).	Mar. 30, 1920, ch. 111, § 1(a), 41 Stat. 537; Pub. L. 106–181, title IV, § 404(a)(1), Apr. 5, 2000, 114 Stat. 131.

The words ''Subject to subsection (b) of this section'' are omitted as unnecessary. The words ''3 nautical miles'' are substituted for ''a marine league'' for clarity. The words ''United States'' are substituted for ''any State, or the District of Columbia, or the Territories or dependencies of the United States'' because of the definition of ''United States'' in chapter 1 of the revised title. The words ''bring a civil action'' are substituted for ''maintain a suit'' for consistency with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.). The words ''for damages'' are omitted as unnecessary. The words ''in the district courts of the United States'' are omitted as unnecessary because of 28 U.S.C. 1333. The words ''person or vessel'' are substituted for ''vessel, person, or corporation'' because of 1 U.S.C. 1. The word ''responsible'' is substituted for ''which would have been liable if death had not ensued'' to eliminate unnecessary words.

§ 30303. Amount and apportionment of recovery

The recovery in an action under this chapter shall be a fair compensation for the pecuniary loss sustained by the individuals for whose benefit the action is brought. The court shall apportion the recovery among those individuals in proportion to the loss each has sustained.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1511.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30303	46 App.:762(a).	Mar. 30, 1920, ch. 111, § 2(a), 41 Stat. 537; Pub. L. 106–181, title IV, § 404(b)(1), Apr. 5, 2000, 114 Stat. 131.

The words ''and just'' are omitted as redundant to ''fair''. The words ''each has sustained'' are substituted for ''they may severally have suffered by reason of the

death of the person by whose representative the suit is brought'' to eliminate unnecessary words.

§ 30304. Contributory negligence

In an action under this chapter, contributory negligence of the decedent is not a bar to recovery. The court shall consider the degree of negligence of the decedent and reduce the recovery accordingly.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1511.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30304	46 App.:766.	Mar. 30, 1920, ch. 111, § 6, 41 Stat. 537.

§ 30305. Death of plaintiff in pending action

If a civil action in admiralty is pending in a court of the United States to recover for personal injury caused by wrongful act, neglect, or default described in section 30302 of this title, and the individual dies during the action as a result of the wrongful act, neglect, or default, the personal representative of the decedent may be substituted as the plaintiff and the action may proceed under this chapter for the recovery authorized by this chapter.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1511.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30305	46 App.:765.	Mar. 30, 1920, ch. 111, § 5, 41 Stat. 537.

The words ''If a civil action in admiralty is pending in a court of the United States to recover for personal injury caused by wrongful act, neglect, or default described in section 30302 of this title, and the individual dies during the action as a result of the wrongful act, neglect, or default'' are substituted for ''If a person die [sic] as the result of such wrongful act, neglect, or default as is mentioned in section 761 of this Appendix during the pendency in a court of admiralty of the United States of a suit to recover damages for personal injuries in respect of such act, neglect, or default'' to eliminate unnecessary words. The words ''the plaintiff'' are substituted for ''a party'' to be more precise.

§ 30306. Foreign cause of action

When a cause of action exists under the law of a foreign country for death by wrongful act, neglect, or default on the high seas, a civil action in admiralty may be brought in a court of the United States based on the foreign cause of action, without abatement of the amount for which recovery is authorized.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1511.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30306	46 App.:764.	Mar. 30, 1920, ch. 111, § 4, 41 Stat. 537.

The words ''a civil action in admiralty may be brought in a court of the United States based on the foreign cause of action'' are substituted for ''such right may be maintained in an appropriate action in admiralty in the courts of the United States'' for clarity and consistency. The words ''any statute of the United States to the contrary notwithstanding'' are omitted as unnecessary.

§ 30307. Commercial aviation accidents

(a) DEFINITION.—In this section, the term ''nonpecuniary damages'' means damages for loss of care, comfort, and companionship.

(b) BEYOND 12 NAUTICAL MILES.—In an action under this chapter, if the death resulted from a commercial aviation accident occurring on the high seas beyond 12 nautical miles from the shore of the United States, additional compensation is recoverable for nonpecuniary damages, but punitive damages are not recoverable.

(c) WITHIN 12 NAUTICAL MILES.—This chapter does not apply if the death resulted from a commercial aviation accident occurring on the high seas 12 nautical miles or less from the shore of the United States.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1512.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30307(a)	46 App.:762(b)(2).	Mar. 30, 1920, ch. 111, §§ 1(b), 2(b); as added Pub. L. 106–181, title IV, § 404(a)(2), (b)(2), Apr. 5, 2000, 114 Stat. 131.
30307(b)	46 App.:762(b)(1).	
30307(c)	46 App.:761(b).	

In subsections (b) and (c), the words ''the United States'' are substituted for ''any State, or the District of Columbia, or the Territories or dependencies of the United States'' because of the definition of ''United States'' in chapter 1 of the revised title.

In subsection (b), the words ''of a decedent'' are omitted as unnecessary.

In subsection (c), the words ''if the death resulted from a commercial aviation accident occurring on the high seas'' are substituted for ''In the case of a commercial aviation accident, whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas'' for consistency with subsection (b) and to eliminate unnecessary words. The words ''and the rules applicable under Federal, State, and other appropriate law shall apply'' are omitted as unnecessary.

§ 30308. Nonapplication

(a) STATE LAW.—This chapter does not affect the law of a State regulating the right to recover for death.

(b) INTERNAL WATERS.—This chapter does not apply to the Great Lakes or waters within the territorial limits of a State.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1512.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30308	46 App.:767.	Mar. 30, 1920, ch. 111, § 7, 41 Stat. 538.

In subsection (a), the words ''law of a State'' are substituted for ''any State statute'' for consistency in the revised title. The words ''regulating the right to recover for death'' are substituted for ''giving or regulating rights of action or remedies for death'' to eliminate unnecessary words.

In subsection (b), the words ''or to any navigable waters in the Panama Canal Zone'' are omitted because the Panama Canal Zone was transferred to the Republic of Panama.

CHAPTER 305—EXONERATION AND LIMITATION OF LIABILITY

Sec.
30501. Definition.
30502. Application.
30503. Declaration of nature and value of goods.
30504. Loss by fire.
30505. General limit of liability.
30506. Limit of liability for personal injury or death.
30507. Apportionment of losses.
30508. Provisions requiring notice of claim or limiting time for bringing action.
30509. Provisions limiting liability for personal injury or death.
30510. Vicarious liability for medical malpractice with regard to crew.
30511. Action by owner for limitation.
30512. Liability as master, officer, or seaman not affected.

§ 30501. Definition

In this chapter, the term ''owner'' includes a charterer that mans, supplies, and navigates a vessel at the charterer's own expense or by the charterer's own procurement.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1512.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30501	46 App.:186.	R.S. § 4286.

The words ''In this chapter'' are substituted for ''within the meaning of the provisions of title 48 of the Revised Statutes relating to the limitation of the liability of the owners of vessels'' because of the codification of title 46, United States Code. The word ''supplies'' is substituted for ''victual'' for clarity. The words ''and such vessel, when so chartered, shall be liable in the same manner as if navigated by the owner thereof'' are omitted as unnecessary.

§ 30502. Application

Except as otherwise provided, this chapter (except section 30503) applies to seagoing vessels and vessels used on lakes or rivers or in inland navigation, including canal boats, barges, and lighters.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1512.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30502	46 App.:188.	R.S. § 4289; Feb. 18, 1875, ch. 80, § 1 (related to R.S. § 4289), 18 Stat. 320; June 19, 1886, ch. 421, § 4, 24 Stat. 80; June 5, 1936, ch. 521, § 4, 49 Stat. 1481.

§ 30503. Declaration of nature and value of goods

(a) IN GENERAL.—If a shipper of an item named in subsection (b), contained in a parcel, package, or trunk, loads the item as freight or baggage on a vessel, without at the time of loading giving to the person receiving the item a written notice of the true character and value of the item and having that information entered on the bill of lading, the owner and master of the vessel are not liable as carriers. The owner and master are not liable beyond the value entered on the bill of lading.

(b) ITEMS.—The items referred to in subsection (a) are precious metals, gold or silver plated articles, precious stones, jewelry, trinkets, watches, clocks, glass, china, coins, bills, securities, printings, engravings, pictures, stamps, maps, papers, silks, furs, lace, and similar items of high value and small size.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1512.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30503	46 App.:181.	R.S. § 4281.

In subsection (a), the words ''load'' and ''loading'' are substituted for ''lade'' and ''lading'' to use more common terminology. The words ''person receiving the item'' are substituted for ''master, clerk, agent, or owner of such vessel receiving the same'' to eliminate unnecessary words. The words ''thereof in any form or manner'' and ''and according to the character thereof so notified and'' are omitted as unnecessary.

In subsection (b), the words ''precious metals'' are substituted for ''platina, gold, gold dust, silver, . . . or other precious metals, . . . gold or silver in a manufactured or unmanufactured state'', the words ''precious stones'' are substituted for ''diamonds, or other precious stones'', the words ''watches, clocks'' are substituted for ''watches, clocks, or timepieces of any description'', the words ''coins, bills, securities'' are substituted for ''bullion, . . . coins, . . . bills of any bank or public body, . . . orders, notes, or securities for the payment of money'', the word ''papers'' is substituted for ''writings, title deeds'', and the word ''silks'' is substituted for ''silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with any other material'', to eliminate unnecessary words. The words ''and similar items of high value and small size'' are added to ensure that any of the items specifically named in the source but omitted in the revised section, or similar items, will be covered by this section.

§ 30504. Loss by fire

The owner of a vessel is not liable for loss or damage to merchandise on the vessel caused by a fire on the vessel unless the fire resulted from the design or neglect of the owner.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1513.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30504	46 App.:182.	R.S. § 4282.

The words ''liable for'' are substituted for ''liable to answer for or make good to any person'', the words ''merchandise on the vessel'' are substituted for ''any merchandise whatsoever, which shall be shipped, taken in, or put on board any such vessel'', and the words ''caused by a fire on the vessel'' are substituted for ''by reason or by means of any fire happening to or on board the vessel'', to eliminate unnecessary words.

§ 30505. General limit of liability

(a) IN GENERAL.—Except as provided in section 30506 of this title, the liability of the owner of a vessel for any claim, debt, or liability described in subsection (b) shall not exceed the value of the vessel and pending freight. If the vessel has more than one owner, the proportionate share of the liability of any one owner shall not exceed that owner's proportionate interest in the vessel and pending freight.

(b) CLAIMS SUBJECT TO LIMITATION.—Unless otherwise excluded by law, claims, debts, and liabilities subject to limitation under subsection (a) are those arising from any embezzlement, loss, or destruction of any property, goods, or merchandise shipped or put on board the vessel, any loss, damage, or injury by collision, or any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of the owner.

(c) WAGES.—Subsection (a) does not apply to a claim for wages.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1513.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30505	46 App.:183(a).	R.S. § 4283(a); Aug. 29, 1935, ch. 804, § 1, 49 Stat. 960; June 5, 1936, ch. 521, § 1, 49 Stat. 1479.
	46 App.:189	June 26, 1884, ch. 121, § 18, 23 Stat. 57.

In subsection (a), the words ''Except as provided in section 30506 of this title'' are substituted for ''except in the cases provided for in subsection (b) of this section'' because 46 App. U.S.C. 183(b) is restated in section 30506 of the revised title. The words ''whether American or foreign'' are omitted as unnecessary because of section 30502 of the revised title. The words ''shall not exceed the value of the vessel and pending freight'' are substituted for ''shall not . . . exceed the amount or value of . . . such vessel, and her freight then pending'' in 46 App. U.S.C. 183(a) and for ''the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessels and freight pending'' in 46 App. U.S.C. 189 for consistency and to eliminate unnecessary words. The last sentence is substituted for ''the interest of such owner in'' in 46 App. U.S.C. 183(a) and for ''The individual liability of a shipowner shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole'' in 46 App. U.S.C. 189 for clarity and consistency. The words ''*Provided*, That this provision shall not prevent any claimant from joining all the owners in one action'' in 46 App. U.S.C. 189 are omitted as unnecessary.

Subsection (c) is substituted for ''nor shall the same apply to wages due to persons employed by said shipowners'' in 46 App. U.S.C. 189 because of the reorganization of the source provisions.

§ 30506. Limit of liability for personal injury or death

(a) APPLICATION.—This section applies only to seagoing vessels, but does not apply to pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels, fish tender vessels, canal boats, scows, car floats, barges, lighters, or nondescript vessels.

(b) MINIMUM LIABILITY.—If the amount of the vessel owner's liability determined under section 30505 of this title is insufficient to pay all losses in full, and the portion available to pay claims for personal injury or death is less than $420 times the tonnage of the vessel, that portion shall be increased to $420 times the tonnage of the vessel. That portion may be used only to pay claims for personal injury or death.

(c) CALCULATION OF TONNAGE.—Under subsection (b), the tonnage of a self-propelled vessel is the gross tonnage without deduction for engine room, and the tonnage of a sailing vessel is the tonnage for documentation. However, space for the use of seamen is excluded.

(d) CLAIMS ARISING ON DISTINCT OCCASIONS.—Separate limits of liability apply to claims for personal injury or death arising on distinct occasions.

(e) PRIVITY OR KNOWLEDGE.—In a claim for personal injury or death, the privity or knowledge of the master or the owner's superintendent or managing agent, at or before the beginning of each voyage, is imputed to the owner.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1513.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30506(a)	46 App.:183(f) (related to 46 App.:183(b)–(e)).	
30506(b)	46 App.:183(b) (1st sentence).	R.S. § 4283(b) (1st sentence); Aug. 29, 1935, ch. 804, § 1, 49 Stat. 960; June 5, 1936, ch. 521, § 1, 49 Stat. 1479; Pub. L. 98–498, title II, § 213(a), Oct. 19, 1984, 98 Stat. 2306.
30506(c)	46 App.:183(c).	R.S. § 4283(c)–(f) (related to R.S. § 4283(b)–(e)); Aug. 29, 1935, ch. 804, § 1, 49 Stat. 960; June 5, 1936, ch. 521, § 1, 49 Stat. 1480.
30506(d)	46 App.:183(d).	
30506(e)	46 App.:183(e).	

Subsection (a) is written as an application provision rather than as a definition to be more direct and to avoid having to repeat the word ''seagoing'' throughout the section. The words ''fishing vessel, fish tender vessel'' are substituted for ''fishing vessels or their tenders'' for clarity. The words ''nondescript vessel'' are substituted for ''nondescript self-propelled vessels'' and ''nondescript non-self-propelled vessels'' to eliminate unnecessary words. The words ''self-propelled lighters'' are omitted as covered by ''lighter''. The words ''even though the same may be seagoing vessels within the meaning of such term as used in section 188 of this Appendix, as amended'' are omitted as unnecessary. This provision is restated also at section 30508(a) of the revised title.

In subsection (b), the words ''is such that the portion available to pay claims for personal injury or death'' are substituted for ''is insufficient to pay all losses in full, and the portion of such amount applicable to the payment of losses in respect of loss of life or bodily injury'' to eliminate unnecessary words.

In subsection (c), the words ''self-propelled vessel'' are substituted for ''steam or motor vessel'', and the words ''tonnage for documentation'' are substituted for ''registered tonnage'', for consistency in the revised title. The words ''space for the use of seamen'' are substituted for ''space occupied by seamen or apprentices and appropriated to their use'' to eliminate unnecessary words.

In subsection (d), the words ''Separate limits of liability apply'' are substituted for ''The owner . . . shall be liable . . . to the same extent as if no other loss of life or bodily injury had arisen'' to eliminate unnecessary words.

In subsection (e), the words ''the privity or knowledge . . . is imputed to the owner'' are substituted for ''shall be deemed conclusively the privity or knowledge of the owner'' for consistency and to eliminate unnecessary words.

§ 30507. Apportionment of losses

If the amounts determined under sections 30505 and 30506 of this title are insufficient to pay all claims—

(1) all claimants shall be paid in proportion to their respective losses out of the amount determined under section 30505 of this title; and

(2) personal injury and death claimants, if any, shall be paid an additional amount in

proportion to their respective losses out of the additional amount determined under section 30506(b) of this title.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1513.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30507	46 App.:183(b) (last sentence).	R.S. § 4283(b) (last sentence); Aug. 29, 1935, ch. 804, § 1, 49 Stat. 960; June 5, 1936, ch. 521, § 1, 49 Stat. 1479; Pub. L. 98–498, title II, § 213(a), Oct. 19, 1984, 98 Stat. 2306.
	46 App.:184.	R.S. § 4284; Feb. 27, 1877, ch. 69, § 1 (related to R.S. § 4284), 19 Stat. 251.

This section is substituted for 46 App. U.S.C. 183(b) (last sentence) and 184 (words before semicolon) for clarity and consistency and to eliminate unnecessary words. The text of 46 App. U.S.C. 184 (words after semicolon) is omitted as unnecessary. See G. Gilmore & C. Black, *The Law of Admiralty*, § 10–8 (2d ed. 1975).

§ 30508. Provisions requiring notice of claim or limiting time for bringing action

(a) APPLICATION.—This section applies only to seagoing vessels, but does not apply to pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels, fish tender vessels, canal boats, scows, car floats, barges, lighters, or nondescript vessels.

(b) MINIMUM TIME LIMITS.—The owner, master, manager, or agent of a vessel transporting passengers or property between ports in the United States, or between a port in the United States and a port in a foreign country, may not limit by regulation, contract, or otherwise the period for—

(1) giving notice of, or filing a claim for, personal injury or death to less than 6 months after the date of the injury or death; or

(2) bringing a civil action for personal injury or death to less than one year after the date of the injury or death.

(c) EFFECT OF FAILURE TO GIVE NOTICE.—When notice of a claim for personal injury or death is required by a contract, the failure to give the notice is not a bar to recovery if—

(1) the court finds that the owner, master, or agent of the vessel had knowledge of the injury or death and the owner has not been prejudiced by the failure;

(2) the court finds there was a satisfactory reason why the notice could not have been given; or

(3) the owner of the vessel fails to object to the failure to give the notice.

(d) TOLLING OF PERIOD TO GIVE NOTICE.—If a claimant is a minor or mental incompetent, or if a claim is for wrongful death, any period provided by a contract for giving notice of the claim is tolled until the earlier of—

(1) the date a legal representative is appointed for the minor, incompetent, or decedent's estate; or

(2) 3 years after the injury or death.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1514.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30508(a)	46 App.:183(f) (related to 46 App.:183b).	R.S. § 4283(f) (related to R.S. § 4283A); Aug. 29, 1935, ch. 804, § 1, 49 Stat. 960; June 5, 1936, ch. 521, § 1, 49 Stat. 1480.
30508(b)	46 App.:183b(a).	R.S. § 4283A, as added Aug. 29, 1935, ch. 804, § 3, 49 Stat. 960.
30508(c)	46 App.:183b(b).	
30508(d)	46 App.:183b(c).	

For an explanation of subsection (a), see the revision notes for section 30506(a), where 46 App. U.S.C. 183(f) is also restated.

In subsection (b), before paragraph (1), the words ''sea-going vessel (other than tugs, barges, fishing vessels and their tenders)'' are omitted because of subsection (a) of this section. The word ''merchandise'' is omitted as covered by ''property''. The words ''between ports in the United States, or between a port in the United States and a port in a foreign country'' are substituted for ''from or between ports of the United States and foreign ports'' for clarity and for consistency with section 30509(a)(1) of the revised title. See *Burstein v. United States Lines Co.*, 43 F. Supp. 226 (S.D.N.Y. 1942), rev'd on other grounds, 134 F.2d 89 (2d Cir. 1943). The word ''rule'' is omitted as covered by ''regulation''. In paragraph (1), the words ''after the date of the injury or death'' are added for clarity and consistency with paragraph (2).

In subsection (c), before paragraph (1), the words ''When notice of a claim for personal injury or death is required by a contract, the failure to give the notice'' are substituted for ''Failure to give such notice, where lawfully prescribed in such contract'' for clarity. In paragraph (1), the words ''the court finds'' are stated at the beginning rather than the middle to be more precise. The word ''damage'' is omitted as unnecessary. In paragraph (2), the words ''the court finds there was a satisfactory reason'' are substituted for ''the court excuses such failure on the ground that for some satisfactory reason'' to eliminate unnecessary words.

In subsection (d), before paragraph (1), the word ''claimant'' is substituted for ''person who is entitled to recover on any such claim'' to eliminate unnecessary words. The word ''lawful'' is omitted as unnecessary. The words ''is tolled until'' are substituted for ''shall not be applicable so long as'' and ''but shall be applicable from'' for clarity and to eliminate unnecessary words.

§ 30509. Provisions limiting liability for personal injury or death

(a) PROHIBITION.—

(1) IN GENERAL.—The owner, master, manager, or agent of a vessel transporting passengers between ports in the United States, or between a port in the United States and a port in a foreign country, may not include in a regulation or contract a provision limiting—

(A) the liability of the owner, master, or agent for personal injury or death caused by the negligence or fault of the owner or the owner's employees or agents; or

(B) the right of a claimant for personal injury or death to a trial by court of competent jurisdiction.

(2) VOIDNESS.—A provision described in paragraph (1) is void.

(b) EMOTIONAL DISTRESS, MENTAL SUFFERING, AND PSYCHOLOGICAL INJURY.—

(1) IN GENERAL.—Subsection (a) does not prohibit a provision in a contract or in ticket conditions of carriage with a passenger that

relieves an owner, master, manager, agent, operator, or crewmember of a vessel from liability for infliction of emotional distress, mental suffering, or psychological injury so long as the provision does not limit such liability when the emotional distress, mental suffering, or psychological injury is—

(A) the result of physical injury to the claimant caused by the negligence or fault of a crewmember or the owner, master, manager, agent, or operator;

(B) the result of the claimant having been at actual risk of physical injury, and the risk was caused by the negligence or fault of a crewmember or the owner, master, manager, agent, or operator; or

(C) intentionally inflicted by a crewmember or the owner, master, manager, agent, or operator.

(2) SEXUAL OFFENSES.—This subsection does not limit the liability of a crewmember or the owner, master, manager, agent, or operator of a vessel in a case involving sexual harassment, sexual assault, or rape.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1514.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30509	46 App.:183c.	R.S. § 4283B, as added June 5, 1936, ch. 521, § 2, 49 Stat. 1480; Oct. 19, 1996, Pub. L. 104–324, § 1129(b), 110 Stat. 3984.

In subsection (a)(1), before subparagraph (A), the words ''may not'' are substituted for ''It shall be unlawful'' for consistency in the revised title and with other titles of the United States Code. The words ''rule'' and ''agreement'' are omitted as covered by ''regulation'' and ''contract'', respectively. The words ''a provision limiting'' are substituted for ''any provision or limitation (1) purporting . . . to relieve . . . , or (2) purporting . . . to lessen, weaken, or avoid'' to eliminate unnecessary words. In subparagraph (A), the words ''the owner's employees or agents'' are substituted for ''his servants'' for consistency in the revised title. In subparagraph (B), the words ''on the question of liability for such loss or injury, or the measure of damages therefor'' are omitted as unnecessary.

Subsection (b)(2) is substituted for 46 App. U.S.C. 183c (last sentence) for consistency and to eliminate unnecessary words.

§ 30510. Vicarious liability for medical malpractice with regard to crew

In a civil action by any person in which the owner or operator of a vessel or employer of a crewmember is claimed to have vicarious liability for medical malpractice with regard to a crewmember occurring at a shoreside facility, and to the extent the damages resulted from the conduct of any shoreside doctor, hospital, medical facility, or other health care provider, the owner, operator, or employer is entitled to rely on any statutory limitations of liability applicable to the doctor, hospital, medical facility, or other health care provider in the State of the United States in which the shoreside medical care was provided.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1515.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30510	46 App.:183(g).	R.S. § 4283(g); Pub. L. 104–324, § 1129(a), Oct. 19, 1996, 110 Stat. 3984.

The words ''civil action'' are substituted for ''suit'' for consistency in the revised title. The words ''is entitled to rely on any statutory'' are substituted for ''shall be entitled to rely upon any and all statutory'' to eliminate unnecessary words.

§ 30511. Action by owner for limitation

(a) IN GENERAL.—The owner of a vessel may bring a civil action in a district court of the United States for limitation of liability under this chapter. The action must be brought within 6 months after a claimant gives the owner written notice of a claim.

(b) CREATION OF FUND.—When the action is brought, the owner (at the owner's option) shall—

(1) deposit with the court, for the benefit of claimants—

(A) an amount equal to the value of the owner's interest in the vessel and pending freight, or approved security; and

(B) an amount, or approved security, that the court may fix from time to time as necessary to carry out this chapter; or

(2) transfer to a trustee appointed by the court, for the benefit of claimants—

(A) the owner's interest in the vessel and pending freight; and

(B) an amount, or approved security, that the court may fix from time to time as necessary to carry out this chapter.

(c) CESSATION OF OTHER ACTIONS.—When an action has been brought under this section and the owner has complied with subsection (b), all claims and proceedings against the owner related to the matter in question shall cease.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1515.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30511	46 App.:185.	R.S. § 4285; June 5, 1936, ch. 521, § 3, 49 Stat. 1480.

In subsection (a), the words ''bring a civil action . . . in a district court of the United States'' are substituted for ''petition a district court of the United States'' for consistency in the revised title and with other titles of the United States Code. See rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.). The words ''of competent jurisdiction'' are omitted as unnecessary.

In subsection (b), the word ''pending'' before ''freight'' is added for consistency in the chapter. The words ''to carry out this chapter'' are substituted for ''to carry out the provisions of section 183 of this Appendix'' because of the reorganization of the source provisions.

§ 30512. Liability as master, officer, or seaman not affected

This chapter does not affect the liability of an individual as a master, officer, or seaman, even though the individual is also an owner of the vessel.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1516.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30512	46 App.:187.	R.S. § 4287.

This section is substituted for the source provision for consistency with the restatement of 46 App. U.S.C. 183(a) and 189 in section 30505 and to eliminate unnecessary words. The reference in the source to particular sections is extended to include the entire chapter to simplify the reference and to conform to the obvious original policy and intent of the source provision.

CHAPTER 307—LIABILITY OF WATER CARRIERS

Sec.
30701. Definition.
30702. Application.
30703. Bills of lading.
30704. Loading, stowage, custody, care, and delivery.
30705. Seaworthiness.
30706. Defenses.
30707. Criminal penalty.

§ 30701. Definition

In this chapter, the term ''carrier'' means the owner, manager, charterer, agent, or master of a vessel.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1516.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30701	(no source).	

This chapter codifies the Act of February 13, 1893 (ch. 105, 27 Stat. 445) (commonly known as the Harter Act). Changes are made to simplify, clarify, and modernize the language and style, but the intent is that these changes should not result in changes in substance.

A definition of ''carrier'' is added based on language appearing in various provisions of the Harter Act. The definition avoids the need to repeat in various sections of this chapter the list of persons to whom the requirements and restrictions of this chapter apply, and it ensures that the list of persons is consistent in the chapter.

CARRIAGE OF GOODS BY SEA ACT

Act Apr. 16, 1936, ch. 229, 49 Stat. 1207, as amended by Pub. L. 97–31, § 12(146), Aug. 6, 1981, 95 Stat. 166, provided:

''That every bill of lading or similar document of title which is evidence of a contract for the carriage of goods by sea to or from ports of the United States, in foreign trade, shall have effect subject to the provisions of this Act.

''TITLE I

''SECTION 1. When used in this Act—

''(a) The term 'carrier' includes the owner or the charterer who enters into a contract of carriage with a shipper.

''(b) The term 'contract of carriage' applies only to contracts of carriage covered by a bill of lading or any similar document of title, insofar as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.

''(c) The term 'goods' includes goods, wares, merchandise, and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.

''(d) The term 'ship' means any vessel used for the carriage of goods by sea.

''(e) The term 'carriage of goods' covers the period from the time when the goods are loaded on to the time when they are discharged from the ship.

''RISKS

''SEC. 2. Subject to the provisions of section 6, under every contract of carriage of goods by sea, the carrier in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities hereinafter set forth.

''RESPONSIBILITIES AND LIABILITIES

''SEC. 3. (1) The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to—

''(a) Make the ship seaworthy;

''(b) Properly man, equip, and supply the ship;

''(c) Make the holds, refrigerating and cooling chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage, and preservation.

''(2) The carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

''(3) After receiving the goods into his charge the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things—

''(a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.

''(b) Either the number of packages or pieces, or the quantity or weight, as the case may be, as furnished in writing by the shipper.

''(c) The apparent order and condition of the goods: *Provided*, That no carrier, master, or agent of the carrier, shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

''(4) Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraphs (3)(a), (b), and (c), of this section: *Provided*, That nothing in this Act shall be construed as repealing or limiting the application of any part of the Act, as amended, entitled 'An Act relating to bills of lading in interstate and foreign commerce', approved August 29, 1916 (U.S.C., title 49, secs. 81–124), commonly known as the 'Pomerene Bills of Lading Act' [now chapter 801 of Title 49, Transportation].

''(5) The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by him; and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

''(6) Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or

damage is not apparent, the notice must be given within three days of the delivery.

''Said notice of loss or damage may be endorsed upon the receipt for the goods given by the person taking delivery thereof.

''The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

''In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: *Provided*, That if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered.

''In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

''(7) After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the carrier to the shipper shall, if the shipper so demands, be a 'shipped' bill of lading: *Provided*, That if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the 'shipped' bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of this section be deemed to constitute a 'shipped' bill of lading.

''(8) Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with the goods, arising from negligence, fault, or failure in the duties and obligations provided in this section, or lessening such liability otherwise than as provided in this Act, shall be null and void and of no effect. A benefit of insurance in favor of the carrier, or similar clause, shall be deemed to be a clause relieving the carrier from liability.

''RIGHTS AND IMMUNITIES

''SEC. 4. (1) Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped, and supplied, and to make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried fit and safe for their reception, carriage, and preservation in accordance with the provisions of paragraph (1) of section 3. Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other persons claiming exemption under this section.

''(2) Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from—

''(a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;

''(b) Fire, unless caused by the actual fault or privity of the carrier;

''(c) Perils, dangers, and accidents of the sea or other navigable waters;

''(d) Act of God;

''(e) Act of war;

''(f) Act of public enemies;

''(g) Arrest or restraint of princes, rulers, or people, or seizure under legal process;

''(h) Quarantine restrictions;

''(i) Act or omission of the shipper or owner of the goods, his agent or representative;

''(j) Strikes or lockouts or stoppage or restraint of labor from whatever cause, whether partial or general: *Provided*, That nothing herein contained shall be construed to relieve a carrier from responsibility for the carrier's own acts;

''(k) Riots and civil commotions;

''(*l*) Saving or attempting to save life or property at sea;

''(m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;

''(n) Insufficiency of packing;

''(*o*) Insufficiency or inadequacy of marks;

''(p) Latent defects not discoverable by due diligence; and

''(q) Any other cause arising without the actual fault and privity of the carrier and without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

''(3) The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault, or neglect of the shipper, his agents, or his servants.

''(4) Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of this Act or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom: *Provided, however*, That if the deviation is for the purpose of loading or unloading cargo or passengers it shall, prima facie, be regarded as unreasonable.

''(5) Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding $500 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. This declaration, if embodied in the bill of lading, shall be prima facie evidence, but shall not be conclusive on the carrier.

''By agreement between the carrier, master, or agent of the carrier, and the shipper another maximum amount than that mentioned in this paragraph may be fixed: *Provided*, That such maximum shall not be less than the figure above named. In no event shall the carrier be liable for more than the amount of damage actually sustained.

''Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with the transportation of the goods if the nature or value thereof has been knowingly and fraudulently misstated by the shipper in the bill of lading.

''(6) Goods of an inflammable, explosive, or dangerous nature to the shipment whereof the carrier, master or agent of the carrier, has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

''SURRENDER OF RIGHTS AND IMMUNITIES AND INCREASE OF RESPONSIBILITIES AND LIABILITIES

''SEC. 5. A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and liabilities under this Act, provided such surrender or increase

shall be embodied in the bill of lading issued to the shipper.

''The provisions of this Act shall not be applicable to charter parties; but if bills of lading are issued in the case of a ship under a charter party, they shall comply with the terms of this Act. Nothing in this Act shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

''SPECIAL CONDITIONS

''SEC. 6. Notwithstanding the provisions of the preceding sections, a carrier, master or agent of the carrier, and a shipper shall, in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness (so far as the stipulation regarding seaworthiness is not contrary to public policy), or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care, and discharge of the goods carried by sea: *Provided*, That in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a nonnegotiable document and shall be marked as such.

''Any agreement so entered into shall have full legal effect: *Provided*, That this section shall not apply to ordinary commercial shipments made in the ordinary course of trade but only to other shipments where the character or condition of the property to be carried or the circumstances, terms, and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

''[AGREEMENT AS TO RESPONSIBILITY AND LIABILITY BEFORE LOADING OR AFTER DISCHARGE]

''SEC. 7. Nothing contained in this Act shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation, or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea.

''[RIGHTS AND LIABILITIES UNDER OTHER OBLIGATIONS]

''SEC. 8. The provisions of this Act shall not affect the rights and obligations of the carrier under the provisions of the Shipping Act, 1916 [former 46 U.S.C. App. 801 et seq., see Disposition Table preceding section 101 of this title], or under the provisions of sections 4281 to 4289, inclusive, of the Revised Statutes of the United States [see chapter 305 of this title] or of any amendments thereto; or under the provisions of any other enactment for the time being in force relating to the limitation of the liability of the owners of seagoing vessels.

''TITLE II

''[DISCRIMINATION BETWEEN COMPETING SHIPPERS]

''SECTION. 9. Nothing contained in this Act shall be construed as permitting a common carrier by water to discriminate between competing shippers similarly placed in time and circumstances, either (a) with respect to their right to demand and receive bills of lading subject to the provisions of this Act; or (b) when issuing such bills of lading, either in the surrender of any of the carrier's rights and immunities or in the increase of any of the carrier's responsibilities and liabilities pursuant to section 5, title I, of this Act; or (c) in any other way prohibited by the Shipping Act, 1916, as amended [former 46 U.S.C. App. 801 et seq., see Disposition Table preceding section 101 of this title].

''[OMITTED]

''SEC. 10. [Amended section 25 of the Interstate Commerce Act (former 49 U.S.C. 25).]

''[WEIGHT OF BULK CARGO]

''SEC. 11. Where under the customs of any trade the weight of any bulk cargo inserted in the bill of lading is a weight ascertained or accepted by a third party other than the carrier or the shipper, and the fact that the weight is so ascertained or accepted is stated in the bill of lading, then, notwithstanding anything in this Act, the bill of lading shall not be deemed to be prima facie evidence against the carrier of the receipt of goods of the weight so inserted in the bill of lading, and the accuracy thereof at the time of shipment shall not be deemed to have been guaranteed by the shipper.

''[RELATIONSHIP TO OTHER LAW]

''SEC. 12. Nothing in this Act shall be construed as superseding any part of the Act entitled 'An Act relating to navigation of vessels, bills of lading, and to certain obligations, duties, and rights in connection with the carriage of property', approved February 13, 1893 [now this chapter], or of any other law which would be applicable in the absence of this Act, insofar as they relate to the duties, responsibilities, and liabilities of the ship or carrier prior to the time when the goods are loaded on or after the time they are discharged from the ship.

''[SCOPE OF ACT; ''UNITED STATES''; ''FOREIGN TRADE'']

''SEC. 13. This Act shall apply to all contracts for carriage of goods by sea to or from ports of the United States in foreign trade. As used in this Act the term 'United States' includes its districts, territories, and possessions: *Provided, however*, That the Philippine Legislature may by law exclude its application to transportation to or from ports of the Philippine Islands. The term 'foreign trade' means the transportation of goods between the ports of the United States and ports of foreign countries. Nothing in this Act shall be held to apply to contracts for carriage of goods by sea between any port of the United States or its possessions, and any other port of the United States or its possessions: *Provided, however*, That any bill of lading or similar document of title which is evidence of a contract for the carriage of goods by sea between such ports, containing an express statement that it shall be subject to the provisions of this Act, shall be subjected hereto as fully as if subject hereto by the express provisions of this Act: *Provided further*, That every bill of lading or similar document of title which is evidence of a contract for the carriage of goods by sea from ports of the United States, in foreign trade, shall contain a statement that it shall have effect subject to the provisions of this Act.

''[As to proviso in second sentence that Philippine Legislature may by law exclude its application to transportation to or from ports of the Philippine Islands, see Proc. No. 2695, set out under section 1394 of Title 22, Foreign Relations and Intercourse, which proclaimed the independence of the Philippines.]

''[SUSPENSION OF PROVISIONS BY PRESIDENT]

''SEC. 14. Upon the certification of the Secretary of Transportation that the foreign commerce of the United States in its competition with that of foreign nations is prejudiced by the provisions, or any of them, of title I of this Act, or by the laws of any foreign country or countries relating to the carriage of goods by sea, the President of the United States may, from time to time, by proclamation, suspend any or all provisions of said sections for such periods of time or indefinitely as may be designated in the proclamation. The President may at any time rescind such suspension of said sections, and any provisions thereof which may have been suspended shall thereby be reinstated and again apply to contracts thereafter made for the carriage of

goods by sea. Any proclamation of suspension or rescission of any such suspension shall take effect on a date named therein, which date shall be not less than ten days from the issue of the proclamation.

''Any contract for the carriage of goods by sea, subject to the provisions of this Act, effective during any period when title I hereof, or any part thereof, are suspended, shall be subject to all provisions of law now or hereafter applicable to that part of title I which may have thus been suspended. [As amended Pub. L. 97–31, §12(146), Aug. 6, 1981, 95 Stat. 166.]

''[EFFECTIVE DATE]

''SEC. 15. This Act shall take effect ninety days after the date of its approval [April 16, 1936]; but nothing in this Act shall apply during a period not to exceed one year following its approval to any contract for the carriage of goods by sea, made before the date on which this Act is approved, nor to any bill of lading or similar document of title issued, whether before or after such date of approval in pursuance of any such contract as aforesaid.

''[SHORT TITLE]

''SEC. 16. This Act may be cited as the 'Carriage of Goods by Sea Act'.''

§ 30702. Application

(a) IN GENERAL.—Except as otherwise provided, this chapter applies to a carrier engaged in the carriage of goods to or from any port in the United States.

(b) LIVE ANIMALS.—Sections 30703 and 30704 of this title do not apply to the carriage of live animals.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1516.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30702(a)	(no source).	
30702(b)	46 App.:195.	Feb. 13, 1893, ch. 105, §7, 27 Stat. 446.

Subsection (a) is added based on language appearing in various source provisions restated in this chapter. The word ''carriage'' is substituted for ''transporting'', and the word ''goods'' is substituted for ''merchandise or property'', to use the same terminology as in the Carriage of Goods By Sea Act (Apr. 16, 1936, ch. 229, 49 Stat. 1207). The words ''to or from any port in the United States'' are substituted for ''from or between ports of the United States and foreign ports'' in 46 App. U.S.C. 190 and 193, ''from or between ports of the United States of America and foreign ports'' in 46 App. U.S.C. 191, and ''to or from any port in the United States of America'' in 46 App. U.S.C. 192, for clarity and consistency. See *Knott v. Botany Mills*, 179 U.S. 69 (1900).

§ 30703. Bills of lading

(a) ISSUANCE.—On demand of a shipper, the carrier shall issue a bill of lading or shipping document.

(b) CONTENTS.—The bill of lading or shipping document shall include a statement of—

(1) the marks necessary to identify the goods;

(2) the number of packages, or the quantity or weight, and whether it is carrier's or shipper's weight; and

(3) the apparent condition of the goods.

(c) PRIMA FACIE EVIDENCE OF RECEIPT.—A bill of lading or shipping document issued under this section is prima facie evidence of receipt of the goods described.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1516.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30703	46 App.:193.	Feb. 13, 1893, ch. 105, §4, 27 Stat. 445.

In subsection (a), the words ''On demand of a shipper'' are added because of the reference to a demand in 46 App. U.S.C. 194. The words ''transporting merchandise or property from or between ports of the United States and foreign ports'' are omitted because of section 30702(a) of the revised title. The word ''lawful'' (which modifies ''merchandise'') is omitted as unnecessary.

In subsection (b)(2), the words ''or weight'' are added for consistency with the requirement to state whether it is the carrier's or shipper's weight.

In subsection (b)(3), the word ''order'' is omitted as redundant to ''condition''. The words ''delivered to and received by . . . for transportation'' are omitted as unnecessary.

§ 30704. Loading, stowage, custody, care, and delivery

A carrier may not insert in a bill of lading or shipping document a provision avoiding its liability for loss or damage arising from negligence or fault in loading, stowage, custody, care, or proper delivery. Any such provision is void.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1516.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30704	46 App.:190.	Feb. 13, 1893, ch. 105, §1, 27 Stat. 445.

The words ''transporting merchandise or property from or between ports of the United States and foreign ports'' are omitted because of section 30702(a) of the revised title. The words ''may not'' are substituted for ''It shall not be lawful . . . to'', and the word ''provision'' is substituted for ''clause, covenant, or agreement'', to eliminate unnecessary words. The words ''any and all lawful'' and ''committed to its or their charge'' are omitted as unnecessary. The words ''Any such provision is void'' are substituted for ''Any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect'' to eliminate unnecessary words.

§ 30705. Seaworthiness

(a) PROHIBITION.—A carrier may not insert in a bill of lading or shipping document a provision lessening or avoiding its obligation to exercise due diligence to—

(1) make the vessel seaworthy; and

(2) properly man, equip, and supply the vessel.

(b) VOIDNESS.—A provision described in subsection (a) is void.

(Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1516.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30705	46 App.:191.	Feb. 13, 1893, ch. 105, §2, 27 Stat. 445.

In subsection (a), before paragraph (1), the words ''transporting merchandise or property from or be-

tween ports of the United States of America and foreign ports'' are omitted because of section 30702(a) of the revised title. The words ''may not'' are substituted for ''It shall not be lawful . . . to'', the word ''provision'' is substituted for ''covenant or agreement'', and the words ''lessening or avoiding its obligation'' are substituted for ''whereby the obligations . . . shall in any wise be lessened, weakened, or avoided'', to eliminate unnecessary words.

In paragraph (1), the words ''and capable of performing her intended voyage'' are omitted as unnecessary.

In paragraph (2), the word ''supply'' is substituted for ''provision, and outfit'' to eliminate unnecessary words.

The words ''or whereby the obligations of the master, officers, agents, or servants to carefully handle and stow her cargo and to care for and properly deliver same'' are omitted as covered by section 30704 of the revised title.

Subsection (b) is added for clarity and for consistency with section 30704 of the revised title.

§ 30706. Defenses

(a) DUE DILIGENCE.—If a carrier has exercised due diligence to make the vessel in all respects seaworthy and to properly man, equip, and supply the vessel, the carrier and the vessel are not liable for loss or damage arising from an error in the navigation or management of the vessel.

(b) OTHER DEFENSES.—A carrier and the vessel are not liable for loss or damage arising from—

(1) dangers of the sea or other navigable waters;

(2) acts of God;

(3) public enemies;

(4) seizure under legal process;

(5) inherent defect, quality, or vice of the goods;

(6) insufficiency of package;

(7) act or omission of the shipper or owner of the goods or their agent; or

(8) saving or attempting to save life or property at sea, including a deviation in rendering such a service.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1517.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30706	46 App.:192.	Feb. 13, 1893, ch. 105, § 3, 27 Stat. 445.

This section is restated as two subsections to clarify that the exercise of due diligence in making the vessel seaworthy is a condition only to the defense of error in navigation or management restated in subsection (a). See *May v. Hamburg-Amerikanische Packetfahrt Aktiengesellschaft (The Isis)*, 290 U.S. 333, 353 (1933). The words ''transporting merchandise or property to or from any port in the United States of America'' are omitted because of section 30702(a) of the revised title.

§ 30707. Criminal penalty

(a) IN GENERAL.—A carrier that violates this chapter shall be fined under title 18.

(b) LIEN.—The amount of the fine and costs for the violation constitute a lien on the vessel engaged in the carriage. A civil action in rem to enforce the lien may be brought in the district court of the United States for any district in which the vessel is found.

(c) DISPOSITION OF FINE.—Half of the fine shall go to the person injured by the violation and half to the United States Government.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1517.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30707	46 App.:194.	Feb. 13, 1893, ch. 105, § 5, 27 Stat. 446.

In subsection (a), the words ''and who refuses to issue on demand the bill of lading herein provided for'' are omitted as unnecessary. The words ''shall be fined under title 18'' are substituted for ''shall be liable to a fine not exceeding $2,000'' because of chapter 227 of title 18.

In subsection (b), the words ''A civil action in rem to enforce the lien may be brought in the district court of the United States for any district in which the vessel is found'' are substituted for ''such vessel may be libeled therefor in any district court of the United States'' for clarity and to modernize the language.

CHAPTER 309—SUITS IN ADMIRALTY AGAINST THE UNITED STATES

Sec.
30901. Short title.
30902. Definition.
30903. Waiver of immunity.
30904. Exclusive remedy.
30905. Period for bringing action.
30906. Venue.
30907. Procedure for hearing and determination.
30908. Exemption from arrest or seizure.
30909. Security.
30910. Exoneration and limitation.
30911. Costs and interest.
30912. Arbitration, compromise, or settlement.
30913. Payment of judgment or settlement.
30914. Release of privately owned vessel after arrest or attachment.
30915. Seizures and other proceedings in foreign jurisdictions.
30916. Recovery by the United States for salvage services.
30917. Disposition of amounts recovered by the United States.
30918. Reports.

§ 30901. Short title

This chapter may be cited as the ''Suits in Admiralty Act''.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1517.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30901	46 App.:741 note.	

SHORT TITLE

Act Mar. 9, 1920, ch. 95, 41 Stat. 525, which enacted chapter 20 (§ 741 et seq.) of the former Appendix to this title, was popularly known as the ''Suits in Admiralty Act'', prior to being repealed and restated in this chapter by Pub. L. 109–304, §§ 6(c), 19, Oct. 6, 2006, 120 Stat. 1509, 1710.

§ 30902. Definition

In this chapter, the term ''federally-owned corporation'' means a corporation in which the United States owns all the outstanding capital stock.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1517.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30902	46 App.:741 (11th–26th words).	Mar. 9, 1920, ch. 95, §1 (11th–26th words), 41 Stat. 525.

The term ''federally-owned corporation'' is defined in this section and used in this chapter to avoid repeating the substance of the definition in several sections in this chapter. The words ''or its representatives'' are omitted as unnecessary.

§ 30903. Waiver of immunity

(a) IN GENERAL.—In a case in which, if a vessel were privately owned or operated, or if cargo were privately owned or possessed, or if a private person or property were involved, a civil action in admiralty could be maintained, a civil action in admiralty in personam may be brought against the United States or a federally-owned corporation. In a civil action in admiralty brought by the United States or a federally-owned corporation, an admiralty claim in personam may be filed or a setoff claimed against the United States or corporation.

(b) NON-JURY.—A claim against the United States or a federally-owned corporation under this section shall be tried without a jury.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1518.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30903	46 App.:742 (1st, 3d sentences).	Mar. 9, 1920, ch. 95, §2 (1st, 3d sentences), 41 Stat. 525; Pub. L. 86–770, §3, Sept. 13, 1960, 74 Stat. 912; Pub. L. 104–324, title XI, §1105, Oct. 19, 1996, 110 Stat. 3967.

In subsection (a), the words ''civil action'' are substituted for ''proceeding'' and ''libel'' because of rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.) and for consistency in the chapter. The words ''civil action in admiralty in personam'' are substituted for ''any appropriate nonjury proceeding in personam'' for clarity. The words ''in rem or in personam in any district'' are omitted as unnecessary. The words ''admiralty claim'' are substituted for ''cross libel'' for consistency in this chapter and with the various means of asserting a claim (such as by counterclaim or cross-claim) allowed by the Federal Rules of Civil Procedure. The words ''with the same force and effect as if the libel had been filed by a private party'' are omitted as unnecessary.

Subsection (b) is substituted for the word ''nonjury'' to clarify that the nonjury requirement applies to any claim against the United States or a federally-owned corporation under this section regardless of which party brings the action.

§ 30904. Exclusive remedy

If a remedy is provided by this chapter, it shall be exclusive of any other action arising out of the same subject matter against the officer, employee, or agent of the United States or the federally-owned corporation whose act or omission gave rise to the claim.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1518.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30904	46 App.:745 (1st proviso).	Mar. 9, 1920, ch. 95, §5 (1st proviso), 41 Stat. 526; June 30, 1932, ch. 315, 47 Stat. 420; Dec. 13, 1950, ch. 1136, 64 Stat. 1112.

The words ''officer, employee, or agent of the United States or the federally-owned corporation'' are substituted for ''agent or employee of the United States or of any incorporated or unincorporated agency thereof'' for consistency in this chapter and to eliminate unnecessary words.

§ 30905. Period for bringing action

A civil action under this chapter must be brought within 2 years after the cause of action arose.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1518.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30905	46 App.:745 (words before 1st proviso).	Mar. 9, 1920, ch. 95, §5 (words before 1st proviso), 41 Stat. 526; June 30, 1932, ch. 315, 47 Stat. 420; Dec. 13, 1950, ch. 1136, 64 Stat. 1112.

§ 30906. Venue

(a) IN GENERAL.—A civil action under this chapter shall be brought in the district court of the United States for the district in which—

(1) any plaintiff resides or has its principal place of business; or

(2) the vessel or cargo is found.

(b) TRANSFER.—On a motion by a party, the court may transfer the action to any other district court of the United States.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1518.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30906(a)	46 App.:742 (2d sentence).	Mar. 9, 1920, ch. 95, §2 (2d, last sentences), 41 Stat. 526.
30906(b)	46 App.:742 (last sentence).	

In subsection (a)(1), the words ''in the United States'' are omitted as unnecessary.

In subsection (a)(2), the words ''charged with liability'' are omitted as unnecessary.

In subsection (b), the words ''in the discretion of the court'' are omitted as unnecessary. For general change of venue provision, see 28 U.S.C. 1404.

§ 30907. Procedure for hearing and determination

(a) IN GENERAL.—A civil action under this chapter shall proceed and be heard and determined according to the principles of law and the rules of practice applicable in like cases between private parties.

(b) IN REM.—

(1) REQUIREMENTS.—The action may proceed according to the principles of an action in rem if—

(A) the plaintiff elects in the complaint; and

(B) it appears that an action in rem could have been maintained had the vessel or cargo been privately owned and possessed.

(2) EFFECT ON RELIEF IN PERSONAM.—An election under paragraph (1) does not prevent the plaintiff from seeking relief in personam in the same action.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1518.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30907(a)	46 App.:743 (1st, 4th sentences).	Mar. 9, 1920, ch. 95, § 3 (1st, 4th–6th sentences), 41 Stat. 526.
30907(b)	46 App.:743 (5th, 6th sentences).	

In subsection (a), the text of 46 App. U.S.C. 743 (4th sentence) is omitted as unnecessary.

In subsection (b)(1)(A), the words ''plaintiff'' and ''complaint'' are substituted for ''libelant'' and ''libel'', respectively, for consistency with the Federal Rules of Civil Procedure (28 App. U.S.C.).

In subsection (b)(2), the words ''in any proper case'' are omitted as unnecessary.

§ 30908. Exemption from arrest or seizure

The following are not subject to arrest or seizure by judicial process in the United States:

(1) A vessel owned by, possessed by, or operated by or for the United States or a federally-owned corporation.

(2) Cargo owned or possessed by the United States or a federally-owned corporation.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1518.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30908	46 App.:741 (less 11th–26th words).	Mar. 9, 1920, ch. 95, § 1 (less 11th–26th words), 41 Stat. 525; Sept. 26, 1950, ch. 1049, § 2(a)(2), 64 Stat. 1038; Pub. L. 96–70, § 3(b)(5), Sept. 27, 1979, 93 Stat. 455.

The words ''a federally-owned corporation'' are substituted for ''any corporation in which the United States or its representatives shall own the entire outstanding capital stock'' because of the definition of ''federally-owned corporation'' in section 30902 of the revised title. The words ''after March 9, 1920'' are omitted as obsolete. The words ''in view of the provision herein made for a libel in personam'' are omitted as unnecessary. The words ''or its possessions'' are omitted because of the definition of ''United States'' in chapter 1 of the revised title. The words ''*Provided*, That this chapter shall not apply to the Panama Canal Commission'' are omitted because the Commission has been dissolved. See 22 U.S.C. 3714a.

§ 30909. Security

Neither the United States nor a federally-owned corporation may be required to give a bond or admiralty stipulation in a civil action under this chapter.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1519.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30909	46 App.:743 (last sentence).	Mar. 9, 1920, ch. 95, § 3 (last sentence), 41 Stat. 526; Pub. L. 97–31, § 12(25)(A), Aug. 6, 1981, 95 Stat. 155.

The words ''civil action'' are substituted for ''proceeding'' for consistency in this chapter and with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.).

§ 30910. Exoneration and limitation

The United States is entitled to the exemptions from and limitations of liability provided by law to an owner, charterer, operator, or agent of a vessel.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1519.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30910	46 App.:746.	Mar. 9, 1920, ch. 95, § 6, 41 Stat. 527.

§ 30911. Costs and interest

(a) IN GENERAL.—A judgment against the United States or a federally-owned corporation under this chapter may include costs and interest at the rate of 4 percent per year until satisfied. Interest shall run as ordered by the court, except that interest is not allowable for the period before the action is filed.

(b) CONTRACT PROVIDING FOR INTEREST.—Notwithstanding subsection (a), if the claim is based on a contract providing for interest, interest may be awarded at the rate and for the period provided in the contract.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1519.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30911	46 App.:743 (2d, 3d sentences). 46 App.:745 (last proviso).	Mar. 9, 1920, ch. 95, § 3 (2d, 3d sentences), 41 Stat. 526. Mar. 9, 1920, ch. 95, § 5 (last proviso), 41 Stat. 526; June 30, 1932, ch. 315, 47 Stat. 420; Dec. 13, 1950, ch. 1136, 64 Stat. 1112.

In subsection (a), the words ''and when the decree is for a money judgment'' are omitted as unnecessary. The words ''except that interest is not allowable for the period before the action is filed'' are substituted for ''*And provided further*, That after June 30, 1932, no interest shall be allowed on any claim prior to the time when suit on such claim is brought as authorized by section 742 of this Appendix'' to eliminate unnecessary words.

Subsection (b) is substituted for ''or at any higher rate which shall be stipulated in any contract upon which such decree shall be based'' in 46 App. U.S.C. 743 and ''unless upon a contract expressly stipulating for the payment of interest'' in 46 App. U.S.C. 745 (last proviso) for clarity and consistency.

§ 30912. Arbitration, compromise, or settlement

The Secretary of a department of the United States Government, or the board of trustees of a federally-owned corporation, may arbitrate, compromise, or settle a claim under this chapter.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1519.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30912	46 App.:749.	Mar. 9, 1920, ch. 95, § 9, 41 Stat. 527; Pub. L. 92–417, § 3, Aug. 29, 1972, 86 Stat. 656; Pub. L. 97–31, § 12(25)(C), Aug. 6, 1981, 95 Stat. 155.

The words ''claim under this chapter'' are substituted for ''claim in which suit will lie under the provisions of sections 742, 744, and 750 of this Appendix'' to eliminate unnecessary words.

§ 30913. Payment of judgment or settlement

(a) IN GENERAL.—The proper accounting officer of the United States shall pay a final judgment, arbitration award, or settlement under this chapter on presentation of an authenticated copy.

(b) SOURCE OF PAYMENT.—Payment shall be made from an appropriation or fund available specifically for the purpose. If no appropriation or fund is specifically available, there is hereby appropriated, out of money in the Treasury not otherwise appropriated, an amount sufficient to pay the judgment, award, or settlement.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1519.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30913	46 App.:748.	Mar. 9, 1920, ch. 95, § 8, 41 Stat. 527.

§ 30914. Release of privately owned vessel after arrest or attachment

If a privately owned vessel not in the possession of the United States or a federally-owned corporation is arrested or attached in a civil action arising or alleged to have arisen from prior ownership, possession, or operation by the United States or corporation, the vessel shall be released without bond or stipulation on a statement by the United States, through the Attorney General or other authorized law officer, that the United States is interested in the action, desires release of the vessel, and assumes liability for the satisfaction of any judgment obtained by the plaintiff. After the vessel is released, the action shall proceed against the United States in accordance with this chapter.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1519.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30914	46 App.:744.	Mar. 9, 1920, ch. 95, § 4, 41 Stat. 526.

The words ''on a statement'' are substituted for ''upon the suggestion'' as more appropriate.

§ 30915. Seizures and other proceedings in foreign jurisdictions

(a) IN GENERAL.—If a vessel or cargo described in section 30908 or 30914 of this title is arrested, attached, or otherwise seized by judicial process in a foreign country, or if an action is brought in a court of a foreign country against the master of such a vessel for a claim arising from the ownership, possession, or operation of the vessel, or the ownership, possession, or carriage of such cargo, the Secretary of State, on request of the Attorney General or another officer authorized by the Attorney General, may direct the United States consul residing at or nearest the place at which the action was brought—

(1) to claim the vessel or cargo as immune from arrest, attachment, or other seizure, and to execute an agreement, stipulation, bond, or undertaking, for the United States or federally-owned corporation, for the release of the vessel or cargo and the prosecution of any appeal; or

(2) if an action has been brought against the master of such a vessel, to enter the appearance of the United States or corporation and to pledge the credit of the United States or corporation to the payment of any judgment and costs in the action.

(b) ARRANGING BOND OR STIPULATION.—The Attorney General may—

(1) arrange with a bank, surety company, or other person, whether in the United States or a foreign country, to execute a bond or stipulation; and

(2) pledge the credit of the United States to secure the bond or stipulation.

(c) PAYMENT OF JUDGMENT.—The appropriate accounting officer of the United States or corporation may pay a judgment in an action described in subsection (a) on presentation of a copy of the judgment if certified by the clerk of the court and authenticated by—

(1) the certificate and seal of the United States consul claiming the vessel or cargo, or by the consul's successor; and

(2) the certificate of the Secretary as to the official capacity of the consul.

(d) RIGHT TO CLAIM IMMUNITY NOT AFFECTED.—This section does not affect the right of the United States to claim immunity of a vessel or cargo from foreign jurisdiction.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1519.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
30915	46 App.:747.	Mar. 9, 1920, ch. 95, § 7, 41 Stat. 527; Pub. L. 97–31, § 12(25)(B), Aug. 6, 1981, 95 Stat. 155.

In this section, references to the Maritime Administration are omitted as unnecessary.

In subsection (a), before paragraph (1), the words ''or in connection with'', ''of the United States in his discretion'', and ''duly'' are omitted as unnecessary. In paragraph (1), the words ''as by said court required'' are omitted as unnecessary.

In subsection (b)(1), the words ''firm, or corporation'' are omitted as included in ''person'' as defined in 1 U.S.C. 1.

Subsection (b)(2) is substituted for ''to pledge the credit of the United States to the indemnification of such surety or stipulator as may be required to secure the execution of such bond or stipulation'' to eliminate unnecessary words.

In subsection (c), the words ''may pay'' are substituted for ''presentation . . . shall be sufficient evidence . . . for the allowance and payment'' to eliminate unnecessary words.

§ 30916. Recovery by the United States for salvage services

(a) CIVIL ACTION.—The United States, and the crew of a merchant vessel owned or operated by the United States, or a federally-owned corporation, may bring a civil action to recover for salvage services provided by the vessel and crew.

(b) DEPOSIT OF AMOUNTS RECOVERED.—Any amount recovered under this section by the United States for its own benefit, and not for the benefit of the crew, shall be deposited in the Treasury to the credit of the department of the United States Government, or the corporation, having control of the possession or operation of the vessel.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1520.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30916	46 App.:750.	Mar. 9, 1920, ch. 95, § 10, 41 Stat. 528; Pub. L. 97–31, § 12(25)(D), Aug. 6, 1981, 95 Stat. 155.

In subsection (a), the words ''may bring a civil action to recover'' are substituted for ''shall have the right to collect and sue'' for consistency in this chapter and to eliminate unnecessary words.

§ 30917. Disposition of amounts recovered by the United States

Amounts recovered in a civil action brought by the United States on a claim arising from the ownership, possession, or operation of a merchant vessel, or the ownership, possession, or carriage of cargo, shall be deposited in the Treasury to the credit of the department of the United States Government, or the federally-owned corporation, having control of the vessel or cargo, for reimbursement of the appropriation, insurance fund, or other fund from which the compensation for which the judgment was recovered was or will be paid.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1520.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30917	46 App.:751.	Mar. 9, 1920, ch. 95, § 11, 41 Stat. 528; Pub. L. 97–31, § 12(25)(D), Aug. 6, 1981, 95 Stat. 155.

The words ''or in connection with'' and ''with respect to which such cause of action arises'' are omitted as unnecessary.

§ 30918. Reports

The Secretary of each department of the United States Government, and the board of trustees of each federally-owned corporation, shall report to Congress at each session thereof all arbitration awards and settlements agreed to under this chapter since the previous session, for which the time to appeal has expired or been waived.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1521.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
30918	46 App.:752.	Mar. 9, 1920, ch. 95, § 12, 41 Stat. 528; Aug. 30, 1954, ch. 1076, § 1(26), 68 Stat. 968; Pub. L. 97–31, § 12(25)(E), Aug. 6, 1981, 95 Stat. 155.

CHAPTER 311—SUITS INVOLVING PUBLIC VESSELS

Sec.
31101. Short title.
31102. Waiver of immunity.
31103. Applicable procedure.
31104. Venue.
31105. Security when counterclaim filed.
31106. Exoneration and limitation.
31107. Interest.
31108. Arbitration, compromise, or settlement.
31109. Payment of judgment or settlement.
31110. Subpoenas to officers or members of crew.
31111. Claims by nationals of foreign countries.
31112. Lien not recognized or created.
31113. Reports.

§ 31101. Short title

This chapter may be cited as the ''Public Vessels Act''.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1521.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
31101	46 App.:781 note.	

SHORT TITLE

Act of March 3, 1925, ch. 428, 43 Stat. 1112, which enacted chapter 22 (§ 781 et seq.) of the former Appendix to this title, was popularly known as the ''Public Vessels Act'', prior to being repealed and restated in this chapter by Pub. L. 109–304, §§ 6(c), 19, Oct. 6, 2006, 120 Stat. 1509, 1710.

§ 31102. Waiver of immunity

(a) IN GENERAL.—A civil action in personam in admiralty may be brought, or an impleader filed, against the United States for—

(1) damages caused by a public vessel of the United States; or

(2) compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States.

(b) COUNTERCLAIM OR SETOFF.—If the United States brings a civil action in admiralty for damages caused by a privately owned vessel, the owner of the vessel, or the successor in interest, may file a counterclaim in personam, or claim a setoff, against the United States for damages arising out of the same subject matter.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1521.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
31102(a)	46 App.:781.	Mar. 3, 1925, ch. 428, § 1, 43 Stat. 1112.
31102(b)	46 App.:783 (words before proviso).	Mar. 3, 1925, ch. 428, § 3 (words before proviso), 43 Stat. 1112.

In this section, the words ''civil action'' are substituted for ''libel'' because of rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.).

In subsection (a), the words ''*Provided*, That the cause of action arose after the 6th day of April, 1920'' are omitted as unnecessary.

In subsection (b), the words ''in rem or in personam'' are omitted as unnecessary. The words ''file a counterclaim in personam, or claim a setoff'' are substituted for ''file a cross libel in personam or claim a set-off or counterclaim'' to conform to the terminolgy in the Federal Rules of Civil Procedure and to eliminate unnecessary words. The words ''for damages arising out of the same subject matter'' are substituted for ''in such suit for and on account of any damages arising out of the same subject matter or cause of action'' to eliminate unnecessary words.

§ 31103. Applicable procedure

A civil action under this chapter is subject to the provisions of chapter 309 of this title except to the extent inconsistent with this chapter.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1521.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
31103	46 App.:782 (last sentence words before last comma).	Mar. 3, 1925, ch. 428, § 2 (last sentence words before last comma), 43 Stat. 1112.

§ 31104. Venue

(a) IN GENERAL.—A civil action under this chapter shall be brought in the district court of the United States for the district in which the vessel or cargo is found within the United States.

(b) VESSEL OR CARGO OUTSIDE TERRITORIAL WATERS.—If the vessel or cargo is outside the territorial waters of the United States—

(1) the action shall be brought in the district court of the United States for any district in which any plaintiff resides or has an office for the transaction of business; or

(2) if no plaintiff resides or has an office for the transaction of business in the United States, the action may be brought in the district court of the United States for any district.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1521.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
31104	46 App.:782 (1st sentence).	Mar. 3, 1925, ch. 428, § 2 (1st sentence), 43 Stat. 1112.

In subsection (a), the words ''charged with creating the liability'' are omitted as unnecessary.

In subsection (b)(2), the words ''in the United States'' are omitted as unnecessary.

§ 31105. Security when counterclaim filed

If a counterclaim is filed for a cause of action for which the original action is filed under this chapter, the respondent to the counterclaim shall give security in the usual amount and form to respond to the counterclaim, unless the court for cause shown orders otherwise. The proceedings in the original action shall be stayed until the security is given.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1522.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
31105	46 App.:783 (proviso).	Mar. 3, 1925, ch. 428, § 3 (proviso), 43 Stat. 1112.

The word ''counterclaim'' is substituted for ''cross-libel'', and the words ''original action'' are substituted for ''original libel'', to conform to the terminolgy in the Federal Rules of Civil Procedure (28 App. U.S.C.).

§ 31106. Exoneration and limitation

The United States is entitled to the exemptions from and limitations of liability provided by law to an owner, charterer, operator, or agent of a vessel.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1522.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
31106	46 App.:789.	Mar. 3, 1925, ch. 428, § 9, 43 Stat. 1113.

§ 31107. Interest

A judgment in a civil action under this chapter may not include interest for the period before the judgment is issued unless the claim is based on a contract providing for interest.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1522.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
31107	46 App.:782 (last sentence words after last comma).	Mar. 3, 1925, ch. 428, § 2 (last sentence words after last comma), 43 Stat. 1112.

§ 31108. Arbitration, compromise, or settlement

The Attorney General may arbitrate, compromise, or settle a claim under this chapter if a civil action based on the claim has been commenced.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1522.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
31108	46 App.:786.	Mar. 3, 1925, ch. 428, § 6, 43 Stat. 1113.

The words ''claim under this chapter'' are substituted for ''claim on which a libel or cross libel would lie under the provisions of this chapter'' to eliminate unnecessary words.

§ 31109. Payment of judgment or settlement

The proper accounting officer of the United States shall pay a final judgment, arbitration award, or settlement under this chapter on presentation of an authenticated copy. Payment shall be made from any money in the Treasury appropriated for the purpose.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1522.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
31109	46 App.:787.	Mar. 3, 1925, ch. 428, § 7, 43 Stat. 1113.

Reference to an arbitration award is added for consistency with sections 30912 and 31108 of the revised title.

§ 31110. Subpoenas to officers or members of crew

An officer or member of the crew of a public vessel may not be subpoenaed in a civil action under this chapter without the consent of—

(1) the Secretary of the department or the head of the independent establishment having control of the vessel at the time the cause of action arose; or

(2) the master or commanding officer of the vessel at the time the subpoena is issued.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1522.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
31110	46 App.:784.	Mar. 3, 1925, ch. 428, § 4, 43 Stat. 1112.

§ 31111. Claims by nationals of foreign countries

A national of a foreign country may not maintain a civil action under this chapter unless it appears to the satisfaction of the court in which the action is brought that the government of that country, in similar circumstances, allows nationals of the United States to sue in its courts.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1522.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
31111	46 App.:785.	Mar. 3, 1925, ch. 428, § 5, 43 Stat. 1113.

§ 31112. Lien not recognized or created

This chapter shall not be construed as recognizing the existence of or as creating a lien against a public vessel of the United States.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1522.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
31112	46 App.:788.	Mar. 3, 1925, ch. 428, § 8, 43 Stat. 1113.

§ 31113. Reports

The Attorney General shall report to Congress at each session thereof all claims settled under this chapter.

(Pub. L. 109–304, § 6(c), Oct. 6, 2006, 120 Stat. 1523.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
31113	46 App.:790.	Mar. 3, 1925, ch. 428, § 10, 43 Stat. 1113; Aug. 30, 1954, ch. 1076, § 1(26), 68 Stat. 968.

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.

HISTORICAL AND REVISION NOTES

Section 101 [102] of H.R. 3105 [became Pub. L. 100–710] 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 31305, 31321, 31322, 31325, 31329, 31330, 31343 of this title].

AMENDMENTS

2002—Pub. L. 107–295, title II, § 205(a)(2), Nov. 25, 2002, 116 Stat. 2096, substituted ''notices of claim of mari-

time 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

Pub. L. 100–710, title I, § 107, Nov. 23, 1988, 102 Stat. 4752, provided that:

''(a) This title [see Tables for classification] and amendments made by this title 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 former section 30101 and sections 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 former 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 ([former] 46 App. U.S.C. 808) [see 46 U.S.C. 56101, 57109], as it existed prior to the date of enactment of this Act, to the extent that such section 9 would have governed such transactions.''

§ 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 56102 or 56103 of this title.

(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; Pub. L. 109–304, § 15(27), Oct. 6, 2006, 120 Stat. 1704.)

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

2006—Subsec. (a). Pub. L. 109–304 substituted ''section 56102 or 56103 of this title'' for ''section 9 or 37 of the Shipping Act, 1916 (46 App. U.S.C. 808, 835)''.

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 chapter 537 of this title, 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; Pub. L. 109–304, § 15(28), Oct. 6, 2006, 120 Stat. 1704.)

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.

AMENDMENTS

2006—Pub. L. 109–304 substituted ''chapter 537 of this title'' for ''title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 et seq.)''.

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 indebtedness 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 31301 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 12113(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 for purposes of documentation under section 12103 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 13107(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.

(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 syn-

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

dicate 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 12113(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; Pub. L. 109–304, §§ 15(29), 16(c)(7), Oct. 6, 2006, 120 Stat. 1704, 1706.)

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

2006—Subsec. (a)(4)(A). Pub. L. 109–304, § 15(29)(A), substituted ''section 12113(c)'' for ''section 12102(c)''.

Subsec. (a)(4)(E). Pub. L. 109–304, § 15(29)(B), substituted ''for purposes of documentation under section 12103'' for ''under section 12102(a)''.

Subsec. (d)(1)(A). Pub. L. 109–304, § 16(c)(7), substituted ''section 13107(b)(8)'' for ''section 13106(b)(8)''.

Subsec. (f)(2). Pub. L. 109–304, § 15(29)(C), substituted ''section 12113(c)'' for ''section 12102(c)''.

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.''

Subsecs. (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

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 [now 46 U.S.C. 12113(b)(2) to (d)], 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 former section 12102 of this title] shall take effect on October 1, 2001.''

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 31301 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 56101 or 56102 of this title.

(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 satisfac-

tory 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; Pub. L. 109–304, § 15(30), Oct. 6, 2006, 120 Stat. 1704.)

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)

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source section (U.S. Code)*
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

2006—Subsec. (b)(3)(B). Pub. L. 109–304, which directed substitution of ''section 56101 or 56102 of this title'' for

''section 9 or 37 of the Shipping Act, 1936 (46 App. U.S.C. 808, 835)'', was executed by making the substitution in text which included ''Shipping Act, 1916'' rather than ''Shipping Act, 1936'', to reflect the probable intent of Congress.

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

Pub. L. 107–295, title II, § 205(e), Nov. 25, 2002, 116 Stat. 2096, provided that: ''This section [see Tables for classification] shall take effect January 1, 2003.''

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 chapter 537 of this title, 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 chapter 537 of this title, 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; Pub. L. 109–304, § 15(31), Oct. 6, 2006, 120 Stat. 1704.)

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.

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.

AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109–304, § 15(31)(A), substituted ''chapter 537 of this title,'' for ''title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1101 et seq.)''.

Subsec. (b)(2). Pub. L. 109–304, § 15(31)(B), substituted ''chapter 537 of this title'' for ''title XI of that Act''.

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 12103 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 chapter 563 of this title; and

(3) the sale of the vessel to the mortgagee is not a sale to a person not a citizen of the United States under section 12132 of this title.

(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; Pub. L. 109–304, § 15(32), Oct. 6, 2006, 120 Stat. 1704.)

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

2006—Subsec. (a)(1). Pub. L. 109–304, § 15(32)(A), substituted ''section 12103'' for ''section 12102''.

Subsec. (b)(2). Pub. L. 109–304, § 15(32)(B)(i), substituted ''chapter 563 of this title'' for ''section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242)''.

Subsec. (b)(3). Pub. L. 109–304, § 15(32)(B)(ii), substituted ''sale to a person not a citizen of the United States under section 12132 of this title'' for ''sale foreign within the terms of the first proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883)''.

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 ''covered 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 31325 of this title.

Subtitle IV—Regulation of Ocean Shipping

PART A—OCEAN SHIPPING

Chapter Sec.

401. General 40101

Chapter Sec.
403. Agreements 40301
405. Tariffs, Service Contracts, Refunds, and Waivers 40501
407. Controlled Carriers 40701
409. Ocean Transportation Intermediaries 40901
411. Prohibitions and Penalties 41101
413. Enforcement 41301

PART B—ACTIONS TO ADDRESS FOREIGN PRACTICES

421. Regulations Affecting Shipping in Foreign Trade 42101
423. Foreign Shipping Practices 42301

PART C—MISCELLANEOUS

441. Evidence of Financial Responsibility for Passenger Transportation 44101

PART A—OCEAN SHIPPING

CHAPTER 401—GENERAL

Sec.
40101. Purposes.
40102. Definitions.
40103. Administrative exemptions.
40104. Reports filed with the Commission.

§ 40101. Purposes

The purposes of this part are to—

(1) establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs;

(2) provide an efficient and economic transportation system in the ocean commerce of the United States that is, insofar as possible, in harmony with, and responsive to, international shipping practices;

(3) encourage the development of an economically sound and efficient liner fleet of vessels of the United States capable of meeting national security needs; and

(4) promote the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1523.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
40101	46 App.:1701.	Pub. L. 98–237, § 2, Mar. 20, 1984, 98 Stat. 67; Pub. L. 105–258, title I, § 101, Oct. 14, 1998, 112 Stat. 1902.

EFFECTS ON CERTAIN AGREEMENTS AND CONTRACTS

Pub. L. 98–237, § 20(d), Mar. 20, 1984, 98 Stat. 90; Pub. L. 105–258, title I, § 117(1), Oct. 14, 1998, 112 Stat. 1914, provided that: ''All agreements, contracts, modifications, licenses, and exemptions previously issued, approved, or effective under the Shipping Act, 1916 [former 46 U.S.C. App. 801 et seq., see Disposition Table preceding section 101 of this title], or the Shipping Act of 1984 [former 46 U.S.C. App. 1701 et seq., see Disposition Table preceding section 101 of this title], shall continue in force and effect as if issued or effective under this Act, as amended by the Ocean Shipping Reform Act of 1998 [Pub. L. 105–258, Oct. 14, 1998, 112 Stat. 1902], and all new agreements, contracts, and modifications to existing, pending, or new contracts or agreements shall be considered under this Act, as amended by the Ocean Shipping Reform Act of 1998.''

§ 40102. Definitions

In this part:

(1) AGREEMENT.—The term ''agreement''—

(A) means a written or oral understanding, arrangement, or association, and any modification or cancellation thereof; but

(B) does not include a maritime labor agreement.

(2) ANTITRUST LAWS.—The term ''antitrust laws'' means—

(A) the Sherman Act (15 U.S.C. 1 et seq.);

(B) sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8, 9);

(C) the Clayton Act (15 U.S.C. 12 et seq.);

(D) the Act of June 19, 1936 (15 U.S.C. 13, 13a, 13b, 21a);

(E) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);

(F) the Antitrust Civil Process Act (15 U.S.C. 1311 et seq.); and

(G) Acts supplementary to those Acts.

(3) ASSESSMENT AGREEMENT.—The term ''assessment agreement'' means an agreement, whether part of a collective bargaining agreement or negotiated separately, to the extent the agreement provides for the funding of collectively bargained fringe-benefit obligations on other than a uniform worker-hour basis, regardless of the cargo handled or type of vessel or equipment used.

(4) BULK CARGO.—The term ''bulk cargo'' means cargo that is loaded and carried in bulk without mark or count.

(5) CHEMICAL PARCEL-TANKER.—The term ''chemical parcel-tanker'' means a vessel that has—

(A) a cargo-carrying capability consisting of individual cargo tanks for bulk chemicals that—

(i) are a permanent part of the vessel; and

(ii) have segregation capability with piping systems to permit simultaneous carriage of several bulk chemical cargoes with minimum risk of cross-contamination; and

(B) a valid certificate of fitness under the International Maritime Organization Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk.

(6) COMMON CARRIER.—The term ''common carrier''—

(A) means a person that—

(i) holds itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation;

(ii) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and

(iii) uses, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country; but

(B) does not include a carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker, or by vessel when primarily engaged in the carriage of perishable agricultural commodities—

(i) if the carrier and the owner of those commodities are wholly-owned, directly or indirectly, by a person primarily engaged in the marketing and distribution of those commodities; and

(ii) only with respect to the carriage of those commodities.

(7) CONFERENCE.—The term ''conference''—

(A) means an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to use a common tariff; but

(B) does not include a joint service, consortium, pooling, sailing, or transshipment agreement.

(8) CONTROLLED CARRIER.—The term ''controlled carrier'' means an ocean common carrier that is, or whose operating assets are, directly or indirectly, owned or controlled by a government, with ownership or control by a government being deemed to exist for a carrier if—

(A) a majority of the interest in the carrier is owned or controlled in any manner by that government, an agency of that government, or a public or private person controlled by that government; or

(B) that government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer, or the chief executive officer of the carrier.

(9) DEFERRED REBATE.—The term ''deferred rebate'' means a return by a common carrier of any freight money to a shipper, where the return is—

(A) consideration for the shipper giving all or any portion of its shipments to that or any other common carrier over a fixed period of time;

(B) deferred beyond the completion of the service for which it was paid; and

(C) made only if the shipper has agreed to make a further shipment with that or any other common carrier.

(10) FOREST PRODUCTS.—The term ''forest products'' includes lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp in rolls, wood pulp in unitized bales, and paper and paper board in rolls or in pallet or skid-sized sheets.

(11) INLAND DIVISION.—The term ''inland division'' means the amount paid by a common carrier to an inland carrier for the inland portion of through transportation offered to the public by the common carrier.

(12) INLAND PORTION.—The term ''inland portion'' means the charge to the public by a common carrier for the non-ocean portion of through transportation.

(13) LOYALTY CONTRACT.—The term ''loyalty contract'' means a contract with an ocean common carrier or agreement providing for—

(A) a shipper to obtain lower rates by committing all or a fixed portion of its cargo to that carrier or agreement; and

(B) a deferred rebate arrangement.

(14) MARINE TERMINAL OPERATOR.—The term ''marine terminal operator'' means a person engaged in the United States in the business of providing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to subchapter II of chapter 135 of title 49.

(15) MARITIME LABOR AGREEMENT.—The term ''maritime labor agreement''—

(A) means—

(i) a collective bargaining agreement between an employer subject to this part, or a group of such employers, and a labor organization representing employees in the maritime or stevedoring industry;

(ii) an agreement preparatory to such a collective bargaining agreement among members of a multi-employer bargaining group; or

(iii) an agreement specifically implementing provisions of such a collective bargaining agreement or providing for the formation, financing, or administration of a multi-employer bargaining group; but

(B) does not include an assessment agreement.

(16) NON-VESSEL-OPERATING COMMON CARRIER.—The term ''non-vessel-operating common carrier'' means a common carrier that—

(A) does not operate the vessels by which the ocean transportation is provided; and

(B) is a shipper in its relationship with an ocean common carrier.

(17) OCEAN COMMON CARRIER.—The term ''ocean common carrier'' means a vessel-operating common carrier.

(18) OCEAN FREIGHT FORWARDER.—The term ''ocean freight forwarder'' means a person that—

(A) in the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; and

(B) processes the documentation or performs related activities incident to those shipments.

(19) OCEAN TRANSPORTATION INTERMEDIARY.—The term ''ocean transportation intermediary'' means an ocean freight forwarder or a non-vessel-operating common carrier.

(20) SERVICE CONTRACT.—The term ''service contract'' means a written contract, other than a bill of lading or receipt, between one or more shippers, on the one hand, and an individual ocean common carrier or an agreement between or among ocean common carriers, on the other, in which—

(A) the shipper or shippers commit to providing a certain volume or portion of cargo over a fixed time period; and

(B) the ocean common carrier or the agreement commits to a certain rate or rate schedule and a defined service level, such as assured space, transit time, port rotation, or similar service features.

(21) SHIPMENT.—The term ''shipment'' means all of the cargo carried under the terms of a single bill of lading.

(22) SHIPPER.—The term ''shipper'' means—

(A) a cargo owner;

(B) the person for whose account the ocean transportation of cargo is provided;

(C) the person to whom delivery is to be made;

(D) a shippers' association; or

(E) a non-vessel-operating common carrier that accepts responsibility for payment of all charges applicable under the tariff or service contract.

(23) SHIPPERS' ASSOCIATION.—The term ''shippers' association'' means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group to obtain carload, truckload, or other volume rates or service contracts.

(24) THROUGH RATE.—The term ''through rate'' means the single amount charged by a common carrier in connection with through transportation.

(25) THROUGH TRANSPORTATION.—The term ''through transportation'' means continuous transportation between origin and destination for which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is a common carrier, between a United States port or point and a foreign port or point.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1523.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
40102(1)	46 App.:1702(1).	Pub. L. 98–237, § 3, Mar. 20, 1984, 98 Stat. 67; Pub. L. 99–307, § 11, May 19, 1986, 100 Stat. 447; Pub. L. 105–258, title I, § 102, Oct. 14, 1998, 112 Stat. 1902; Pub. L. 105–383, title IV, § 424(d), Nov. 13, 1998, 112 Stat. 3441.
40102(2)	46 App.:1702(2).	
40102(3)	46 App.:1702(3).	
40102(4)	46 App.:1702(4).	
40102(5)	46 App.:1702(6) (last sentence).	
40102(6)	46 App.:1702(6) (1st sentence).	
40102(7)	46 App.:1702(7).	
40102(8)	46 App.:1702(8).	
40102(9)	46 App.:1702(9).	
40102(10)	46 App.:1702(10).	
40102(11)	46 App.:1702(11).	
40102(12)	46 App.:1702(12).	
40102(13)	46 App.:1702(13).	
40102(14)	46 App.:1702(14).	
40102(15)	46 App.:1702(15).	
40102(16)	46 App.:1702(17)(B).	
40102(17)	46 App.:1702(16).	
40102(18)	46 App.:1702(17)(A).	
40102(19)	46 App.:1702(17) (1st sentence).	
40102(20)	46 App.:1702(19).	
40102(21)	46 App.:1702(20).	
40102(22)	46 App.:1702(21).	
40102(23)	46 App.:1702(22).	
40102(24)	46 App.:1702(23).	
40102(25)	46 App.:1702(24).	

In the definition of ''service contract'', the words ''The contract may also specify provisions in the event of nonperformance on the part of any party'' are omitted as unnecessary and inappropriate for a definition.

In the definition of ''shipper'', the words ''non-vessel-operating common carrier'' are substituted for ''ocean transportation intermediary, as defined in paragraph (17)(B) of this section'' because paragraph (17)(B) contains a definition of ''non-vessel-operating common carrier'' which is restated as a separate definition.

The definition of ''Commission'' is omitted because the full name of the Federal Maritime Commission is used the first time the Commission is referred to in each section. The definition of ''person'' is omitted as unnecessary because of 1 U.S.C. 1. The definition of ''United States'' is omitted because the term is defined in chapter 1 of the revised title for purposes of the title.

REFERENCES IN TEXT

The Sherman Act, referred to in par. (2)(A), is act July 2, 1890, ch. 647, 26 Stat. 209, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

The Clayton Act, referred to in par. (2)(C), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, Commerce and Trade, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

Act of June 19, 1936, referred to in par. (2)(D), is act June 19, 1936, ch. 592, 49 Stat. 1526, popularly known as the Robinson-Patman Act, the Robinson-Patman Antidiscrimination Act, and the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of Title 15, Commerce and Trade, and amended section 13 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 13 of Title 15 and Tables.

The Federal Trade Commission Act, referred to in par. (2)(E), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

The Antitrust Civil Process Act, referred to in par. (2)(F), is Pub. L. 87–664, Sept. 19, 1962, 76 Stat. 548, which is classified generally to chapter 34 (§ 1311 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1311 of Title 15 and Tables.

§ 40103. Administrative exemptions

(a) IN GENERAL.—The Federal Maritime Commission, on application or its own motion, may by order or regulation exempt for the future any class of agreements between persons subject to this part or any specified activity of those persons from any requirement of this part if the Commission finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce. The Commission may attach conditions to an exemption and may, by order, revoke an exemption.

(b) OPPORTUNITY FOR HEARING.—An order or regulation of exemption or revocation of an exemption may be issued only if the Commission has provided an opportunity for a hearing to interested persons and departments and agencies of the United States Government.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1527.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
40103	46 App.:1715.	Pub. L. 98–237, § 16, Mar. 20, 1984, 98 Stat. 84; Pub. L. 105–258, title I, § 114, Oct. 14, 1998, 112 Stat. 1912.

§ 40104. Reports filed with the Commission

(a) IN GENERAL.—The Federal Maritime Commission may require a common carrier or an officer, receiver, trustee, lessee, agent, or employee of the carrier to file with the Commission a periodical or special report, an account, record, rate, or charge, or a memorandum of facts and transactions related to the business of the carrier. The report, account, record, rate, charge, or memorandum shall be made under oath if the Commission requires, and shall be filed in the form and within the time prescribed by the Commission.

(b) CONFERENCE MINUTES.—Conference minutes required to be filed with the Commission under this section may not be released to third parties or published by the Commission.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1527.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
40104	46 App.:1714.	Pub. L. 98–237, § 15, Mar. 20, 1984, 98 Stat. 84; Pub. L. 98–595, § 3(b)(3), Oct. 30, 1984, 98 Stat. 3133; Pub. L. 105–258, title I, § 113, Oct. 14, 1998, 112 Stat. 1912.

CHAPTER 403—AGREEMENTS

Sec.
40301. Application.
40302. Filing requirements.
40303. Content requirements.
40304. Commission action.
40305. Assessment agreements.
40306. Nondisclosure of information.
40307. Exemption from antitrust laws.

§ 40301. Application

(a) OCEAN COMMON CARRIER AGREEMENTS.—This part applies to an agreement between or among ocean common carriers to—

(1) discuss, fix, or regulate transportation rates, including through rates, cargo space accommodations, and other conditions of service;

(2) pool or apportion traffic, revenues, earnings, or losses;

(3) allot ports or regulate the number and character of voyages between ports;

(4) regulate the volume or character of cargo or passenger traffic to be carried;

(5) engage in an exclusive, preferential, or cooperative working arrangement between themselves or with a marine terminal operator;

(6) control, regulate, or prevent competition in international ocean transportation; or

(7) discuss and agree on any matter related to a service contract.

(b) MARINE TERMINAL OPERATOR AGREEMENTS.—This part applies to an agreement between or among marine terminal operators, or between or among one or more marine terminal operators and one or more ocean common carriers, to—

(1) discuss, fix, or regulate rates or other conditions of service; or

(2) engage in exclusive, preferential, or cooperative working arrangements, to the extent the agreement involves ocean transportation in the foreign commerce of the United States.

(c) ACQUISITIONS.—This part does not apply to an acquisition by any person, directly or indirectly, of any voting security or assets of any other person.

(d) MARITIME LABOR AGREEMENTS.—This part does not apply to a maritime labor agreement. However, this subsection does not exempt from this part any rate, charge, regulation, or practice of a common carrier that is required to be set forth in a tariff or is an essential term of a service contract, whether or not the rate, charge, regulation, or practice arises out of, or is otherwise related to, a maritime labor agreement.

(e) ASSESSMENT AGREEMENTS.—This part (except sections 40305 and 40307(a)) does not apply to an assessment agreement.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1528.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
40301(a)	46 App.:1703(a).	Pub. L. 98–237, § 4, Mar. 20, 1984, 98 Stat. 70; Pub. L. 105–258, title I, § 103, Oct. 14, 1998, 112 Stat. 1904.
40301(b)	46 App.:1703(b).	
40301(c)	46 App.:1703(c).	
40301(d)	46 App.:1704(f).	Pub. L. 98–237, § 5(e) (last sentence), (f), Mar. 20, 1984, 98 Stat. 70; Pub. L. 104–88, title III, § 335(c)(2), Dec. 29, 1995, 109 Stat. 954; Pub. L. 105–258, title I, § 104(a)(2), (b), Oct. 14, 1998, 112 Stat. 1904, 1905.
40301(e)	46 App.:1704(e) (last sentence).	

§ 40302. Filing requirements

(a) IN GENERAL.—A true copy of every agreement referred to in section 40301(a) or (b) of this title shall be filed with the Federal Maritime Commission. If the agreement is oral, a complete memorandum specifying in detail the substance of the agreement shall be filed.

(b) EXCEPTIONS.—Subsection (a) does not apply to—

(1) an agreement related to transportation to be performed within or between foreign countries; or

(2) an agreement among common carriers to establish, operate, or maintain a marine terminal in the United States.

(c) REGULATIONS.—The Commission may by regulation prescribe the form and manner in which an agreement shall be filed and any additional information and documents necessary to evaluate the agreement.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1528.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
40302	46 App.:1704(a).	Pub. L. 98–237, § 5(a), Mar. 20, 1984, 98 Stat. 70; Pub. L. 98–595, § 3(b)(1), Oct. 30, 1984, 98 Stat. 3132.

§ 40303. Content requirements

(a) OCEAN COMMON CARRIER AGREEMENTS.—

(1) RESTRICTIONS.—An ocean common carrier agreement may not—

(A) prohibit or restrict a member of the agreement from engaging in negotiations for a service contract with a shipper;

(B) require a member of the agreement to disclose a negotiation on a service contract, or the terms of a service contract, other than those terms required to be published under section 40502(d) of this title; or

(C) adopt mandatory rules or requirements affecting the right of an agreement member to negotiate and enter into a service contract.

(2) VOLUNTARY GUIDELINES.—An ocean common carrier agreement may provide authority to adopt voluntary guidelines relating to the terms and procedures of an agreement member's service contracts if the guidelines explicitly state the right of members of the agreement not to follow the guidelines. Any guidelines adopted shall be submitted confidentially to the Federal Maritime Commission.

(b) CONFERENCE AGREEMENTS.—Each conference agreement must—

(1) state its purpose;

(2) provide reasonable and equal terms for admission and readmission to conference membership for any ocean common carrier willing to serve the particular trade or route;

(3) permit any member to withdraw from conference membership on reasonable notice without penalty;

(4) at the request of any member, require an independent neutral body to police fully the obligations of the conference and its members;

(5) prohibit the conference from engaging in conduct prohibited by section 41105(1) or (3) of this title;

(6) provide for a consultation process designed to promote—

(A) commercial resolution of disputes; and

(B) cooperation with shippers in preventing and eliminating malpractices;

(7) establish procedures for promptly and fairly considering requests and complaints of shippers; and

(8) provide that—

(A) any member of the conference may take independent action on a rate or service item on not more than 5 days' notice to the conference; and

(B) except for an exempt commodity not published in the conference tariff, the conference will include the new rate or service item in its tariff for use by that member, effective no later than 5 days after receipt of the notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference tariff provision for that rate or service item.

(c) INTERCONFERENCE AGREEMENTS.—Each agreement between carriers not members of the same conference must provide the right of independent action for each carrier. Each agreement between conferences must provide the right of independent action for each conference.

(d) VESSEL SHARING AGREEMENTS.—

(1) IN GENERAL.—An ocean common carrier that is the owner, operator, or bareboat, time, or slot charterer of a liner vessel documented under section 12103 or 12111(c) of this title may agree with an ocean common carrier described in paragraph (2) to which it charters or subcharters the vessel or space on the vessel that the charterer or subcharterer may not use or make available space on the vessel for the carriage of cargo reserved by law for vessels of the United States.

(2) CARRIER DESCRIBED.—An ocean common carrier described in this paragraph is one that is not the owner, operator, or bareboat charterer for at least one year of liner vessels of the United States that are eligible to be included in the Maritime Security Fleet Program and are enrolled in an Emergency Preparedness Program under chapter 531 of this title.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1529.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
40303(a)	46 App.:1704(c).	Pub. L. 98–237, § 5(b)–(d), Mar. 20, 1984, 98 Stat. 70; Pub. L. 105–258, title I, § 104(a), Oct. 14, 1998, 112 Stat. 1904.
40303(b)	46 App.:1704(b).	
40303(c)	46 App.:1704(d).	
40303(d)	46 App.:1704(g).	Pub. L. 98–237, § 5(g), Mar. 20, 1984; as added Pub. L. 105–383, title IV, § 424(a), Nov. 13, 1998, 112 Stat. 3440.

In subsection (c)(8), the word ''calendar'' is omitted as unnecessary.

In subsection (d), the words ''vessel of the United States'' are substituted for ''United States-flag vessel'' (and similar variations) for consistency in the revised title.

§ 40304. Commission action

(a) NOTICE OF FILING.—Within 7 days after an agreement is filed, the Federal Maritime Commission shall transmit a notice of the filing to the Federal Register for publication.

(b) PRELIMINARY REVIEW AND REJECTION.—After preliminary review, the Commission shall reject an agreement that it finds does not meet the requirements of sections 40302 and 40303 of this title. The Commission shall notify in writing the person filing the agreement of the reason for rejection.

(c) REVIEW AND EFFECTIVE DATE.—Unless rejected under subsection (b), an agreement (other than an assessment agreement) is effective—

(1) on the 45th day after filing, or on the 30th day after notice of the filing is published in the Federal Register, whichever is later; or

(2) if additional information or documents are requested under subsection (d)—

(A) on the 45th day after the Commission receives all the additional information and documents; or

(B) if the request is not fully complied with, on the 45th day after the Commission receives the information and documents submitted and a statement of the reasons for noncompliance with the request.

(d) REQUEST FOR ADDITIONAL INFORMATION.—Before the expiration of the period specified in

subsection (c)(1), the Commission may request from the person filing the agreement any additional information and documents the Commission considers necessary to make the determinations required by this section.

(e) MODIFICATION OF REVIEW PERIOD.—

(1) SHORTENING.—On request of the party filing an agreement, the Commission may shorten a period specified in subsection (c), but not to a date that is less than 14 days after notice of the filing of the agreement is published in the Federal Register.

(2) EXTENSION.—The period specified in subsection (c)(2) may be extended only by the United States District Court for the District of Columbia in a civil action brought by the Commission under section 41307(c) of this title.

(f) FIXED TERMS.—The Commission may not limit the effectiveness of an agreement to a fixed term.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1530.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
40304(a)	46 App.:1705(a).	Pub. L. 98–237, § 6(a)–(f), Mar. 20, 1984, 98 Stat. 72.
40304(b)	46 App.:1705(b).	
40304(c)	46 App.:1705(c) (1st sentence).	
40304(d)	46 App.:1705(d).	
40304(e)(1) ..	46 App.:1705(e).	
40304(e)(2) ..	46 App.:1705(c) (last sentence).	
40304(f)	46 App.:1705(f).	

§ 40305. Assessment agreements

(a) FILING REQUIREMENT.—An assessment agreement shall be filed with the Federal Maritime Commission and is effective on filing.

(b) COMPLAINTS.—If a complaint is filed with the Commission within 2 years after the date of an assessment agreement, the Commission shall disapprove, cancel, or modify the agreement, or an assessment or charge pursuant to the agreement, that the Commission finds, after notice and opportunity for a hearing, to be unjustly discriminatory or unfair as between carriers, shippers, or ports. The Commission shall issue its final decision in the proceeding within one year after the date the complaint is filed.

(c) ADJUSTMENTS OF ASSESSMENTS AND CHARGES.—To the extent that the Commission finds under subsection (b) that an assessment or charge is unjustly discriminatory or unfair as between carriers, shippers, or ports, the Commission shall adjust the assessment or charge for the period between the filing of the complaint and the final decision by awarding prospective credits or debits to future assessments and charges. However, if the complainant has ceased activities subject to the assessment or charge, the Commission may award reparations.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1531.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
40305	46 App.:1704(e) (less last sentence).	Pub. L. 98–237, § 5(e) (less last sentence), Mar. 20, 1984, 98 Stat. 70; Pub. L. 105–258, title I, § 104(a)(2), (b)(1), Oct. 14, 1998, 112 Stat. 1904, 1905.

§ 40306. Nondisclosure of information

Information and documents (other than an agreement) filed with the Federal Maritime Commission under this chapter are exempt from disclosure under section 552 of title 5 and may not be made public except as may be relevant to an administrative or judicial proceeding. This section does not prevent disclosure to either House of Congress or to a duly authorized committee or subcommittee of Congress.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1531.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
40306	46 App.:1705(j).	Pub. L. 98–237, § 6(j), Mar. 20, 1984, 98 Stat. 73.

The words ''judicial proceeding'' are substituted for ''judicial action or proceeding'' to eliminate unnecessary words.

§ 40307. Exemption from antitrust laws

(a) IN GENERAL.—The antitrust laws do not apply to—

(1) an agreement (including an assessment agreement) that has been filed and is effective under this chapter;

(2) an agreement that is exempt under section 40103 of this title from any requirement of this part;

(3) an agreement or activity within the scope of this part, whether permitted under or prohibited by this part, undertaken or entered into with a reasonable basis to conclude that it is—

(A) pursuant to an agreement on file with the Federal Maritime Commission and in effect when the activity takes place; or

(B) exempt under section 40103 of this title from any filing or publication requirement of this part;

(4) an agreement or activity relating to transportation services within or between foreign countries, whether or not via the United States, unless the agreement or activity has a direct, substantial, and reasonably foreseeable effect on the commerce of the United States;

(5) an agreement or activity relating to the foreign inland segment of through transportation that is part of transportation provided in a United States import or export trade;

(6) an agreement or activity to provide wharfage, dock, warehouse, or other terminal facilities outside the United States; or

(7) an agreement, modification, or cancellation approved before June 18, 1984, by the Commission under section 15 of the Shipping Act, 1916, or permitted under section 14b of that Act, and any properly published tariff, rate, fare, or charge, or classification, rule, or regulation explanatory thereof implementing that agreement, modification, or cancellation.

(b) EXCEPTIONS.—This part does not extend antitrust immunity to—

(1) an agreement with or among air carriers, rail carriers, motor carriers, or common carriers by water not subject to this part relating to transportation within the United States;

(2) a discussion or agreement among common carriers subject to this part relating to the inland divisions (as opposed to the inland portions) of through rates within the United States;

(3) an agreement among common carriers subject to this part to establish, operate, or maintain a marine terminal in the United States; or

(4) a loyalty contract.

(c) RETROACTIVE EFFECT OF DETERMINATIONS.—A determination by an agency or court that results in the denial or removal of the immunity to the antitrust laws under subsection (a) does not remove or alter the antitrust immunity for the period before the determination.

(d) RELIEF UNDER CLAYTON ACT.—A person may not recover damages under section 4 of the Clayton Act (15 U.S.C. 15), or obtain injunctive relief under section 16 of that Act (15 U.S.C. 26), for conduct prohibited by this part.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1531.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
40307	46 App.:1706.	Pub. L. 98–237, § 7, Mar. 20, 1984, 98 Stat. 73; Pub. L. 105–258, title I, § 105, Oct. 14, 1998, 112 Stat. 1905.

Subsection (a)(1) is substituted for ''any agreement that has been filed under section 1704 of this Appendix and is effective under section 1704(d) [redesignated as (e)] or section 1705 of this Appendix'' for clarity and to eliminate unnecessary words.

Subsection (a)(2) is substituted for ''any agreement that . . . is exempt under section 1715 of this Appendix from any requirement of this chapter'' in 46 App. U.S.C. 1706(a)(1) for clarity.

In subsection (a)(7), the words ''subject to section 1719(e)(2) of this Appendix'' are omitted as obsolete.

REFERENCES IN TEXT

Section 15 of the Shipping Act, 1916, referred to in subsec. (a)(7), which was classified to section 814 of the former Appendix to this title, was repealed by Pub. L. 104–88, title III, § 335(b)(3), Dec. 29, 1996, 109 Stat. 954.

Section 14b of the Shipping Act, 1916, referred to in subsec. (a)(7), which was classified to section 813a of former Title 46, Shipping, was repealed by Pub. L. 98–237, § 20(a), Mar. 20, 1984, 98 Stat. 88.

CHAPTER 405—TARIFFS, SERVICE CONTRACTS, REFUNDS, AND WAIVERS

Sec.
40501. General rate and tariff requirements.
40502. Service contracts.
40503. Refunds and waivers.

§ 40501. General rate and tariff requirements

(a) AUTOMATED TARIFF SYSTEM.—

(1) IN GENERAL.—Each common carrier and conference shall keep open to public inspection in an automated tariff system, tariffs showing all its rates, charges, classifications, rules, and practices between all points or ports on its own route and on any through transportation route that has been established. However, a common carrier is not required to state separately or otherwise reveal in tariffs the inland divisions of a through rate.

(2) EXCEPTIONS.—Paragraph (1) does not apply with respect to bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper, or paper waste.

(b) CONTENTS OF TARIFFS.—A tariff under subsection (a) shall—

(1) state the places between which cargo will be carried;

(2) list each classification of cargo in use;

(3) state the level of compensation, if any, of any ocean freight forwarder by a carrier or conference;

(4) state separately each terminal or other charge, privilege, or facility under the control of the carrier or conference and any rules that in any way change, affect, or determine any part or the total of the rates or charges;

(5) include sample copies of any bill of lading, contract of affreightment, or other document evidencing the transportation agreement; and

(6) include copies of any loyalty contract, omitting the shipper's name.

(c) ELECTRONIC ACCESS.—A tariff under subsection (a) shall be made available electronically to any person, without time, quantity, or other limitation, through appropriate access from remote locations. A reasonable fee may be charged for such access, except that no fee may be charged for access by a Federal agency.

(d) TIME-VOLUME RATES.—A rate contained in a tariff under subsection (a) may vary with the volume of cargo offered over a specified period of time.

(e) EFFECTIVE DATES.—

(1) INCREASES.—A new or initial rate or change in an existing rate that results in an increased cost to a shipper may not become effective earlier than 30 days after publication. However, for good cause, the Federal Maritime Commission may allow the rate to become effective sooner.

(2) DECREASES.—A change in an existing rate that results in a decreased cost to a shipper may become effective on publication.

(f) MARINE TERMINAL OPERATOR SCHEDULES.—A marine terminal operator may make available to the public a schedule of rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining to receiving, delivering, handling, or storing property at its marine terminal. Any such schedule made available to the public is enforceable by an appropriate court as an implied contract without proof of actual knowledge of its provisions.

(g) REGULATIONS.—

(1) IN GENERAL.—The Commission shall by regulation prescribe the requirements for the accessibility and accuracy of automated tariff systems established under this section. The Commission, after periodic review, may prohibit the use of any automated tariff system that fails to meet the requirements established under this section.

(2) REMOTE TERMINALS.—The Commission may not require a common carrier to provide a remote terminal for electronic access under subsection (c).

(3) MARINE TERMINAL OPERATOR SCHEDULES.—The Commission shall by regulation prescribe the form and manner in which marine terminal operator schedules authorized by this section shall be published.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1532.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
40501(a)	46 App.:1707(a)(1) (1st, 2d sentences).	Pub. L. 98–237, §8(a), (b), (d), (f), (g), Mar. 20, 1984, 98 Stat. 74; Pub. L. 105–258, title I, §106(a), (c), (e), (f), Oct. 14, 1998, 112 Stat. 1905, 1907.
40501(b)	46 App.:1707(a)(1) (last sentence).	
40501(c)	46 App.:1707(a)(2).	
40501(d)	46 App.:1707(b).	
40501(e)	46 App.:1707(d).	
40501(f)	46 App.:1707(f).	
40501(g)	46 App.:1707(g).	

In subsection (b)(3), the words ''ocean freight forwarder'' are substituted for ''ocean transportation intermediary, as defined in section 1702(17)(A) of this Appendix'' because the definition of ''ocean transportation intermediary'' in section 1702(17)(A) contains a definition of ''ocean freight forwarder'' which is restated as a separate definition.

In subsection (e), the word ''calendar'' is omitted as unnecessary.

In subsection (f)(1), the words ''subject to section 1709(d) of this Appendix'' are omitted as unnecessary.

§ 40502. Service contracts

(a) IN GENERAL.—An individual ocean common carrier or an agreement between or among ocean common carriers may enter into a service contract with one or more shippers subject to the requirements of this part.

(b) FILING REQUIREMENTS.—

(1) IN GENERAL.—Each service contract entered into under this section by an individual ocean common carrier or an agreement shall be filed confidentially with the Federal Maritime Commission.

(2) EXCEPTIONS.—Paragraph (1) does not apply to contracts regarding bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper, or paper waste.

(c) ESSENTIAL TERMS.—Each service contract shall include—

(1) the origin and destination port ranges;

(2) the origin and destination geographic areas in the case of through intermodal movements;

(3) the commodities involved;

(4) the minimum volume or portion;

(5) the line-haul rate;

(6) the duration;

(7) service commitments; and

(8) the liquidated damages for nonperformance, if any.

(d) PUBLICATION OF CERTAIN TERMS.—When a service contract is filed confidentially with the Commission, a concise statement of the essential terms specified in paragraphs (1), (3), (4), and (6) of subsection (c) shall be published and made available to the general public in tariff format.

(e) DISCLOSURE OF CERTAIN TERMS.—

(1) DEFINITIONS.—In this subsection, the terms ''dock area'' and ''within the port area'' have the same meaning and scope as in the applicable collective bargaining agreement between the requesting labor organization and the carrier.

(2) DISCLOSURE.—An ocean common carrier that is a party to or is otherwise subject to a collective bargaining agreement with a labor organization shall, in response to a written request by the labor organization, state whether it is responsible for the following work at a dock area or within a port area in the United States with respect to cargo transportation under a service contract:

(A) The movement of the shipper's cargo on a dock area or within the port area or to or from railroad cars on a dock area or within the port area.

(B) The assignment of intraport carriage of the shipper's cargo between areas on a dock or within the port area.

(C) The assignment of the carriage of the shipper's cargo between a container yard on a dock area or within the port area and a rail yard adjacent to the container yard.

(D) The assignment of container freight station work and container maintenance and repair work performed at a dock area or within the port area.

(3) WITHIN REASONABLE TIME.—The common carrier shall provide the information described in paragraph (2) to the requesting labor organization within a reasonable period of time.

(4) EXISTENCE OF COLLECTIVE BARGAINING AGREEMENT.—This subsection does not require the disclosure of information by an ocean common carrier unless there exists an applicable and otherwise lawful collective bargaining agreement pertaining to that carrier. A disclosure by an ocean common carrier may not be deemed an admission or an agreement that any work is covered by a collective bargaining agreement. A dispute about whether any work is covered by a collective bargaining agreement and the responsibility of an ocean common carrier under a collective bargaining agreement shall be resolved solely in accordance with the dispute resolution procedures contained in the collective bargaining agreement and the National Labor Relations Act (29 U.S.C. 151 et seq.), and without reference to this subsection.

(5) EFFECT UNDER OTHER LAWS.—This subsection does not affect the lawfulness or unlawfulness under this part or any other Federal or State law of any collective bargaining agreement or element thereof, including any element that constitutes an essential term of a service contract.

(f) REMEDY FOR BREACH.—Unless the parties agree otherwise, the exclusive remedy for a breach of a service contract is an action in an appropriate court. The contract dispute resolution forum may not be controlled by or in any way affiliated with a controlled carrier or by the government that owns or controls the carrier.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1533.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
40502(a)	46 App.:1707(c)(1) (1st sentence).	Pub. L. 98–237, §8(c), Mar. 20, 1984, 98 Stat. 75; restated Pub. L. 105–258, title I, §106(b), Oct. 14, 1998, 112 Stat. 1905.
40502(b)	46 App.:1707(c)(2) (1st sentence).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40502(c)	46 App.:1707(c)(2) (last sentence).	
40502(d)	46 App.:1707(c)(3).	
40502(e)	46 App.:1707(c)(4).	
40502(f)	46 App.:1707(c)(1) (2d, last sentences).	

In subsection (e)(5), the words ''the National Labor Relations Act [29 U.S.C. 151 et seq.], the Taft-Hartley Act [29 U.S.C. 141 et seq.], the Federal Trade Commission Act [15 U.S.C. 41 et seq.], the antitrust laws'' are omitted as unnecessary because of the reference to ''any other Federal or State law''.

REFERENCES IN TEXT

The National Labor Relations Act, referred to in subsec. (e)(4), is act July 5, 1935, ch. 372, 49 Stat. 449, which is classified generally to subchapter II (§151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

§ 40503. Refunds and waivers

The Federal Maritime Commission, on application of a carrier or shipper, may permit a common carrier or conference to refund a portion of the freight charges collected from a shipper, or to waive collection of a portion of the charges from a shipper, if—

(1) there is an error in a tariff, a failure to publish a new tariff, or an error in quoting a tariff, and the refund or waiver will not result in discrimination among shippers, ports, or carriers;

(2) the common carrier or conference, before filing an application for authority to refund or waive any charges for an error in a tariff or a failure to publish a tariff, has published a new tariff setting forth the rate on which the refund or waiver would be based; and

(3) the application for the refund or waiver is filed with the Commission within 180 days from the date of shipment.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1535.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40503	46 App.:1707(e).	Pub. L. 98–237, §8(e), Mar. 20, 1984, 98 Stat. 75; Pub. L. 105–258, title I, §106(d), Oct. 14, 1998, 112 Stat. 1907.

In paragraph (1), the words ''an error in a tariff, a failure to publish a new tariff'' are substituted for ''an error in a, in failing to publish a new tariff'' to correct an obvious error in the underlying statute.

In paragraph (2), the words ''or waive'' are added for consistency with the reference to a waiver later in the paragraph.

CHAPTER 407—CONTROLLED CARRIERS

Sec.
40701. Rates.
40702. Rate standards.
40703. Effective date of rates.
40704. Commission review.
40705. Presidential review of Commission orders.
40706. Exceptions.

§ 40701. Rates

(a) IN GENERAL.—A controlled carrier may not—

(1) maintain a rate or charge in a tariff or service contract, or charge or assess a rate, that is below a just and reasonable level; or

(2) establish, maintain, or enforce in a tariff or service contract a classification, rule, or regulation that results, or is likely to result, in the carriage or handling of cargo at a rate or charge that is below a just and reasonable level.

(b) COMMISSION PROHIBITION.—The Federal Maritime Commission, at any time after notice and opportunity for a hearing, may prohibit the publication or use of a rate, charge, classification, rule, or regulation that a controlled carrier has failed to demonstrate is just and reasonable.

(c) BURDEN OF PROOF.—In a proceeding under this section, the burden of proof is on the controlled carrier to demonstrate that its rate, charge, classification, rule, or regulation is just and reasonable.

(d) VOIDNESS.—A rate, charge, classification, rule, or regulation that has been suspended or prohibited by the Commission is void and its use is unlawful.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1535.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40701	46 App.:1708(a).	Pub. L. 98–237, §9(a), Mar. 20, 1984, 98 Stat. 76; Pub. L. 102–100, §5(a), Aug. 17, 1991, 105 Stat. 492; Pub. L. 105–258, title I, §108(1)–(4), Oct. 14, 1998, 112 Stat. 1908.

§ 40702. Rate standards

(a) DEFINITION.—In this section, the term ''constructive costs'' means the costs of another carrier, other than a controlled carrier, operating similar vessels and equipment in the same or a similar trade.

(b) STANDARDS.—In determining whether a rate, charge, classification, rule, or regulation of a controlled carrier is just and reasonable, the Federal Maritime Commission—

(1) shall take into account whether the rate or charge that has been published or assessed, or that would result from the pertinent classification, rule, or regulation, is below a level that is fully compensatory to the controlled carrier based on the carrier's actual costs or constructive costs; and

(2) may take into account other appropriate factors, including whether the rate, charge, classification, rule, or regulation is—

(A) the same as, or similar to, those published or assessed by other carriers in the same trade;

(B) required to ensure movement of particular cargo in the same trade; or

(C) required to maintain acceptable continuity, level, or quality of common carrier service to or from affected ports.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1536.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40702	46 App.:1708(b).	Pub. L. 98–237, §9(b), Mar. 20, 1984, 98 Stat. 76; Pub. L. 105–258, title I, §108(5)–(7), Oct. 14, 1998, 112 Stat. 1908.

§ 40703. Effective date of rates

Notwithstanding section 40501(e) of this title and except for service contracts, a rate, charge, classification, rule, or regulation of a controlled carrier may not become effective, without special permission of the Federal Maritime Commission, until the 30th day after publication.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1536.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40703	46 App.:1708(c) (1st sentence).	Pub. L. 98–237, §9(c) (1st sentence), Mar. 20, 1984, 98 Stat. 76; Pub. L. 102–100, §5(b), Aug. 17, 1991, 105 Stat. 492; Pub. L. 105–258, title I, §108(8), Oct. 14, 1998, 112 Stat. 1908.

§ 40704. Commission review

(a) REQUEST FOR JUSTIFICATION.—On request of the Federal Maritime Commission, a controlled carrier shall file with the Commission, within 20 days of the request, a statement of justification that sufficiently details the carrier's need and purpose for an existing or proposed rate, charge, classification, rule, or regulation and upon which the Commission may reasonably base a determination of its lawfulness.

(b) DETERMINATION.—Within 120 days after receipt of information requested under subsection (a), the Commission shall determine whether the rate, charge, classification, rule, or regulation may be unjust and unreasonable.

(c) SHOW CAUSE ORDER.—Whenever the Commission is of the opinion that a rate, charge, classification, rule, or regulation published or assessed by a controlled carrier may be unjust and unreasonable, the Commission shall issue an order to the controlled carrier to show cause why the rate, charge, classification, rule, or regulation should not be prohibited.

(d) SUSPENSION PENDING DETERMINATION.—

(1) NOT YET EFFECTIVE.—Pending a determination of the lawfulness of a rate, charge, classification, rule, or regulation in a proceeding under subsection (c), the Commission may suspend the rate, charge, classification, rule, or regulation at any time before its effective date.

(2) ALREADY EFFECTIVE.—If a rate, charge, classification, rule, or regulation has already become effective, the Commission, on issuance of an order to show cause, may suspend the rate, charge, classification, rule, or regulation on at least 30 days' notice to the controlled carrier.

(3) MAXIMUM SUSPENSION.—A period of suspension under this subsection may not exceed 180 days.

(e) REPLACEMENT DURING SUSPENSION.—Whenever the Commission has suspended a rate, charge, classification, rule, or regulation under this section, the controlled carrier may publish a new rate, charge, classification, rule, or regulation to take effect immediately during the suspension in lieu of the suspended rate, charge, classification, rule, or regulation. However, the Commission may reject the new rate, charge, classification, rule, or regulation if the Commission believes it is unjust and unreasonable.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1536.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40704	46 App.:1708(c) (last sentence), (d).	Pub. L. 98–237, §9(c) (last sentence), (d), Mar. 20, 1984, 98 Stat. 76; Pub. L. 105–258, title I, §108(9)–(15), Oct. 14, 1998, 112 Stat. 1908.

In subsection (d)(1), the words ''in a proceeding under subsection (c)'' are substituted for ''in such a proceeding'' for clarity.

§ 40705. Presidential review of Commission orders

(a) TRANSMISSION TO PRESIDENT.—The Federal Maritime Commission shall transmit to the President, concurrently with publication thereof, each order of suspension or final order of prohibition issued under section 40704 of this title.

(b) PRESIDENTIAL REQUEST AND COMMISSION ACTION.—Within 10 days after receipt or the effective date of a Commission order referred to in subsection (a), the President, in writing, may request the Commission to stay the effect of the order if the President finds that the stay is required for reasons of national defense or foreign policy. The reasons shall be specified in the request. The Commission shall immediately grant the request by issuing an order in which the President's request shall be described. During a stay, the President shall, whenever practicable, attempt to resolve the matter by negotiating with representatives of the applicable foreign governments.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1537.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40705	46 App.:1708(e).	Pub. L. 98–237, §9(e), Mar. 20, 1984, 98 Stat. 77; Pub. L. 105–258, title I, §108(16), Oct. 14, 1998, 112 Stat. 1909.

In subsection (b), the words ''Notwithstanding any other law'' are omitted as unnecessary.

§ 40706. Exceptions

This chapter does not apply to—

(1) a controlled carrier of a foreign country whose vessels are entitled by a treaty of the United States to receive national or most-favored-nation treatment; or

(2) a trade served only by controlled carriers.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1537.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
40706	46 App.:1708(f).	Pub. L. 98–237, § 9(f), Mar. 20, 1984, 98 Stat. 77; Pub. L. 105–258, title I, § 108(17)–(19), Oct. 14, 1998, 112 Stat. 1909.

In paragraph (1), the words ''foreign country'' are substituted for ''state'' for clarity and consistency.

CHAPTER 409—OCEAN TRANSPORTATION INTERMEDIARIES

Sec.
40901. License requirement.
40902. Financial responsibility.
40903. Suspension or revocation of license.
40904. Compensation by common carriers.

§ 40901. License requirement

(a) IN GENERAL.—A person in the United States may not act as an ocean transportation intermediary unless the person holds an ocean transportation intermediary's license issued by the Federal Maritime Commission. The Commission shall issue a license to a person that the Commission determines to be qualified by experience and character to act as an ocean transportation intermediary.

(b) EXCEPTION.—A person whose primary business is the sale of merchandise may forward shipments of the merchandise for its own account without an ocean transportation intermediary's license.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1538.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
40901(a)	46 App.:1718(a).	Pub. L. 98–237, § 19(a), (d), Mar. 20, 1984, 98 Stat. 87, 88; Pub. L. 105–258, title I, § 116, Oct. 14, 1998, 112 Stat. 1912.
40901(b)	46 App.:1718(d).	

§ 40902. Financial responsibility

(a) IN GENERAL.—A person may not act as an ocean transportation intermediary unless the person furnishes a bond, proof of insurance, or other surety—

(1) in a form and amount determined by the Federal Maritime Commission to insure financial responsibility; and

(2) issued by a surety company found acceptable by the Secretary of the Treasury.

(b) SCOPE OF FINANCIAL RESPONSIBILITY.—A bond, insurance, or other surety obtained under this section—

(1) shall be available to pay any penalty assessed under section 41109 of this title or any order for reparation issued under section 41305 of this title;

(2) may be available to pay any claim against an ocean transportation intermediary arising from its transportation-related activities—

(A) with the consent of the insured ocean transportation intermediary and subject to review by the surety company; or

(B) when the claim is deemed valid by the surety company after the ocean transportation intermediary has failed to respond to adequate notice to address the validity of the claim; and

(3) shall be available to pay any judgment for damages against an ocean transportation intermediary arising from its transportation-related activities, if the claimant has first attempted to resolve the claim under paragraph (2) and the claim has not been resolved within a reasonable period of time.

(c) REGULATIONS ON COURT JUDGMENTS.—The Commission shall prescribe regulations for the purpose of protecting the interests of claimants, ocean transportation intermediaries, and surety companies with respect to the process of pursuing claims against ocean transportation intermediary bonds, insurance, or sureties through court judgments. The regulations shall provide that a judgment for monetary damages may not be enforced except to the extent that the damages claimed arise from the transportation-related activities of the insured ocean transportation intermediary, as defined by the Commission.

(d) RESIDENT AGENT.—An ocean transportation intermediary not domiciled in the United States shall designate a resident agent in the United States for receipt of service of judicial and administrative process, including subpoenas.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1538.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
40902	46 App.:1718(b).	Pub. L. 98–237, § 19(b), Mar. 20, 1984; added Pub. L. 105–258, title I, § 116(4), Oct. 14, 1998, 112 Stat. 1913.

In subsection (b), in paragraphs (2) and (3), the words ''described in section 1702(17) of this Appendix'' are omitted as unnecessary.

§ 40903. Suspension or revocation of license

(a) FAILURE TO MAINTAIN QUALIFICATIONS OR TO COMPLY.—The Federal Maritime Commission, after notice and opportunity for a hearing, shall suspend or revoke an ocean transportation intermediary's license if the Commission finds that the ocean transportation intermediary—

(1) is not qualified to provide intermediary services; or

(2) willfully failed to comply with a provision of this part or with an order or regulation of the Commission.

(b) FAILURE TO MAINTAIN BOND, PROOF OF INSURANCE, OR OTHER SURETY.—The Commission may revoke an ocean transportation intermediary's license for failure to maintain a bond, proof of insurance, or other surety as required by section 40902(a) of this title.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1539.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
40903	46 App.:1718(c).	Pub. L. 98–237, § 19(c), Mar. 20, 1984, 98 Stat. 88; Pub. L. 105–258, title I, § 116, Oct. 14, 1998, 112 Stat. 1912.

In subsection (a)(2), the words ''lawful'' and ''rule'' are omitted as unnecessary.

§ 40904. Compensation by common carriers

(a) CERTIFICATION OF LICENSE AND SERVICES.—A common carrier may compensate an ocean freight forwarder for a shipment dispatched for others only when the ocean freight forwarder has certified in writing that it holds an ocean transportation intermediary's license (if required under section 40901 of this title) and has—

(1) engaged, booked, secured, reserved, or contracted directly with the carrier or its agent for space aboard a vessel or confirmed the availability of the space; and

(2) prepared and processed the ocean bill of lading, dock receipt, or other similar document for the shipment.

(b) DUAL COMPENSATION.—A common carrier may not pay compensation for services described in subsection (a) more than once on the same shipment.

(c) BENEFICIAL INTEREST SHIPMENTS.—An ocean freight forwarder may not receive compensation from a common carrier for a shipment in which the ocean freight forwarder has a direct or indirect beneficial interest. A common carrier may not knowingly pay compensation on that shipment.

(d) LIMITS ON AUTHORITY OF CONFERENCE OR GROUP.—A conference or group of two or more ocean common carriers in the foreign commerce of the United States that is authorized to agree on the level of compensation paid to an ocean freight forwarder may not—

(1) deny a member of the conference or group the right, upon notice of not more than 5 days, to take independent action on any level of compensation paid to an ocean freight forwarder; or

(2) agree to limit the payment of compensation to an ocean freight forwarder to less than 1.25 percent of the aggregate of all rates and charges applicable under a tariff and assessed against the cargo on which the services of the ocean freight forwarder are provided.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1539.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
40904	46 App.:1718(e).	Pub. L. 98–237, § 19(e), Mar. 20, 1984, 98 Stat. 88; Pub. L. 105–258, title I, § 116, Oct. 14, 1998, 112 Stat. 1912.

In this section, the words ''ocean freight forwarder'' are substituted for ''ocean transportation intermediary, as defined in section 1702(17)(A) of this Appendix'' and ''ocean transportation intermediary'' because the definition of ''ocean transportation intermediary'' in section 1702(17)(A) contains a definition of ''ocean freight forwarder'' which is restated as a separate definition.

In subsection (d)(1), the word ''calendar'' is omitted as unnecessary.

CHAPTER 411—PROHIBITIONS AND PENALTIES

Sec.
41101. Joint ventures and consortiums.
41102. General prohibitions.
41103. Disclosure of information.
41104. Common carriers.
41105. Concerted action.
41106. Marine terminal operators.
41107. Monetary penalties.
41108. Additional penalties.
41109. Assessment of penalties.

§ 41101. Joint ventures and consortiums

In this chapter, a joint venture or consortium of two or more common carriers operating as a single entity is deemed to be a single common carrier.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1540.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
41101	46 App.:1709(e).	Pub. L. 98–237, § 10(e), Mar. 20, 1984, 98 Stat. 80.

§ 41102. General prohibitions

(a) OBTAINING TRANSPORTATION AT LESS THAN APPLICABLE RATES.—A person may not knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or any other unjust or unfair device or means, obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise apply.

(b) OPERATING CONTRARY TO AGREEMENT.—A person may not operate under an agreement required to be filed under section 40302 or 40305 of this title if—

(1) the agreement has not become effective under section 40304 of this title or has been rejected, disapproved, or canceled; or

(2) the operation is not in accordance with the terms of the agreement or any modifications to the agreement made by the Federal Maritime Commission.

(c) PRACTICES IN HANDLING PROPERTY.—A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1540.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
41102(a)	46 App.:1709(a)(1).	Pub. L. 98–237, § 10(a), Mar. 20, 1984, 98 Stat. 77.
41102(b)	46 App.:1709(a)(2), (3).	
41102(c)	46 App.:1709(d)(1).	Pub. L. 98–237, § 10(d)(1), Mar. 20, 1984, 98 Stat. 77; Pub. L. 105–258, title I, § 109(c)(2), Oct. 14, 1998, 112 Stat. 1909.

§ 41103. Disclosure of information

(a) PROHIBITION.—A common carrier, marine terminal operator, or ocean freight forwarder, either alone or in conjunction with any other person, directly or indirectly, may not knowingly disclose, offer, solicit, or receive any infor-

mation concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to a common carrier, without the consent of the shipper or consignee, if the information—

(1) may be used to the detriment or prejudice of the shipper, the consignee, or any common carrier; or

(2) may improperly disclose its business transaction to a competitor.

(b) EXCEPTIONS.—Subsection (a) does not prevent providing the information—

(1) in response to legal process;

(2) to the Federal Maritime Commission or an agency of the United States Government; or

(3) to an independent neutral body operating within the scope of its authority to fulfill the policing obligations of the parties to an agreement effective under this part.

(c) DISCLOSURE FOR DETERMINING BREACH OR COMPILING STATISTICS.—An ocean common carrier that is a party to a conference agreement approved under this part, a receiver, trustee, lessee, agent, or employee of the carrier, or any other person authorized by the carrier to receive information—

(1) may give information to the conference or any person or agency designated by the conference, for the purpose of—

(A) determining whether a shipper or consignee has breached an agreement with the conference or its member lines;

(B) determining whether a member of the conference has breached the conference agreement; or

(C) compiling statistics of cargo movement; and

(2) may not prevent the conference or its designee from soliciting or receiving information for any of those purposes.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1540.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
41103(a)	46 App.:1709(b)(13), (d)(3) (related to (b)(13)), (5).	Pub. L. 98–237, §10(b)(13), (words after cl. (13)), (d)(3) (related to (b)(13)), (5), Mar. 20, 1984, 98 Stat. 79, 80; Pub. L. 101–595, title VII, §710(c)(1), (2), Nov. 16, 1990, 104 Stat. 2997; Pub. L. 105–258, title I, §109(a)(10), (11), (16), (17), (c)(3), Oct. 14, 1998, 112 Stat. 1910, 1911.
41103(b)	46 App.:1709(b) (next-to-last sentence).	
41103(c)	46 App.:1709(b) (last sentence).	

In subsection (a), the words ''marine terminal operator, or ocean freight forwarder'' are added because of 46 App. U.S.C. 1709(d)(3) and (5). The words ''ocean freight forwarder'' are substituted for ''ocean transportation intermediaries, as defined by section 1702(17)(A) of this Appendix'' in 46 App. U.S.C. 1709(d)(5) because the definition of ''ocean transportation intermediary'' in section 1702(17)(A) contains a definition of ''ocean freight forwarder'' which is restated as a separate definition.

In subsection (b), the words ''does not prevent'' are substituted for ''Nothing . . . shall be construed to prevent'' to eliminate unnecessary words.

In subsection (c)(1), the words ''may give information'' are substituted for ''Nor shall it be prohibited . . . to give information'' to eliminate unnecessary words. The words ''firm, corporation'' are omitted as unnecessary because firms and corporations are persons.

In subsection (c)(2), the words ''may not prevent'' are substituted for ''Nor shall it be prohibited . . . to prevent'' to reflect the probable intent of Congress. The words ''but the use of such information for any other purpose prohibited by this chapter or any other Act is prohibited'' are omitted as unnecessary.

§ 41104. Common carriers

A common carrier, either alone or in conjunction with any other person, directly or indirectly, may not—

(1) allow a person to obtain transportation for property at less than the rates or charges established by the carrier in its tariff or service contract by means of false billing, false classification, false weighing, false measurement, or any other unjust or unfair device or means;

(2) provide service in the liner trade that is—

(A) not in accordance with the rates, charges, classifications, rules, and practices contained in a tariff published or a service contract entered into under chapter 405 of this title, unless excepted or exempted under section 40103 or 40501(a)(2) of this title; or

(B) under a tariff or service contract that has been suspended or prohibited by the Federal Maritime Commission under chapter 407 or 423 of this title;

(3) retaliate against a shipper by refusing, or threatening to refuse, cargo space accommodations when available, or resort to other unfair or unjustly discriminatory methods because the shipper has patronized another carrier, or has filed a complaint, or for any other reason;

(4) for service pursuant to a tariff, engage in any unfair or unjustly discriminatory practice in the matter of—

(A) rates or charges;

(B) cargo classifications;

(C) cargo space accommodations or other facilities, with due regard being given to the proper loading of the vessel and the available tonnage;

(D) loading and landing of freight; or

(E) adjustment and settlement of claims;

(5) for service pursuant to a service contract, engage in any unfair or unjustly discriminatory practice in the matter of rates or charges with respect to any port;

(6) use a vessel in a particular trade for the purpose of excluding, preventing, or reducing competition by driving another ocean common carrier out of that trade;

(7) offer or pay any deferred rebates;

(8) for service pursuant to a tariff, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage;

(9) for service pursuant to a service contract, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any port;

(10) unreasonably refuse to deal or negotiate;

(11) knowingly and willfully accept cargo from or transport cargo for the account of an

ocean transportation intermediary that does not have a tariff as required by section 40501 of this title and a bond, insurance, or other surety as required by section 40902 of this title; or

(12) knowingly and willfully enter into a service contract with an ocean transportation intermediary that does not have a tariff as required by section 40501 of this title and a bond, insurance, or other surety as required by section 40902 of this title, or with an affiliate of such an ocean transportation intermediary.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1541.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
41104	46 App.:1709(b) (1)–(12).	Pub. L. 98–237, § 10(b)(1)–(12), Mar. 20, 1984, 98 Stat. 77; Pub. L. 101–595, title VII, § 710(c), Nov. 16, 1990, 104 Stat. 2997; Pub. L. 102–251, title II, § 201(b), Mar. 9, 1992, 106 Stat. 60; Pub. L. 105–258, title I, § 109(a), Oct. 14, 1998, 112 Stat. 1909; Pub. L. 105–383, title IV, § 424(b), Nov. 13, 1998, 112 Stat. 3441.

§ 41105. Concerted action

A conference or group of two or more common carriers may not—

(1) boycott or take any other concerted action resulting in an unreasonable refusal to deal;

(2) engage in conduct that unreasonably restricts the use of intermodal services or technological innovations;

(3) engage in any predatory practice designed to eliminate the participation, or deny the entry, in a particular trade of a common carrier not a member of the conference, a group of common carriers, an ocean tramp, or a bulk carrier;

(4) negotiate with a non-ocean carrier or group of non-ocean carriers (such as truck, rail, or air operators) on any matter relating to rates or services provided to ocean common carriers within the United States by those non-ocean carriers, unless the negotiations and any resulting agreements are not in violation of the antitrust laws and are consistent with the purposes of this part, except that this paragraph does not prohibit the setting and publishing of a joint through rate by a conference, joint venture, or association of ocean common carriers;

(5) deny in the export foreign commerce of the United States compensation to an ocean freight forwarder or limit that compensation to less than a reasonable amount;

(6) allocate shippers among specific carriers that are parties to the agreement or prohibit a carrier that is a party to the agreement from soliciting cargo from a particular shipper, except as—

(A) authorized by section 40303(d) of this title;

(B) required by the law of the United States or the importing or exporting country; or

(C) agreed to by a shipper in a service contract;

(7) for service pursuant to a service contract, engage in any unjustly discriminatory practice in the matter of rates or charges with respect to any locality, port, or person due to the person's status as a shippers' association or ocean transportation intermediary; or

(8) for service pursuant to a service contract, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any locality, port, or person due to the person's status as a shippers' association or ocean transportation intermediary.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1542.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
41105	46 App.:1709(c).	Pub. L. 98–237, § 10(c), Mar. 20, 1984, 98 Stat. 77; Pub. L. 105–258, title I, § 109(b), Oct. 14, 1998, 112 Stat. 1910; Pub. L. 105–383, title IV, § 424(b), Nov. 13, 1998, 112 Stat. 3441.

In paragraph (5), the words ''ocean freight forwarder'' are substituted for ''ocean transportation intermediary, as defined by section 1702(17)(A) of this Appendix'' because the definition of ''ocean transportation intermediary'' in section 1702(17)(A) contains a definition of ''ocean freight forwarder'' which is restated as a separate definition.

§ 41106. Marine terminal operators

A marine terminal operator may not—

(1) agree with another marine terminal operator or with a common carrier to boycott, or unreasonably discriminate in the provision of terminal services to, a common carrier or ocean tramp;

(2) give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any person; or

(3) unreasonably refuse to deal or negotiate.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1543.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
41106(1)	46 App.:1709(d)(2).	Pub. L. 98–237, § 10(d)(2), (3) (related to (b)(10)), (4), Mar. 20, 1984, 98 Stat. 77; Pub. L. 105–258, title I, § 109(c), Oct. 14, 1998, 112 Stat. 1910.
41106(2)	46 App.:1709(d)(4).	
41106(3)	46 App.:1709(d)(3) (related to (b)(10)).	

§ 41107. Monetary penalties

(a) IN GENERAL.—A person that violates this part or a regulation or order of the Federal Maritime Commission issued under this part is liable to the United States Government for a civil penalty. Unless otherwise provided in this part, the amount of the penalty may not exceed $5,000 for each violation or, if the violation was willfully and knowingly committed, $25,000 for each violation. Each day of a continuing violation is a separate violation.

(b) LIEN ON CARRIER'S VESSELS.—The amount of a civil penalty imposed on a common carrier

under this section constitutes a lien on the vessels operated by the carrier. Any such vessel is subject to an action in rem to enforce the lien in the district court of the United States for the district in which it is found.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1543.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
41107	46 App.:1712(a).	Pub. L. 98–237, § 13(a), Mar. 20, 1984, 98 Stat. 82; Pub. L. 105–258, title I, § 112(a), Oct. 14, 1998, 112 Stat. 1911.

In subsection (b), the words ''is subject to an action in rem to enforce the lien'' are substituted for ''may be libeled therefore'' to modernize the language.

§ 41108. Additional penalties

(a) SUSPENSION OF TARIFFS.—For a violation of section 41104(1), (2), or (7) of this title, the Federal Maritime Commission may suspend any or all tariffs of the common carrier, or that common carrier's right to use any or all tariffs of conferences of which it is a member, for a period not to exceed 12 months.

(b) OPERATING UNDER SUSPENDED TARIFF.—A common carrier that accepts or handles cargo for carriage under a tariff that has been suspended, or after its right to use that tariff has been suspended, is liable to the United States Government for a civil penalty of not more than $50,000 for each shipment.

(c) FAILURE TO PROVIDE INFORMATION.—

(1) PENALTIES.—If the Commission finds, after notice and opportunity for a hearing, that a common carrier has failed to supply information ordered to be produced or compelled by subpoena under section 41303 of this title, the Commission may—

(A) suspend any or all tariffs of the carrier or the carrier's right to use any or all tariffs of conferences of which it is a member; and

(B) request the Secretary of Homeland Security to refuse or revoke any clearance required for a vessel operated by the carrier, and when so requested, the Secretary shall refuse or revoke the clearance.

(2) DEFENSE BASED ON FOREIGN LAW.—If, in defense of its failure to comply with a subpoena or discovery order, a common carrier alleges that information or documents located in a foreign country cannot be produced because of the laws of that country, the Commission shall immediately notify the Secretary of State of the failure to comply and of the allegation relating to foreign laws. On receiving the notification, the Secretary of State shall promptly consult with the government of the nation within which the information or documents are alleged to be located for the purpose of assisting the Commission in obtaining the information or documents.

(d) IMPAIRING ACCESS TO FOREIGN TRADE.—If the Commission finds, after notice and opportunity for a hearing, that the action of a common carrier, acting alone or in concert with another person, or a foreign government has unduly impaired access of a vessel documented under the laws of the United States to ocean trade between foreign ports, the Commission shall take action that it finds appropriate, including imposing any of the penalties authorized by this section. The Commission also may take any of the actions authorized by sections 42304 and 42305 of this title.

(e) SUBMISSION OF ORDER TO PRESIDENT.—Before an order under this section becomes effective, it shall be submitted immediately to the President. The President, within 10 days after receiving it, may disapprove it if the President finds that disapproval is required for reasons of national defense or foreign policy.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1543.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
41108(a)	46 App.:1712(b)(1).	Pub. L. 98–237, § 13(b), Mar. 20, 1984, 98 Stat. 82; Pub. L. 105–258, title I, § 112(b), Oct. 14, 1998, 112 Stat. 1911.
41108(b)	46 App.:1712(b)(3).	
41108(c)	46 App.:1712(b)(2), (4), (5).	
41108(d)	46 App.:1712(b)(6).	
	46 App.:1710a(h) (related to 1712(b)(6)).	Pub. L. 100–418, title X, § 10002(h) (related to § 13(b)(6)), Aug. 23, 1988, 102 Stat. 1572; Pub. L. 105–258, title I, § 111(7), Oct. 14, 1998, 112 Stat. 1911.
41108(e)	46 App.:1712(b)(7).	

In subsection (c)(1)(B), the words ''Secretary of Homeland Security'' are substituted for ''Secretary of the Treasury'' because the functions of the Secretary of the Treasury relating to the Customs Service were transferred to the Secretary of Homeland Security by section 403(1) of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2178).

§ 41109. Assessment of penalties

(a) GENERAL AUTHORITY.—Until a matter is referred to the Attorney General, the Federal Maritime Commission may, after notice and opportunity for a hearing, assess a civil penalty provided for in this part. The Commission may compromise, modify, or remit, with or without conditions, a civil penalty.

(b) FACTORS IN DETERMINING AMOUNT.—In determining the amount of a civil penalty, the Commission shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and other matters justice may require.

(c) EXCEPTION.—A civil penalty may not be imposed for conspiracy to violate section 41102(a) or 41104(1) or (2) of this title or to defraud the Commission by concealing such a violation.

(d) PROHIBITED BASIS OF PENALTY.—The Commission or a court may not order a person to pay the difference between the amount billed and agreed upon in writing with a common carrier or its agent and the amount set forth in a tariff or service contract by that common carrier for the transportation service provided.

(e) TIME LIMIT.—A proceeding to assess a civil penalty under this section must be commenced within 5 years after the date of the violation.

(f) REVIEW OF CIVIL PENALTY.—A person against whom a civil penalty is assessed under this section may obtain review under chapter 158 of title 28.

(g) CIVIL ACTIONS TO COLLECT.—If a person does not pay an assessment of a civil penalty after it has become final or after the appropriate court has entered final judgment in favor of the Commission, the Attorney General at the request of the Commission may seek to collect the amount assessed in an appropriate district court of the United States. The court shall enforce the order of the Commission unless it finds that the order was not regularly made and duly issued.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1544.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
41109(a)	46 App.:1712(c) (1st, last sentences).	Pub. L. 98–237, § 13(c)–(f), Mar. 20, 1984, 98 Stat. 82; Pub. L. 105–258, title I, § 112(c), Oct. 14, 1998, 112 Stat. 1912.
41109(b)	46 App.:1712(c) (2d sentence).	
41109(c)	46 App.:1712(f)(1) (1st sentence).	
41109(d)	46 App.:1712(f)(1) (last sentence).	
41109(e)	46 App.:1712(f)(2).	
41109(f)	46 App.:1712(d).	
41109(g)	46 App.:1712(e).	

CHAPTER 413—ENFORCEMENT

Sec.
41301. Complaints.
41302. Investigations.
41303. Discovery and subpoenas.
41304. Hearings and orders.
41305. Award of reparations.
41306. Injunctive relief sought by complainants.
41307. Injunctive relief sought by the Commission.
41308. Enforcement of subpoenas and orders.
41309. Enforcement of reparation orders.

§ 41301. Complaints

(a) IN GENERAL.—A person may file with the Federal Maritime Commission a sworn complaint alleging a violation of this part, except section 41307(b)(1). If the complaint is filed within 3 years after the claim accrues, the complainant may seek reparations for an injury to the complainant caused by the violation.

(b) NOTICE AND RESPONSE.—The Commission shall provide a copy of the complaint to the person named in the complaint. Within a reasonable time specified by the Commission, the person shall satisfy the complaint or answer it in writing.

(c) IF COMPLAINT NOT SATISFIED.—If the complaint is not satisfied, the Commission shall investigate the complaint in an appropriate manner and make an appropriate order.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1545.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
41301(a)	46 App.:1710(a), (g) (related to time limit).	Pub. L. 98–237, § 11(a), (b), (g) (related to time limit), Mar. 20, 1984, 98 Stat. 80; Pub. L. 98–595, § 3(b)(2), Oct. 30, 1984, 98 Stat. 3132; Pub. L. 105–258, title I, § 110, Oct. 14, 1998, 112 Stat. 1911.
41301(b)	46 App.:1710(b) (1st sentence).	
41301(c)	46 App.:1710(b) (last sentence).	

In subsection (a), the words ''If the complaint is filed within 3 years after the claim accrues'' are substituted for ''For any complaint filed within 3 years after the cause of action accrued'' in 46 App. U.S.C. 1710(g) to alert the reader to that time limitation.

§ 41302. Investigations

(a) IN GENERAL.—The Federal Maritime Commission, on complaint or its own motion, may investigate any conduct or agreement that the Commission believes may be in violation of this part. The Commission may by order disapprove, cancel, or modify any agreement that operates in violation of this part.

(b) EFFECTIVENESS OF AGREEMENT DURING INVESTIGATION.—Unless an injunction is issued under section 41306 or 41307 of this title, an agreement under investigation by the Commission remains in effect until the Commission issues its order.

(c) DATE FOR DECISION.—Within 10 days after the initiation of a proceeding under this section or section 41301 of this title, the Commission shall set a date by which it will issue its final decision. The Commission by order may extend the date for good cause.

(d) SANCTIONS FOR DELAY.—If, within the period for final decision under subsection (c), the Commission determines that it is unable to issue a final decision because of undue delay caused by a party to the proceeding, the Commission may impose sanctions, including issuing a decision adverse to the delaying party.

(e) REPORT.—The Commission shall make a written report of every investigation under this part in which a hearing was held, stating its conclusions, decisions, findings of fact, and order. The Commission shall provide a copy of the report to all parties and publish the report for public information. A published report is competent evidence in a court of the United States.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1545.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
41302(a)	46 App.:1710(c) (1st, 3d sentences).	Pub. L. 98–237, § 11(c)–(f), Mar. 20, 1984, 98 Stat. 80.
41302(b)	46 App.:1710(c) (2d sentence).	
41302(c)	46 App.:1710(d).	
41302(d)	46 App.:1710(e).	
41302(e)	46 App.:1710(f).	

§ 41303. Discovery and subpoenas

(a) IN GENERAL.—In an investigation or adjudicatory proceeding under this part—

(1) the Federal Maritime Commission may subpoena witnesses and evidence; and

(2) a party may use depositions, written interrogatories, and discovery procedures under regulations prescribed by the Commission that, to the extent practicable, shall conform to the Federal Rules of Civil Procedure (28 App. U.S.C.).

(b) WITNESS FEES.—Unless otherwise prohibited by law, a witness is entitled to the same fees and mileage as in the courts of the United States.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1545.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41303	46 App.:1711.	Pub. L. 98–237, §12, Mar. 20, 1984, 98 Stat. 81.

In subsection (a)(1), the words ''may subpoena witnesses and evidence'' are substituted for ''may by subpena compel the attendance of witnesses and the production of books, papers, documents, and other evidence'' to eliminate unnecessary words.

In subsection (a)(2), the words ''shall conform to the Federal Rules of Civil Procedure (28 App. U.S.C.)'' are substituted for ''shall be in conformity with the rules applicable in civil proceedings in the district courts of the United States'' for clarity.

§ 41304. Hearings and orders

(a) OPPORTUNITY FOR HEARING.—The Federal Maritime Commission shall provide an opportunity for a hearing before issuing an order relating to a violation of this part or a regulation prescribed under this part.

(b) MODIFICATION OF ORDER.—The Commission may reverse, suspend, or modify any of its orders.

(c) REHEARING.—On application of a party to a proceeding, the Commission may grant a rehearing of the same or any matter determined in the proceeding. Except by order of the Commission, a rehearing does not operate as a stay of an order.

(d) PERIOD OF EFFECTIVENESS.—An order of the Commission remains in effect for the period specified in the order or until suspended, modified, or set aside by the Commission or a court of competent jurisdiction.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1546.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41304(a)	46 App.:1713(a) (1st sentence).	Pub. L. 98–237, §14(a), (b), Mar. 20, 1984, 98 Stat. 83.
41304(b)	46 App.:1713(b) (1st sentence 1st–12th words).	
41304(c)	46 App.:1713(b) (1st sentence 13th–last words, last sentence).	
41304(d)	46 App.:1713(a) (last sentence).	

In subsection (a), the words ''upon sworn complaint or on its own motion'' are omitted as unnecessary.

§ 41305. Award of reparations

(a) DEFINITION.—In this section, the term ''actual injury'' includes the loss of interest at commercial rates compounded from the date of injury.

(b) BASIC AMOUNT.—If the complaint was filed within the period specified in section 41301(a) of this title, the Federal Maritime Commission shall direct the payment of reparations to the complainant for actual injury caused by a violation of this part, plus reasonable attorney fees.

(c) ADDITIONAL AMOUNTS.—On a showing that the injury was caused by an activity prohibited by section 41102(b), 41104(3) or (6), or 41105(1) or (3) of this title, the Commission may order the payment of additional amounts, but the total recovery of a complainant may not exceed twice the amount of the actual injury.

(d) DIFFERENCE BETWEEN RATES.—If the injury was caused by an activity prohibited by section 41104(4)(A) or (B) of this title, the amount of the injury shall be the difference between the rate paid by the injured shipper and the most favorable rate paid by another shipper.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1546.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41305	46 App.:1710(g) (less time limit).	Pub. L. 98–237, §11(g) (less time limit), Mar. 20, 1984, 98 Stat. 80; Pub. L. 98–595, §3(b)(2), Oct. 30, 1984, 98 Stat. 3132; Pub. L. 105–258, title I, §110, Oct. 14, 1998, 112 Stat. 1911.

In subsection (b), the words ''within the period specified in section 41301(a) of this title'' are substituted for ''within 3 years after the cause of action accrued'' because the time limit is restated in section 41301(a) instead of in this section. The words ''upon petition of the complainant'' are omitted as unnecessary. The words ''after notice and hearing'' are omitted as unnecessary because of section 41304(a) of the revised title.

§ 41306. Injunctive relief sought by complainants

(a) IN GENERAL.—After filing a complaint with the Federal Maritime Commission under section 41301 of this title, the complainant may bring a civil action in a district court of the United States to enjoin conduct in violation of this part.

(b) VENUE.—The action must be brought in the judicial district in which—

(1) the Commission has brought a civil action against the defendant under section 41307(a) of this title; or

(2) the defendant resides or transacts business, if the Commission has not brought such an action.

(c) REMEDIES BY COURT.—After notice to the defendant, and a showing that the standards for granting injunctive relief by courts of equity are met, the court may grant a temporary restraining order or preliminary injunction for a period not to exceed 10 days after the Commission has issued an order disposing of the complaint.

(d) ATTORNEY FEES.—A defendant prevailing in a civil action under this section shall be allowed reasonable attorney fees to be assessed and collected as part of the costs of the action.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1546.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41306	46 App.:1710(h)(2).	Pub. L. 98–237, §11(h)(2), Mar. 20, 1984, 98 Stat. 81.

§ 41307. Injunctive relief sought by the Commission

(a) GENERAL VIOLATIONS.—In connection with an investigation under section 41301 or 41302 of this title, the Federal Maritime Commission may bring a civil action to enjoin conduct in violation of this part. The action must be brought in the district court of the United States for any judicial district in which the defendant resides or transacts business. After no-

tice to the defendant, and a showing that the standards for granting injunctive relief by courts of equity are met, the court may grant a temporary restraining order or preliminary injunction for a period not to exceed 10 days after the Commission has issued an order disposing of the issues under investigation.

(b) REDUCTION IN COMPETITION.—

(1) ACTION BY COMMISSION.—If, at any time after the filing or effective date of an agreement under chapter 403 of this title, the Commission determines that the agreement is likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost, the Commission, after notice to the person filing the agreement, may bring a civil action in the United States District Court for the District of Columbia to enjoin the operation of the agreement. The Commission's sole remedy with respect to an agreement likely to have such an effect is an action under this subsection.

(2) REMEDIES BY COURT.—In an action under this subsection, the court may issue—

(A) a temporary restraining order or a preliminary injunction; and

(B) a permanent injunction after a showing that the agreement is likely to have the effect described in paragraph (1).

(3) BURDEN OF PROOF AND THIRD PARTIES.—In an action under this subsection, the burden of proof is on the Commission. The court may not allow a third party to intervene.

(c) FAILURE TO PROVIDE INFORMATION.—If a person filing an agreement, or an officer, director, partner, agent, or employee of the person, fails substantially to comply with a request for the submission of additional information or documents within the period provided in section 40304(c) of this title, the Commission may bring a civil action in the United States District Court for the District of Columbia. At the request of the Commission, the Court—

(1) may order compliance;

(2) shall extend the period specified in section 40304(c)(2) of this title until there has been substantial compliance; and

(3) may grant other equitable relief that the court decides is appropriate.

(d) REPRESENTATION.—The Commission may represent itself in a proceeding under this section in—

(1) a district court of the United States, on notice to the Attorney General; and

(2) a court of appeals of the United States, with the approval of the Attorney General.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1547.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
41307(a)	46 App.:1710(h)(1).	Pub. L. 98–237, §11(c) (last sentence), (h)(1), Mar. 20, 1984, 98 Stat. 80, 81.
41307(b)(1) ..	46 App.:1705(g), (h) (1st sentence).	Pub. L. 98–237, §6(g)–(i), (k), Mar. 20, 1984, 98 Stat. 72, 73.
	46 App.:1710(c) (last sentence).	
41307(b)(2) ..	46 App.:1705(h) (2d sentence).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
41307(b)(3) ..	46 App.:1705(h) (3d, last sentences).	
41307(c)	46 App.:1705(i).	
41307(d)	46 App.:1705(k).	

§ 41308. Enforcement of subpoenas and orders

(a) CIVIL ACTION.—If a person does not comply with a subpoena or order of the Federal Maritime Commission, the Attorney General, at the request of the Commission, or an injured party, may seek enforcement in a district court of the United States having jurisdiction over the parties. If, after hearing, the court determines that the subpoena or order was regularly made and duly issued, the court shall enforce the subpoena or order.

(b) TIME LIMIT ON BRINGING ACTIONS.—An action under this section to enforce an order of the Commission must be brought within 3 years after the date the order was violated.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1548.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
41308(a)	46 App.:1713(c).	Pub. L. 98–237, §14(c), (e), Mar. 20, 1984, 98 Stat. 83, 84.
41308(b)	46 App.:1713(e).	

In subsection (a), the words ''subpoena or'' are added in the second sentence for consistency in the subsection. The words ''by an appropriate injunction or other process, mandatory or otherwise'' are omitted as unnecessary. The words ''regularly made and duly issued'' are substituted for ''properly made and duly issued'' for consistency in the subtitle.

§ 41309. Enforcement of reparation orders

(a) CIVIL ACTION.—If a person does not comply with an order of the Federal Maritime Commission for the payment of reparation, the person to whom the award was made may seek enforcement of the order in a district court of the United States having jurisdiction over the parties.

(b) PARTIES AND SERVICE OF PROCESS.—All parties in whose favor the Commission has made an award of reparation by a single order may be joined as plaintiffs, and all other parties in the order may be joined as defendants, in a single action in a judicial district in which any one plaintiff could maintain an action against any one defendant. Service of process against a defendant not found in that district may be made in a district in which any office of that defendant is located or in which any port of call on a regular route operated by that defendant is located. Judgment may be entered for any plaintiff against the defendant liable to that plaintiff.

(c) NATURE OF REVIEW.—In an action under this section, the findings and order of the Commission are prima facie evidence of the facts stated in the findings and order.

(d) COSTS AND ATTORNEY FEES.—The plaintiff is not liable for costs of the action or for costs of any subsequent stage of the proceedings unless they accrue on the plaintiff's appeal. A pre-

vailing plaintiff shall be allowed reasonable attorney fees to be assessed and collected as part of the costs of the action.

(e) TIME LIMIT ON BRINGING ACTIONS.—An action under this section to enforce an order of the Commission must be brought within 3 years after the date the order was violated.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1548.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
41309(a)	46 App.:1713(d)(1).	Pub. L. 98–237, § 14(d), (e), Mar. 20, 1984, 98 Stat. 83, 84.
41309(b)	46 App.:1713(d)(3).	
41309(c)	46 App.:1713(d)(2) (1st sentence 1st–23d words).	
41309(d)	46 App.:1713(d)(2) (1st sentence 24th–last words, last sentence).	
41309(e)	46 App.:1713(e).	

PART B—ACTIONS TO ADDRESS FOREIGN PRACTICES

CHAPTER 421—REGULATIONS AFFECTING SHIPPING IN FOREIGN TRADE

Sec.
42101. Regulations of the Commission.
42102. Regulations of other agencies.
42103. No preference to Government-owned vessels.
42104. Information, witnesses, and evidence.
42105. Disclosure to public.
42106. Other actions to remedy unfavorable conditions.
42107. Refusal of clearance and entry.
42108. Penalty for operating under suspended tariff or service contract.
42109. Consultation with other agencies.

§ 42101. Regulations of the Commission

(a) UNFAVORABLE CONDITIONS.—To further the objectives and policy set forth in section 50101 of this title, the Federal Maritime Commission shall prescribe regulations affecting shipping in foreign trade, not in conflict with law, to adjust or meet general or special conditions unfavorable to shipping in foreign trade, whether in a particular trade or on a particular route or in commerce generally, including intermodal movements, terminal operations, cargo solicitation, agency services, ocean transportation intermediary services and operations, and other activities and services integral to transportation systems, and which arise out of or result from laws or regulations of a foreign country or competitive methods, pricing practices, or other practices employed by owners, operators, agents, or masters of vessels of a foreign country.

(b) INITIATION OF REGULATION.—A regulation under subsection (a) may be initiated by the Commission on its own motion or on the petition of any person, including another component of the United States Government.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1548.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
42101(a)	46 App.:876(a)(2).	June 5, 1920, ch. 250, § 19(a)(2), (e), 41 Stat. 995; Ex. Ord. No. 6166, § 12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; Pub. L. 97–31, § 12(46), Aug. 6, 1981, 95 Stat. 157; Pub. L. 101–595, title I, § 103, Nov. 16, 1990, 104 Stat. 2979; Pub. L. 102–587, title VI, § 6205(b), Nov. 4, 1992, 106 Stat. 5094; Pub. L. 105–258, title III, § 301, Oct. 14, 1998, 112 Stat. 1915.
	46 App.:1710a(h) (related to 876(a)(2)).	Pub. L. 100–418, title X, § 10002(h) (related to § 19(b)(1)(b)), Aug. 23, 1988, 102 Stat. 1572; Pub. L. 105–258, title I, § 111(7), Oct. 14, 1998, 112 Stat. 1911.
42101(b)	46 App.:876(e).	

In subsection (a), the word ''shall'' is substituted for ''is authorized and directed'', and the words ''prescribe regulations'' are substituted for ''make rules and regulations'', for consistency in the revised title and to eliminate unnecessary words. The text of 46 App. U.S.C. 1710a(h), insofar as it relates to 46 App. U.S.C. 876(a)(2), is omitted as unnecessary because this chapter already provides for the same remedies as those authorized by the omitted provision.

In subsection (b), the words ''on the petition of any person, including another component of the United States Government'' are substituted for ''pursuant to a petition. Any person, including a common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean transportation intermediary, marine terminal operator, or any component of the Government of the United States, may file a petition for relief under subsection (a)(2) of this section.'' for consistency with section 42302(b) of the revised title and to eliminate unnecessary words.

§ 42102. Regulations of other agencies

(a) REQUEST TO AGENCY.—To further the objectives and policy set forth in section 50101 of this title, the Federal Maritime Commission shall request the head of a department, agency, or instrumentality of the United States Government to suspend, modify, or annul any existing regulations, or to make new regulations, affecting shipping in the foreign trade, except regulations relating to the Public Health Service, the Consular Service, or the inspection of vessels.

(b) PRIOR REVIEW AND APPROVAL.—A department, agency, or instrumentality of the Government may not prescribe a regulation affecting shipping in the foreign trade (except a regulation affecting the Public Health Service, the Consular Service, or the inspection of vessels) until the regulation has been submitted to the Commission for its approval and final action has been taken by the Commission or the President.

(c) SUBMISSION TO PRESIDENT.—If the head of a department, agency, or instrumentality of the Government refuses to comply with a request under subsection (a) or objects to a decision of the Commission under subsection (b), the Commission or the head of the department, agency, or instrumentality may submit the facts to the President. The President may establish, suspend, modify, or annul the regulation.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1549.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
42102(a)	46 App.:876(a)(3).	June 5, 1920, ch. 250, §19(a)(3), (b), (c), 41 Stat. 995; Ex. Ord. No. 6166, §12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, §204, title IX, §904, 49 Stat. 1987, 2016; Pub. L. 97–31, §12(46), Aug. 6, 1981, 95 Stat. 157; Pub. L. 105–258, title III, §301, Oct. 14, 1998, 112 Stat. 1915.
42102(b)	46 App.:876(b).	
42102(c)	46 App.:876(c).	

In this section, the words ''department, agency, or instrumentality'' are substituted for ''department, board, bureau, or agency'' for consistency in the revised title. The words ''the inspection of vessels'' are substituted for ''the steamboat inspection service'' because the Steamboat Inspection Service has been abolished and its functions are now carried out by the Coast Guard.

In subsection (a), the word ''shall'' is substituted for ''is authorized and directed'' for consistency in the revised title and to eliminate unnecessary words.

§ 42103. No preference to Government-owned vessels

A regulation may not give a vessel owned by the United States Government a preference over a vessel owned by citizens of the United States and documented under the laws of the United States.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1549.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
42103	46 App.:876(d).	June 5, 1920, ch. 250, §19(d), 41 Stat. 995; Ex. Ord. No. 6166, §12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, §204, title IX, §904, 49 Stat. 1987, 2016; Pub. L. 105–258, title III, §301, Oct. 14, 1998, 112 Stat. 1915.

§ 42104. Information, witnesses, and evidence

(a) ORDER TO SUPPLY INFORMATION.—In carrying out section 42101 of this title, the Federal Maritime Commission may order any person (including a common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean transportation intermediary, or marine terminal operator, or an officer, receiver, trustee, lessee, agent, or employee thereof) to file with the Commission a report, answers to questions, documentary material, or other information the Commission considers necessary or appropriate. The Commission may require the response to any such order to be made under oath. The response shall be provided in the form and within the time specified by the Commission.

(b) SUBPOENAS AND DISCOVERY.—In carrying out section 42101 of this title, the Commission may—

(1) subpoena witnesses and evidence; and

(2) authorize a party to use depositions, written interrogatories, and discovery procedures that, to the extent practicable, conform to the Federal Rules of Civil Procedure (28 App. U.S.C.).

(c) WITNESS FEES.—Unless otherwise prohibited by law, and subject to funds being appropriated, a witness in a proceeding under section 42101 of this title is entitled to the same fees and mileage as in the courts of the United States.

(d) PENALTIES.—For failure to supply information ordered to be produced or compelled by subpoena under this section, the Commission may—

(1) after notice and opportunity for a hearing, suspend tariffs and service contracts of a common carrier or the common carrier's right to use tariffs of conferences and service contracts of agreements of which it is a member; or

(2) assess a civil penalty of not more than $5,000 for each day that the information is not provided.

(e) ENFORCEMENT.—If a person does not comply with an order or subpoena of the Commission under this section, the Commission may seek enforcement in a district court of the United States having jurisdiction over the parties. If, after hearing, the court determines that the order or subpoena was regularly made and duly issued, the court shall enforce the order or subpoena.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1549.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
42104(a)	46 App.:876(f)(1)–(3).	June 5, 1920, ch. 250, §19(f), (g); as added Pub. L. 101–595, title I, §103(2), Nov. 16, 1990, 104 Stat. 2979; Pub. L. 102–587, title VI, §6205(b)(2), Nov. 4, 1992, 106 Stat. 5094; Pub. L. 105–258, title III, §301, Oct. 14, 1998, 112 Stat. 1915.
42104(b)	46 App.:876(g)(1), (2).	
42104(c)	46 App.:876(g)(3).	
42104(d)	46 App.:876(f)(4), (g)(4).	
42104(e)	46 App.:876(g)(5).	

In subsections (a) and (b), the words ''In carrying out'' are substituted for ''In furtherance of the purposes of'' and ''In proceedings under'' for clarity and consistency.

In subsection (b)(1), the words ''subpoena witnesses and evidence'' are substituted for ''by subpoena compel the attendance of witnesses and the production of books, papers, documents, and other evidence'' for consistency in the revised title and to eliminate unnecessary words.

In subsection (b)(2), the words ''conform to the Federal Rules of Civil Procedure (28 App. U.S.C.)'' are substituted for ''are in conformity with the rules applicable in civil proceedings in the district courts of the United States'' for clarity.

In subsection (d)(2), the penalties from 46 App. U.S.C. 876(f)(4) and (g)(4)(B) are combined because they are redundant.

In subsection (e), the words ''by an appropriate injunction or other process, mandatory or otherwise'' are omitted as unnecessary.

§ 42105. Disclosure to public

Notwithstanding any other provision of law, the Federal Maritime Commission may refuse to disclose to the public a response or other information submitted to it under this chapter.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1550.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
42105	46 App.:876(h).	June 5, 1920, ch. 250, § 19(h); as added Pub. L. 101–595, title I, § 103(2), Nov. 16, 1990, 104 Stat. 2979; Pub. L. 105–258, title III, § 301, Oct. 14, 1998, 112 Stat. 1915.

§ 42106. Other actions to remedy unfavorable conditions

If the Federal Maritime Commission finds that conditions unfavorable to shipping in foreign trade as described in section 42101 of this title exist, the Commission may—

(1) limit voyages to and from United States ports or the amount or type of cargo carried;

(2) suspend, in whole or in part, tariffs and service contracts for carriage to or from United States ports, including a common carrier's right to use tariffs of conferences and service contracts of agreements in United States trades of which it is a member for any period the Commission specifies;

(3) suspend, in whole or in part, an ocean common carrier's right to operate under any agreement filed with the Commission, including any agreement authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenue with other ocean common carriers;

(4) impose a fee not to exceed $1,000,000 per voyage; or

(5) take any other action the Commission finds necessary and appropriate to adjust or meet any condition unfavorable to shipping in the foreign trade of the United States.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1550.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
42106	46 App.:876(i).	June 5, 1920, ch. 250, § 19(i); as added Pub. L. 101–595, title I, § 103(2), Nov. 16, 1990, 104 Stat. 2979; Pub. L. 105–258, title III, § 301, Oct. 14, 1998, 112 Stat. 1915.

§ 42107. Refusal of clearance and entry

At the request of the Federal Maritime Commission—

(1) the Secretary of Homeland Security shall—

(A) refuse the clearance required by section 60105 of this title to a vessel of a country that is named in a regulation prescribed by the Commission under section 42101 of this title; and

(B) collect any fees imposed by the Commission under section 42106(4) of this title; and

(2) the Secretary of the department in which the Coast Guard is operating shall—

(A) deny entry, for purposes of oceanborne trade, of a vessel of a country that is named in a regulation prescribed by the Commission under section 42101 of this title, to a port or place in the United States or the navigable waters of the United States; or

(B) detain the vessel at the port or place in the United States from which it is about to depart for another port or place in the United States.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1551.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
42107	46 App.:876(j).	June 5, 1920, ch. 250, § 19(j); as added Pub. L. 101–595, title I, § 103(2), Nov. 16, 1990, 104 Stat. 2979; Pub. L. 105–258, title III, § 301, Oct. 14, 1998, 112 Stat. 1915.

In paragraph (1), the words ''Secretary of Homeland Security'' are substituted for ''collector of customs at the port or place of destination in the United States'' because the functions of the Customs Service and of the Secretary of the Treasury relating thereto were transferred to the Secretary of Homeland Security by section 403(1) of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2178). The functions of the collector of customs previously were vested in the Secretary of the Treasury by Reorganization Plan No. 26 of 1950, and the office of collector of customs previously was abolished by Reorganization Plan No. 1 of 1965.

§ 42108. Penalty for operating under suspended tariff or service contract

A common carrier that accepts or handles cargo for carriage under a tariff or service contract that has been suspended under section 42104(d)(1) or 42106(2) of this title, or after its right to use another tariff or service contract has been suspended under those provisions, is liable to the United States Government for a civil penalty of not more than $50,000 for each day that it is found to be operating under a suspended tariff or service contract.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1551.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
42108	46 App.:876(k).	June 5, 1920, ch. 250, § 19(k); as added Pub. L. 101–595, title I, § 103(2), Nov. 16, 1990, 104 Stat. 2979; Pub. L. 105–258, title III, § 301, Oct. 14, 1998, 112 Stat. 1915.

§ 42109. Consultation with other agencies

The Federal Maritime Commission may consult with, seek the cooperation of, or make recommendations to other appropriate agencies of the United States Government prior to taking any action under this chapter.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1551.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
42109	46 App.:876(*l*).	June 5, 1920, ch. 250, § 19(*l*); as added Pub. L. 101–595, title I, § 103(2), Nov. 16, 1990, 104 Stat. 2979; Pub. L. 105–258, title III, § 301, Oct. 14, 1998, 112 Stat. 1915.

CHAPTER 423—FOREIGN SHIPPING PRACTICES

Sec.
42301. Definitions.

Sec.
42302. Investigations.
42303. Information requests.
42304. Action against foreign carriers.
42305. Refusal of clearance and entry.
42306. Submission of determinations to President.
42307. Review of regulations and orders.

§ 42301. Definitions

(a) DEFINED IN PART A.—In this chapter, the terms ''common carrier'', ''marine terminal operator'', ''ocean common carrier'', ''ocean transportation intermediary'', ''shipper'', and ''shippers' association'' have the meaning given those terms in section 40102 of this title.

(b) OTHER DEFINITIONS.—In this chapter:

(1) FOREIGN CARRIER.—The term ''foreign carrier'' means an ocean common carrier a majority of whose vessels are documented under the laws of a foreign country.

(2) MARITIME SERVICES.—The term ''maritime services'' means port-to-port transportation of cargo by vessels operated by an ocean common carrier.

(3) MARITIME-RELATED SERVICES.—The term ''maritime-related services'' means intermodal operations, terminal operations, cargo solicitation, agency services, ocean transportation intermediary services and operations, and all other activities and services integral to total transportation systems of ocean common carriers and their foreign domiciled affiliates for themselves and others.

(4) UNITED STATES CARRIER.—The term ''United States carrier'' means an ocean common carrier operating vessels documented under the laws of the United States.

(5) UNITED STATES OCEANBORNE TRADE.—The term ''United States oceanborne trade'' means the carriage of cargo between the United States and a foreign country, whether directly or indirectly, by an ocean common carrier.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1551.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
42301	46 App.:1710a(a).	Pub. L. 100–418, title X, § 10002(a), Aug. 23, 1988, 102 Stat. 1570; Pub. L. 105–258, title I, § 111(1)–(3), Oct. 14, 1998, 112 Stat. 1911.

§ 42302. Investigations

(a) IN GENERAL.—The Federal Maritime Commission shall investigate whether any laws, rules, regulations, policies, or practices of a foreign government, or any practices of a foreign carrier or other person providing maritime or maritime-related services in a foreign country, result in the existence of conditions that—

(1) adversely affect the operations of United States carriers in United States oceanborne trade; and

(2) do not exist for foreign carriers of that country in the United States under the laws of the United States or as a result of acts of United States carriers or other persons providing maritime or maritime-related services in the United States.

(b) INITIATION OF INVESTIGATION.—An investigation under subsection (a) may be initiated by the Commission on its own motion or on the petition of any person, including another component of the United States Government.

(c) TIME FOR DECISION.—The Commission shall complete an investigation under this section and render a decision within 120 days after it is initiated. However, the Commission may extend this 120-day period for an additional 90 days if the Commission is unable to obtain sufficient information to determine whether a condition specified in subsection (a) exists. A notice providing an extension shall state clearly the reasons for the extension.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1552.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
42302(a)	46 App.:1710a(b).	Pub. L. 100–418, title X, § 10002(b), (c), Aug. 23, 1988, 102 Stat. 1570; Pub. L. 105–258, title I, § 111(4), Oct. 14, 1998, 112 Stat. 1911.
42302(b)	46 App.:1710a(c)(1).	
42302(c)	46 App.:1710a(c)(2).	

In subsection (b), the words ''including another component of the United States Government'' are substituted for ''including any common carrier, shipper, shippers' association, ocean transportation intermediary, or marine terminal operator, or any branch, department, agency, or other component of the Government of the United States'' for consistency with section 42101(b) of the revised title and to eliminate unnecessary words.

§ 42303. Information requests

(a) IN GENERAL.—To further the purposes of section 42302(a) of this title, the Federal Maritime Commission may order any person (including a common carrier, shipper, shippers' association, ocean transportation intermediary, or marine terminal operator, or an officer, receiver, trustee, lessee, agent or employee thereof) to file with the Commission any periodic or special report, answers to questions, documentary material, or other information the Commission considers necessary or appropriate. The Commission may require the response to any such order to be made under oath. The response shall be provided in the form and within the time specified by the Commission.

(b) SUBPOENAS.—In an investigation under section 42302 of this title, the Commission may subpoena witnesses and evidence.

(c) NONDISCLOSURE.—Notwithstanding any other provision of law, the Commission may determine that any information submitted to it in response to a request under this section, or otherwise, shall not be disclosed to the public.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1552.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
42303	46 App.:1710a(d)	Pub. L. 100–418, title X, § 10002(d), Aug. 23, 1988, 102 Stat. 1571; Pub. L. 105–258, title I, § 111(4), Oct. 14, 1998, 112 Stat. 1911.

In subsection (b), the words ''subpoena witnesses and evidence'' are substituted for ''issue subpoenas to compel the attendance and testimony of witnesses and the

production of records or other evidence'' for consistency in the revised title and to eliminate unnecessary words.

In subsection (c), the words ''in its discretion'' are omitted as unnecessary.

§ 42304. Action against foreign carriers

(a) IN GENERAL.—Subject to section 42306 of this title, whenever the Federal Maritime Commission, after notice and opportunity for comment or hearing, determines that the conditions specified in section 42302(a) of this title exist, the Commission shall take such action to offset those conditions as it considers necessary and appropriate against any foreign carrier that is a contributing cause, or whose government is a contributing cause, to those conditions. The action may include—

(1) limitations on voyages to and from United States ports or on the amount or type of cargo carried;

(2) suspension, in whole or in part, of any or all tariffs and service contracts, including an ocean common carrier's right to use any or all tariffs and service contracts of conferences in United States trades of which it is a member for any period the Commission specifies;

(3) suspension, in whole or in part, of an ocean common carrier's right to operate under any agreement filed with the Commission, including any agreement authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenue with other ocean common carriers; and

(4) a fee not to exceed $1,000,000 per voyage.

(b) CONSULTATION.—The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate agencies of the United States Government prior to taking any action under subsection (a).

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1553.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
42304(a)	46 App.:1710a(e)(1).	Pub. L. 100–418, title X, §10002(e)(1), (2), Aug. 23, 1988, 102 Stat. 1571; Pub. L. 105–258, title I, §111(5), (6), Oct. 14, 1998, 112 Stat. 1911.
42304(b)	46 App.:1710a(e)(2).	

In subsection (a), the words ''Subject to section 42306 of this title'' are added to alert the reader to the application of that section.

§ 42305. Refusal of clearance and entry

Subject to section 42306 of this title, whenever the Federal Maritime Commission determines that the conditions specified in section 42302(a) of this title exist, then at the request of the Commission—

(1) the Secretary of Homeland Security shall refuse the clearance required by section 60105 of this title to a vessel of a foreign carrier that is identified by the Commission under section 42304 of this title; and

(2) the Secretary of the department in which the Coast Guard is operating shall—

(A) deny entry, for purposes of oceanborne trade, of a vessel of a foreign carrier that is identified by the Commission under section 42304 of this title, to a port or place in the United States or the navigable waters of the United States; or

(B) detain the vessel at the port or place in the United States from which it is about to depart for another port or place in the United States.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1553.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
42305	46 App.:1710a(f).	Pub. L. 100–418, title X, §10002(f), Aug. 23, 1988, 102 Stat. 1572.

Before paragraph (1), the words ''Subject to section 42306 of this title'' are added to alert the reader to the application of that section. The word ''determines'' is substituted for ''finds'' for consistency with section 42306 of the revised title.

In paragraph (1), the words ''Secretary of Homeland Security'' are substituted for ''collector of customs at any port or place of destination in the United States'' because the functions of the Customs Service and of the Secretary of the Treasury relating thereto were transferred to the Secretary of Homeland Security by section 403(1) of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2178). The functions of the collector of customs previously were vested in the Secretary of the Treasury by Reorganization Plan No. 26 of 1950, and the office of collector of customs previously was abolished by Reorganization Plan No. 1 of 1965.

§ 42306. Submission of determinations to President

Before a determination under section 42304 of this title becomes effective or a request is made under section 42305 of this title, the determination shall be submitted immediately to the President. The President, within 10 days after receiving it, may disapprove it in writing, setting forth the reasons for the disapproval, if the President finds that disapproval is required for reasons of national defense or foreign policy.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1553.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
42306	46 App.:1710a(e)(3).	Pub. L. 100–418, title X, §10002(e)(3), Aug. 23, 1988, 102 Stat. 1572.

§ 42307. Review of regulations and orders

A regulation or final order of the Federal Maritime Commission under this chapter is reviewable exclusively in the same forum and in the same manner as provided in section 2342(3)(B) of title 28.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1554.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
42307	46 App.:1710a(i).	Pub. L. 100–418, title X, §10002(i), Aug. 23, 1988, 102 Stat. 1572.

PART C—MISCELLANEOUS

CHAPTER 441—EVIDENCE OF FINANCIAL RESPONSIBILITY FOR PASSENGER TRANSPORTATION

Sec.
44101. Application.
44102. Financial responsibility to indemnify passengers for nonperformance of transportation.
44103. Financial responsibility to pay liability for death or injury.
44104. Civil penalty.
44105. Refusal of clearance.
44106. Conduct of proceedings.

§ 44101. Application

This chapter applies to a vessel that—

(1) has berth or stateroom accommodations for at least 50 passengers; and

(2) boards passengers at a port in the United States.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1554.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
44101	46 App.:817d(a) (6th–28th words).	Pub. L. 89–777, §§ 2(a) (6th–28th words), 3(a) (15th–36th words), Nov. 6, 1966, 80 Stat. 1356, 1357.
	46 App.:817e(a) (15th–36th words).	

§ 44102. Financial responsibility to indemnify passengers for nonperformance of transportation

(a) FILING REQUIREMENT.—A person in the United States may not arrange, offer, advertise, or provide transportation on a vessel to which this chapter applies unless the person has filed with the Federal Maritime Commission evidence of financial responsibility to indemnify passengers for nonperformance of the transportation.

(b) SATISFACTORY EVIDENCE.—To satisfy subsection (a), a person must file—

(1) information the Commission considers necessary; or

(2) a copy of a bond or other security, in such form as the Commission by regulation may require.

(c) AUTHORIZED ISSUER OF BOND.—If a bond is filed, it must be issued by a bonding company authorized to do business in the United States.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1554.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
44102	46 App.:817e(a) (1st–14th, 37th–last words), (b).	Pub. L. 89–777, § 3(a) (1st–14th, 37th–last words), (b), Nov. 6, 1966, 80 Stat. 1357; Pub. L. 103–206, title III, § 320, Dec. 20, 1993, 107 Stat. 2427.

In subsection (c), the words ''or any State thereof, or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States'' are omitted as unnecessary because of the definition of ''United States'' in chapter 1 of the revised title.

§ 44103. Financial responsibility to pay liability for death or injury

(a) GENERAL REQUIREMENT.—The owner or charterer of a vessel to which this chapter applies shall establish, under regulations prescribed by the Federal Maritime Commission, financial responsibility to meet liability for death or injury to passengers or other individuals on a voyage to or from a port in the United States.

(b) AMOUNTS.—

(1) IN GENERAL.—The amount of financial responsibility required under subsection (a) shall be based on the number of passenger accommodations as follows:

(A) $20,000 for each of the first 500 passenger accommodations.

(B) $15,000 for each additional passenger accommodation between 501 and 1,000.

(C) $10,000 for each additional passenger accommodation between 1,001 and 1,500.

(D) $5,000 for each additional passenger accommodation over 1,500.

(2) MULTIPLE VESSELS.—If the owner or charterer is operating more than one vessel subject to this chapter, the amount of financial responsibility shall be based on the number of passenger accommodations on the vessel with the largest number of passenger accommodations.

(c) AVAILABILITY TO PAY JUDGMENT.—The amount determined under subsection (b) shall be available to pay a judgment for damages (whether less than or more than $20,000) for death or injury to a passenger or other individual on a voyage to or from a port in the United States.

(d) MEANS OF ESTABLISHING.—Financial responsibility under this section may be established by one or more of the following if acceptable to the Commission:

(1) Insurance.

(2) Surety bond issued by a bonding company authorized to do business in the United States.

(3) Qualification as a self-insurer.

(4) Other evidence of financial responsibility.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1554.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
44103	46 App.:817d(a) (1st–5th, 29th–last words), (b).	Pub. L. 89–777, § 2(a) (1st–5th, 29th–last words), (b), Nov. 6, 1966, 80 Stat. 1356.

In subsection (d)(2), the words ''issued by a bonding company authorized to do business in the United States'' are substituted for 46 App. U.S.C. 817d(b) to eliminate unnecessary words. The words ''or any State thereof or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, or any territory or possession of the United States'' are omitted as unnecessary because of the definition of ''United States'' in chapter 1 of the revised title.

§ 44104. Civil penalty

A person that violates section 44102 or 44103 of this title is liable to the United States Government for a civil penalty of not more than $5,000, plus $200 for each passage sold, to be assessed by the Federal Maritime Commission. The Commission may remit or mitigate the penalty on terms the Commission considers proper.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1555.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
44104	46 App.:817d(c). 46 App.:817e(c).	Pub. L. 89–777, §§ 2(c), 3(c), Nov. 6, 1966, 80 Stat. 1357.

§ 44105. Refusal of clearance

The Secretary of Homeland Security shall refuse the clearance required by section 60105 of this title, at the port or place of departure from the United States, of a vessel that is subject to this chapter and does not have evidence issued by the Federal Maritime Commission of compliance with sections 44102 and 44103 of this title.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1555.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
44105	46 App.:817d(e). 46 App.:817e(e).	Pub. L. 89–777, §§ 2(e), 3(e), Nov. 6, 1966, 80 Stat. 1357, 1358; Pub. L. 103–182, title VI, § 689(c), Dec. 8, 1993, 107 Stat. 2222.

The words ''Secretary of Homeland Security'' are substituted for ''Customs Service'' because the functions of the Customs Service and of the Secretary of the Treasury relating thereto were transferred to the Secretary of Homeland Security by section 403(1) of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2178).

§ 44106. Conduct of proceedings

Part A of this subtitle applies to proceedings conducted by the Federal Maritime Commission under this chapter.

(Pub. L. 109–304, § 7, Oct. 6, 2006, 120 Stat. 1555.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
44106	46 App.:817d(d). 46 App.:817e(d).	Pub. L. 89–777, §§ 2(d), 3(d), Nov. 6, 1966, 80 Stat. 1357, 1358; Pub. L. 104–324, title VII, § 746(c), Oct. 19, 1996, 110 Stat. 3943.

The authority to prescribe regulations is omitted as unnecessary because it is already provided by section 305 of the revised title.

Subtitle V—Merchant Marine

PART A—GENERAL

Chapter		Sec.
501.	**Policy, Studies, and Reports**	**50101**
503.	**Administrative**	**50301**
505.	**Other General Provisions**	**50501**

PART B—MERCHANT MARINE SERVICE

511.	**General**	**51101**
513.	**United States Merchant Marine Academy**	**51301**
515.	**State Maritime Academy Support Program**	**51501**
517.	**Other Support for Merchant Marine Training**	**51701**
519.	**Merchant Marine Awards**	**51901**
521.	**Miscellaneous**	**52101**

PART C—FINANCIAL ASSISTANCE PROGRAMS

531.	**Maritime Security Fleet**	**53101**
533.	**Construction Reserve Funds**	**53301**
535.	**Capital Construction Funds**	**53501**
537.	**Loans and Guarantees**	**53701**
539.	**War Risk Insurance**	**53901**

PART D—PROMOTIONAL PROGRAMS

551.	**Coastwise Trade**	**55101**
553.	**Passenger and Cargo Preferences** ..	**55301**
555.	**Miscellaneous**	**55501**

PART E—CONTROL OF MERCHANT MARINE CAPABILITIES

561.	**Restrictions on Transfers**	**56101**
563.	**Emergency Acquisition of Vessels** ..	**56301**
565.	**Essential Vessels Affected by Neutrality Act**	**56501**

PART F—GOVERNMENT-OWNED MERCHANT VESSELS

571.	**General Authority**	**57101**
573.	**Vessel Trade-In Program**	**57301**
575.	**Construction, Charter, and Sale of Vessels**	**57501**

PART G—RESTRICTIONS AND PENALTIES

581.	**Restrictions and Penalties**	**58101**

AMENDMENTS

2006—Pub. L. 109–304, § 8(a), Oct. 6, 2006, 120 Stat. 1555, amended subtitle analysis generally. Prior to amendment, analysis consisted of item for chapter 531 ''Maritime Security Fleet''.

PART A—GENERAL

CHAPTER 501—POLICY, STUDIES, AND REPORTS

Sec.
50101. Objectives and policy.
50102. Survey of merchant marine.
50103. Determinations of essential services.
50104. Studies of general maritime problems.
50105. Studies and cooperation relating to the construction of vessels.
50106. Studies on the operation of vessels.
50107. Studies on marine insurance.
50108. Studies on cargo carriage and cargo containers.
50109. Miscellaneous studies.
50110. Securing preference to vessels of the United States.
50111. Reports to Congress.
50112. National Maritime Enhancement Institutes.
50113. Use and performance reports by operators of vessels.

§ 50101. Objectives and policy

(a) OBJECTIVES.—It is necessary for the national defense and the development of the domestic and foreign commerce of the United States that the United States have a merchant marine—

(1) sufficient to carry the waterborne domestic commerce and a substantial part of the waterborne export and import foreign commerce of the United States and to provide shipping service essential for maintaining the flow of the waterborne domestic and foreign commerce at all times;

(2) capable of serving as a naval and military auxiliary in time of war or national emergency;

(3) owned and operated as vessels of the United States by citizens of the United States;

(4) composed of the best-equipped, safest, and most suitable types of vessels and manned with a trained and efficient citizen personnel; and

(5) supplemented by efficient facilities for building and repairing vessels.

(b) POLICY.—It is the policy of the United States to encourage and aid the development and maintenance of a merchant marine satisfying the objectives described in subsection (a).

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1556.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
50101	46 App.:861.	June 5, 1920, ch. 250, § 1, 41 Stat. 988; Exec. Order No. 6166, June 10, 1933, § 12; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; Pub. L. 97–31, § 12(33), Aug. 6, 1981, 95 Stat. 156.
	46 App.:891.	May 22, 1928, ch. 675, § 1, 45 Stat. 689.
	46 App.:1101.	June 29, 1936, ch. 858, title I, § 101, 49 Stat. 1985; Pub. L. 91–469, § 1, Oct. 21, 1970, 84 Stat. 1018.

This section consolidates the source provisions to eliminate repetition.

§ 50102. Survey of merchant marine

(a) IN GENERAL.—The Secretary of Transportation shall survey the merchant marine of the United States to determine whether replacements and additions are required to carry out the objectives and policy of section 50101 of this title. The Secretary shall study, perfect, and adopt a long-range program for replacements and additions that will result, as soon as practicable, in—

(1) an adequate and well-balanced merchant fleet, including vessels of all types, that will provide shipping service essential for maintaining the flow of foreign commerce by vessels designed to be readily and quickly convertible into transport and supply vessels in a time of national emergency;

(2) ownership and operation of the fleet by citizens of the United States insofar as practicable;

(3) vessels designed to afford the best and most complete protection for passengers and crew against fire and all marine perils; and

(4) an efficient capacity for building and repairing vessels in the United States with an adequate number of skilled personnel to provide an adequate mobilization base.

(b) COOPERATION WITH SECRETARY OF NAVY.—In carrying out subsection (a)(1), the Secretary of Transportation shall cooperate closely with the Secretary of the Navy as to national defense requirements.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1557.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
50102	46 App.:1120.	June 29, 1936, ch. 858, title II, § 210, 49 Stat. 1989; Pub. L. 91–469, §§ 3, 35(a), Oct. 21, 1970, 84 Stat. 1018, 1035; Pub.L. 97–31, § 12(67) (related to § 210), Aug. 6, 1981, 95 Stat. 159.

§ 50103. Determinations of essential services

(a) ESSENTIAL SERVICES, ROUTES, AND LINES.—

(1) IN GENERAL.—The Secretary of Transportation shall investigate, determine, and keep current records of the ocean services, routes, and lines from ports in the United States, or in the territories and possessions of the United States, to foreign markets, which the Secretary determines to be essential for the promotion, development, expansion, and maintenance of the foreign commerce of the United States. In making such a determination, the Secretary shall consider and give due weight to—

(A) the cost of maintaining each line;

(B) the probability that a line cannot be maintained except at a heavy loss disproportionate to the benefit to foreign trade;

(C) the number of voyages and types of vessels that should be employed in a line;

(D) the intangible benefit of maintaining a line to the foreign commerce of the United States, the national defense, and other national requirements; and

(E) any other facts and conditions a prudent business person would consider when dealing with the person's own business.

(2) SAINT LAWRENCE SEAWAY.—For purposes of paragraph (1), the Secretary shall establish services, routes, and lines that reflect the seasonal closing of the Saint Lawrence Seaway and provide for alternate routing of vessels through a different range of ports during that closing to maintain continuity of service on a year-round basis.

(b) BULK CARGO CARRYING SERVICES.—The Secretary shall investigate, determine, and keep current records of the bulk cargo carrying services that should be provided by vessels of the United States (whether or not operating on particular services, routes, or lines) for the promotion, development, expansion, and maintenance of the foreign commerce of the United States and the national defense or other national requirements.

(c) TYPES OF VESSELS.—The Secretary shall investigate, determine, and keep current records of the type, size, speed, method of propulsion, and other requirements of the vessels, including express-liner or super-liner vessels, that should be employed in—

(1) the services, routes, or lines described in subsection (a), and the frequency and regularity of the voyages of the vessels, with a view to furnishing adequate, regular, certain, and permanent service; and

(2) the bulk cargo carrying services described in subsection (b).

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1557.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
50103(a)(1) ..	46 App.:1121(a).	June 29, 1936, ch. 858, title II, §211(a)–(c), 49 Stat. 1989; Pub. L. 91–469, §§4, 35(a), (b), Oct. 21, 1970, 84 Stat. 1018, 1035; Pub. L. 97–31, §12(67), Aug. 6, 1981, 95 Stat. 159.
50103(a)(2) ..	46 App.:1213(a) (3d sentence related to 1121(a)).	June 29, 1936, ch. 858, title VIII, §809(a) (3d sentence related to 211(a)), as added Pub. L. 97–35, title XVI, §1604, Aug. 13, 1981, 95 Stat. 751.
50103(b)	46 App.:1121(b).	
50103(c)	46 App.:1121(c).	

§ 50104. Studies of general maritime problems

The Secretary of Transportation shall study all maritime problems arising in carrying out the policy in section 50101 of this title.

(Pub. L. 109–304, §8(b), Oct. 6, 2006, 120 Stat. 1558.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
50104	46 App.:1122(a).	June 29, 1936, ch. 858, title II, §212(a), 49 Stat. 1990; Aug. 6, 1981, Pub. L. 97–31, §12(69), 95 Stat. 159.

§ 50105. Studies and cooperation relating to the construction of vessels

(a) RELATIVE COSTS AND NEW DESIGNS.—The Secretary of Transportation shall investigate, determine, and keep current records of—

(1) the relative cost of construction of comparable vessels in the United States and in foreign countries; and

(2) new designs, new methods of construction, and new types of equipment for vessels.

(b) RULES, CLASSIFICATIONS, AND RATINGS.—The Secretary shall examine the rules under which vessels are constructed abroad and in the United States and the methods of classifying and rating the vessels.

(c) COLLABORATION WITH OWNERS AND BUILDERS.—The Secretary shall collaborate with vessel owners and shipbuilders in developing plans for the economical construction of vessels and their propelling machinery, of most modern economical types, giving thorough consideration to all well-recognized means of propulsion and taking into account the benefits from standardized production where practicable and desirable.

(d) EXPRESS-LINER AND SUPER-LINER VESSELS.—The Secretary shall study and cooperate with vessel owners in devising means by which there may be constructed, by or with the aid of the United States Government, express-liner or super-liner vessels comparable to those of other nations, especially with a view to their use in a national emergency, and the use of transoceanic aircraft service in connection with or in lieu of those vessels.

(Pub. L. 109–304, §8(b), Oct. 6, 2006, 120 Stat. 1558.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
50105(a)(1) ..	46 App.:811 (1st sentence words before 1st comma).	Sept. 7, 1916, ch. 451, §12 (1st sentence words before 1st comma, 2d sentence words before 2d comma), 39 Stat. 732; Ex. Ord. No. 6166, §12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, §204, title IX, §904, 49 Stat. 1987, 2016; Pub. L. 97–31, §12(27), Aug. 6, 1981, 95 Stat. 155.
	46 App.:1121(d).	June 29, 1936, ch. 858, title II, §211(d), (j) (words before 1st semicolon), 49 Stat. 1989; Pub. L. 91–469, §§4(2), 35(a), Oct. 21, 1970, 84 Stat. 1018, 1035; Pub. L. 97–31, §12(67), Aug. 6, 1981, 95 Stat. 159.
50105(a)(2) ..	46 App.:1121(j) (words before 1st semicolon).	
50105(b)	46 App.:811 (2d sentence words before 2d comma).	
50105(c)	46 App.:1122(c).	June 29, 1936, ch. 858, title II, §212(b)(2), (c), 49 Stat. 1990; Pub. L. 97–31, §12(69), Aug. 6, 1981, 95 Stat. 159.
50105(d)	46 App.:1122(b)(2).	

§ 50106. Studies on the operation of vessels

(a) RELATIVE COSTS.—The Secretary of Transportation shall investigate, determine, and keep current records of the relative cost of marine insurance, maintenance, repairs, wages and subsistence of officers and crews, and all other items of expense, in the operation of comparable vessels under the laws and regulations of the United States and those of the foreign countries whose vessels are substantial competitors of American vessels.

(b) SHIPYARDS.—The Secretary shall investigate, determine, and keep current records of the number, location, and efficiency of shipyards in the United States.

(c) NAVIGATION LAWS.—The Secretary shall examine the navigation laws and regulations of the United States and make such recommendations to Congress as the Secretary considers proper for the amendment, improvement, and revision of those laws and for the development of the merchant marine of the United States.

(Pub. L. 109–304, §8(b), Oct. 6, 2006, 120 Stat. 1559.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
50106(a)	46 App.:811 (1st sentence words after 1st comma).	Sept. 7, 1916, ch. 451, §12 (1st sentence words after 1st comma, 3d sentence), 39 Stat. 732; Ex. Ord. No. 6166, §12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, §204, title IX, §904, 49 Stat. 1987, 2016; Pub. L. 97–31, §12(27), Aug. 6, 1981, 95 Stat. 155.
	46 App.:1121(e).	June 29, 1936, ch. 858, title II, §211(e), (g), 49 Stat. 1989; Pub. L. 91–469, §§4(2), 5, 35(a), Oct. 21, 1970, 84 Stat. 1018, 1035; Pub. L. 97–31, §12(67), Aug. 6, 1981, 95 Stat. 159.
50106(b)	46 App.:1121(g).	
50106(c)	46 App.:811 (3d sentence).	

In subsection (b), the words ''existing on June 29, 1936, or thereafter built'' are omitted as obsolete.

§ 50107. Studies on marine insurance

The Secretary of Transportation shall—

(1) examine into the subject of marine insurance, the number of companies in the United States, domestic and foreign, engaging in marine insurance, the extent of the insurance on hulls and cargoes placed or written in the United States, and the extent of reinsurance of American maritime risks in foreign companies; and

(2) ascertain what steps may be necessary to develop an ample marine insurance system as an aid in the development of the merchant marine of the United States.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1559.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
50107	46 App.:811 (2d sentence words after 2d comma).	Sept. 7, 1916, ch. 451, § 12 (2d sentence words after 2d comma), 39 Stat. 732; Ex. Ord. No. 6166, § 12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; Pub. L. 97–31, § 12(27), Aug. 6, 1981, 95 Stat. 155.

§ 50108. Studies on cargo carriage and cargo containers

(a) STUDIES.—The Secretary of Transportation shall study—

(1) the methods of encouraging the development and implementation of new concepts for the carriage of cargo in the domestic and foreign commerce of the United States; and

(2) the economic and technological aspects of the use of cargo containers as a method of carrying out the policy in section 50101 of this title.

(b) RESTRICTION.—In carrying out subsection (a) and the policy in section 50101 of this title, the United States Government may not give preference as between carriers based on the length, height, or width of cargo containers or the length, height, or width of cargo container cells. This restriction applies to all existing container vessels and any container vessel to be constructed or rebuilt.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1559.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
50108	46 App.:1122(f).	June 29, 1936, ch. 858, title II, § 212(f); as added Pub. L. 90–268, § 1, Mar. 16, 1968, 82 Stat. 49; Pub. L. 97–31, § 12(69), Aug. 6, 1981, 95 Stat. 159; Pub. L. 98–237, § 20(c), Mar. 20, 1984, 98 Stat. 90.

§ 50109. Miscellaneous studies

(a) FOREIGN SUBSIDIES.—The Secretary of Transportation shall investigate, determine, and keep current records of the extent and character of the governmental aid and subsidies granted by foreign governments to their merchant marine.

(b) LAWS APPLICABLE TO AIRCRAFT.—The Secretary shall investigate, determine, and keep current records of the provisions of law relating to shipping that should be made applicable to aircraft engaged in foreign commerce to further the policy in section 50101 of this title, and any appropriate legislation in this regard.

(c) AID FOR COTTON, COAL, LUMBER, AND CEMENT.—The Secretary shall investigate, determine, and keep current records of the advisability of enactment of suitable legislation authorizing the Secretary, in an economic or commercial emergency, to aid farmers and producers of cotton, coal, lumber, and cement in any section of the United States in the transportation and landing of their products in any foreign port, which products can be carried in dry-cargo vessels by reducing rates, by supplying additional tonnage to any American operator, or by operation of vessels directly by the Secretary, until the Secretary considers the special rate reduction and operation unnecessary for the benefit of those farmers and producers.

(d) INTERCOASTAL AND INLAND WATER TRANSPORTATION.—The Secretary shall investigate, determine, and keep current records of intercoastal and inland water transportation, including their relation to transportation by land and air.

(e) OBSOLETE TONNAGE AND TRAMP SERVICE.—The Secretary shall make studies and reports to Congress on—

(1) the scrapping or removal from service of old or obsolete merchant tonnage owned by the United States Government or in use in the merchant marine; and

(2) tramp shipping service and the advisability of citizens of the United States participating in that service with vessels under United States registry.

(f) MORTGAGE LOANS.—The Secretary shall investigate the legal status of mortgage loans on vessel property, with a view to the means of improving the security of those loans and of encouraging investment in American shipping.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1559.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
50109(a)	46 App.:1121(f).	June 29, 1936, ch. 858, title II, § 211(f), (h), (i), (j) (words after 2d semicolon), 49 Stat. 1989; Pub. L. 91–469, §§ 4(2), 35(a), Oct. 21, 1970, 84 Stat. 1018, 1035; Pub. L. 97–31, § 12(67), Aug. 6, 1981, 95 Stat. 159.
50109(b)	46 App.:1121(h).	
50109(c)	46 App.:1121(i).	
50109(d)	46 App.:1121(j) (words after 2d semicolon).	
50109(e)	46 App.:1123.	June 29, 1936, ch. 858, title II, § 213, 49 Stat. 1991; Pub. L. 87–877, § 2(c), (d), Oct. 24, 1962, 76 Stat. 1201; Pub. L. 94–273, § 27, Apr. 21, 1976, 90 Stat. 380; Pub. L. 97–31, § 12(71), Aug. 6, 1981, 95 Stat. 159; Pub. L. 105–85, div. C, title XXXVI, § 3602, Nov. 18, 1997, 111 Stat. 2075.
50109(f)	46 App.:811 (4th sentence).	Sept. 7, 1916, ch. 451, § 12 (4th sentence), 39 Stat. 732; Ex. Ord. No. 6166, § 12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; Pub. L. 97–31, § 12(27), Aug. 6, 1981, 95 Stat. 155.

§ 50110. Securing preference to vessels of the United States

(a) POSSIBILITIES OF PROMOTING CARRIAGE.—The Secretary of Transportation shall investigate, determine, and keep current records of the possibilities of promoting the carriage of United States foreign trade in vessels of the United States.

(b) INDUCEMENTS TO IMPORTERS AND EXPORTERS.—The Secretary shall study and cooperate with vessel owners in devising means by which the importers and exporters of the United States can be induced to give preference to vessels of the United States.

(c) LIAISON WITH AGENCIES AND ORGANIZATIONS.—The Secretary shall establish and maintain liaison with such other agencies of the United States Government, and with such representative trade organizations throughout the United States, as may be concerned, directly or indirectly, with any movement of commodities in the waterborne export and import foreign commerce of the United States, for the purpose of securing preference to vessels of the United States in the shipment of those commodities.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1560.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
50110(a)	46 App.:1121(j) (words between 1st and 2d semicolons).	June 29, 1936, ch. 858, title II, § 211(j) (words between 1st and 2d semicolons), 49 Stat. 1989; Pub. L. 91–469, §§ 4(2), 35(a), Oct. 21, 1970, 84 Stat. 1018, 1035; Pub. L. 97–31, § 12(67), Aug. 6, 1981, 95 Stat. 159.
50110(b)	46 App.:1122(b)(1).	June 29, 1936, ch. 858, title II, § 212(b)(1), (d), 49 Stat. 1990; Pub. L. 97–31, § 12(69), Aug. 6, 1981, 95 Stat. 159; Pub. L. 98–237, § 20(c), Mar. 20, 1984, 98 Stat. 90.
50110(c)	46 App.:1122(d).	

§ 50111. Reports to Congress

(a) IN GENERAL.—Not later than April 1 of each year, the Secretary of Transportation shall submit a report to Congress. The report shall include, with respect to activities of the Secretary under this subtitle, the results of investigations, a summary of transactions, a statement of all expenditures and receipts, the purposes for which all expenditures were made, and any recommendations for legislation.

(b) ADMINISTERED AND OVERSIGHT FUNDS.—The Secretary, in the report under subsection (a) and in the annual budget estimate for the Maritime Administration submitted to Congress, shall state separately the amount, source, intended use, and nature of any funds (other than funds appropriated to the Administration or to the Secretary of Transportation for use by the Administration) administered, or subject to oversight, by the Administration.

(c) ADDITIONAL RECOMMENDATIONS FOR LEGISLATION.—The Secretary, from time to time, shall make recommendations to Congress for legislation the Secretary considers necessary to better achieve the objectives and policy of section 50101 of this title.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1560.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
50111(a)	46 App.:811 (last sentence).	Sept. 7, 1916, ch. 451, § 12 (last sentence), 39 Stat. 732; Ex. Ord. No. 6166, § 12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; Pub. L. 97–31, § 12(27), Aug. 6, 1981, 95 Stat. 155.
	46 App.:1118 (related to Secretary).	June 29, 1936, ch. 858, title II, § 208 (related to Secretary), 49 Stat. 1988; Pub. L. 94–273, § 36, Apr. 21, 1976, 90 Stat. 380; Pub. L. 97–31, § 12(65), Aug. 6, 1981, 95 Stat. 159.
	46 App.:1160(f).	June 29, 1936, ch. 858, title V, § 510(f), as added Aug. 4, 1939, ch. 417, § 7, 53 Stat. 1184; Pub. L. 97–31, § 12(91)(A)–(C), Aug. 6, 1981, 95 Stat. 161.
	46 App.:1291.	June 29, 1936, ch. 858, title XII, § 1211, as added Sept. 7, 1950, ch. 906, 64 Stat. 776; Pub. L. 89–348, § 1(7), Nov. 8, 1965, 79 Stat. 1310.
50111(b)	46 App.:1118 note.	Pub. L. 106–398, § 1 [div. C, title XXXV, § 3506], Oct. 30, 2000, 114 Stat. 1654, 1654A–494.
50111(c)	46 App.:1122(g).	June 29, 1936, ch. 858, title II, § 212(g), 49 Stat. 1990; Pub. L. 90–268, § 1, Mar. 16, 1968, 82 Stat. 49; Pub. L. 97–31, § 12(69), Aug. 6, 1981, 95 Stat. 159; Pub. L. 98–237, § 20(c), Mar. 20, 1984, 98 Stat. 90.

In subsection (a), the words ''on or before the 1st day of December in each year'' in 46 App. U.S.C. 811 (last sentence) are omitted for consistency with the April 1 date in 46 App.:1118. The words ''and of the operations of any corporation in which the United States is a stockholder, and the names and compensation of all persons employed by the Secretary of Transportation'' in 46 App. U.S.C. 811 (last sentence) are omitted because the provision originally applied to the United States Shipping Board (which was abolished in 1933) and presumably is not intended to apply to the Secretary.

§ 50112. National Maritime Enhancement Institutes

(a) DESIGNATION.—The Secretary of Transportation may designate National Maritime Enhancement Institutes.

(b) ACTIVITIES.—Activities undertaken by an institute may include—

(1) conducting research about methods to improve the performance of maritime industries;

(2) enhancing the competitiveness of domestic maritime industries in international trade;

(3) forecasting trends in maritime trade;

(4) assessing technological advancements;

(5) developing management initiatives and training;

(6) analyzing economic and operational impacts of regulatory policies and international negotiations or agreements pending before international bodies;

(7) assessing the compatibility of domestic maritime infrastructure systems with overseas transport systems;

(8) fostering innovations in maritime transportation pricing; and

(9) improving maritime economics and finance.

(c) APPLICATION FOR DESIGNATION.—An institution seeking designation as a National Maritime

Enhancement Institute shall submit an application under regulations prescribed by the Secretary.

(d) CRITERIA FOR DESIGNATION.—The Secretary shall designate an institute under this section on the basis of the following criteria:

(1) The demonstrated research and extension resources available to the applicant for carrying out the activities specified in subsection (b).

(2) The ability of the applicant to provide leadership in making national and regional contributions to the solution of both long-range and immediate problems of the domestic maritime industry.

(3) The existence of an established program of the applicant encompassing research and training directed to enhancing maritime industries.

(4) The demonstrated ability of the applicant to assemble and evaluate pertinent information from national and international sources and to disseminate results of maritime industry research and educational programs through a continuing education program.

(5) The qualification of the applicant as a nonprofit institution of higher learning.

(e) FINANCIAL AWARDS.—The Secretary may make awards on an equal matching basis to an institute designated under subsection (a) from amounts appropriated. The aggregate annual amount of the Federal share of the awards by the Secretary may not exceed $500,000.

(f) UNIVERSITY TRANSPORTATION RESEARCH FUNDS.—The Secretary may make a grant under section 5505 of title 49 to an institute designated under subsection (a) for maritime and maritime intermodal research under that section as if the institute were a university transportation center. In making a grant, the Secretary, through the Research and Innovative Technology Administration, shall advise the Maritime Administration on the availability of funds for the grants and consult with the Administration on making the grants.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1561.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
50112	46 App.:1121–2.	Pub. L. 101–115, § 8, Oct. 13, 1989, 103 Stat. 694; Pub. L. 101–595, title VII, § 702, Nov. 16, 1990, 104 Stat. 2994; Pub. L. 102–241, § 47, Dec. 19, 1991, 105 Stat. 2227; Pub. L. 106–398, § 1 [div. C, title XXXV, § 3504], Oct. 30, 2000, 114 Stat. 1654, 1654A–493; Pub. L. 108–426, Nov. 30, 2004, § 2(c)(4), 118 Stat. 2424.

§ 50113. Use and performance reports by operators of vessels

(a) FILING REQUIREMENT.—The Secretary of Transportation by regulation may require the operator of a vessel in the waterborne foreign commerce of the United States to file such report, account, record, or memorandum on the use and performance of the vessel as the Secretary considers desirable to assist in carrying out this subtitle. The report, account, record, or memorandum shall be signed and verified, and be filed at the times and in the manner, as provided by regulation.

(b) CIVIL PENALTY.—An operator not filing a report, account, record, or memorandum required by the Secretary under this section is liable to the United States Government for a civil penalty of $50 for each day of the violation. A penalty imposed under this section on the operator of a vessel constitutes a lien on the vessel involved in the violation. A civil action in rem to enforce the lien may be brought in the district court of the United States for any district in which the vessel is found. The Secretary may remit or mitigate any penalty imposed under this section.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1562.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
50113	46 App.:1122a.	June 29, 1936, ch. 858, title II, § 212(A), as added June 25, 1956, ch. 437, 70 Stat. 332; Aug. 6, 1981, Pub. L. 97–31, § 12(70), 95 Stat. 159.

CHAPTER 503—ADMINISTRATIVE

Sec.
50301. Vessel Operations Revolving Fund.
50302. Port development.
50303. Operating property and extending term of notes.
50304. Sale and transfer of property.
50305. Appointment of trustee or receiver and operation of vessels.
50306. Requiring testimony and records in investigations.

§ 50301. Vessel Operations Revolving Fund

(a) IN GENERAL.—There is a ''Vessel Operations Revolving Fund'' for use by the Secretary of Transportation in carrying out duties and powers related to vessel operations, including charter, operation, maintenance, repair, reconditioning, and improvement of merchant vessels under the jurisdiction of the Secretary. The Fund has a working capital of $20,000,000, to remain available until expended.

(b) RELATIONSHIP TO OTHER LAWS.—Notwithstanding any other law, rates for shipping services provided under the Fund shall be prescribed by the Secretary and the Fund shall be credited with receipts from vessel operations conducted under the Fund. Sections 1(a) and (c), 3(c), and 4 of the Act of March 24, 1943 (50 App. U.S.C. 1291(a), (c), 1293(c), 1294), apply to those operations and to seamen employed through general agents as employees of the United States Government. Notwithstanding any other law on the employment of persons by the Government, the seamen may be employed in accordance with customary commercial practices in the maritime industry.

(c) ADVANCEMENTS.—With the approval of the Director of the Office of Management and Budget, the Secretary may advance amounts the Secretary considers necessary, but not more than 2 percent of vessel operating expenses, from the Fund to the appropriation ''Salaries and Expenses'' in carrying out duties and powers related to vessel operations, without regard to the

limitations on amounts stated in that appropriation.

(d) TRANSFERS.—The unexpended balances of working funds or of allocation accounts established after January 1, 1951, for the activities provided for in subsection (a), and receipts received from those activities, may be transferred to the Fund, which shall be available for the purposes of those working funds or allocation accounts.

(e) LIMITATION.—

(1) IN GENERAL.—Amounts made available to the Secretary for maritime activities by this section or any other law may not be used to pay for a vessel described in paragraph (2) unless the compensation to be paid is computed under section 56303 of this title as that section is interpreted by the Comptroller General.

(2) APPLICABLE VESSELS.—Paragraph (1) applies to a vessel—

(A) the title to which is acquired by the Government by requisition or purchase;

(B) the use of which is taken by requisition or agreement; or

(C) lost while insured by the Government.

(3) NONAPPLICABLE VESSELS.—Paragraph (1) does not apply to a vessel under a construction-differential subsidy contract.

(f) AVAILABILITY FOR ADDITIONAL PURPOSES.—The Fund is available for—

(1) necessary expenses incurred in the protection, preservation, maintenance, acquisition, or use of vessels involved in mortgage foreclosure or forfeiture proceedings instituted by the Government, including payment of prior claims and liens, expenses of sale, or other related charges;

(2) necessary expenses incident to the redelivery and lay-up, in the United States, of vessels chartered as of June 20, 1956, under agreements not calling for their return to the Government;

(3) the activation, repair, and deactivation of merchant vessels chartered for limited emergency purposes during fiscal year 1957 under the jurisdiction of the Secretary; and

(4) payment of expenses of custody and maintenance of Government-owned vessels not in the National Defense Reserve Fleet.

(g) EXPENSES AND RECEIPTS RELATED TO CHARTER OPERATIONS.—The Fund is available for expenses incurred in activating, repairing, and deactivating merchant vessels chartered under the jurisdiction of the Secretary. Receipts from charter operations of Government-owned vessels under the jurisdiction of the Secretary shall be credited to the Fund.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1562.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
50301(a)	46 App.:1241a (1st sentence).	June 2, 1951, ch. 121 (pars. under heading "Vessel Operations Revolving Fund"), 65 Stat. 59; Pub. L. 97–31, § 12(128), Aug. 6, 1981, 95 Stat. 165; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.
50301(b)	46 App.:1241a (2d sentence words before 2d proviso).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
50301(c)	46 App.:1241a (2d sentence 2d proviso).	
50301(d)	46 App.:1241a (2d sentence last proviso).	
50301(e)	46 App.:1241a (last sentence).	
50301(f)	46 App.:1241b.	June 20, 1956, ch. 415, title I, § 101 (4th complete par. on p. 319), 70 Stat. 319; Pub. L. 97–31, § 12(129), Aug. 6, 1981, 95 Stat. 165.
	46 App.:1241b note.	
50301(g)	46 App.:1241c.	Aug. 1, 1956, ch. 846, 70 Stat. 897; Pub. L. 97–31, § 12(130), Aug. 6, 1981, 95 Stat. 165.

In subsection (c), the words "Director of the Office of Management and Budget" are substituted for "Bureau of the Budget" in the Act of June 2, 1951 (ch. 121, 65 Stat. 59), because of sections 101 and 102 of Reorganization Plan No. 2 of 1970 (5 App. U.S.C.) and 31 U.S.C. ch. 5. The words "for the purposes of that appropriation" are omitted for clarity and for consistency in the subsection.

In subsection (d), the words "notwithstanding any other provisions of law" and "and consolidated with" are omitted as unnecessary.

In subsection (e), in paragraph (1), the words "Comptroller General" are substituted for "Government Accountability Office" for consistency in the revised title. Paragraph (3) is substituted for "(except in cases where section 1212 of this Appendix is applicable)" because section 1212 applies to all vessels under a construction-differential subsidy contract.

In subsection (f), the words "On and after June 20, 1956", and the last proviso in the 4th complete par. at 70 Stat. 319 (46 App. U.S.C. 1241b note), are omitted as obsolete.

In subsection (g), the words "beginning July 1, 1956" and "after July 1, 1956" are omitted as obsolete.

§ 50302. Port development

(a) GENERAL REQUIREMENTS.—With the objective of promoting, encouraging, and developing ports and transportation facilities in connection with water commerce over which the Secretary of Transportation has jurisdiction, the Secretary, in cooperation with the Secretary of the Army, shall—

(1) investigate territorial regions and zones tributary to ports, taking into consideration the economies of transportation by rail, water, and highway and the natural direction of the flow of commerce;

(2) investigate the causes of congestion of commerce at ports and applicable remedies;

(3) investigate the subject of water terminals, including the necessary docks, warehouses, and equipment, to devise and suggest the types most appropriate for different locations and for the most expeditious and economical transfer or interchange of passengers or property between water carriers and rail carriers;

(4) consult with communities on the appropriate location and plan of construction of wharves, piers, and water terminals;

(5) investigate the practicability and advantages of harbor, river, and port improvements in connection with foreign and coastwise trade; and

(6) investigate any other matter that may tend to promote and encourage the use by ves-

sels of ports adequate to care for the freight that naturally would pass through those ports.

(b) SUBMISSION OF FINDINGS TO SURFACE TRANSPORTATION BOARD.—After an investigation under subsection (a), if the Secretary of Transportation believes that the rates or practices of a rail carrier subject to the jurisdiction of the Surface Transportation Board are detrimental to the objective specified in subsection (a), or that new rates or practices, new or additional port terminal facilities, or affirmative action by a rail carrier is necessary to promote that objective, the Secretary may submit findings to the Board for action the Board considers appropriate under existing law.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1564.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
50302(a)	46 App.:867 (words before proviso).	June 5, 1920, ch. 250, § 8, 41 Stat. 992; Exec. Order No. 6166, June 10, 1933, § 12; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; Pub. L. 97–31, § 12(40), Aug. 6, 1981, 95 Stat. 156; Pub. L. 104–88, § 321(1), Dec. 29, 1995, 109 Stat. 949.
50302(b)	46 App.:867 (proviso).	

In subsection (a), before paragraph (1), the words ''Secretary of the Army'' are substituted for ''Secretary of War'' in section 8 of the Merchant Marine Act, 1920 (ch. 250, 41 Stat. 992) because of section 205(a) of the National Security Act of 1947 (ch. 343, 61 Stat. 501). See 10 U.S.C. 3011 et seq. In paragraph (3), the words ''apparatus'' and ''appliances'' are omitted as unnecessary. In paragraph (4), the words ''consult with'' are substituted for ''advise with'' as being more grammatical.

In subsection (b), the words ''rates or practices'' are substituted for ''rates, charges, rules, or regulations'' for consistency in the revised title and with other titles of the United States Code.

§ 50303. Operating property and extending term of notes

(a) GENERAL AUTHORITY.—The Secretary of Transportation may—

(1) operate or lease docks, wharves, piers, or real property under the Secretary's control; and

(2) make extensions and accept renewals of—

(A) promissory notes and other evidences of indebtedness on property; and

(B) mortgages and other contracts securing the property.

(b) TERMS OF TRANSACTIONS.—A transaction under subsection (a) shall be on terms the Secretary considers necessary to carry out the purposes of this subtitle, but consistent with sound business practice.

(c) AVAILABILITY OF AMOUNTS.—Amounts received by the Secretary from a transaction under this section are available for expenditure by the Secretary as provided in this subtitle.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1564.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
50303	46 App.:1112.	June 29, 1936, ch. 858, title II, § 202, 49 Stat. 1986; Aug. 26, 1937, ch. 822, § 1, 50 Stat. 839; June 23, 1938, ch. 600, § 1, 52 Stat. 953; Pub. L. 97–31, § 12(60), Aug. 6, 1981, 95 Stat. 158.

In subsection (a), the words ''Notwithstanding any other provision of law'' are omitted as unnecessary. In paragraph (1), the word ''lands'' is omitted as included in ''real property''. In paragraph (2)(A), the word ''promissory'' is added for clarity. The words ''hereby transferred'', referring to the transfer under the first sentence of section 202 of the Merchant Marine Act, 1936 (repealed by section 12(60)(A) of Public Law 97–31), are omitted as obsolete.

Subsection (b) is substituted for ''in accordance with good business methods and on such terms and conditions as he determines to effectuate the policy of this chapter'' and ''upon such terms and conditions as he may prescribe in accordance with sound business practice'' for consistency and to eliminate unnecessary words.

§ 50304. Sale and transfer of property

(a) AUTHORITY TO SELL.—The Secretary of Transportation may sell property (other than vessels transferred under section 4 of the Merchant Marine Act, 1920 (ch. 250, 41 Stat. 990)) on terms the Secretary considers appropriate.

(b) TRANSFERS FROM MILITARY TO CIVILIAN CONTROL.—When the President considers it in the interest of the United States, the President may transfer to the Secretary of Transportation possession and control of property described in the second paragraph of section 17 of the Merchant Marine Act, 1920 (ch. 250, 41 Stat. 994), as originally enacted, that is possessed and controlled by the Secretary of a military department.

(c) TRANSFERS FROM CIVILIAN TO MILITARY CONTROL.—When the President considers it necessary, the President by executive order may transfer to the Secretary of a military department possession and control of property described in section 17 of the Merchant Marine Act, 1920 (ch. 250, 41 Stat. 994), as originally enacted, that is possessed and controlled by the Secretary of Transportation. The President's order shall state the need for the transfer and the period of the need. When the President decides that the need has ended, the possession and control shall revert to the Secretary of Transportation. The property may not be sold except as provided by law.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1565.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
50304(a)	46 App.:872.	June 5, 1920, ch. 250, §§ 13, 17, 41 Stat. 993, 994; Exec. Order No. 6166, June 10, 1933, § 12; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; Pub. L. 97–31, § 12(44), (45), Aug. 6, 1981, 95 Stat. 157.
50304(b)	46 App.:875 (1st par.).	
50304(c)	46 App.:875 (last par.).	

In subsections (b) and (c), the words ''property described in the second paragraph of section 17 of the Merchant Marine Act, 1920 (ch. 250, 41 Stat. 994), as originally enacted'' are substituted for ''such other docks, piers, warehouses, wharves and terminal equipment and facilities or parts thereof, including all leasehold easements, rights of way, riparian rights and other rights, estates or interests therein or appurtenant thereto which were acquired . . . for military or naval purposes during the war emergency'', and the words ''property described in section 17 of the Merchant Marine Act, 1920 (ch. 250, 41 Stat. 994), as originally enacted'' are substituted for ''property taken over by or transferred to . . . under this section'', because the first paragraph of section 17 of the Merchant Marine Act, 1920, was repealed in 1981 and reference to that paragraph is necessary for a complete understanding of these provisions. The words ''Secretary of a military department'' are substituted for ''War Department or the Navy Department'' and ''Department of the Army, Department of the Air Force, or Department of the Navy'' for consistency with other titles of the United States Code. For redesignation of the Department of War to the Department of the Army, and for transfer of certain functions to newly established Department of the Air Force, see sections 205(a) and 207(a) and (f) of the National Security Act of 1947 (ch. 343, 61 Stat. 501, 502, 503).

In subsection (b), the words ''possessed and controlled by'' are substituted for ''acquired by'' for clarity and for consistency in the section. The word ''best'' is omitted as unnecessary.

REFERENCES IN TEXT

Section 4 of the Merchant Marine Act, 1920, referred to in subsec. (a), is section 4 of act June 5, 1920, ch. 250, 41 Stat. 990, which was classified to section 863 of former Title 46, Shipping, and was repealed by Pub. L. 100–710, title II, § 202(4), Nov. 23, 1988, 102 Stat. 4753.

Section 17 of the Merchant Marine Act, 1920 (ch. 250, 41 Stat. 994), as originally enacted, referred to in subsecs. (b) and (c), is section 17 of act June 5, 1920, ch. 250, 41 Stat. 994, which was classified to section 875 of the former Appendix to this title, was subsequently amended, and as amended, was repealed and restated in subsecs. (b) and (c) of this section by Pub. L. 109–304, §§ 8(b), 19, Oct. 6, 2006, 120 Stat. 1556, 1710.

§ 50305. Appointment of trustee or receiver and operation of vessels

(a) APPOINTMENT OF TRUSTEES AND RECEIVERS.—

(1) APPOINTMENT OF SECRETARY.—In a proceeding in a court of the United States in which a trustee or receiver may be appointed for a corporation operating a vessel of United States registry between the United States and a foreign country, on which the United States Government holds a mortgage, the court may appoint the Secretary of Transportation as the sole trustee or receiver (subject to the direction of the court) if—

(A) the court finds that the appointment will—

(i) inure to the advantage of the estate and the parties in interest; and

(ii) tend to carry out the purposes of this subtitle; and

(B) the Secretary expressly consents to the appointment.

(2) APPOINTMENT OF OTHER PERSON.—The appointment of another person as trustee or receiver without a hearing becomes effective when ratified by the Secretary, but the Secretary may demand a hearing.

(b) OPERATION OF VESSELS.—

(1) IN GENERAL.—If the court is unwilling to allow the trustee or receiver to operate the vessel in foreign commerce without financial aid from the Government pending termination of the proceeding, and the Secretary certifies to the court that the continued operation of the vessel is essential to the foreign commerce of the United States and is reasonably calculated to carry out the purposes of this subtitle, the court may allow the Secretary to operate the vessel, either directly or through a managing agent or operator employed by the Secretary. The Secretary must agree to comply with terms imposed by the court sufficient to protect the parties in interest. The Secretary also must agree to pay all operating losses resulting from the operation. The operation shall be for the account of the trustee or receiver.

(2) PAYMENT OF OPERATING LOSSES AND OTHER AMOUNTS.—The Secretary has no claim against the corporation, its estate, or its assets for operating losses paid by the Secretary, but the Secretary may pay amounts for depreciation the Secretary considers reasonable and other amounts the court considers just. The payment of operating losses and the other amounts and compliance with terms imposed by the court shall be in satisfaction of any claim against the Secretary resulting from the operation of the vessel.

(3) DEEMED OPERATION BY GOVERNMENT.—A vessel operated by the Secretary under this subsection is deemed to be a vessel operated by the United States under chapter 309 of this title.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1565.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
50305	46 App.:1247.	June 29, 1936, ch. 858, title IX, § 908, as added Pub. L. 95–598, title III, § 334, Nov. 6, 1978, 92 Stat. 2680; Pub. L. 97–31, § 12(134), Aug. 6, 1981, 95 Stat. 165.

In subsection (a)(1), before subparagraph (A), the words ''Notwithstanding any other provision of law'' and ''bankruptcy, equity, or admiralty'' are omitted as unnecessary.

In subsection (a)(2), the words ''but the Secretary may demand a hearing'' are substituted for ''unless the Secretary shall deem a hearing necessary'' for clarity.

In subsection (b)(1), the words ''subject to the orders of the court'' and ''comply with the terms imposed by the court'' are omitted as unnecessary.

In subsection (b)(2), the words ''operating losses paid by the Secretary'' are substituted for ''the amount of such payments'' for clarity.

In subsection (b)(3), the words ''vessel operated by the United States'' are substituted for ''vessel of the United States'' for clarity and consistency with chapter 309.

§ 50306. Requiring testimony and records in investigations

(a) IN GENERAL.—In conducting an investigation that the Secretary of Transportation considers necessary and proper to carry out this subtitle, the Secretary may administer oaths, take evidence, and subpoena persons to testify

and produce documents relevant to the matter under investigation. Persons may be required to attend or produce documents from any place in the United States at any designated place of hearing.

(b) FEES AND MILEAGE.—Persons subpoenaed by the Secretary under subsection (a) shall be paid the same fees and mileage paid to witnesses in the courts of the United States.

(c) ENFORCEMENT OF SUBPOENAS.—If a person disobeys a subpoena issued under subsection (a), the Secretary may seek an order enforcing the subpoena from the district court of the United States for the district in which the person resides or does business. Process may be served in the judicial district in which the person resides or is found. The court may issue an order to obey the subpoena and punish a refusal to obey as a contempt of court.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1566.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
50306	46 App.:1124.	June 29, 1936, ch. 858, title II, § 214, 49 Stat. 1991; June 23, 1938, ch. 600, § 3, 52 Stat. 954; Pub. L. 91–452, title II, § 241, Oct. 15, 1970, 84 Stat. 930; Pub. L. 97–31, § 12(72), Aug. 6, 1981, 95 Stat. 159; Pub. L. 98–237, § 20(a), Mar. 20, 1984, 98 Stat. 89; Pub. L. 98–595, § 2, Oct. 30, 1984, 98 Stat. 3132.

In subsection (a), the word ''affirmations'' is omitted as unnecessary because of the definition of ''oath'' in 1 U.S.C. 1. The words ''or any territory, district, or possession thereof'' are omitted as unnecessary because of the definition of ''United States'' in chapter 1 of the revised title.

Subsection (c) is substituted for the source provision to eliminate unnecessary words.

CHAPTER 505—OTHER GENERAL PROVISIONS

Sec.
50501. Entities deemed citizens of the United States.
50502. Applicability to receivers, trustees, successors, and assigns.
50503. Oceanographic research vessels.
50504. Sailing school vessels.

§ 50501. Entities deemed citizens of the United States

(a) IN GENERAL.—In this subtitle, a corporation, partnership, or association is deemed to be a citizen of the United States only if the controlling interest is owned by citizens of the United States. However, if the corporation, partnership, or association is operating a vessel in the coastwise trade, at least 75 percent of the interest must be owned by citizens of the United States.

(b) ADDITIONAL REQUIREMENTS FOR CORPORATIONS.—In this subtitle, a corporation is deemed to be a citizen of the United States only if, in addition to satisfying the requirements in subsection (a)—

(1) it is incorporated under the laws of the United States or a State;

(2) its chief executive officer, by whatever title, and the chairman of its board of directors are citizens of the United States; and

(3) no more of its directors are noncitizens than a minority of the number necessary to constitute a quorum.

(c) DETERMINATION OF CONTROLLING CORPORATE INTEREST.—The controlling interest in a corporation is owned by citizens of the United States under subsection (a) only if—

(1) title to the majority of the stock in the corporation is vested in citizens of the United States free from any trust or fiduciary obligation in favor of a person not a citizen of the United States;

(2) the majority of the voting power in the corporation is vested in citizens of the United States;

(3) there is no contract or understanding by which the majority of the voting power in the corporation may be exercised, directly or indirectly, in behalf of a person not a citizen of the United States; and

(4) there is no other means by which control of the corporation is given to or permitted to be exercised by a person not a citizen of the United States.

(d) DETERMINATION OF 75 PERCENT CORPORATE INTEREST.—At least 75 percent of the interest in a corporation is owned by citizens of the United States under subsection (a) only if—

(1) title to at least 75 percent of the stock in the corporation is vested in citizens of the United States free from any trust or fiduciary obligation in favor of a person not a citizen of the United States;

(2) at least 75 percent of the voting power in the corporation is vested in citizens of the United States;

(3) there is no contract or understanding by which more than 25 percent of the voting power in the corporation may be exercised, directly or indirectly, in behalf of a person not a citizen of the United States; and

(4) there is no other means by which control of more than 25 percent of any interest in the corporation is given to or permitted to be exercised by a person not a citizen of the United States.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1566.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
50501(a)	46 App.:802(a) (words before 3d comma and after 11th comma).	Sept. 7, 1916, ch. 451, § 2(a)–(c), 39 Stat. 729; July 15, 1918, ch. 152, § 2, 40 Stat. 900; June 5, 1920, ch. 250, § 38, 41 Stat. 1008; Pub. L. 86–327, § 3, Sept. 21, 1959, 73 Stat. 597; Pub. L. 105–383, title IV, § 421, Nov. 13, 1998, 112 Stat. 3439.
	46 App.:1244(c).	June 29, 1936, ch. 858, title IX, § 905(c), 49 Stat. 2016; June 23, 1938, ch. 600, § 39(b), 52 Stat. 964; Pub. L. 86–327, § 4, Sept. 21, 1959, 73 Stat. 597.
50501(b)	46 App.:802(a) (words between 3d and 11th commas).	
50501(c)	46 App.:802(b).	
50501(d)	46 App.:802(c).	

In subsection (a), the words ''and with respect to a corporation under subchapter VI of this chapter, all directors of the corporation are citizens of the United States'' in 46 App. U.S.C. 1244(c) are omitted because

part A of subchapter VI contains the operating-differential subsidy program which, under 46 App. U.S.C. 1185a, is being phased out, and part B of subchapter VI contains the Maritime Security Fleet program which is being repealed (effective October 1, 2005) and replaced by chapter 531 of title 46 as enacted by the Maritime Security Act of 2003. Thus, subchapter VI is being omitted from the revised title and will instead appear as a note under section 53101. The words ''and, in the case of a corporation, partnership, or association operating a vessel on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States the amount of interest required to be owned by a citizen of the United States shall be not less than 75 per centum'' in 46 App. U.S.C. 1244(c) are omitted as covered by the 75 percent ownership requirement for operation in the coastwise trade.

In subsection (b)(1), the words ''Territory, District, or possession thereof'' are omitted because of the definition of ''State'' in chapter 1 of the revised title.

§ 50502. Applicability to receivers, trustees, successors, and assigns

This subtitle applies to receivers, trustees, successors, and assigns of any person to whom this subtitle applies.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1567.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
50502	46 App.:803.	Sept. 7, 1916, ch. 451, § 2(d), 39 Stat. 729; June 5, 1920, ch. 250, § 38, 41 Stat. 1008.

§ 50503. Oceanographic research vessels

An oceanographic research vessel (as defined in section 2101 of this title) is deemed not to be engaged in trade or commerce.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1567.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
50503	46 App.:441. 46 App.:443. 46 App.:444.	Pub. L. 89–99, §§ 1, 3, 4, July 30, 1965, 79 Stat. 424.

The definitions of ''oceanographic research vessel'' and ''scientific personnel'' in 46 App. U.S.C. 441 are omitted because substantially the same definitions are already in 46 U.S.C. 2101.

The text of 46 App. U.S.C. 444 is omitted because section 10101(3) of title 46, which defines ''seaman'' for purposes of part G of subtitle II of title 46, already contains an exception for scientific personnel. Title 53 of the Revised Statutes, referred to [in] 46 App. U.S.C. 444, was previously codified principally in part G of subtitle II of title 46.

§ 50504. Sailing school vessels

(a) DEFINITIONS.—In this section, the terms ''sailing school instructor'', ''sailing school student'', and ''sailing school vessel'' have the meaning given those terms in section 2101 of this title.

(b) NOT SEAMEN.—A sailing school student or sailing school instructor is deemed not to be a seaman under—

(1) parts B, F, and G of subtitle II of this title; or

(2) the maritime law doctrines of maintenance and cure or warranty of seaworthiness.

(c) NOT MERCHANT VESSEL OR ENGAGED IN TRADE OR COMMERCE.—A sailing school vessel is deemed not to be—

(1) a merchant vessel under section 11101(a)–(c) of this title; or

(2) a vessel engaged in trade or commerce.

(d) EVIDENCE OF FINANCIAL RESPONSIBILITY.—The owner or charterer of a sailing school vessel shall maintain evidence of financial responsibility to meet liability for death or injury to sailing school students and sailing school instructors on a voyage on the vessel. The amount of financial responsibility shall be at least $50,000 for each student and instructor. Financial responsibility under this subsection may be evidenced by insurance or other adequate financial resources.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1568.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
50504(a)	46 App.:446c.	Pub. L. 97–322, title II, §§ 204, 205, 207, Oct. 15, 1982, 96 Stat. 1589.
50504(b)	46 App.:446.	
50504(c)	46 App.:446b.	Pub. L. 97–322, title II, § 206, Oct. 15, 1982, 96 Stat. 1590; Pub. L. 98–557, § 34(b), Oct. 30, 1984, 98 Stat. 2876.
50504(d)	46 App.:446a.	

In subsection (b)(1), the words ''parts B, F, and G of subtitle II of this title'' are substituted for ''the provisions of titles 52 and 53 of the Revised Statutes of the United States and any Act amendatory thereof or supplementary thereto'' because the relevant provisions of titles 52 and 53 of the Revised Statutes were previously codified in parts B, F, and G of subtitle II of title 46.

In subsection (c), references to 46 App. U.S.C. 291 and 883 are omitted for consistency with section 50503 of the revised title.

PART B—MERCHANT MARINE SERVICE

CHAPTER 511—GENERAL

Sec.
51101. Policy.
51102. Definitions.
51103. General authority of Secretary of Transportation.
51104. General authority of Secretary of the Navy.

§ 51101. Policy

It is the policy of the United States that merchant marine vessels of the United States should be operated by highly trained and efficient citizens of the United States and that the United States Navy and the merchant marine of the United States should work closely together to promote the maximum integration of the total seapower forces of the United States.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1568.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51101	46 App.:1126–1(a) (1st sentence). 46 App.:1295 (1st sentence).	Pub. L. 94–361, title VI, § 603(a) (1st sentence), July 14, 1976, 90 Stat. 929. June 29, 1936, ch. 858, title XIII, § 1301 (1st sentence), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 1997.

§ 51102. Definitions

In this part:

(1) ACADEMY.—The term ''Academy'' means the United States Merchant Marine Academy located at Kings Point, New York, and maintained under chapter 513 of this title.

(2) COST OF EDUCATION PROVIDED.—The term ''cost of education provided'' means the financial costs incurred by the United States Government for providing training or financial assistance to students at the Academy and the State maritime academies, including direct financial assistance, room, board, classroom academics, and other training activities.

(3) MERCHANT MARINE OFFICER.—The term ''merchant marine officer'' means an individual issued a license by the Coast Guard authorizing service as—

(A) a master, mate, or pilot on a documented vessel that—

(i) is 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

(ii) operates on the oceans or the Great Lakes; or

(B) an engineer officer on a documented vessel propelled by machinery of at least 4,000 horsepower.

(4) STATE MARITIME ACADEMY.—The term ''State maritime academy'' means—

(A) a State maritime academy or college sponsored by a State and assisted under chapter 515 of this title; and

(B) a regional maritime academy or college sponsored by a group of States and assisted under chapter 515 of this title.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1568.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51102	46 App.:1295a.	June 29, 1936, ch. 858, title XIII, § 1302, as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 1997; Pub. L. 97–31, § 12(143), Aug. 6, 1981, 95 Stat. 166; Pub. L. 104–324, title VII, § 708, Oct. 19, 1996, 110 Stat. 3934; Pub. L. 108–136, title XXXV, § 3515(a), Nov. 24, 2003, 117 Stat. 1792.

The definition of ''Secretary'' is omitted as unnecessary because the full title is used the first time the term appears in each section.

In the definition of ''merchant marine office'', the words ''documented vessel'' are substituted for ''vessel . . . which is documented under the laws of the United States'' because of the definition of ''documented vessel'' in 46 U.S.C. 2101, which is being moved to chapter 1 of the revised title.

In the definition of ''State maritime academy'', the words ''or territory of the United States'' and ''or territories of the United States'' are omitted as unnecessary because of the definition of ''State'' in chapter 1 of the revised title.

§ 51103. General authority of Secretary of Transportation

(a) EDUCATION AND TRAINING.—The Secretary of Transportation may provide for the education and training of citizens of the United States for the safe and efficient operation of the merchant marine of the United States at all times, including operation as a naval and military auxiliary in time of war or national emergency.

(b) SURPLUS PROPERTY FOR INSTRUCTIONAL PURPOSES.—

(1) IN GENERAL.—The Secretary may cooperate with and assist the institutions named in paragraph (2) by making vessels, shipboard equipment, and other marine equipment, owned by the United States Government and determined to be excess or surplus, available to those institutions for instructional purposes, by gift, loan, sale, lease, or charter on terms the Secretary considers appropriate.

(2) INSTITUTIONS.—The institutions referred to in paragraph (1) are—

(A) the United States Merchant Marine Academy;

(B) a State maritime academy; and

(C) a nonprofit training institution jointly approved by the Secretary of Transportation and the Secretary of the department in which the Coast Guard is operating as offering training courses that meet Federal regulations for maritime training.

(c) ASSISTANCE FROM OTHER AGENCIES.—

(1) IN GENERAL.—The Secretary of Transportation may secure directly from an agency, on a reimbursable basis, information, facilities, and equipment necessary to carry out this part.

(2) DETAILING PERSONNEL.—At the request of the Secretary, the head of an agency (including a military department) may detail, on a reimbursable basis, personnel from the agency to the Secretary to assist in carrying out this part.

(d) ACADEMY PERSONNEL.—To carry out this part, the Secretary may—

(1) employ an individual as a professor, lecturer, or instructor at the Academy, without regard to the provisions of title 5 governing appointments in the competitive service; and

(2) pay the individual without regard to chapter 51 and subchapter III of chapter 53 of title 5.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1569.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51103(a)	46 App.:1295 (last sentence cl. (1)).	June 29, 1936, ch. 858, title XIII, § 1301 (last sentence cl. (1)), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 1997; Pub. L. 97–31, § 12(142)(A), Aug. 6, 1981, 95 Stat. 166.
51103(b)	46 App.:1295g(b).	June 29, 1936, ch. 858, title XIII, § 1308(b)–(d), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 2007.
51103(c)	46 App.:1295g(c).	
51103(d)	46 App.:1295g(d).	

In subsection (c), the word ''department'' is omitted as unnecessary because of the definition of ''agency'' in chapter 1 of the revised title.

§ 51104. General authority of Secretary of the Navy

The Secretary of the Navy, in cooperation with the Maritime Administrator and the head

of each State maritime academy, shall ensure that—

(1) the training of future merchant marine officers at the United States Merchant Marine Academy and at State maritime academies includes programs for naval science training in the operation of merchant vessels as a naval and military auxiliary; and

(2) naval officer training programs for future officers, insofar as possible, are maintained at designated maritime academies consistent with Navy standards and needs.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1570.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51104	46 App.:1126–1(a) (last sentence), (b).	Pub. L. 94–361, title VI, § 603(a) (last sentence), (b), July 14, 1976, 90 Stat. 929; Pub. L. 97–31, § 12(76), Aug. 6, 1981, 95 Stat. 160.
	46 App.:1295 (last sentence cl. (2)).	June 29, 1936, ch. 858, title XIII, § 1301 (last sentence cl. (2)), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 1997; Pub. L. 97–31, § 12(142)(B), Aug. 6, 1981, 95 Stat. 166.

CHAPTER 513—UNITED STATES MERCHANT MARINE ACADEMY

Sec.
51301. Maintenance of the Academy.
51302. Nomination and competitive appointment of cadets.
51303. Non-competitive appointments.
51304. Additional appointments from particular areas.
51305. Prohibited basis for appointment.
51306. Cadet commitment agreements.
51307. Places of training.
51308. Uniforms, textbooks, and transportation allowances.
51309. Academic degree.
51310. Deferment of service obligation under cadet commitment agreements.
51311. Midshipman status in the Naval Reserve.
51312. Board of Visitors.
51313. Advisory Board.
51314. Limitation on charges and fees for attendance.

§ 51301. Maintenance of the Academy

The Secretary of Transportation shall maintain the United States Merchant Marine Academy to provide instruction to individuals to prepare them for service in the merchant marine of the United States.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1570.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51301	46 App.:1295b(a).	June 29, 1936, ch. 858, title XIII, § 1303(a), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 1998.

§ 51302. Nomination and competitive appointment of cadets

(a) REQUIREMENTS.—An individual may be nominated for a competitive appointment as a cadet at the United States Merchant Marine Academy only if the individual—

(1) is a citizen or national of the United States; and

(2) meets the minimum requirements that the Secretary of Transportation shall establish.

(b) NOMINATORS.—Nominations for competitive appointments for the positions allocated under subsection (c) may be made as follows:

(1) A Senator may nominate residents of the State represented by that Senator.

(2) A Member of the House of Representatives may nominate residents of the State in which the congressional district represented by that Member is located.

(3) A Delegate to the House of Representatives from the District of Columbia, the Virgin Islands, Guam, or American Samoa may nominate residents of the jurisdiction represented by that Delegate.

(4) The Resident Commissioner to the United States from Puerto Rico may nominate residents of Puerto Rico.

(5) The Governor of the Northern Mariana Islands may nominate residents of the Northern Mariana Islands.

(6) The Panama Canal Commission may nominate—

(A) residents, or sons or daughters of residents, of an area or installation in Panama and made available to the United States under the Panama Canal Treaty of 1977, the agreements relating to and implementing that Treaty, signed September 7, 1977, and the Agreement Between the United States of America and the Republic of Panama Concerning Air Traffic Control and Related Services, concluded January 8, 1979; and

(B) sons or daughters of personnel of the United States Government and the Panama Canal Commission residing in Panama.

(c) ALLOCATION OF POSITIONS.—Positions for competitive appointments shall be allocated each year as follows:

(1) Positions shall be allocated for residents of each State nominated by the Members of Congress from that State in proportion to the representation in Congress from that State.

(2) Four positions shall be allocated for residents of the District of Columbia nominated by the Delegate to the House of Representatives from the District of Columbia.

(3) One position each shall be allocated for residents of the Virgin Islands, Guam, and American Samoa nominated by the Delegates to the House of Representatives from the Virgin Islands, Guam, and American Samoa, respectively.

(4) One position shall be allocated for a resident of Puerto Rico nominated by the Resident Commissioner to the United States from Puerto Rico.

(5) One position shall be allocated for a resident of the Northern Mariana Islands nominated by the Governor of the Northern Mariana Islands.

(6) Two positions shall be allocated for individuals nominated by the Panama Canal Commission.

(d) COMPETITIVE SYSTEM FOR APPOINTMENT.—

(1) ESTABLISHMENT OF SYSTEM.—The Secretary shall establish a competitive system for

selecting individuals nominated under subsection (b) to fill the positions allocated under subsection (c). The system must determine the relative merit of each individual based on competitive examinations, an assessment of the individual's academic background, and other effective indicators of motivation and probability of successful completion of training at the Academy.

(2) APPOINTMENTS BY JURISDICTION.—The Secretary shall appoint individuals to fill the positions allocated under subsection (c) for each jurisdiction in the order of merit of the individuals nominated from that jurisdiction.

(3) REMAINING UNFILLED POSITIONS.—If positions remain unfilled after the appointments are made under paragraph (2), the Secretary shall appoint individuals to fill the positions in the order of merit of the remaining individuals nominated from all jurisdictions.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1570.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51302(a)	46 App.:1295b(b)(1)(A).	June 29, 1936, ch. 858, title XIII, § 1303(b)(1)–(3)(A), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 1998; Pub. L. 101–595, title VII, § 708(1), (2), Nov. 16, 1990, 104 Stat. 2995.
	46 App.:1295b(b)(2)(A) (related to nominations).	
51302(b)	46 App.:1295b(b)(1) (less cl. (A)).	
	46 App.:1295b(b)(3)(A)(ii) (related to who may be nominated).	
51302(c)	46 App.:1295b(b)(3)(A) (less (ii) (related to who may be nominated)).	
51302(d)	46 App.:1295b(b)(2)(A) (related to selection), (B), (3)(B), (C).	

In subsection (b)(6)(A), the words ''residents, or sons or daughters of residents, of an area or installation'' are substituted for ''a resident of the area or installation'' in 46 App. U.S.C. 1295b(b)(1)(B) and ''sons or daughters of residents of any area or installation'' in 46 App. U.S.C. 1295b(b)(3)(A)(ii) to resolve an inconsistency in the source law and to conform to the probable intent of Congress. Although 46 App. U.S.C. 1295b(b)(1)(B) provides that a nominee must be a resident, 46 App. U.S.C. 1295b(b)(3)(A)(ii) allocates positions only for sons or daughters of residents.

§ 51303. Non-competitive appointments

The Secretary of Transportation may appoint each year without competition as cadets at the United States Merchant Marine Academy not more than 40 qualified individuals with qualities the Secretary considers to be of special value to the Academy. In making these appointments, the Secretary shall try to achieve a national demographic balance at the Academy.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1572.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51303	46 App.:1295b(b)(3)(D).	June 29, 1936, ch. 858, title XIII, § 1303(b)(3)(D), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 1999.

§ 51304. Additional appointments from particular areas

(a) OTHER COUNTRIES IN WESTERN HEMISPHERE.—The President may appoint individuals from countries in the Western Hemisphere other than the United States to receive instruction at the United States Merchant Marine Academy. Not more than 12 individuals may receive instruction under this subsection at the same time, and not more than 2 individuals from the same country may receive instruction under this subsection at the same time.

(b) OTHER COUNTRIES GENERALLY.—

(1) APPOINTMENT.—The Secretary of Transportation, with the approval of the Secretary of State, may appoint individuals from countries other than the United States to receive instruction at the Academy. Not more than 30 individuals may receive instruction under this subsection at the same time.

(2) REIMBURSEMENT.—The Secretary of Transportation shall ensure that the country from which an individual comes under this subsection will reimburse the Secretary for the cost (as determined by the Secretary) of the instruction and allowances received by the individual.

(c) PANAMA.—

(1) APPOINTMENT.—The Secretary of Transportation, with the approval of the Secretary of State, may appoint individuals from Panama to receive instruction at the Academy. Individuals appointed under this subsection are in addition to those appointed under any other provision of this chapter.

(2) REIMBURSEMENT.—The Secretary of Transportation shall be reimbursed for the cost (as determined by the Secretary) of the instruction and allowances received by an individual appointed under this subsection.

(d) ALLOWANCES AND REGULATIONS.—Individuals receiving instruction under this section are entitled to the same allowances and are subject to the same regulations on admission, attendance, discipline, resignation, discharge, dismissal, and graduation, as cadets at the Academy appointed from the United States.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1572.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51304(a)	46 App.:1295b(b)(5)(A), (B).	June 29, 1936, ch. 858, title XIII, § 1303(b)(5)–(7), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 1999; Pub. L. 99–368, § 5, Aug. 1, 1986, 100 Stat. 776; Pub. L. 101–595, title VII, § 708(3), Nov. 16, 1990, 104 Stat. 2995.
51304(b)	46 App.:1295b(b)(6)(A)–(C).	
51304(c)	46 App.:1295b(b)(7)(A), (B).	
51304(d)	46 App.:1295b(b)(5)(C), (6)(D), (7)(C).	

The word ''appoint'' is substituted for ''designate'' and ''permit'' for consistency in the chapter.

§ 51305. Prohibited basis for appointment

Preference may not be given to an individual for appointment as a cadet at the United States

Merchant Marine Academy because one or more members of the individual's immediate family are alumni of the Academy.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1572.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51305	46 App.:1295b(b)(3)(E).	June 29, 1936, ch. 858, title XIII, § 1303(b)(3)(E), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 1999.

§ 51306. Cadet commitment agreements

(a) AGREEMENT REQUIREMENTS.—A citizen of the United States appointed as a cadet at the United States Merchant Marine Academy must sign, as a condition of the appointment, an agreement to—

(1) complete the course of instruction at the Academy;

(2) fulfill the requirements for a license as an officer in the merchant marine of the United States before graduation from the Academy;

(3) maintain a valid license as an officer in the merchant marine of the United States for at least 6 years after graduation from the Academy, accompanied by the appropriate national and international endorsements and certification required by the Coast Guard for service aboard vessels on domestic and international voyages;

(4) apply for, and accept if tendered, an appointment as a commissioned officer in the Naval Reserve (including the Merchant Marine Reserve, Naval Reserve), the Coast Guard Reserve, or any other reserve unit of an armed force of the United States, and, if tendered the appointment, to serve for at least 6 years after graduation from the Academy;

(5) serve the foreign and domestic commerce and the national defense of the United States for at least 5 years after graduation from the Academy—

(A) as a merchant marine officer on a documented vessel or a vessel owned and operated by the United States Government or by a State;

(B) as an employee in a United States maritime-related industry, profession, or marine science (as determined by the Secretary of Transportation), if the Secretary determines that service under subparagraph (A) is not available to the individual;

(C) as a commissioned officer on active duty in an armed force of the United States, as a commissioned officer in the National Oceanic and Atmospheric Administration, or in other maritime-related Federal employment which serves the national security interests of the United States, as determined by the Secretary; or

(D) by a combination of the service alternatives referred to in subparagraphs (A)–(C); and

(6) report to the Secretary on compliance with this subsection.

(b) FAILURE TO COMPLETE COURSE OF INSTRUCTION.—

(1) ACTIVE DUTY.—If the Secretary of Transportation determines that an individual who has attended the Academy for at least 2 years has failed to fulfill the part of the agreement described in subsection (a)(1), the individual may be ordered by the Secretary of Defense to serve on active duty in one of the armed forces of the United States for a period of not more than 2 years. In cases of hardship as determined by the Secretary of Transportation, the Secretary of Transportation may waive this paragraph in whole or in part.

(2) RECOVERY OF COST.—If the Secretary of Defense is unable or unwilling to order an individual to serve on active duty under paragraph (1), or if the Secretary of Transportation determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Secretary of Transportation may recover from the individual the cost of education provided by the Government.

(c) FAILURE TO CARRY OUT OTHER REQUIREMENTS.—

(1) ACTIVE DUTY.—If the Secretary of Transportation determines that an individual has failed to fulfill any part of the agreement described in subsection (a)(2)–(6), the individual may be ordered to serve on active duty for a period of at least 3 years but not more than the unexpired period (as determined by the Secretary) of the service required by subsection (a)(5). The Secretary of Transportation, in consultation with the Secretary of Defense, shall determine in which service the individual shall serve. In cases of hardship as determined by the Secretary of Transportation, the Secretary of Transportation may waive this paragraph in whole or in part.

(2) RECOVERY OF COST.—If the Secretary of Defense is unable or unwilling to order an individual to serve on active duty under paragraph (1), or if the Secretary of Transportation determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Secretary of Transportation may recover from the individual the cost of education provided. The Secretary may reduce the amount to be recovered to reflect partial performance of service obligations and other factors the Secretary determines merit a reduction.

(d) ACTIONS TO RECOVER COST.—To aid in the recovery of the cost of education provided by the Government under a commitment agreement under this section, the Secretary of Transportation may—

(1) request the Attorney General to bring a civil action against the individual; and

(2) make use of the Federal debt collection procedures in chapter 176 of title 28 or other applicable administrative remedies.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1572; Pub. L. 109–163, div. A, title V, § 515(g)(2)(A), Jan. 6, 2006, 119 Stat. 3236; Pub. L. 109–364, div. C, title XXXV, §§ 3505(a), 3506(a), Oct. 17, 2006, 120 Stat. 2516, 2517.)

AMENDMENTS NOT SHOWN IN TEXT

This section was derived from provisions of section 1295b(e) of the former Appendix to this title,

which was amended by Pub. L. 109–163, div. A, title V, § 515(g)(2)(A), Jan. 6, 2006, 119 Stat. 3236, and Pub. L. 109–364, div. C, title XXXV, §§ 3505(a), 3506(a), Oct. 17, 2006, 120 Stat. 2516, 2517. For applicability of those amendments to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Section 1295b(e) of the former Appendix to this title was amended by striking ''Naval Reserve'' each place it appears and inserting ''Navy Reserve'' and by adding the following:

''(6)(A) An individual who for the 5-year period following graduation from the Academy, serves as a commissioned officer on active duty in an armed force of the United States or as a commissioned officer of the National Oceanic and Atmospheric Administration or the Public Health Service shall be excused from the requirements of subparagraphs (C), (D), and (E) of paragraph (1) [now paragraphs (3) to (5) of subsection (a) of this section].

''(B) The Secretary may modify or waive any of the terms and conditions set forth in paragraph (1) through the imposition of alternative service requirements.

''(7)(A) Subject to any otherwise applicable restrictions on disclosure in section 552a of title 5, United States Code, the Secretary of Defense, the Secretary of the department in which the Coast Guard is operating, the Administrator of the National Oceanic and Atmospheric Administration, and the Surgeon General of the Public Health Service—

''(i) shall report the status of obligated service of an individual graduate of the Academy upon request of the Secretary; and

''(ii) may, in their discretion, notify the Secretary of any failure of the graduate to perform the graduate's duties, either on active duty or in the Ready Reserve component of their respective service, or as a commissioned officer of the National Oceanic and Atmospheric Administration or the Public Health Service, respectively.

''(B) A report or notice under subparagraph (A) shall identify any graduate determined to have failed to comply with service obligation requirements and provide all required information as to why such graduate failed to comply.

''(C) Upon receipt of such a report or notice, such graduate may be considered to be in default of the graduate's service obligations by the Secretary, and subject to all remedies the Secretary may have with respect to such a default.''

For effective dates of paragraphs (6) and (7) above, see Effective Date of 2006 Amendment note below.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51306(a)	46 App.:1295b(e)(1).	June 29, 1936, ch. 858, title XIII, § 1303(e)(1)–(4), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 2000; Pub. L. 97–31, § 12(144)(A), Aug. 6, 1981, 95 Stat. 166; Pub. L. 101–595, title VII, § 707(a), Nov. 16, 1990, 104 Stat. 2995; Pub. L. 108–136, title XXXV, § 3515(b), Nov. 24, 2003, 117 Stat. 1792.
51306(b)	46 App.:1295b(e)(2).	
51306(c)	46 App.:1295b(e)(3).	
51306(d)	46 App.:1295b(e)(4).	

In subsection (a), before paragraph (1), the words ''after the date occurring 6 months after October 1, 1981'' are omitted as obsolete. In paragraph (2), the words ''before graduating'' are substituted for ''on or before the date of graduation'' to eliminate unnecessary words. In paragraph (5)(A), the words ''or territories'' are omitted as unnecessary because of the definition of ''State'' in chapter 1 of the revised title.

In subsection (d), the words ''bring a civil action'' are substituted for ''begin court proceedings'' for consistency in the revised title and with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. C, title XXXV, § 3505(b), Oct. 17, 2006, 120 Stat. 2517, provided that: ''Paragraph (6) of section 1303(e) of the Merchant Marine Act, 1936 ([former] 46 U.S.C. App. 1295b(e)) [see Amendments Not Shown in Text note above], as added by this section, applies only to an individual who enrolls as a cadet at the United States Merchant Marine Academy, and signs an agreement under paragraph (1) of that section [now 46 U.S.C. 51306(a)], after the date of the enactment of this Act [Oct. 17, 2006].''

Pub. L. 109–364, div. C, title XXXV, § 3506(b), Oct. 17, 2006, 120 Stat. 2517, provided that: ''The amendment made by this section [enacting par. (7) of former 46 U.S.C. App. 1295b(e), see Amendments Not Shown in Text note above] does not apply with respect to an agreement entered into under section 1303(e) of the Merchant Marine Act, 1936 ([former] 46 U.S.C. [App.] 1295b(e)) [see 46 U.S.C. 51306(a)] before the date of the enactment of this Act [Oct. 17, 2006].''

§ 51307. Places of training

The Secretary of Transportation may provide for the training of cadets at the United States Merchant Marine Academy—

(1) on vessels owned or subsidized by the United States Government;

(2) on other documented vessels, with the permission of the owner; and

(3) in shipyards or plants and with industrial or educational organizations.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1574; Pub. L. 109–241, title III, § 307, July 11, 2006, 120 Stat. 528.)

AMENDMENT NOT SHOWN IN TEXT

This section was derived from section 1295b(f) of the former Appendix to this title, which was amended by Pub. L. 109–241, title III, § 307, July 11, 2006, 120 Stat. 528. For applicability of that amendment to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Section 1295b(f) of the former Appendix to this title was amended as follows:

(1) by striking ''and'' at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting ''; and''; and

(3) by adding at the end the following:

''(4) on any other vessel considered by the Secretary to be necessary or appropriate or in the national interest.''

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51307	46 App.:1295b(f).	June 29, 1936, ch. 858, title XIII, § 1303(f), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 2002.

In paragraph (2), the words ''with the permission of the owner'' are substituted for ''if the owner . . . cooperates in such use'' for clarity.

§ 51308. Uniforms, textbooks, and transportation allowances

The Secretary of Transportation shall provide cadets at the United States Merchant Marine Academy—

(1) all required uniforms and textbooks; and

(2) allowances for transportation (including reimbursement of traveling expenses) when traveling under orders as a cadet.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1574.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51308	46 App.:1295b(d).	June 29, 1936, ch. 858, title XIII, § 1303(d), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 2000.

§ 51309. Academic degree

(a) BACHELOR'S DEGREE.—

(1) IN GENERAL.—The Superintendent of the United States Merchant Marine Academy may confer the degree of bachelor of science on an individual who—

(A) has met the conditions prescribed by the Secretary of Transportation; and

(B) if a citizen of the United States, has passed the examination for a merchant marine officer's license.

(2) EFFECT OF PHYSICAL DISQUALIFICATION.—An individual not allowed to take the examination for a merchant marine officer's license only because of physical disqualification may not be denied a degree for not taking the examination.

(b) MASTER'S DEGREE.—The Superintendent of the Academy may confer a master's degree on an individual who has met the conditions prescribed by the Secretary. A master's degree program may be funded through non-appropriated funds. To maintain the appropriate academic standards, the program shall be accredited by the appropriate accreditation body. The Secretary may prescribe regulations necessary to administer such a program.

(c) GRADUATION NOT ENTITLEMENT TO HOLD LICENSE.—Graduation from the Academy does not entitle an individual to hold a license authorizing service on a merchant vessel.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1574.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51309(a)	46 App.:1295b(g)(1).	June 29, 1936, ch. 858, title XIII, § 1303(g), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 2002; restated Pub. L. 108–136, title XXXV, § 3515(c), Nov. 24, 2003, 117 Stat. 1794.
51309(b)	46 App.:1295b(g)(2).	
51309(c)	46 App.:1295b(b)(8).	June 29, 1936, ch. 858, title XIII, § 1303(b)(8), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 1997; Pub. L. 99–368, § 5, Aug. 1, 1986, 100 Stat. 776.

§ 51310. Deferment of service obligation under cadet commitment agreements

The Secretary of Transportation may defer the service commitment of an individual under section 51306(a)(5) of this title (as specified in the cadet commitment agreement) for not more than 2 years if the individual is engaged in a graduate course of study approved by the Secretary. However, deferment of service as a commissioned officer under section 51306(a)(5) must be approved by the Secretary of the military department that has jurisdiction over the service or by the Secretary of Commerce for service with the National Oceanic and Atmospheric Administration.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1575.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51310	46 App.:1295b(e)(5).	June 29, 1936, ch. 858, title XIII, § 1303(e)(5), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 2001; Pub. L. 97–31, § 12(144)(B), Aug. 6, 1981, 95 Stat. 166; Pub. L. 108–136, title XXXV, § 3515(b)(6), Nov. 24, 2003, 117 Stat. 1793.

§ 51311. Midshipman status in the Naval Reserve

(a) APPLICATION REQUIREMENT.—Before being appointed as a cadet at the United States Merchant Marine Academy, a citizen of the United States must agree to apply for midshipman status in the Naval Reserve (including the Merchant Marine Reserve, Naval Reserve).

(b) APPOINTMENT.—

(1) IN GENERAL.—A citizen of the United States appointed as a cadet at the Academy shall be appointed by the Secretary of the Navy as a midshipman in the Naval Reserve (including the Merchant Marine Reserve, Naval Reserve).

(2) RIGHTS AND PRIVILEGES.—The Secretary of the Navy shall provide for cadets of the Academy who are midshipmen in the United States Naval Reserve to be—

(A) issued an identification card (referred to as a ''military ID card''); and

(B) entitled to all rights and privileges in accordance with the same eligibility criteria as apply to other members of the Ready Reserve of the reserve components of the armed forces.

(3) COORDINATION.—The Secretary of the Navy shall carry out paragraphs (1) and (2) in coordination with the Secretary of Transportation.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1575; Pub. L. 109–163, div. A, title V, § 515(g)(2), Jan. 6, 2006, 119 Stat. 3236.)

AMENDMENT NOT SHOWN IN TEXT

This section was derived from provisions of section 1295b of the former Appendix to this title, which was amended by Pub. L. 109–163, div. A, title V, § 515(g)(2), Jan. 6, 2006, 119 Stat. 3236. For applicability of that amendment to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section

101 of this title. Section 1295b of the former Appendix to this title was amended by striking ''Naval Reserve'' each place it appears and inserting ''Navy Reserve'' and by striking ''NAVAL RESERVE'' *in subsec. (c) and inserting* ''NAVY RESERVE''.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51311(a)	46 App.:1295b(b)(3)(F).	June 29, 1936, ch. 858, title XIII, § 1303(b)(3)(F), (c), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 1999, 2000; Pub. L. 105–261, div. A, title V, § 568, Oct. 17, 1998, 112 Stat. 2031; Pub. L. 106–65, div. A, title X, § 1066(b)(5), Oct. 5, 1999, 113 Stat. 772.
51311(b)	46 App.:1295b(c).	

§ 51312. Board of Visitors

(a) IN GENERAL.—A Board of Visitors to the United States Merchant Marine Academy shall be established, for a term of 2 years commencing at the beginning of each Congress, to visit the Academy annually on a date determined by the Secretary of Transportation and to make recommendations on the operation of the Academy.

(b) APPOINTMENT.—

(1) IN GENERAL.—The Board shall be composed of—

(A) 2 Senators appointed by the chairman of the Committee on Commerce, Science, and Transportation of the Senate;

(B) 3 Members of the House of Representatives appointed by the chairman of the Committee on Armed Services of the House of Representatives;

(C) 1 Senator appointed by the Vice President;

(D) 2 Members of the House of Representatives appointed by the Speaker of the House of Representatives; and

(E) the chairmen of the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Armed Services of the House of Representatives, as ex officio members.

(2) SUBSTITUTE APPOINTMENT.—If an appointed member of the Board is unable to visit the Academy as provided in subsection (a), another individual may be appointed as a substitute in the manner provided in paragraph (1).

(c) STAFF.—The chairmen of the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Armed Services of the House of Representatives may designate staff members of their committees to serve without reimbursement as staff for the Board.

(d) TRAVEL EXPENSES.—When serving away from home or regular place of business, a member of the Board or a staff member designated under subsection (c) shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1575.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51312	46 App.:1295b(h).	June 29, 1936, ch. 858, title XIII, § 1303(h), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 2002; Pub. L. 97–35, title XVI, § 1607, Aug. 13, 1981, 95 Stat. 752; Pub. L. 101–595, title VII, § 703, Nov. 16, 1990, 104 Stat. 2994.

The words ''Committee on Armed Services'' are substituted for ''Committee on Merchant Marine and Fisheries'' to reflect changes in committee structure made by the 104th Congress.

§ 51313. Advisory Board

(a) IN GENERAL.—An Advisory Board to the United States Merchant Marine Academy shall be established to visit the Academy at least once during each academic year, for the purpose of examining the course of instruction and management of the Academy and advising the Maritime Administrator and the Superintendent of the Academy.

(b) APPOINTMENT AND TERMS.—The Board shall be composed of not more than 7 individuals appointed by the Secretary of Transportation. The individuals must be distinguished in education and other fields related to the Academy. Members of the Board shall be appointed for terms of not more than 3 years and may be reappointed. The Secretary shall designate one of the members as chairman.

(c) TRAVEL EXPENSES.—When serving away from home or regular place of business, a member of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.

(d) RELATIONSHIP TO OTHER LAW.—The Federal Advisory Committee Act (5 App. U.S.C.) does not apply to the Board.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1576.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51313	46 App.:1295b(i).	June 29, 1936, ch. 858, title XIII, § 1303(i), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 2002; Pub. L. 97–31, § 12(144)(C), Aug. 6, 1981, 95 Stat. 166.

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (d), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 51314. Limitation on charges and fees for attendance

(a) PROHIBITION.—Except as provided in subsection (b), no charge or fee for tuition, room, or board for attendance at the United States Merchant Marine Academy may be imposed unless the charge or fee is specifically authorized by a law enacted after October 5, 1994.

(b) EXCEPTION.—The prohibition specified in subsection (a) does not apply with respect to any item or service provided to cadets for which a charge or fee is imposed as of October 5, 1994.

The Secretary of Transportation shall notify Congress of any change made by the Academy in the amount of a charge or fee authorized under this subsection.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1576.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51314	46 App.:1295b(j).	June 29, 1936, ch. 858, title XIII, § 1303(j), as added Pub. L. 108–375, Oct. 28, 2004, div. A, title V, § 545(e), 118 Stat. 1909.

CHAPTER 515—STATE MARITIME ACADEMY SUPPORT PROGRAM

Sec.
51501. General support program.
51502. Detailing of personnel.
51503. Regional maritime academies.
51504. Use of training vessels.
51505. Annual payments for maintenance and support.
51506. Conditions to receiving payments and use of vessels.
51507. Places of training.
51508. Allowances for students.
51509. Student incentive payment agreements.
51510. Deferment of service obligation under student incentive payment agreements.
51511. Midshipman status in the Naval Reserve.

§ 51501. General support program

(a) ASSISTANCE TO STATE MARITIME ACADEMIES.—The Secretary of Transportation shall cooperate with and assist State maritime academies in providing instruction to individuals to prepare them for service in the merchant marine of the United States.

(b) COURSE DEVELOPMENT.—The Secretary shall provide to each State maritime academy guidance and assistance in developing courses on the operation and maintenance of new vessels, on equipment, and on innovations being introduced to the merchant marine of the United States.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1577.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51501(a)	46 App.:1295c(a).	June 29, 1936, ch. 858, title XIII, § 1304(a), (d)(2), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 2003, 2004.
51501(b)	46 App.:1295c(d)(2).	

§ 51502. Detailing of personnel

At the request of the Governor of a State, the President may detail, without reimbursement, personnel of the Navy, the Coast Guard, and the Maritime Service to a State maritime academy to serve as a superintendent, professor, lecturer, or instructor at the academy.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1577.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51502	46 App.:1295c(e).	June 29, 1936, ch. 858, title XIII, § 1304(e), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 2004.

The reference to territories is omitted as unnecessary because of the definition of ''State'' in chapter 1 of the revised title.

§ 51503. Regional maritime academies

The Governors of the States cooperating to sponsor a regional maritime academy shall designate in writing one of those States to conduct the affairs of that academy. A regional maritime academy is eligible for assistance from the United States Government on the same basis as a State maritime academy sponsored by a single State.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1577.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51503	46 App.:1295c(b).	June 29, 1936, ch. 858, title XIII, § 1304(b), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 2003.

The reference to territories is omitted as unnecessary because of the definition of ''State'' in chapter 1 of the revised title.

§ 51504. Use of training vessels

(a) APPLICATIONS TO USE VESSELS.—The Governor of a State sponsoring a State maritime academy (or the Governor of the State designated to conduct the affairs of a regional maritime academy) may apply in writing to the Secretary of Transportation to obtain the use of a training vessel for the academy. A vessel provided under this section remains the property of the United States Government.

(b) GENERAL AUTHORITY.—Subject to subsection (c), the Secretary may provide to a State maritime academy, for use as a training vessel, a suitable vessel under the control of the Secretary or made available to the Secretary under subsection (e). If a suitable vessel is not available, the Secretary may build and provide a suitable vessel.

(c) APPROVAL REQUIREMENTS.—The Secretary may provide a vessel under this section only if—

(1) an application has been made under subsection (a);

(2) the State maritime academy satisfies section 51506(a) of this title; and

(3) a suitable port will be available for the safe mooring of the vessel while the academy is using the vessel.

(d) PREPARATION AND MAINTENANCE.—A vessel provided under this section shall be—

(1) repaired, reconditioned, and equipped (with all apparel, charts, books, and instruments of navigation) as necessary for use as a training vessel; and

(2) maintained in good repair by the Secretary.

(e) AGENCY VESSELS.—An agency may provide to the Secretary, for use by a State maritime academy, a vessel (including equipment) that—

(1) is suitable for training purposes; and

(2) can be provided without detriment to the service to which the vessel is assigned.

(f) FUEL COSTS.—The Secretary may pay to a State maritime academy the costs of fuel used by a vessel provided under this section while used for training.

(g) REMOVING VESSELS FROM SERVICE AND VESSEL SHARING.—The Secretary may not—

(1) take a vessel, currently in use as a training vessel under this section, out of service to implement an alternative program (including vessel sharing) unless the vessel is incapable of being maintained in good repair as required by subsection (d); or

(2) implement a program requiring a State maritime academy to share its training vessel with another State maritime academy, except with the express consent of Congress.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1577; Pub. L. 109–163, div. C, title XXXV, § 3502(b), Jan. 6, 2006, 119 Stat. 3548.)

AMENDMENT NOT SHOWN IN TEXT

Subsection (f) of this section was derived from section 1295c(c)(2) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3502(b), Jan. 6, 2006, 119 Stat. 3548. For applicability of that amendment to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Section 1295c(c)(2) of the former Appendix to this title was amended—

(1) by striking ''The Secretary may pay to any State maritime academy'' and inserting ''(A) The Secretary shall, subject to the availability of appropriations, pay to each State maritime academy''; and

(2) by adding at the end the following:

''(B) The amount of the payment to a State maritime academy under this paragraph shall not exceed—

''(i) $100,000 for fiscal year 2006;

''(ii) $200,000 for fiscal year 2007; and

''(iii) $300,000 for fiscal year 2008 and each fiscal year thereafter.''

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51504(a)	46 App.:1295c(c)(1)(A)(ii), (v).	June 29, 1936, ch. 858, title XIII, § 1304(c)(1), (2), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 2003.
51504(b)	46 App.:1295c(c)(1)(A) (1st sentence words before ''meeting the requirements'').	
51504(c)(1) ..	46 App.:1295c(c)(1)(A)(ii).	
51504(c)(2) ..	46 App.:1295c(c)(1)(A) (1st sentence words beginning with ''meeting the requirements'').	
51504(c)(3) ..	46 App.:1295c(c)(1)(A)(iii).	
51504(d)(1) ..	46 App.:1295c(c)(1)(A)(i).	
51504(d)(2) ..	46 App.:1295c(c)(1)(A)(iv).	
51504(e)	46 App.:1295c(c)(1)(B).	
51504(f)	46 App.:1295c(c)(2).	
51504(g)	46 App.:1295c note.	Pub. L. 101–115, § 4, Oct. 13, 1989, 103 Stat. 692; Pub. L. 101–595, title VII, § 705, Nov. 16, 1990, 104 Stat. 2994.

In subsection (a), the reference to territories is omitted as unnecessary because of the definition of ''State'' in chapter 1 of the revised title.

In subsection (e), before paragraph (1), the word ''agency'' is substituted for ''department or agency of the United States'' because of the definition of ''agency'' in chapter 1 of the revised title.

In subsection (g), the 1st–3d sentences of section 4 of Public Law 101–115 are omitted as obsolete.

§ 51505. Annual payments for maintenance and support

(a) PAYMENT AGREEMENTS.—The Secretary of Transportation may make an agreement (effective for not more than 4 years) with the following academies to provide annual payments to those academies for their maintenance and support:

(1) One State maritime academy in each State that satisfies section 51506(a) of this title.

(2) Each regional maritime academy that satisfies section 51506(a) of this title.

(b) PAYMENTS.—

(1) IN GENERAL.—Subject to paragraph (2), an annual payment to an academy under subsection (a) shall be at least equal to the amount given to the academy for its maintenance and support by the State in which it is located, or, for a regional maritime academy, by all States cooperating to sponsor the academy.

(2) MAXIMUM.—The amount under paragraph (1) may not be more than $25,000. However, if the academy satisfies section 51506(b) of this title, the amount shall be—

(A) $100,000 for a State maritime academy; and

(B) $200,000 for a regional maritime academy.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1578; Pub. L. 109–163, div. C, title XXXV, § 3502(a), Jan. 6, 2006, 119 Stat. 3547.)

AMENDMENT NOT SHOWN IN TEXT

This section was derived from section 1295c(d)(1) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3502(a), Jan. 6, 2006, 119 Stat. 3547. For applicability of that amendment to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Section 1295c(d)(1) of the former Appendix to this title was amended in subparagraph (C)(ii) (corresponding to subsection (b)(2)(B) of this section) by striking ''$200,000'' and inserting ''$300,000 for fiscal year 2006, $400,000 for fiscal year 2007, and $500,000 for fiscal year 2008 and each fiscal year thereafter''.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51505	46 App.:1295c(d)(1).	June 29, 1936, ch. 858, title XIII, § 1304(d)(1), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 2004; Pub. L. 101–115, § 5, Oct. 13, 1989, 103 Stat. 693.

In subsection (b)(1), the reference to territories is omitted as unnecessary because of the definition of ''State'' in chapter 1 of the revised title.

§ 51506. Conditions to receiving payments and use of vessels

(a) GENERAL CONDITIONS.—As conditions of receiving an annual payment or the use of a vessel under this chapter, a State maritime academy must—

(1) provide courses of instruction on navigation, marine engineering (including steam and diesel propulsion), the operation and maintenance of new vessels and equipment, and innovations being introduced to the merchant marine of the United States;

(2) agree in writing to conform to the standards for courses, training facilities, admissions, and instruction that the Secretary of Transportation may establish after consultation with the superintendents of State maritime academies; and

(3) agree in writing to require, as a condition for graduation, that each individual who is a citizen of the United States and who is attending the academy in a merchant marine officer preparation program pass the examination required for the issuance of a license under section 7101 of this title.

(b) ADDITIONAL CONDITION TO PAYMENTS OF MORE THAN $25,000.—As a condition of receiving an annual payment of more than $25,000 under section 51505 of this title, a State maritime academy also must agree to admit each year a number of citizens of the United States who meet its admission requirements and reside in a State not supporting that academy. The Secretary shall determine the number of individuals to be admitted by each academy under this subsection. The number may not be more than one-third of the total number of individuals attending the academy at any time.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1579.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51506	46 App.:1295c(f).	June 29, 1936, ch. 858, title XIII, § 1304(f), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 2004; Pub. L. 101–115, § 3(a), Oct. 13, 1989, 103 Stat. 692.

In subsection (a)(3), the words ''administered by the Coast Guard'' are omitted as unnecessary.

§ 51507. Places of training

The Secretary of Transportation may provide for the training of students attending a State maritime academy—

(1) on vessels owned or subsidized by the United States Government;

(2) on other documented vessels, with the permission of the owner; and

(3) in shipyards or plants and with industrial or educational organizations.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1579.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51507	46 App.:1295c(c)(3)(A).	June 29, 1936, ch. 858, title XIII, § 1304(c)(3)(A), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 2003.

In paragraph (2), the words ''with the permission of the owner'' are substituted for ''if the owner . . . cooperates in such use'' for clarity.

§ 51508. Allowances for students

Under regulations prescribed by the Secretary of Transportation, a student at a State maritime academy shall receive from the Secretary allowances for transportation (including reimbursement of traveling expenses) when traveling under orders to receive training under section 51507 of this title.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1579.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51508	46 App.:1295c(c)(3)(B).	June 29, 1936, ch. 858, title XIII, § 1304(c)(3)(B), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 2004.

§ 51509. Student incentive payment agreements

(a) GENERAL AUTHORITY.—If a State maritime academy has an agreement with the Secretary of Transportation under section 51505 of this title, the Secretary may make an agreement with a student at the academy who is a citizen of the United States to make student incentive payments to the individual. An agreement with a student may not be effective for more than 4 academic years. The Secretary shall allocate payments under this section among the various State maritime academies in an equitable manner.

(b) PAYMENTS.—Payments under an agreement under this section shall be equal to $4,000 each academic year and be paid, as prescribed by the Secretary, while the individual is attending the academy. The payments shall be used for uniforms, books, and subsistence.

(c) MIDSHIPMAN AND ENLISTED RESERVE STATUS.—An agreement under this section shall require the student to accept midshipman and enlisted reserve status in the Naval Reserve (including the Merchant Marine Reserve, Naval Reserve) before receiving any payments under the agreement.

(d) AGREEMENT REQUIREMENTS.—An agreement under this section shall require the student to—

(1) complete the course of instruction at the academy the individual is attending;

(2) take the examination for a license as an officer in the merchant marine of the United States before graduation from the academy and fulfill the requirements for such a license within 3 months after graduation from the academy;

(3) maintain a valid license as an officer in the merchant marine of the United States for at least 6 years after graduation from the academy, accompanied by the appropriate national and international endorsements and certification required by the Coast Guard for service aboard vessels on domestic and international voyages;

(4) accept, if tendered, an appointment as a commissioned officer in the Naval Reserve (including the Merchant Marine Reserve, Naval Reserve), the Coast Guard Reserve, or any other reserve unit of an armed force of the

United States, and, if tendered the appointment, to serve for at least 6 years after graduation from the academy;

(5) serve the foreign and domestic commerce and the national defense of the United States for at least 3 years after graduation from the academy—

(A) as a merchant marine officer on a documented vessel or a vessel owned and operated by the United States Government or by a State;

(B) as an employee in a United States maritime-related industry, profession, or marine science (as determined by the Secretary), if the Secretary determines that service under subparagraph (A) is not available to the individual;

(C) as a commissioned officer on active duty in an armed force of the United States, as a commissioned officer in the National Oceanic and Atmospheric Administration, or in other maritime-related Federal employment which serves the national security interests of the United States, as determined by the Secretary; or

(D) by a combination of the service alternatives referred to in subparagraphs (A)–(C); and

(6) report to the Secretary on compliance with this subsection.

(e) FAILURE TO COMPLETE COURSE OF INSTRUCTION.—

(1) ACTIVE DUTY.—If the Secretary of Transportation determines that an individual who has accepted the payments described in subsection (b) for a minimum of 2 academic years has failed to fulfill the part of the agreement described in subsection (d)(1), the individual may be ordered by the Secretary of Defense to serve on active duty in the armed forces of the United States for a period of not more than 2 years. In cases of hardship as determined by the Secretary of Transportation, the Secretary of Transportation may waive this paragraph in whole or in part.

(2) RECOVERY OF COST.—If the Secretary of Defense is unable or unwilling to order an individual to serve on active duty under paragraph (1), or if the Secretary of Transportation determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Secretary of Transportation may recover from the individual the amount of student incentive payments, plus interest and attorney fees. The Secretary may reduce the amount to be recovered to reflect partial performance of service obligations and other factors the Secretary determines merit a reduction.

(f) FAILURE TO CARRY OUT OTHER REQUIREMENTS.—

(1) ACTIVE DUTY.—If the Secretary of Transportation determines that an individual has failed to fulfill any part of the agreement described in subsection (d)(2)–(6), the individual may be ordered to serve on active duty for a period of at least 2 years but not more than the unexpired period (as determined by the Secretary) of the service required by subsection (d)(5). The Secretary of Transportation, in consultation with the Secretary of Defense, shall determine in which service the individual shall serve. In cases of hardship as determined by the Secretary of Transportation, the Secretary of Transportation may waive this paragraph in whole or in part.

(2) RECOVERY OF COST.—If the Secretary of Defense is unable or unwilling to order an individual to serve on active duty under paragraph (1), or if the Secretary of Transportation determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Secretary of Transportation may recover from the individual the amount of student incentive payments, plus interest and attorney fees. The Secretary may reduce the amount to be recovered to reflect partial performance of service obligations and other factors the Secretary determines merit a reduction.

(g) ACTIONS TO RECOVER COST.—To aid in the recovery of the cost of education provided by the Government under a commitment agreement under this section, the Secretary of Transportation may—

(1) request the Attorney General to bring a civil action against the individual; and

(2) make use of the Federal debt collection procedures in chapter 176 of title 28 or other applicable administrative remedies.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1579; Pub. L. 109–163, div. A, title V, § 515(g)(2)(A), Jan. 6, 2006, 119 Stat. 3236; Pub. L. 109–364, div. C, title XXXV, § 3508, Oct. 17, 2006, 120 Stat. 2517.)

AMENDMENTS NOT SHOWN IN TEXT

This section was derived from provisions of section 1295c(g) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. A, title V, § 515(g)(2)(A), Jan. 6, 2006, 119 Stat. 3236, and Pub. L. 109–364, div. C, title XXXV, § 3508, Oct. 17, 2006, 120 Stat. 2517. For applicability of those amendments to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Section 1295c(g) of the former Appendix to this title was amended by striking ''Naval Reserve'' each place it appears and inserting ''Navy Reserve'' and by amending paragraph (2) to read as follows:

''(2) Each agreement entered into under paragraph (1) shall require the individual to accept enlisted reserve status in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve) or the United States Coast Guard Reserve before receiving any student incentive payments under this subsection.''

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51509(a)	46 App.:1295c(g)(1) (words before 5th comma, cl. (A)), (8).	June 29, 1936, ch. 858, title XIII, § 1304(g)(1)–(5), (8), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 2004, 2006; Pub. L. 97–31, § 12(145)(A), Aug. 6, 1981, 95 Stat. 166; Pub. L. 101–115, § 2(a)–(d), Oct. 13, 1989, 103 Stat. 691; Pub. L. 102–587, title VI, § 6201(a)(1), (b), (c), Nov. 4, 1992, 106 Stat. 5093; Pub. L. 108–136, title XXXV, § 3515(d), Nov. 24, 2003, 117 Stat. 1794.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
51509(b)	46 App.:1295c(g)(1) (words between 5th comma and dash, cls. (B), (C)).	
51509(c)	46 App.:1295c(g)(2)	
51509(d)	46 App.:1295c(g)(3)	
51509(e)	46 App.:1295c(g)(4)	
51509(f)	46 App.:1295c(g)(5)	
51509(g)	46 App.:1295c(g)(6)	

In subsection (a), the text of 46 App. U.S.C. 1295c(g)(8) is omitted as obsolete.

In subsection (g), the words ''bring a civil action'' are substituted for ''begin court proceedings'' for consistency in the revised title and with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.).

§ 51510. Deferment of service obligation under student incentive payment agreements

The Secretary of Transportation may defer the service commitment of an individual under section 51509(d)(5) of this title (as specified in the agreement under section 51509) for not more than 2 years if the individual is engaged in a graduate course of study approved by the Secretary. However, deferment of service as a commissioned officer on active duty must be approved by the Secretary of the affected military department (or the Secretary of Commerce, for service with the National Oceanic and Atmospheric Administration).

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1581.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
51510	46 App.:1295c(g)(7).	June 29, 1936, ch. 858, title XIII, § 1304(g)(7), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 2006; Pub. L. 97–31, § 12(145)(B), Aug. 6, 1981, 95 Stat. 166; Pub. L. 108–136, title XXXV, § 3515(d)(7), Nov. 24, 2003, 117 Stat. 1795.

The words ''affected military department'' are substituted for ''military department . . . which has jurisdiction over such service'' for clarity and to eliminate unnecessary words.

§ 51511. Midshipman status in the Naval Reserve

A citizen of the United States attending a State maritime academy may be appointed by the Secretary of the Navy as a midshipman in the Naval Reserve (including the Merchant Marine Reserve, Naval Reserve).

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1582; Pub. L. 109–163, div. A, title V, § 515(g)(2), Jan. 6, 2006, 119 Stat. 3236.)

AMENDMENT NOT SHOWN IN TEXT

This section was derived from section 1295c(h) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. A, title V, § 515(g)(2), Jan. 6, 2006, 119 Stat. 3236. For applicability of that amendment to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Section 1295c(h) of the former Appendix to this title was amended by striking ''Naval Reserve'' each place it appears and inserting ''Navy Reserve'' and by striking ''NAVAL RESERVE'' *and inserting* ''NAVY RESERVE''.

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
51511	46 App.:1295c(h).	June 29, 1936, ch. 858, title XIII, § 1304(h), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 2006.

CHAPTER 517—OTHER SUPPORT FOR MERCHANT MARINE TRAINING

Sec.
51701. United States Maritime Service.
51702. Civilian nautical schools.
51703. Additional training.
51704. Training for maritime oil pollution prevention, response, and clean-up.

§ 51701. United States Maritime Service

(a) GENERAL AUTHORITY.—The Secretary of Transportation may establish and maintain a voluntary organization, to be known as the United States Maritime Service, for the training of citizens of the United States to serve on merchant vessels of the United States.

(b) SPECIFIC AUTHORITY.—The Secretary may—

(1) determine the number of individuals to be enrolled for training and reserve purposes in the Service;

(2) fix the rates of pay and allowances of the individuals without regard to chapter 51 or subchapter III of chapter 53 of title 5;

(3) prescribe the course of study and the periods of training for the Service; and

(4) prescribe the uniform of the Service and the rules on providing and wearing the uniform.

(c) RANKS, GRADES, AND RATINGS.—The ranks, grades, and ratings for personnel of the Service shall be the same as those prescribed for personnel of the Coast Guard.

(d) MEDALS AND AWARDS.—The Secretary may establish and maintain a medals and awards program to recognize distinguished service, superior achievement, professional performance, and other commendable achievement by personnel of the Service.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1582; Pub. L. 109–163, div. C, title XXXV, § 3509, Jan. 6, 2006, 119 Stat. 3557; Pub. L. 109–364, div. C, title XXXV, § 3510(d)(1), Oct. 17, 2006, 120 Stat. 2520.)

AMENDMENT NOT SHOWN IN TEXT

Subsection (a) of this section was derived from section 1295e(a) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3509, Jan. 6, 2006, 119 Stat. 3557, as amended by Pub. L. 109–364, div. C, title XXXV, § 3510(d)(1), Oct. 17, 2006, 120 Stat. 2520. For applicability of that amendment to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Section 1295e(a) of the former Appendix to this title was amended by inserting ''and to perform functions to assist the United States merchant marine, as determined necessary by the Secretary,'' after ''United States'' the second place it appears.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51701	46 App.:1295e.	June 29, 1936, ch. 858, title XIII, § 1306, as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 2006; Pub. L. 108–136, title XXXV, § 3515(e), Nov. 24, 2003, 117 Stat. 1795.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. C, title XXXV, § 3510(d)(2), Oct. 17, 2006, 120 Stat. 2521, provided that: ''This subsection [amending section 3509 of Pub. L. 109–163 which had amended section 1295e(a) of the former Appendix to this title, from which subsec. (a) of this section is derived] shall be effective immediately after section 3509 of the National Defense Authorization Act for Fiscal Year 2006 (119 Stat. 3557) [Pub. L. 109–163] takes effect [Jan. 6, 2006].''

§ 51702. Civilian nautical schools

(a) DEFINITION.—In this section, the term ''civilian nautical school'' means a school operated in the United States (except the United States Merchant Marine Academy, a State maritime academy, or another school operated by the United States Government) that offers instruction to individuals quartered on a vessel primarily to train them for service in the merchant marine.

(b) INSPECTION.—Each civilian nautical school is subject to inspection by the Secretary of Transportation.

(c) RATING AND CERTIFICATION.—The Secretary may, under regulations the Secretary may prescribe, provide for the rating and certification of civilian nautical schools as to the adequacy of their course of instruction, the competence of their instructors, and the suitability of the equipment used in their course of instruction.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1582.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51702	46 App.:1295f.	June 29, 1936, ch. 858, title XIII, § 1307, as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 2007; Pub. L. 98–89, § 4(b), Aug. 26, 1983, 97 Stat. 603.

The text of 46 App. U.S.C. 1295f(d) is omitted because it apparently was intended to apply to former 46 App. U.S.C. 1295f(c), which was repealed in 1983.

§ 51703. Additional training

(a) GENERAL AUTHORITY.—The Secretary of Transportation may provide additional training on maritime subjects to supplement other training opportunities and make the training available to the personnel of the merchant marine of the United States and individuals preparing for a career in the merchant marine of the United States.

(b) EQUIPMENT, SUPPLIES, AND CONTRACTS.—The Secretary may—

(1) prepare or buy equipment or supplies required for the additional training; and

(2) without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), make contracts for services the Secretary considers necessary to prepare the equipment and supplies and to supervise and administer the additional training.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1583.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51703	46 App.:1295d(a), (b).	June 29, 1936, ch. 858, title XIII, § 1305(a), (b), as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 2006.

In subsection (a), before paragraph (1), the words ''as the Secretary deems necessary'' are omitted as unnecessary.

In subsection (b), the words ''with any person, partnership, firm, association, or corporation'' and ''the performance of'' are omitted as unnecessary.

§ 51704. Training for maritime oil pollution prevention, response, and clean-up

(a) ASSISTANCE IN ESTABLISHING PROGRAM.—The Secretary of Transportation shall assist maritime training institutions approved by the Secretary in establishing a training program for maritime oil pollution prevention, response, and clean-up.

(b) PROVIDING TRAINING VESSELS.—Subject to subsection (c), the Secretary may provide, with title free of all liens, to maritime training institutions that have a program established under subsection (a), offshore supply vessels and tug/supply vessels that were built in the United States and are in the possession of the Maritime Administration because of a default on a loan guaranteed under chapter 537 of this title.

(c) REQUIREMENTS.—In addition to any other requirements the Secretary considers appropriate, the following requirements apply to vessels provided under this section:

(1) The vessel shall be offered to the institution at a location selected by the Secretary.

(2) The institution shall use the vessel to train students and appropriate maritime industry personnel in oil spill prevention, response, clean-up, and related skills.

(3) The institution shall make the vessel and qualified students available to appropriate Federal, State, and local oil spill response authorities when there is a maritime oil spill.

(4) The institution may not sell, trade, charter, donate, scrap, or in any way alter or dispose of the vessel without prior approval of the Secretary.

(5) The institution may not use the vessel in competition with a privately-owned vessel documented under chapter 121 of this title or titled under the law of a State, unless necessary to carry out this section.

(6) When the institution can no longer use the vessel for its training program, the institution shall return the vessel to the Secretary. The Secretary shall take possession at the institution and thereafter may provide the vessel to another institution under this section or dispose of the vessel.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1583.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
51704(a)	46 App.:1295d(c)(1).	June 29, 1936, ch. 858, title XIII, § 1305(c), as added Pub. L. 101–595, title VII, § 712, Nov. 16, 1990, 104 Stat. 2998.
51704(b)	46 App.:1295d(c)(2)(A), (4).	
51704(c)	46 App.:1295d(c)(2)(B), (3).	

In subsection (c)(5), the words ''or titled under the law of a State'' are substituted for ''documented under the laws of . . . any State'' for consistency with the terminology in 46 U.S.C. 2101(46) (which is being moved to chapter 1 of the revised title) and 46 U.S.C. ch. 125.

CHAPTER 519—MERCHANT MARINE AWARDS

Sec.
51901. Awards for individual acts or service.
51902. Gallant Ship Award.
51903. Multiple awards.
51904. Presentation to representatives.
51905. Flags and grave markers.
51906. Special certificates for civilian service to armed forces.
51907. Manufacture and sale of awards and replacements.
51908. Prohibition against unauthorized manufacture, sale, possession, or display of awards.

§ 51901. Awards for individual acts or service

(a) GENERAL AUTHORITY.—The Secretary of Transportation may award decorations and medals of appropriate design (including ribbons, ribbon bars, emblems, rosettes, miniature facsimiles, plaques, citations, or other suitable devices or insignia) for individual acts or service in the merchant marine of the United States. The design may be similar to the design of a decoration or medal authorized for members of the armed forces for similar acts or service.

(b) SPECIFIC AUTHORITY.—The Secretary may award—

(1) a Merchant Marine Distinguished Service Medal to an individual for outstanding acts, conduct, or valor beyond the line of duty;

(2) a Merchant Marine Meritorious Service Medal to an individual for meritorious acts, conduct, or valor in the line of duty, but not of the outstanding character that would warrant the award of the Merchant Marine Distinguished Service Medal;

(3) a decoration or medal to an individual for service during a war, national emergency proclaimed by the President or Congress, or operations by the armed forces outside the continental United States under conditions of danger to life and property; and

(4) a decoration or medal to an individual for other acts or service of conspicuous gallantry, intrepidity, and extraordinary heroism under conditions of danger to life and property that would warrant a similar decoration or medal for a member of the armed forces.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1584.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
51901(a)	46 App.:2001.	Pub. L. 100–324, §§ 2, 3, 5(d), May 30, 1988, 102 Stat. 576, 577.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
	46 App.:2004(d).	
51901(b)	46 App.:2002.	

§ 51902. Gallant Ship Award

(a) AWARDS TO VESSELS.—The Secretary of Transportation may award a Gallant Ship Award and a citation to a vessel (including a foreign vessel) participating in outstanding or gallant action in a marine disaster or other emergency to save life or property at sea. The Secretary may award a plaque to the vessel, and a replica of the plaque may be preserved as a permanent historical record.

(b) AWARDS TO CREWS.—The Secretary of Transportation may award an appropriate citation ribbon bar to the master and each individual serving, at the time of the action, on a vessel issued an award under subsection (a).

(c) CONSULTATION.—The Secretary of Transportation shall consult with the Secretary of State before awarding an award or citation to a foreign vessel or its crew under this section.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1584.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
51902	46 App.:2003.	Pub. L. 100–324, § 4, May 30, 1988, 102 Stat. 576.

In subsection (a), the words ''a vessel (including a foreign vessel)'' are substituted for ''a United States vessel or to a foreign-flag vessel'' to eliminate unnecessary words.

§ 51903. Multiple awards

An individual may not be awarded more than one of any type of decoration or medal under this chapter. For each succeeding act or service justifying the same decoration or medal, a suitable device may be awarded to be worn with the decoration or medal.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1585.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
51903	46 App.:2004(a).	Pub. L. 100–324, § 5(a), May 30, 1988, 102 Stat. 576.

§ 51904. Presentation to representatives

If an individual to be issued an award under this chapter is unable to accept the award personally, the Secretary of Transportation may present the award to an appropriate representative.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1585.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
51904	46 App.:2004(b).	Pub. L. 100–324, § 5(b), May 30, 1988, 102 Stat. 577.

§ 51905. Flags and grave markers

Except as authorized under another law, the Secretary of Transportation may issue, at no cost, a flag of the United States and a grave marker to the family or personal representative of a deceased individual who served in the merchant marine of the United States in support of the armed forces of the United States or its allies during a war or national emergency.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1585.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51905	46 App.:2005.	Pub. L. 100–324, § 6, May 30, 1988, 102 Stat. 577.

§ 51906. Special certificates for civilian service to armed forces

(a) GENERAL AUTHORITY.—The Maritime Administrator may issue a special certificate to an individual, or the personal representative of an individual, in recognition of service of that individual in the merchant marine of the United States, if the service has been determined to be active duty under section 401 of the GI Bill Improvement Act of 1977 (Public Law 95–202; 38 U.S.C. 106 note).

(b) RELATIONSHIP TO OTHER LAWS.—Issuance of a certificate under subsection (a) does not entitle an individual to any rights, privileges, or benefits under a law of the United States.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1585.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51906	46 App.:2006.	Pub. L. 100–324, § 7, May 30, 1988, 102 Stat. 577.

§ 51907. Manufacture and sale of awards and replacements

The Secretary of Transportation may—

(1) authorize private persons to manufacture decorations and medals authorized under this chapter or a prior law; and

(2) provide at cost, or authorize private persons to sell at reasonable prices, replacements for those decorations and medals.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1585; Pub. L. 109–163, div. C, title XXXV, § 3510, Jan. 6, 2006, 119 Stat. 3557.)

AMENDMENT NOT SHOWN IN TEXT

This section was derived from section 2004(c) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3510, Jan. 6, 2006, 119 Stat. 3557. For applicability of that amendment to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Section 2004(c) of the former Appendix to this title was amended by striking ''provide at cost, or authorize for the manufacture and sale at reasonable prices by private persons—'' and inserting ''provide—''.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51907	46 App.:2004(c).	Pub. L. 100–324, § 5(c), May 30, 1988, 102 Stat. 577.

The Secretary's authority to provide decorations and medals at cost, or to authorize the sale of decorations and medals at reasonable prices, is restated to apply only to replacement awards because Congress probably did not intend that recipients being honored would pay for their decorations and medals.

§ 51908. Prohibition against unauthorized manufacture, sale, possession, or display of awards

(a) PROHIBITION.—Except as authorized under this chapter, a person may not manufacture, sell, possess, or display a decoration or medal provided for in this chapter.

(b) CIVIL PENALTY.—A person violating this section is liable to the United States Government for a civil penalty of not more than $2,000.

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1585; Pub. L. 109–364, div. C, title XXXV, § 3510(b), Oct. 17, 2006, 120 Stat. 2520.)

AMENDMENT NOT SHOWN IN TEXT

This section was derived from section 2007 of the former Appendix to this title, which was amended by Pub. L. 109–364, div. C, title XXXV, § 3510(b), Oct. 17, 2006, 120 Stat. 2520. For applicability of that amendment to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Section 2007 of the former Appendix to this title was amended by inserting ''or the Secretary of Transportation,'' after ''chapter,''.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
51908	46 App.:2007.	Pub. L. 100–324, § 8, May 30, 1988, 102 Stat. 577.

In subsection (b), the words ''not more than'' are added for clarity and for consistency in the revised title.

CHAPTER 521—MISCELLANEOUS

Sec.
52101. Reemployment rights for certain merchant seamen.

§ 52101. Reemployment rights for certain merchant seamen

(a) IN GENERAL.—An individual who is certified by the Secretary of Transportation under subsection (c) shall be entitled to reemployment rights and other benefits substantially equivalent to the rights and benefits provided for by chapter 43 of title 38 for any member of a reserve component of the armed forces of the United States who is ordered to active duty.

(b) TIME FOR APPLICATION.—An individual may submit an application for certification under subsection (c) to the Secretary not later than 45 days after the date the individual completes a period of employment described in subsection (c)(1)(A) with respect to which the application is submitted.

(c) CERTIFICATION DETERMINATION.—Not later than 20 days after the date the Secretary re-

ceives from an individual an application for certification under this subsection, the Secretary shall—

(1) determine whether the individual—

(A) was employed in the activation or operation of a vessel—

(i) in the National Defense Reserve Fleet maintained under section 11 of the Merchant Ship Sales Act of 1946 (50 App. U.S.C. 1744) in a period in which the vessel was in use or being activated for use under subsection (b) of that section;

(ii) requisitioned or purchased under chapter 563 of this title; or

(iii) owned, chartered, or controlled by the United States Government and used by the Government for a war, armed conflict, national emergency, or maritime mobilization need (including for training purposes or testing for readiness and suitability for mission performance); and

(B) during the period of that employment, possessed a valid license, certificate of registry, or merchant mariner's document issued under chapter 71 or 73 of this title; and

(2) if the Secretary makes affirmative determinations under subparagraphs (A) and (B) of paragraph (1), certify that individual under this subsection.

(d) EQUIVALENCE TO MILITARY SELECTIVE SERVICE ACT CERTIFICATE.—For purposes of reemployment rights and benefits provided by this section, a certification under subsection (c) shall be considered to be the equivalent of a certificate described in section 9(a) of the Military Selective Service Act (50 App. U.S.C. 459(a)).

(Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1585.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
52101	46 App.:1132.	June 29, 1936, ch. 858, title III, § 302, as added Pub. L. 104–239, § 10(a), Oct. 8, 1996, 110 Stat. 3133.

In subsection (c)(1)(B), the words ''(as applicable)'' are omitted as unnecessary.

In subsection (d), the words ''certificate described in section 9(a) of the Military Selective Service Act (50 App. U.S.C. 459(a))'' are substituted for ''certificate referred to in paragraph (1) of section 4301(a) of title 38'' because section 4301 of title 38 was amended generally by section 2(a) of Public Law 103–353, and before the amendment section 4301(a)(1) referred to a certificate described in section 9(a) of the Military Selective Service Act (50 App. U.S.C. 459(a)).

PART C—FINANCIAL ASSISTANCE PROGRAMS

AMENDMENTS

2006—Pub. L. 109–304, § 8(b), Oct. 6, 2006, 120 Stat. 1586, inserted ''Part C—Financial Assistance Programs''.

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.).[1]

(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.

[1] See References in Text note below.

(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 former 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 section 101 of this title and Tables.

The Merchant Marine Act, 1936, referred to in par. (6)(B), is act June 29, 1936, ch. 858, 49 Stat. 1985. Subtitle B of title VI of the Act was classified generally to part B (§ 1187 et seq.) of subchapter VI of chapter 27 of the former Appendix to this title prior to repeal by Pub. L. 108–136, div. C, title XXXV, § 3534(a)(1), Nov. 24, 2003, 117 Stat. 1818. For complete classification of this Act to the Code, see Short Title of 1936 Amendment note set out under section 101 of 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 former Appendix to this title, repealing sections 1187 to 1187e and 1222 of the former 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 former Appendix to this title, and amending provisions set out as a note under section 1187 of the former 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].''

ASSISTANCE FOR SMALL SHIPYARDS AND MARITIME COMMUNITIES

Pub. L. 109–163, div. C, title XXXV, § 3506, Jan. 6, 2006, 119 Stat. 3553, provided that:

''(a) ESTABLISHMENT OF PROGRAM.—Subject to the availability of appropriations, the Administrator of the Maritime Administration shall establish a program to provide assistance to State and local governments—

''(1) to provide assistance in the form of grants, loans, and loan guarantees to small shipyards for capital improvements; and

''(2) for maritime training programs in communities whose economies are substantially related to the maritime industry.

''(b) AWARDS.—In providing assistance under the program, the Administrator shall—

''(1) take into account—

''(A) the economic circumstances and conditions of maritime communities; and

''(B) the local, State, and regional economy in which the communities are located; and

''(2) strongly encourage State, local, and regional efforts to promote economic development and training that will enhance the economic viability of and quality of life in maritime communities.

''(c) USE OF FUNDS.—Assistance provided under this section may be used—

''(1) to make capital and related improvements in small shipyards located in or near maritime communities;

''(2) to encourage, assist in, or provide training for residents of maritime communities that will enhance the economic viability of those communities; and

''(3) for such other purposes as the Administrator determines to be consistent with and supplemental to such activities.

''(d) PROHIBITED USES.—Grants awarded under this section may not be used to construct buildings or other physical facilities or to acquire land unless such use is specifically approved by the Administrator in support of subsection (c)(3).

''(e) MATCHING REQUIREMENTS.—

''(1) 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.—Paragraph (1) shall not apply to grants under this section for stand alone

projects costing not more than $25,000. The amount under this subparagraph shall be indexed to the consumer price index and modified each fiscal year after the annual publication of the consumer price index.

''(B) REDUCTION IN MATCHING REQUIREMENT.—If the Administrator determines that a proposed project merits support and cannot be undertaken without a higher percentage of Federal financial assistance, the Administrator may award a grant for such project with a lesser matching requirement than is described in paragraph (1).

''(f) APPLICATION.—

''(1) IN GENERAL.—The Administrator shall determine who, as an eligible applicant, may submit an application, at such time, in such form, and containing such information and assurances as the Administrator may require.

''(2) MINIMUM STANDARDS FOR PAYMENT OR REIMBURSEMENT.—Each application submitted under paragraph (1) shall include—

''(A) a comprehensive description of—

''(i) the need for the project;

''(ii) the methodology for implementing the project; and

''(iii) any existing programs or arrangements that can be used to supplement or leverage assistance under the program.

''(3) PROCEDURAL SAFEGUARDS.—The Administrator, in consultation with the Office of the Inspector General, shall issue guidelines to establish appropriate accounting, reporting, and review procedures to ensure that—

''(A) grant funds are used for the purposes for which they were made available;

''(B) grantees have properly accounted for all expenditures of grant funds; and

''(C) grant funds not used for such purposes and amounts not obligated or expended are returned.

''(4) PROJECT APPROVAL REQUIRED.—The Administrator may not award a grant under this section unless the Administrator determines that—

''(A) sufficient funding is available to meet the matching requirements of subsection (e);

''(B) the project will be completed without unreasonable delay; and

''(C) the recipient has authority to carry out the proposed project.

''(g) AUDITS AND EXAMINATIONS.—All grantees under this section shall maintain such records as the Administrator may require and make such records available for review and audit by the Administrator.

''(h) SMALL SHIPYARD DEFINED.—In this section, the term 'small shipyard' means a shipyard that—

''(1) is a small business concern (within the meaning of section 3 of the Small Business Act (15 U.S.C. 632)[)]; and

''(2) does not have more than 600 employees.

''(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator of the Maritime Administration for each of fiscal years 2006 through 2010 to carry out this section—

''(1) $5,000,000 for training grants; and

''(2) $25,000,000 for capital and related improvement grants.''

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 set out under section 101 of this title], 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; Pub. L. 109–364, div. C, title XXXV, § 3502(b)(2), Oct. 17, 2006, 120 Stat. 2516, 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 commer-

cial 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 ([former] 46 U.S.C. App. 802) [see 46 U.S.C. 50501]; 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 may 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) [probably should be 9(e)] of the Shipping Act, 1916, ([former] 46 U.S.C. App. 808(g) [probably should be 808(e)]) [now 46 U.S.C. 56101(c)] 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 former 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.''

SALE OF INACTIVE PASSENGER VESSELS UNDER OPERATING-DIFFERENTIAL SUBSIDY TO FOREIGN OWNERSHIP

Pub. L. 92–296, § 1, May 16, 1972, 86 Stat. 140; Pub. L. 97–31, § 12(38), Aug. 6, 1981, 95 Stat. 156, provided that:

''Notwithstanding any other provision of law or of prior contract with the United States, any vessel heretofore operated as a passenger vessel, as defined in section 613(a) of the Merchant Marine Act, 1936, as amended [act June 29, 1936, ch. 858, set out below], under an operating-differential subsidy contract with the United States and now in inactive or layup status, except the steamship Independence and the steamship United States, may be sold and transferred to foreign ownership, registry, and flag, with the prior approval of the Secretary of Transportation. Such approval shall require (1) approval of the purchaser; (2) payment of existing debt and private obligations related to the vessel; (3) approval of the price, including terms of payment, for the sale of the vessel; (4) the seller to enter into an agreement with the Secretary whereby an amount equal to the net proceeds received from such sale in excess of existing obligations and expenses incident to the sale shall within a reasonable period not to exceed twelve months of receipt be committed and thereafter be used as equity capital for the construction of new vessels which the Secretary determines are built to effectuate the purposes and policy of the Merchant Marine Act, 1936, as amended [former 46 U.S.C. App. 1101 et seq., see Disposition Table preceding section 101 of this title]; and (5) the purchaser to enter into an agreement with the Secretary, binding upon such purchaser and any later owner of the vessel and running with title to the vessel, that (a) the vessel will not carry passengers or cargo in competition, as determined by the Secretary, with any United States-flag passenger vessel for a period of two years from the date the transferred vessel goes into operation; (b) the vessel will be made available to the United States in time of emergency and just compensation for title or use, as the case may be, shall be paid in accordance with section 902 of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1242) [now 46 U.S.C. 56301 et seq.]; (c) the purchaser will comply with such further conditions as the Secretary may impose as authorized by sections 9, 37, and 41 of the Shipping Act, 1916, as amended ([former] 46 U.S.C. [App.] 808, 835, and 839) [see 46 U.S.C. 56101 to 56104 and 57109]; and (d) the purchaser will furnish a surety bond in an amount and with a surety satisfactory to the Secretary to secure performance of the foregoing agreements.

''In addition to any other provision such agreements may contain for enforcement of (4) and (5) above, the agreements therein required may be specifically enforced by decree for specific performance or injunction in any district court of the United States. In the agreement with the Secretary the purchaser shall irrevocably appoint a corporate agent within the United States for service of process upon such purchaser in any action to enforce the agreement.''

OFF-SEASON CRUISES ADDITIONAL TO VOYAGES ON REGULAR SERVICE, ROUTE, OR LINE

Pub. L. 87–45, § 7, May 27, 1961, 75 Stat. 91, provided that: ''The cruises authorized by section 613 [of act

June 29, 1936, ch. 858, set out below] shall be in addition to and not in derogation of the right of an operator to make voyages on his regular service, route or line, including approved deviations within the general area of his essential service. There shall be no adjustment of subsidy in the event of such deviations if they are without prejudice to the adequacy of service.''

MINIMUM MANNING, WAGE SCALES, AND WORKING CONDITIONS ON SUBSIDIZED VESSELS

Act June 29, 1936, ch. 858, title III, § 301, 49 Stat. 1992; June 23, 1938, ch. 600, §§ 5, 6, 52 Stat. 955; 1946 Reorg. Plan No. 3, §§ 101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Pub. L. 97–31, § 12(82), Aug. 6, 1981, 95 Stat. 160; Pub. L. 109–163, div. A, title V, § 515(g)(2)(A), Jan. 6, 2006, 119 Stat. 3236, provided that:

''(a) The Secretary of Transportation is authorized and directed to investigate the employment and wage conditions in ocean-going shipping and, after making such investigation and after appropriate hearings, to incorporate in the contracts authorized under titles VI and VII of this Act [former 46 U.S.C. App. 1171 et seq., 1191 et seq., see Disposition Table preceding section 101 of this title] minimum manning scales and minimum wage scales, and minimum working conditions for all officers and crews employed on all types of vessels receiving an operating-differential subsidy. After such minimum manning and wage scales, and working conditions shall have been adopted by the Secretary of Transportation, no change shall be made therein by the Secretary of Transportation except upon public notice of the hearing to be had, and a hearing by the Secretary of Transportation of all interested parties, under such rules as the Secretary of Transportation shall prescribe. The duly elected representatives of the organizations certified as the proper collective bargaining agencies shall have the right to represent the employees who are members of their organizations at any such hearings. Every contractor receiving an operating-differential subsidy shall post and keep posted in a conspicuous place on each such vessel operated by such contractor a printed copy of the minimum manning and wage scales, and working conditions prescribed by his contract and applicable to such vessel: *Provided, however*, That any increase in the operating expenses of the subsidized vessel occasioned by any change in the wage or manning scales or working conditions as provided in this section shall be added to the operating-differential subsidy previously authorized for the vessel.

''(b) Every contract executed under authority of titles VI and VII of this Act shall require—

''(1) Insofar as is practicable, officers' living quarters shall be kept separate and apart from those furnished for members of the crew;

''(2) Licensed officers and unlicensed members of the crew shall be entitled to make complaints or recommendations to the Secretary of Transportation providing they file such complaint or recommendation directly with the Secretary of Transportation, or with their immediate superior officer who shall be required to forward such complaint or recommendation with his remarks to the Secretary of Transportation, or with the authorized representatives of the respective collective bargaining agencies;

''(3) Licensed officers who are members of the United States Navy Reserve shall wear on their uniforms such special distinguishing insignia as may be approved by the Secretary of the Navy; officers being those men serving under licenses issued by the Bureau of Marine Inspection and Navigation or the Coast Guard;

''(4) The uniform stripes, decoration, or other insignia shall be of gold braid or woven gold or silver material, to be worn by officers, and no member of the ship's crew other than licensed officers shall be allowed to wear any uniform with such officer's identifying insignia;

''(5) No discrimination shall be practiced against licensed officers, who are otherwise qualified, because of their failure to qualify as members of the United States Navy Reserve.''

CONSTRUCTION-DIFFERENTIAL SUBSIDY

Act June 29, 1936, ch. 858, title V, 49 Stat. 1995, as amended, provided as follows:

Subsidy Authorized for Vessels To Be Operated in Foreign Trade

''SEC. 501. (a) Any proposed ship purchaser who is a citizen of the United States or any shipyard of the United States may make application to the Secretary of Transportation for a construction-differential subsidy to aid in the construction of a new vessel to be used in the foreign commerce of the United States. No such application shall be approved by the Secretary of Transportation unless he determines that (1) the plans and specifications call for a new vessel which will meet the requirements of the foreign commerce of the United States, will aid in the promotion and development of such commerce, and be suitable for use by the United States for national defense or military purposes in time of war or national emergency; (2) if the applicant is the proposed ship purchaser, the applicant possesses the ability, experience, financial resources, and other qualifications necessary for the operation and maintenance of the proposed new vessel, and (3) the granting of the aid applied for is reasonably calculated to carry out effectively the purposes and policy of this Act [former 46 U.S.C. App. 1101 et seq., see Disposition Table preceding section 101 of this title]. The contract of sale, and the mortgage given to secure the payment of the unpaid balance of the purchase price shall not restrict the lawful or proper use or operation of the vessel except to the extent expressly required by law. The Secretary of Transportation may give preferred consideration to applications that will tend to reduce construction-differential subsidies and that propose the construction of ships of higher transport capability and productivity.

''(b) The Secretary of Transportation shall submit the plans and specifications for the proposed vessel to the Navy Department for examination thereof and suggestions for such changes therein as may be deemed necessary or proper in order that such vessel shall be suitable for economical and speedy conversion into a naval or military auxiliary, or otherwise suitable for the use of the United States Government in time of war or national emergency. If the Secretary of the Navy approves such plans and specifications as submitted, or as modified, in accordance with the provisions of this subsection, he shall certify such approval to the Secretary of Transportation.

''(c) Any citizen of the United States or any shipyard of the United States may make application to the Secretary of Transportation for a construction-differential subsidy to aid in reconstructing or reconditioning any vessel that is to be used in the foreign commerce of the United States. If the Secretary of Transportation, in the exercise of his discretion, shall determine that the granting of the financial aid applied for is reasonably calculated to carry out effectively the purposes and policy of this Act, the Secretary of Transportation may approve such application and enter into a contract or contracts with the applicant therefor providing for the payment by the United States of a construction-differential subsidy that is to be ascertained, determined, controlled, granted, and paid, subject to all the applicable conditions and limitations of this title and under such further conditions and limitations as may be prescribed in the rules and regulations of the Secretary of Transportation has adopted as provided in section 204(b) of this Act [former 46 U.S.C. App. 1114(b), repealed by Pub. L. 109–304, § 19, Oct. 6, 2006, 120 Stat. 1710]; but the financial aid authorized by this subsection shall be extended to reconstruction or reconditioning only in exceptional cases and after a thorough study and a formal determination by the Secretary of Transportation that the proposed reconstruction or re-

conditioning is consistent with the purposes and policy of this Act.''

(As amended June 23, 1938, ch. 600, §8, 52 Stat. 955; July 17, 1952, ch. 939, §§1, 2, 66 Stat. 760, 761; Pub. L. 91–469, §§6, 35(a), (c), (d), Oct. 21, 1970, 84 Stat. 1019, 1035; Pub. L. 91–603, §4(a), Dec. 31, 1970, 84 Stat. 1675; Pub. L. 97–31, §12(84), Aug. 6, 1981, 95 Stat. 161.)

Construction of Vessels; Bids; Subsidies

''SEC. 502. (a) If the Secretary of the Navy certifies his approval under section 501(b) of this Act, and the Secretary of Transportation approves the application, he may secure bids for the construction of the proposed vessel according to the approved plans and specifications. If the bid of the shipbuilder who is the lowest responsible bidder is determined by the Secretary of Transportation to be fair and reasonable, the Secretary of Transportation may approve such bid, and if such approved bid is accepted by the proposed ship purchaser, the Secretary of Transportation is authorized to enter into a contract with the successful bidder for the construction, outfitting, and equipment of the proposed vessel, and for the payment by the Secretary of Transportation to the shipbuilder, on terms to be agreed upon in the contract, of the contract price of the vessel, out of the construction fund hereinbefore referred to, or out of other available funds. Notwithstanding the provisions of the first sentence of section 505 of this Act with respect to competitive bidding, the Secretary of Transportation is authorized to accept a price for the construction of the ship which has been negotiated between a shipyard and proposed ship purchaser if (1) the proposed ship purchaser and the shipyard submit backup cost details and evidence that the negotiated price is fair and reasonable; (2) the Secretary of Transportation finds that the negotiated price is fair and reasonable; and (3) the shipyard agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment have access to and the right to examine any pertinent books, documents, papers, and records of the shipyard or any of its subcontractors related to the negotiation or performance of any contract or subcontract negotiated under this subsection and will include in its subcontracts a provision to that effect. Concurrently with entering into such contract with the shipbuilder, the Secretary of Transportation is authorized to enter into a contract for the sale of such vessel upon its completion, to the applicant if he is the proposed ship purchaser and if not to another citizen of the United States, if the Secretary of Transportation determines that such citizen possesses the ability, experience, financial resources, and other qualifications necessary for the operation and maintenance of the vessel at a price corresponding to the estimated cost, as determined by the Secretary of Transportation pursuant to the provisions of this Act [former 46 U.S.C. App. 1101 et seq., see Disposition Table preceding section 101 of this title], of building such vessel in a foreign shipyard.

''(b) The amount of the reduction in selling price which is herein termed 'construction differential subsidy' shall equal, but not exceed, the excess of the bid of the shipbuilder constructing the proposed vessel (excluding the cost of any features incorporated in the vessel for national defense uses, which shall be paid by the Secretary in addition to the subsidy), over the fair and reasonable estimate of cost, as determined by the Secretary, of the construction of that type vessel if it were constructed under similar plans and specifications (excluding national defense features as above provided) in a foreign shipbuilding center which is deemed by the Secretary to furnish a fair and representative example for the determination of the estimated foreign cost of construction of vessels of the type proposed to be constructed. The Secretary of Transportation shall recompute such estimated foreign cost annually unless, in the opinion of the Secretary, there has been a significant change in shipbuilding market conditions. The Secretary shall publish notice of his intention to compute or recompute such estimated foreign cost and shall give interested persons, including but not limited to shipyards and shipowners and associations thereof, an opportunity to file written statements. The Secretary's consideration shall include, but not be limited to, all relevant matter so filed, and his determination shall include or be accompanied by a concise explanation of the basis of his determination. The construction differential approved and paid by the Secretary shall not exceed 50 per centum of the cost of constructing, reconstructing, or reconditioning the vessel (excluding the cost of national defense features). If the Secretary finds that the construction differential exceeds, in any case, the foregoing percentage of such cost, the Secretary may negotiate with any bidder (whether or not such person is the lowest bidder) and may contract with such bidder (notwithstanding the first sentence of section 505) for the construction, reconstruction, or reconditioning of the vessel involved in a domestic shipyard at a cost which will reduce the construction differential to such percentage or less. In the event that the Secretary has reason to believe that the bidding in any instance is collusive, he shall report all of the evidence on which he acted (1) to the Attorney General of the United States, and (2) to the President of the Senate and to the Speaker of the House of Representatives if the Congress shall be in session or if the Congress shall not be in session, then to the Secretary of the Senate and Clerk of the House, respectively.

''(c) In such contract of sale between the purchaser and the Secretary of Transportation, the purchaser shall be required to make cash payments to the Secretary of Transportation of not less than 25 per centum of the price at which the vessel is sold to the purchaser. The cash payments shall be made at the time and in the same proportion as provided for the payments on account of the construction cost in the contract between the shipbuilder and the Secretary of Transportation. The purchaser shall pay, not less frequently than annually, interest on those portions of the Secretary of Transportation's payments as made to the shipbuilder which are chargeable to the purchaser's portion of the price of the vessel (after deduction of the purchaser's cash payments) at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, plus (ii) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs. The balance of such purchase price shall be paid by the purchaser, within twenty-five years after delivery of the vessel and in not to exceed twenty-five equal annual installments, the first of which shall be payable one year after the delivery of the vessel by the Secretary of Transportation to the purchaser. Interest at the rate per annum applicable to payments that are chargeable to the purchaser's portion of the price of the vessel shall be paid on all such installments of the purchase price remaining unpaid.

''(d) [Repealed. Pub. L. 87–877, §2(a), Oct. 24, 1962, 76 Stat. 1200.]

''(e) If no bids are received for the construction, outfitting, or equipping of such vessel, or if it appears to the Secretary of Transportation that the bids received from privately owned shipyards of the United States are collusive, excessive, or unreasonable, and if a citizen of the United States agrees to purchase said vessel as provided in this section, then, to provide employment for citizens of the United States, the Secretary of Transportation may have such vessel constructed, outfitted, or equipped at not in excess of the actual cost thereof in a navy yard of the United States under such regulations as may be promulgated by the Secretary of the Navy and the Secretary of Transportation. In such event the Secretary of Transportation is authorized to pay for any such vessel so constructed from his con-

struction fund. The Secretary of Transportation is authorized to sell any vessel so constructed, outfitted, or equipped in a navy yard to a citizen of the United States for the fair and reasonable value thereof, but at not less than the cost thereof less the equivalent to the construction differential subsidy determined as provided by subsection (b), such sale to be in accordance with all the provisions of this title.

''(f) The Secretary of Transportation, with the advice of and in coordination with the Secretary of the Navy, shall at least once each year, as required for purposes of this Act, survey the existing privately owned shipyards capable of merchant ship construction, or review available data on such shipyards if deemed adequate, to determine whether their capabilities for merchant ship construction, including facilities and skilled personnel, provide an adequate mobilization base at strategic points for purposes of national defense and national emergency. The Secretary of Transportation, in connection with ship construction, reconstruction, reconditioning, or remodeling under titles V and VII [former 46 U.S.C. App. 1191 et seq., see Disposition Table preceding section 101 of this title], upon a basis of a finding that the award of the proposed construction, reconstruction, reconditioning, or remodeling work will remedy an existing or impending inadequacy in such mobilization base as to the capabilities and capacities of a shipyard or shipyards at a strategic point, and after taking into consideration the benefits accruing from standardized construction, the conditions of unemployment, and the needs and reasonable requirements of all shipyards, may allocate such construction, reconstruction, reconditioning, or remodeling to such yard or yards in such manner as he may determine to be fair, just, and reasonable to all sections of the country, subject to the provisions of this subsection. In the allocation of construction work to such yards as herein provided, the Secretary of Transportation may, after first obtaining competitive bids for such work in compliance with the provisions of this Act, negotiate with the bidders and with other shipbuilders concerning the terms and conditions of any contract for such work, and is authorized to enter into such contract at a price deemed by the Secretary of Transportation to be fair and reasonable. Any contract entered into by the Secretary of Transportation under the provisions of this subsection shall be subject to all of the terms and conditions of this Act, excepting those pertaining to the awarding of contracts to the lowest bidder which are inconsistent with the provisions of this subsection. In the event that a contract is made providing for a price in excess of the lowest responsible bid which otherwise would be accepted, such excess shall be paid by the Secretary of Transportation as a part of the cost of national defense, and shall not be considered as a part of the construction-differential subsidy. In the event that a contract is made providing for a price lower than the lowest responsible bid which otherwise would be accepted, the construction-differential subsidy shall be computed on the contract price in lieu of such bid.

''If, as a result of allocation under this subsection, the purchaser incurs expenses for inspection and supervision of the vessel during construction and for the delivery voyage of the vessel in excess of the estimated expenses for the same services that he would have incurred if the vessel had been constructed by the lowest responsible bidder the Secretary of Transportation (with respect to construction under title V, except section 509) shall reimburse the purchaser for such excess, less one-half of any gross income the purchaser receives that is allocable to the delivery voyage minus one-half of the extra expenses incurred to produce such gross income, and such reimbursement shall not be considered part of the construction-differential subsidy: *Provided*, That no interest shall be paid on any refund authorized under this Act. If the vessel is constructed under section 509 the Secretary of Transportation shall reduce the price of the vessel by such excess, less one-half of any gross income (minus one-half of the extra expenses incurred to produce such gross income) the purchaser receives that is allocable to the delivery voyage. In the case of a vessel that is not to receive operating-differential subsidy, the delivery voyage shall be deemed terminated at the port where the vessel begins loading. In the case of a vessel that is to receive operating-differential subsidy, the delivery voyage shall be deemed terminated when the vessel begins loading at a United States port in an essential service. In either case, however, the vessel owner shall not be compensated for excess vessel delivery costs in an amount greater than the expenses that would have been incurred in delivering the vessel from the shipyard at which it was built to the shipyard of the lowest responsible bidder. If as a result of such allocation, the expenses the purchaser incurs with respect to such services are less than the expenses he would have incurred for such services if the vessel had been constructed by the lowest responsible bidder, the purchaser shall pay to the Secretary of Transportation an amount equal to such reduction and, if the vessel was built with the aid of construction-differential subsidy, such payment shall not be considered a reduction of the construction-differential subsidy.

''(g) Upon the application of any citizen of the United States to purchase any vessel acquired by the Secretary of Transportation under the provisions of section 215 [former 46 U.S.C. App. 1125, see 46 U.S.C. 57105], the Secretary of Transportation is authorized to sell such vessel to the applicant for the fair and reasonable value thereof, but at not less than the cost thereof to the Secretary of Transportation less depreciation at the rate of 4 per centum per annum from the date of completion, excluding the cost of national-defense features added by the Secretary of Transportation, less the equivalent of any applicable construction-differential subsidy as provided by subsection (b), such sale to be in accordance with all the provisions of this title. Such vessel shall thereupon be eligible for an operating-differential subsidy under title VI of this Act [former 46 U.S.C. App. 1171 et seq., see Disposition Table preceding section 101 of this title], notwithstanding the provisions of section 601(a)(1), and section 610(1) [set out below], or any other provision of law.

''(h) The Secretary of Transportation is authorized to construct, purchase, lease, acquire, store, maintain, sell, or otherwise dispose of national defense features intended for installation on vessels. The Secretary of Transportation is authorized to install or remove such national defense features on any vessel (1) which is in the National Defense Reserve Fleet as defined by section 11(a) of the Merchant Ship Sales Act of 1946 [50 U.S.C. App. 1744(a)], (2) which is requisitioned, purchased, or chartered under section 902 of the Merchant Marine Act, 1936 [former 46 U.S.C. App. 1242, now 46 U.S.C. 56301 et seq.], (3) which serves as security for the guarantee of an obligation by the Secretary of Transportation under title XI of this Act [former 46 U.S.C. App. 1271 et seq., see 46 U.S.C. 53701 et seq.], or (4) which is the subject of an agreement between the owner of such vessel and the Secretary of Transportation to install or remove such national defense features. Title to such national defense features which the Secretary of Transportation determines are not to be permanently incorporated in a vessel shall not be affected by such installation or removal unless otherwise transferred in accordance with the provisions of this title V.

''(i) The Secretary of Transportation shall submit the plans and specifications for such national defense features and the proposals for their acquisition, storage, utilization, or disposition to the Navy Department for examination thereof and suggestion for such changes therein as may be deemed necessary or proper in order that such features shall be suitable for the use of the United States Government in time of war or national emergency. If the Secretary of the Navy approves such plans, specifications, or proposals as submitted, or as modified in accordance with the provisions of this subsection, he shall certify such approval to the Secretary of Transportation.''

(As amended June 23, 1938, ch. 600, §§9–14, 52 Stat. 955–957; Aug. 4, 1939, ch. 417, §6, 53 Stat. 1183; July 26,

1956, ch. 737, 70 Stat. 657; Pub. L. 86–518, §§1, 2, June 12, 1960, 74 Stat. 216; Pub. L. 86–607, §1, July 7, 1960, 74 Stat. 362; Pub. L. 87–877, §§1, 2(a), (e), (f), Oct. 24, 1962, 76 Stat. 1200, 1201; Pub. L. 88–370, July 11, 1964, 78 Stat. 313; Pub. L. 88–410, §1, Aug. 10, 1964, 78 Stat. 385; Pub. L. 89–127, Aug. 14, 1965, 79 Stat. 519; Pub. L. 89–589, Sept. 19, 1966, 80 Stat. 811; Pub. L. 90–572, Oct. 12, 1968, 82 Stat. 1004; Pub. L. 91–40, July 8, 1969, 83 Stat. 44; Pub. L. 91–469, §§7, 35(a), (e)–(g), Oct. 21, 1970, 84 Stat. 1019, 1035, 1036; Pub. L. 91–603, §4(b), Dec. 31, 1970, 84 Stat. 1675; Pub. L. 93–71, July 10, 1973, 87 Stat. 169; Pub. L. 94–372, §§2, 3, July 31, 1976, 90 Stat. 1042; Pub. L. 96–210, Mar. 17, 1980, 94 Stat. 100; Pub. L. 96–387, §3, Oct. 7, 1980, 94 Stat. 1545; Pub. L. 97–31, §12(84), (85), Aug. 6, 1981, 95 Stat. 161.)

Documentation of Completed Vessel Under Laws of United States; Delivery to Purchaser; First Mortgage to Secure Deferred Payments

''SEC. 503. Upon completion of the construction of any vessel in respect to which a construction-differential subsidy is to be allowed under this title and its delivery by the shipbuilder to the Secretary of Transportation, the vessel shall be documented under the laws of the United States, and concurrently therewith, or as soon thereafter as practicable, the vessel shall be delivered with a bill of sale to the purchaser with warranty against liens, pursuant to the contract of sale between the purchaser and the Secretary of Transportation. The vessel shall remain documented under the laws of the United States for not less than twenty-five years, or so long as there remains due the United States any principal or interest on account of the purchaser price, whichever is the longer period. At the time of delivery of the vessel the purchaser shall execute and deliver a first-preferred mortgage to the United States to secure payment of any sums due from the purchaser in respect to said vessel: *Provided*, That notwithstanding any other provisions of law, the payment of any sums due in respect to a passenger vessel purchased under section 4(b) of the Merchant Ship Sales Act of 1946 [former 50 U.S.C. App. 1737(b)], reconverted or restored for normal operation in commercial services, or in respect to a passenger vessel purchased under title V of this Act, which is delivered subsequent to March 8, 1946, and which (i) is of not less than ten thousand gross tons, (ii) has a designed speed approved by the Secretary of Transportation but not less than eighteen knots, (iii) has accommodations for not less than two hundred passengers, and, (iv) is approved by the Secretary of Defense as being desirable for national defense purposes, may, with the approval of the Secretary of Transportation be secured only by a first-preferred mortgage on said vessel. With the approval of the Secretary of Transportation, such preferred mortgage may provide that the sole recourse against the purchaser of such a passenger vessel under such mortgage, and any of the notes secured thereby, shall be limited to repossession of the vessel by the United States and the assignment of insurance claims, if the purchaser shall have complied with all provisions of the mortgage other than those relating to the payment of principal and interest when due, and the obligation of the purchaser shall be satisfied and discharged by the surrender of the vessel, and all right, title, and interest therein to the United States. Such vessel upon surrender shall be (i) free and clear of all liens and encumbrances whatsoever, except the lien of the preferred mortgage, (ii) in class, and (iii) in as good order and condition, ordinary wear and tear excepted, as when acquired by the purchaser, except that any deficiencies with respect to freedom from encumbrances, condition, and class, may, to the extent covered by valid policies of insurance, be satisfied by the assignment to the United States of claims of the purchaser under such policies of insurance. The purchaser shall also comply with all the provisions of section 9 of the Merchant Marine Act, 1920 [former 46 U.S.C. App. 868, repealed by Pub. L. 109–304, §19, Oct. 6, 2006, 120 Stat. 1710].''

(As amended June 23, 1938, ch. 600, §15, 52 Stat. 957; July 17, 1952, ch. 939, §3, 66 Stat. 761; Pub. L. 86–518, §1, June 12, 1960, 74 Stat. 216; Pub. L. 91–469, §§8, 35(a), Oct. 21, 1970, 84 Stat. 1021, 1035; Pub. L. 97–31, §12(84), Aug. 6, 1981, 95 Stat. 161.)

Purchase of Vessel Constructed in Accordance With Application for Subsidy; Bid or Negotiated Price Basis for Subsidy and Payments for Cost of National Defense Features; Documentation

''SEC. 504. If a qualified purchaser under the terms of this title desires to purchase a vessel to be constructed in accordance with an application for construction-differential subsidy under this title, the Secretary of Transportation may, in lieu of contracting to pay the entire cost of the vessel under section 502, contract to pay only construction-differential subsidy and the cost of national defense features to the shipyard constructing such vessel. The construction-differential subsidy and payments for the cost of national defense features shall be based upon the lowest responsible domestic bid unless the vessel is constructed at a negotiated price as provided by section 502(a) or under a contract negotiated by the Secretary of Transportation as provided in section 502(b) in which event the construction-differential subsidy and payments for the cost of national defense features shall be based upon such negotiated price. No construction-differential subsidy, as provided in this section, shall be paid unless the said contract or contracts or other arrangements contain such provisions as are provided in this title to protect the interests of the United States as the Secretary of Transportation deems necessary. Such vessel shall be documented under the laws of the United States as provided in section 503 of this title. The contract of sale, and the mortgage given to secure the payment of the unpaid balance of the purchase price, shall not restrict the lawful or proper use or operation of the vessel, except to the extent expressly required by law.''

(As amended June 23, 1938, ch. 600, §16, 52 Stat. 958; July 17, 1952, ch. 939, §4, 66 Stat. 761; Pub. L. 91–469, §§9, 35(a), Oct. 21, 1970, 84 Stat. 1021, 1035; Pub. L. 97–31, §12(84), Aug. 6, 1981, 95 Stat. 161.)

Eligible Shipyards; Materials; Conditions of Contracts; Limitation to American Shipyards; American Materials, Waiver; Ability of Bidders; Filing Bids and Data

''SEC. 505. All construction in respect of which a construction-differential subsidy is allowed under this title shall be performed in a shipyard of the United States as the result of competitive bidding, after due advertisement, with the right reserved in the Secretary of Transportation to disapprove, any or all bids. In all such construction the shipbuilder, subcontractors, materialmen, or suppliers shall use, so far as practicable, only articles, materials, and supplies of the growth, production, or manufacture of the United States as defined in paragraph K of section 401 of the Tariff Act of 1930 [now 19 U.S.C. 1401(h)]; *Provided, however*, That with respect to other than major components of the hull, superstructure, and any material used in the construction thereof, (1) if the Secretary of Transportation determines that the requirements of this sentence will unreasonably delay completion of any vessel beyond its contract delivery date, and (2) if such determination includes or is accompanied by a concise explanation of the basis therefor, then the Secretary of Transportation may waive such requirements to the extent necessary to prevent such delay. No shipbuilder shall be deemed a responsible bidder unless he possesses the ability, experience, financial resources, equipment, and other qualifications necessary properly to perform the proposed contract. Each bid submitted to the Secretary of Transportation shall be accompanied by all detailed estimates upon which it is based. The Secretary of Transportation may require that the bids of any subcontractors, or other pertinent data, accompany such bid. All such bids and data relating thereto shall be kept on file until disposed of as provided by law. For the purposes of this title V, the term 'shipyard of the

United States' means shipyards within any of the United States and the Commonwealth of Puerto Rico.''

(As amended June 23, 1938, ch. 600, §§17, 40(a), 52 Stat. 958, 964; Oct. 25, 1951, ch. 562, §3(4), 65 Stat. 639; Pub. L. 86–624, §35(a), July 12, 1960, 74 Stat. 421; Pub. L. 91–469, §§10, 35(a), Oct. 21, 1970, 84 Stat. 1022, 1035; Pub. L. 97–31, §12(84), Aug. 6, 1981, 95 Stat. 161.)

Operation of Subsidy Constructed Vessel Limited to Foreign Trade; Repayments to Secretary for Deviations

''SEC. 506. Every owner of a vessel for which a construction-differential subsidy has been paid shall agree that the vessel shall be operated exclusively in foreign trade, or on a round-the-world voyage, or on a round voyage from the west coast of the United States to a European port or ports which includes intercoastal ports of the United States, or a round voyage from the Atlantic coast of the United States to the Orient which includes intercoastal ports of the United States, or on a voyage in foreign trade on which the vessel may stop at the State of Hawaii, or an island possession or island territory of the United States, and that if the vessel is operated in the domestic trade on any of the above-enumerated services, he will pay annually to the Secretary of Transportation that proportion of one-twenty-fifth of the construction-differential subsidy paid for such vessel as the gross revenue derived from the domestic trade bears to the gross revenue derived from the entire voyages completed during the preceding year. The Secretary may consent in writing to the temporary transfer of such vessel to service other than the service covered by such agreement for periods not exceeding six months in any year, whenever the Secretary may determine that such transfer is necessary or appropriate to carry out the purposes of this Act [former 46 U.S.C. App. 1101 et seq., see Disposition Table preceding section 101 of this title]. Such consent shall be conditioned upon the agreement by the owner to pay to the Secretary, upon such terms and conditions as he may prescribe, an amount which bears the same proportion to the construction-differential subsidy paid by the Secretary as such temporary period bears to the entire economic life of the vessel. No operating-differential subsidy shall be paid for the operation of such vessel for such temporary period.''

(As amended June 23, 1938, ch. 600, §18, 52 Stat. 958; Mar. 18, 1959, Pub. L. 86–3, §18(b)(1), 73 Stat. 12; Pub. L. 86–518, §3, June 12, 1960, 74 Stat. 216; Pub. L. 97–31, §12(87), Aug. 6, 1981, 95 Stat. 161.)

Construction of New Vessel to Replace Obsolete; Purchase of Old Vessel by Secretary; Bond of Seller Against Liens

''SEC. 507. If a contract is made by the Secretary of Transportation under authority of this title for the construction and sale of a new vessel to replace a vessel then operated in foreign trade or domestic trade, which in the judgment of the Secretary of Transportation should be replaced because it is obsolete or inadequate for successful operation in such trade, the Secretary of Transportation is authorized, in his discretion, to buy such replaced vessel from the owner at a fair and reasonable valuation, which valuation shall not exceed the cost to the owner or any former owner plus the actual cost previously expended thereon for reconditioning, and less a reasonable and proper depreciation, based upon not more than twenty-five-year life of the vessel, and apply the purchase price agreed upon to that portion of the construction cost of such new vessel which is to be borne by the purchaser thereof: *Provided*, That the owner of such replaced vessel shall execute a bond, with one or more approved sureties, conditioned upon indemnifying the United States from all loss resulting from any existing lien against such vessel: *And provided further*, That such vessel has been documented under the laws of the United States for a period of at least ten years prior to the date of its purchase by the United States.''

(As amended June 23, 1938, ch. 600, §19, 52 Stat. 959; July 17, 1952, ch. 939, §5, 66 Stat. 761; Pub. L. 86–518, §1, June 12, 1960, 74 Stat. 216; Pub. L. 97–31, §12(88), Aug. 6, 1981, 95 Stat. 161.)

Disposition of Vessels Transferred to Maritime Administration of Department of Transportation

[Section 508 was classified to section 1158 of the former Appendix to this title and was repealed and restated as sections 57102 and 57103 of this title by Pub. L. 109–304, §§8(c), 19, Oct. 6, 2006, 120 Stat. 1586, 1710.]

Vessels To Be Operated in Domestic Trade; Terms and Conditions of Construction Aid and Sale to Purchaser

''SEC. 509. Any citizen of the United States may make application to the Secretary of Transportation for aid in the construction of a new vessel to be operated in the foreign or domestic trade (excepting vessels engaged solely in the transportation of property on inland rivers and canals exclusively). If such application is approved by the Secretary of Transportation, the vessel may be constructed under the terms and conditions of this title, but no construction-differential subsidy shall be allowed. The Secretary of Transportation shall pay for the cost of national-defense features incorporated in such vessel. In case the vessel is designed to be of not less than three thousand five hundred gross tons and to be capable of sustained speed of not less than ten knots, or in the case of a passenger vessel operating solely on the inland rivers and waterways which is designed to be of not less than one thousand gross tons and to be capable of sustained speed of not less than eight knots, or in the case of a ferry operating solely in point-to-point transportation which is designed to be of not less than seventy-five gross tons and to be capable of a sustained speed of not less than eight knots, in the case of an oceangoing tug of more than two thousand five hundred horsepower or oceangoing barge of more than two thousand five hundred gross tons, or in the case of a vessel of more than two thousand five hundred horsepower designed to be capable of sustained speed of not less than forty knots, the purchaser shall be required to pay the Secretary of Transportation not less than 12½ per centum of the cost of such vessel, and in the case of any other vessel the purchaser shall be required to pay the Secretary of Transportation not less than 25 per centum of the cost of such vessel (excluding from such cost, in either case, the cost of national defense features); and the balance of such purchase price shall be paid by the purchaser within twenty-five years in not to exceed twenty-five equal annual installments, with interest at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, plus (ii) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs, the balance of such purchase price being secured by a preferred mortgage on the vessel sold and otherwise secured as the Secretary of Transportation may determine: *Provided*, That, notwithstanding any other provisions of law, the balance of the purchase price of a passenger vessel constructed under this section which is delivered subsequent to March 8, 1946, and which has the tonnage, speed, passenger accommodations, and other characteristics set forth in section 503 of this Act, may, with the approval of the Secretary of Transportation, be secured as provided in such section, and the obligation of the purchaser of such a vessel shall be satisfied and discharged as provided in such section.''

(As amended June 23, 1938, ch. 600, §20, 52 Stat. 959; June 6, 1939, ch. 186, 53 Stat. 810; July 17, 1952, ch. 939, §6, 66 Stat. 761; Pub. L. 86–518, §1, June 12, 1960, 74 Stat. 216; Pub. L. 87–877, §2(b), Oct. 24, 1962, 76 Stat. 1200; Pub.

L. 90–183, Dec. 10, 1967, 81 Stat. 559; Pub. L. 90–214, Dec. 18, 1967, 81 Stat. 660; Pub. L. 91–469, § 11, Oct. 21, 1970, 84 Stat. 1022; Pub. L. 92–374, Aug. 10, 1972, 86 Stat. 528; Pub. L. 95–173, § 8, Nov. 12, 1977, 91 Stat. 1360; Pub. L. 95–505, Oct. 24, 1978, 92 Stat. 1755; Pub. L. 97–31, § 12(90), Aug. 6, 1981, 95 Stat. 161.)

Acquisition of Obsolete Vessels

[Section 510 was classified to section 1160 of the former Appendix to this title and was primarily repealed and restated in subtitle V of this title by Pub. L. 109–304, §§ 8(b), (c), 19, Oct. 6, 2006, 120 Stat. 1556, 1586, 1710. For disposition of sections of the former Appendix to this title, see Disposition Table preceding section 101 of this title.]

Reserve Funds for Construction or Acquisition of Vessels; Taxation

[Section 511 was classified to section 1161 of the former Appendix to this title and was primarily repealed and restated as chapter 533 of this title by Pub. L. 109–304, §§ 8(c), 19, Oct. 6, 2006, 120 Stat. 1586, 1710. For disposition of sections of the former Appendix to this title, see Disposition Table preceding section 101 of this title.]

Limitation on Restrictions

''SEC. 512. (a) Except as provided in subsection (b), notwithstanding any other provision of law or contract, all restrictions and requirements under sections 503, 506, and 802 [set out below] applicable to a liner vessel constructed, reconstructed, or reconditioned with the aid of construction-differential subsidy shall terminate upon the expiration of the 25-year period beginning on the date of the original delivery of the vessel from the shipyard.

''(b)(1) Except as provided in paragraph (2), the restrictions and requirements of section 506 shall terminate upon the expiration of the 20-year period beginning on the date of the original delivery of the vessel from the shipyard for operation of a vessel in any domestic trade in which it has operated at any time since 1996.

''(2) Paragraph (1) shall not affect any requirement to make payments under section 506.''

(As added Pub. L. 104–239, § 7, Oct. 8, 1996, 110 Stat. 3133; amended Pub. L. 108–136, div. C, title XXXV, § 3532(b), Nov. 24, 2003, 117 Stat. 1818.)

[Title V of act June 29, 1936, ch. 858, comprising this note, consisted of sections 501 to 512 which were classified to sections 1151 to 1162, respectively, of the former Appendix to this title, prior to the enactment of Pub. L. 109–304 and elimination of that Appendix. For complete disposition of those sections, see Disposition Table preceding section 101 of this title.]

[Pub. L. 87–877, § 5, Oct. 24, 1962, 76 Stat. 1202, provided that: ''The amendment made by the first section of this Act [amending section 502 of act June 29, 1936, ch. 858, set out above] shall be effective only with respect to contracts entered into with respect to (a) the construction of a vessel the keel of which was laid after June 30, 1959, or (b) the reconstruction or reconditioning of a vessel the shipyard contract for which was entered into after June 30, 1959, and the Secretary may, with the consent of the parties thereto, modify any such contract entered into prior to the date of the enactment of this Act [Oct. 24, 1962] to the extent authorized by the amendment made by this Act.'']

[Pub. L. 86–607, § 2, July 7, 1960, 74 Stat. 362, as amended by Pub. L. 87–222, Sept. 13, 1961, 75 Stat. 494, provided that: ''The amendment made by this Act [amending section 502 of act June 29, 1936, ch. 858, set out above] shall be effective only with respect to any contract entered into not later than two years after the date of enactment of this Act [July 7, 1960] under the provisions of section 502 of the Merchant Marine Act, 1936 [act June 29, 1936, ch. 858], with respect to (a) the construction of a vessel the keel of which was laid, or (b) the reconstruction or reconditioning of a vessel the shipyard contract for which was entered into after June 30, 1959, and the Federal Maritime Board may, with the consent of the parties thereto, modify any such contract entered into prior to the date of enactment of the first amendment to Public Law 86–607 (74 Stat. 362) [Sept. 13, 1961], to the extent authorized by the amendment made by this Act, as amended.'']

[Pub. L. 86–518, § 8(a), June 12, 1960, 74 Stat. 216, provided that: ''The amendments made by this Act [amending sections 502, 503, 506, 507, 509, 605, and 611 of act June 29, 1936, ch. 858, set out above and below] shall apply only to vessels delivered by the shipbuilder on or after January 1, 1946, and with respect to such vessels shall become effective on January 1, 1960. With respect to vessels delivered by the shipbuilder before January 1, 1946, the provisions of the Merchant Marine Act, 1936 [act June 29, 1936, ch. 858, see Tables for classification], existing immediately before the date of enactment of this Act [June 12, 1960] shall continue in effect.'']

OPERATING-DIFFERENTIAL SUBSIDY

Act June 29, 1936, ch. 858, title VI, 49 Stat. 2001, as amended, provided as follows:

Subtitle A—Operating-Differential Subsidy Program

Subsidy Authorized for Operation of Vessels in Foreign Trade or in Off-Season Cruises

''SEC. 601. (a) The Secretary of Transportation is authorized and directed to consider the application of any citizen of the United States for financial aid in the operation of a vessel or vessels, which are to be used in an essential service in the foreign commerce of the United States or in such service and in cruises authorized under section 613 of this title. In this title VI the term 'essential service' means the operation of a vessel on a service, route, or line described in section 211(a) [now 46 U.S.C. 50103(a)(1)] or in bulk cargo carrying service described in section 211(b) [now 46 U.S.C. 50103(b)]. No such application shall be approved by the Secretary of Transportation unless he determines that (1) the operation of such vessel or vessels in an essential service is required to meet foreign-flag competition and to promote the foreign commerce of the United States except to the extent such vessels are to be operated on cruises authorized under section 613 of this title, and that such vessel or vessels were built in the United States, or have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date; (2) the applicant owns, or leases or can and will build or purchase, or lease, a vessel or vessels of the size, type, speed, and number, and with the proper equipment required to enable him to operate in an essential service, in such manner as may be necessary to meet competitive conditions, and to promote foreign commerce; (3) the applicant possesses the ability, experience, financial resources, and other qualifications necessary to enable him to conduct the proposed operations of the vessel or vessels as to meet competitive conditions and promote foreign commerce; (4) the granting of the aid applied for is necessary to place the proposed operations of the vessel or vessels on a parity with those of foreign competitors, and is reasonably calculated to carry out effectively the purposes and policy of this Act [former 46 U.S.C. App. 1101 et seq., see Disposition Table preceding section 101 of this title]. To the extent the application covers cruises, as authorized under section 613 of this title, the Secretary of Transportation may make the portion of this last determination relating to parity on the basis that any foreign flag cruise from the United States competes with any American flag cruise from the United States.

''(b) Every application for an operating-differential subsidy under the provisions of this title shall be accompanied by statements disclosing the names of all persons having any pecuniary interest, direct or indirect, in such application, or in the ownership or use of the vessel or vessels, routes, or lines covered thereby,

and the nature and extent of any such interest, together with such financial and other statements as may be required by the Secretary of Transportation. All such statements shall be under oath or affirmation and in such form as the Secretary of Transportation shall prescribe. Any person who, in an application for financial aid under this title or in any statement required to be filed therewith, willfully makes any untrue statement of a material fact, shall be guilty of a misdemeanor.''

(As amended Pub. L. 87–45, § 2, May 27, 1961, 75 Stat. 90; Pub. L. 91–469, §§ 14, 35(a), (h), Oct. 21, 1970, 84 Stat. 1023, 1035, 1036; Pub. L. 91–603, § 4(c), (d), Dec. 31, 1970, 84 Stat. 1675; Pub. L. 97–31, § 12(93), Aug. 6, 1981, 95 Stat. 161.)

Determination of Necessity of Subsidy To Meet Competition

''SEC. 602. Except with respect to cruises authorized under section 613 of this title, no contract for an operating-differential subsidy shall be made by the Secretary of Transportation for the operation of a vessel or vessels to meet foreign competition, except direct foreign-flag competition, until and unless the Secretary of Transportation, after a full and complete investigation and hearing, shall determine that an operating-differential subsidy is necessary to meet competition of foreign-flag ships.''

(As amended June 23, 1938, ch. 600, § 40(b), 52 Stat. 964; Pub. L. 87–45, § 3, May 27, 1961, 75 Stat. 91; Pub. L. 91–469, § 35(a), Oct. 21, 1970, 84 Stat. 1035; Pub. L. 97–31, § 12(94), Aug. 6, 1981, 95 Stat. 161.)

Contracts for Payment of Subsidy

''SEC. 603. (a) If the Secretary of Transportation approves the application, he may enter into a contract with the applicant for the payment of an operating-differential subsidy determined in accordance with the provisions of subsection (b) of this section, for the operation of such vessel or vessels in an essential service and in cruises authorized under section 613 of this title for a period not exceeding twenty years, and subject to such reasonable terms and conditions, consistent with this Act [former 46 U.S.C. App. 1101 et seq., see Disposition Table preceding section 101 of this title], as the Secretary of Transportation shall require to effectuate the purposes and policy of this Act, including a performance bond with approved sureties, if such bond is required by the Secretary of Transportation.

''(b) Such contract shall provide, except as the parties should agree upon a lesser amount, that the amount of the operating-differential subsidy for the operation of vessels in an essential service shall equal the excess of the subsidizable wage costs of the United States officers and crews, the fair and reasonable cost of insurance, subsistence of officers and crews on passenger vessels, as defined in section 613 of this Act, maintenance, and repairs not compensated by insurance, incurred in the operation under United States registry of the vessel or vessels covered by the contract, over the estimated fair and reasonable cost of the same items of expense (after deducting therefrom any estimated increase in such items necessitated by features incorporated pursuant to the provisions of section 501(b) [set out above]) if such vessel or vessels were operated under the registry of a foreign country whose vessels are substantial competitors of the vessel or vessels covered by the contract: *Provided, however*, That the Secretary of Transportation may, with respect to any vessel in an essential bulk cargo carrying service as described in section 211(b) [now 46 U.S.C. 50103(b)], pay, in lieu of the operating-differential subsidy provided by this subsection (b), such sums as he shall determine to be necessary to make the cost of operating such vessel competitive with the cost of operating similar vessels under the registry of a foreign country. For any period during which a vessel cruises as authorized by section 613 of this Act, operating-differential subsidy shall be computed as though the vessel were operating on the essential service to which the vessel is assigned: *Provided, however*, That if the cruise vessel calls at a port or ports outside of its assigned service, but which is served with passenger vessels (as defined in section 613 of this Act) by another subsidized operator at an operating-differential subsidy rate for wages lower than the cruise vessel has on its assigned essential service, the operating-differential subsidy rates for each of the subsidizable items for each day (a fraction of a day to count as a day) that the vessel stops at such port shall be at the respective rates applicable to the subsidized operator regularly serving the area.

''(c)(1) When used in this section—

''(A) The term 'collective bargaining costs' means the annual cost, calculated on the basis of the per diem rate of expense as of any date, of all items of expense required of the applicant through collective bargaining or other agreement, covering the employ of United States officers and crew of a vessel, including payments required by law to assure old-age pensions, unemployment benefits, or similar benefits and taxes or other governmental assessments on crew payrolls, but excluding subsistence of officers and crews on vessels other than passenger vessels as defined in section 613 of this Act and costs relating to:

''(i) the officers or members of the crew that the Secretary of Transportation has found, prior to the award of a contract for the construction or reconstruction of a vessel, to be unnecessary for the efficient and economical operation of such vessel: *Provided*, That the Secretary of Transportation shall afford representatives of the collective-bargaining unit or units responsible for the manning of the vessel an opportunity to comment on such finding prior to the effective date of such finding: *And provided further*, That in determining whether officers or members of the crew are necessary for the efficient and economical operation of such vessel, the Secretary of Transportation shall give due consideration to, but shall not be bound by, wage and manning scales and working conditions required by a bona fide collective-bargaining agreement, or

''(ii) those officers or members of the crew that the Secretary of Transportation has found, prior to ninety days following the date of enactment of this subsection [Oct. 21, 1970], to be unnecessary for the efficient and economical operation of the vessel.

''(B) The term 'base period costs' means for the base period beginning July 1, 1970, and ending June 30, 1971, the collective-bargaining costs as of January 1, 1971, less all other items of cost that have been disallowed by the Secretary of Transportation prior to ninety days following the date of enactment of this subsection [Oct. 21, 1970], and not already excluded from collective-bargaining costs under subparagraph (A)(i) or (A)(ii) of this subsection. In any subsequent base period the term 'base period costs' means the average of the subsidizable wage cost of United States officers and crews for the preceding annual period ending June 30 (calculated without regard to the limitation of the last sentence of paragraph (D) of this subdivision but increased or decreased by the increase or decrease in the index described in subdivision (3) of this subsection from January 1 of such annual period to January 1 of the base period), and the collective-bargaining costs as of January 1 of the base period: *Provided*, That in no event shall the base period cost be such that the difference between the base period cost and the collective-bargaining costs as of January 1 of any base period subsequent to the first base period exceeds five-fourths of 1 per centum of the collective-bargaining costs as of such January 1 multiplied by the number of years that have elapsed since the most recent base period.

''(C) The term 'base period' means any annual period beginning July 1, and ending June 30 with respect to which a base period cost is established.

''(D) The term 'subsidizable wage costs of United States officers and crews' in any period other than a base period means the most recent base period costs increased or decreased by the increase or decrease from

January 1 of such base period to January 1 of such period in the index described in subdivision (3) hereof, and with respect to a base period means the base period cost. The subsidizable wage costs of United States officers and crews in any period other than a base period shall not be less than 90 per centum of the collective-bargaining costs as of January 1 of such period nor greater than 110 per centum of such collective-bargaining costs.

''(2) The Secretary of Transportation shall determine the collective-bargaining costs on ships in subsidized operation as of January 1, 1971, and as of each January 1 thereafter, and shall as of intervals of not less than two years nor more than four years, establish a new base period cost, except that the Secretary shall not establish a new base period unless he announces his intention to do so prior to the December 31 that would be included in the new base period.

''(3) The Bureau of Labor Statistics shall compile the index referred to in subdivision (1). Such index shall consist of the average annual change in wages and benefits placed into effect for employees covered by collective-bargaining agreements with equal weight to be given to changes affecting employees in the transportation industry (excluding the offshore maritime industry) and to changes affecting employees in private nonagricultural industries other than transportation. Such index shall be based on the materials regularly used by the Bureau of Labor Statistics in compiling its regularly published statistical series on wage and benefit changes arrived at through collective bargaining. Such materials shall remain confidential and not be subject to disclosure.

''(d) Each foreign wage cost computation shall be made after an opportunity is given to the contractor to submit in writing and in timely fashion all relevant data within his possession. In making the computation, the Secretary shall consider all relevant matter so presented and all foreign wage cost data collected at his request or on his behalf. Such foreign cost data shall be made available to an interested contractor, unless the Secretary shall find that disclosure of the data will prevent him from obtaining such data in the future. In determining foreign manning for purposes of this section, the foreign manning determined for any ship type with respect to any base period shall not be redetermined until the beginning of a new base period.

''(e) The wage subsidy shall be payable monthly for the voyages completed during the month, upon the contractor's certification that the subsidized vessels were in authorized service during the month. The Secretary of Transportation shall prescribe procedures for the calculation and payment of subsidy on items of expense which are included in 'collective-bargaining costs' but are not included in the daily rate because they are unpredictably timed.

''(f) Ninety percent of the amount of the insurance and maintenance and repair and subsistence of officers and crews subsidy shall be payable monthly for the voyages completed during the month on the basis of the subsidy estimated to have accrued with respect to such voyages. Any such payment shall be made only after there has been furnished to the Secretary of Transportation such security as he deems to be reasonable and necessary to assure refund of any overpayment. The contractor and the Secretary of Transportation shall audit the voyage accounts as soon as practicable after such payment. The remaining 10 percent of such subsidy shall be payable after such audit.''

(As amended Aug. 4, 1939, ch. 417, §8, 53 Stat. 1185; Pub. L. 87–45, §4, May 27, 1961, 75 Stat. 91; Pub. L. 87–243, Sept. 14, 1961, 75 Stat. 513; Pub. L. 91–469, §§15–17, 35(a), (i), Oct. 21, 1970, 84 Stat. 1023, 1024, 1035, 1036; Pub. L. 97–31, §12(94), Aug. 6, 1981, 95 Stat. 161.)

Additional Subsidy; When Authorized

''SEC. 604. If in the case of any particular foreign-trade route the Secretary of Transportation shall find after consultation with the Secretary of State, that the subsidy provided for in this title is in any respect inadequate to offset the effect of governmental aid paid to foreign competitors, he may grant such additional subsidy as he determines to be necessary for that purpose.''

(As amended June 23, 1938, ch. 600, §21, 52 Stat. 959; Aug. 4, 1939, ch. 417, §9, 53 Stat. 1185; Pub. L. 97–31, §12(95), Aug. 6, 1981, 95 Stat. 162.)

Vessels Excluded From Subsidy

''SEC. 605. (a) No operating-differential subsidy shall be paid for the operation of any vessel on a voyage on which it engages in coastwise or intercoastal trade: *Provided, however*, That such subsidy may be paid on a round-the-world voyage or a round voyage from the west coast of the United States to a European port or ports or a round voyage from the Atlantic coast to the Orient which includes intercoastal ports of the United States or a voyage in foreign trade on which the vessel may stop at the State of Hawaii, or an island possession or island territory of the United States, and if the subsidized vessel earns any gross revenue on the carriage of mail, passengers, or cargo by reason of such coastal or intercoastal trade the subsidy payment for the entire voyage shall be reduced by an amount which bears the same ratio to the subsidy otherwise payable as such gross revenue bears to the gross revenue derived from the entire voyage. No vessel operating on the inland waterways of the United States shall be considered for the purposes of this Act [former 46 U.S.C. App. 1101 et seq., see Disposition Table preceding section 101 of this title] to be operating in foreign trade.

''(b) No operating-differential subsidy shall be paid for the operation of a vessel after the calendar year the vessel becomes 25 years of age, unless the Secretary of Transportation has determined, before the date of enactment of the Maritime Security Act of 1996 [Oct. 8, 1996], that it is in the public interest to grant such financial aid for the operation of such vessel.

''(c) No contract shall be made under this title with respect to a vessel to be operated in an essential service served by citizens of the United States which would be in addition to the existing service, or services, unless the Secretary of Transportation shall determine after proper hearing of all parties that the service already provided by vessels of United States registry is inadequate, and that in the accomplishment of the purposes and policy of this Act additional vessels should be operated thereon; and no contract shall be made with respect to a vessel operated or to be operated in an essential service served by two or more citizens of the United States with vessels of United States registry, if the Secretary of Transportation shall determine the effect of such a contract would be to give undue advantage or be unduly prejudicial, as between citizens of the United States, in the operation of vessels in such essential service unless following public hearing, due notice of which shall be given to each operator serving such essential service, the Secretary of Transportation shall find that it is necessary to enter into such contract in order to provide adequate service by vessels of United States registry. The Secretary of Transportation in determining for the purposes of this section whether services are competitive, shall take into consideration the type, size, and speed of the vessels employed, whether passenger or cargo, or combination passenger and cargo, vessels, the ports or ranges between which they run, the character of cargo carried, and such other facts as he may deem proper.''

(As amended July 17, 1952, ch. 939, §15, 66 Stat. 764; Pub. L. 86–3, §18(b)(2), Mar. 18, 1959, 73 Stat. 12; Pub. L. 86–518, §1, June 12, 1960, 74 Stat. 216; Pub. L. 89–348, §1(9), Nov. 8, 1965, 79 Stat. 1310; Pub. L. 91–469, §§18, 19, 26(b), 35(a), (j), Oct. 21, 1970, 84 Stat. 1025, 1026, 1034–1036; Pub. L. 97–31, §12(96), Aug. 6, 1981, 95 Stat. 162; Pub. L. 104–239, §3(a), Oct. 8, 1996, 110 Stat. 3126.)

Readjustments; Change in Service; Withdrawal From Service; Payment of Excess Profits; Wages, Etc.; American Materials

''SEC. 606. Every contract for an operating-differential subsidy under this title shall provide (1) that the

amount of the future payments to the contractor shall be subject to review and readjustment from time to time, but not more frequently than once a year, at the instance of the Secretary of Transportation or of the contractor. If any such readjustment cannot be reached by mutual agreement, the Secretary of Transportation, on his own motion or on the application of the contractor, shall, after a proper hearing, determine the facts and make such readjustment in the amount of such future payments as he may determine to be fair and reasonable and in the public interest. The testimony in every such proceeding shall be reduced to writing and filed in the office of the Secretary of Transportation. His decision shall be based upon and governed by the changes which may have occurred since the date of the said contract, with respect to the items theretofore considered and on which such contract was based, and other conditions affecting shipping, and shall be promulgated in a formal order, which shall be accompanied by a report in writing in which the Secretary of Transportation shall state his findings of fact; (2) that the compensation to be paid under it shall be reduced, under such terms and in such amounts as the Secretary of Transportation shall determine, for any periods in which the vessel or vessels are laid up; (3) that if the Secretary of Transportation shall determine that a change in an essential service, which is receiving an operating-differential subsidy under this title, is necessary in the accomplishment of the purposes of this Act [former 46 U.S.C. App. 1101 et seq., see Disposition Table preceding section 101 of this title], it may make such change upon such readjustment of payments to the contractor as shall be arrived at by the method prescribed in clause (1) of these conditions; (4) that if at any time the contractor receiving an operating-differential subsidy claims that he cannot maintain and operate his vessels in such an essential service, with a reasonable profit upon his investment, and applies to the Secretary of Transportation for a modification or rescission of his contract to maintain such essential service, and the Secretary of Transportation determines that such claim is proved the Secretary of Transportation shall modify or rescind such contract and permit the contractor to withdraw such vessels from such essential service upon a date fixed by the Secretary of Transportation, and upon the date of such withdrawal the further payment of the operating differential subsidy shall cease and the contractor be discharged from any further obligation under such contract; (5) that the contractor shall conduct his operations with respect to essential services and any services authorized under section 613 of this title, covered by his contract in an economical and efficient manner, and (6) that whenever practicable, an operator who receives subsidy with respect to subsistence of officers and crews shall use as such subsistence items only articles, materials, and supplies of the growth, production, and manufacture of the United States, as defined in section 505 herein [set out above], except when it is necessary to purchase supplies outside the United States to enable such vessel to continue and complete her voyage, and an operator who receives subsidy with respect to repairs shall perform such repairs within any of the United States or the Commonwealth of Puerto Rico, except in an emergency.''

(As amended June 23, 1938, ch. 600, § 22, 52 Stat. 960; July 17, 1952, ch. 939, § 16, 66 Stat. 764; May 10, 1956, ch. 247, § 1, 70 Stat. 148; Pub. L. 86–624, § 35(b), July 12, 1960, 74 Stat. 421; Pub. L. 87–45, § 5, May 27, 1961, 75 Stat. 91; Pub. L. 91–469, §§ 20, 35(a), (k), Oct. 21, 1970, 84 Stat. 1026, 1035, 1036; Pub. L. 97–31, § 12(96), Aug. 6, 1981, 95 Stat. 162.)

Capital Construction Fund

[Section 607 was classified to section 1177 of the former Appendix to this title and was primarily repealed and restated as chapter 535 of this title by Pub. L. 109–304, §§ 8(c), 19, Oct. 6, 2006, 120 Stat. 1586, 1710. For disposition of sections of the former Appendix to this title, see Disposition Table preceding section 101 of this title.]

Sale or Assignment of Contract; Consent of Secretary; Purchaser Subject to Terms of Contract; Rescinding Contract on Transfer Without Consent

''SEC. 608. No contract executed under this title or any interest therein shall be sold, assigned, or transferred, either directly or indirectly, or through any reorganization, merger, or consolidation, nor shall any agreement or arrangement be made by the holder whereby the maintenance, management, or operation of the service, route, line, vessel, or vessels is to be performed by any other person, without the written consent of the Secretary of Transportation. If he consents to such agreement or arrangement, the agreement or arrangement shall make provision whereby the person undertaking such maintenance, management, or operation agrees to be bound by all of the provisions of the contract and of this Act [former 46 U.S.C. App. 1101 et seq., see Disposition Table preceding section 101 of this title] applicable thereto, and the rules and regulations prescribed pursuant to this Act. If the holder of any such contract shall voluntarily sell such contract or any interest therein, or make such assignment, transfer, agreement, or arrangement whereby the maintenance, management, or operation of the service, route, line, vessel, or vessels is to be performed by any other person, without the consent of the Secretary of Transportation, or if the operation of the service, route, line, or vessel, shall pass out of the direct control of the holder of such contract by reason of any voluntary or involuntary receivership or bankruptcy proceedings, the Secretary of Transportation shall have the right to modify or rescind such contract, without further liability thereon by the United States, and is vested with exclusive jurisdiction to determine the purposes for which any payments made by him under such contract shall be expended.''

(As amended Pub. L. 97–31, § 12(98), Aug. 6, 1981, 95 Stat. 162.)

Withholding Payment to Defaulting Contractor

''SEC. 609. The Secretary of Transportation shall withhold the payment of operating-differential subsidy while any contractor therefor is in default in any payments due on account of construction-loan, ship-sales mortgage notes, or any other obligation due the United States, and shall apply the amount so withheld to the satisfaction of such debt.''

(As amended June 23, 1938, ch. 600, § 29, 52 Stat. 961; Pub. L. 97–31, § 12(99), Aug. 6, 1981, 95 Stat. 162.)

Vessels Eligible for Subsidy

''SEC. 610. An operating-differential subsidy shall not be paid under authority of this title on account of the operation of any vessel which does not meet the following requirements: (1) The vessel shall be of steel or other acceptable metal, shall be propelled by steam or motor, shall be as nearly fireproof as practicable, shall be built in a domestic yard or shall have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date, and shall be documented under the laws of the United States, during the entire life of the subsidy contract; and (2) if the vessel shall be constructed after June 29, 1936 it shall be either a vessel constructed according to plans and specifications approved by the Secretary of Transportation and the Secretary of the Navy, with particular reference to economical conversion into an auxiliary naval vessel, or a vessel approved by the Secretary of Transportation and the Navy Department as otherwise useful to the United States in time of national emergency.''

(As amended Pub. L. 97–31, § 12(99), Aug. 6, 1981, 95 Stat. 162.)

Transfer of Vessels to Foreign Registry on Default of United States

''SEC. 611. (a) The contractor, upon compliance with the provisions of this section, may transfer to foreign registry the vessels covered by any operating-differential subsidy contract held by him, in the event that the United States defaults upon such contract or cancels it without just cause. Any contractor desiring to transfer any such vessel to foreign registry upon such default or cancelation shall file an application in writing with the Secretary of Transportation setting forth its contentions with respect to the lack of just cause or lawful grounds for such default or cancelation. The Secretary of Transportation shall afford the contractor an opportunity for a hearing within twenty days after such contractor files written application therefor, and after the testimony, if any, in such hearing has been reduced to writing and filed with the Secretary of Transportation, he shall, within a reasonable time, grant or deny the application by order.

''(b) If any such application is denied, the contractor may obtain a review of the order of denial in the United States Court of Appeals for the District of Columbia, by filing in such court, within twenty days after the entry of such order, a written petition praying that the order of the Secretary of Transportation be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary of Transportation or any officer designated by him for that purpose, and thereupon the Secretary of Transportation shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to determine whether such cancelation or default was without just cause, and to affirm or set aside such order. The judgment and decree of the court affirming or setting aside any such order of the Secretary of Transportation shall be final.

''(c) No transfer of vessels to foreign registry under this section shall become effective until any indebtedness to the Government or to any citizen of the United States, secured by such vessels, has been paid or discharged, and until after the expiration of ninety days from the date of final determination of the application or the appeal, if any. Within such ninety-day period the Secretary of Transportation may (1) with the consent of the contractor purchase the vessels at cost to the contractor plus cost of capital improvements thereon, less 4 per centum annual depreciation upon such vessel, and the actual depreciated costs of capital improvements thereon, or (2) reinstate the contract and adjust or settle the default found by the Secretary of Transportation or the court to exist.''

(As added June 23, 1938, ch. 600, § 30, 52 Stat. 961; and amended Pub. L. 85–791, § 17, Aug. 28, 1958, 72 Stat. 947; Pub. L. 86–518, § 4, June 12, 1960, 74 Stat. 216; Pub. L. 97–31, § 12(100), Aug. 6, 1981, 95 Stat. 162.)

Subordination of Secretary's Interest to Reconstruction Finance Corporation

[Section 612 was classified to section 1182 of the former Appendix to this title and was repealed by Pub. L. 101–225, title III, § 307(7), Dec. 12, 1989, 103 Stat. 1925.]

Off-Season Cruises by Passenger Vessels

''SEC. 613. (a) In this section, 'passenger vessel' means a vessel which (1) is of not less than ten thousand gross tons, and (2) has accommodations for not less than one hundred passengers.

''(b) If the Secretary of Transportation finds that the operation of any passenger vessel with respect to which a contract for the payment of an operating-differential subsidy has been entered into under section 603 of this title effective before January 2, 1960, is not required for all of each year, in order to furnish adequate service on the service, route, or line covered by such contract, he may amend such contract to agree to pay an operating-differential subsidy for operation of the vessel (1) on such service, route, or line for some part or no part of each year, and (2) on cruises for all or part of each year if such specific cruise is approved by the Secretary of Transportation under subsection (e) of this section: *Provided, however*, That no such vessel may cruise for more than seven months of each year to ports which are regularly served by another United States-flag passenger vessel pursuant to an operating-differential subsidy contract.

''(c) The Secretary of Transportation may authorize passenger vessels under operating-differential subsidy contracts to provide domestic service between specified ports while the vessels are on voyages in an essential service in the foreign commerce of the United States without reduction of operating-differential subsidy and the partial payback of construction-differential subsidy for operating in the domestic trades, if he finds that such domestic service will not result in a substantial deviation from the service, route, or line for which operating-differential subsidy is paid and will not adversely affect service on such service, route, or line.

''(d) When a vessel is being operated on cruises or has been authorized under this section to provide domestic passenger services while on voyages in an essential service in foreign commerce of the United States—

''(1) except as provided in subdivision (4) of this subsection, it shall carry no mail unless required by law, or cargo except passengers' luggage, except between those ports between which it may carry mail and cargo on its regular service assigned by contract;

''(2) it may not carry one-way passengers between those ports served by another United States carrier on its regular service assigned by contract, without the consent of such carrier, except between those ports between which it may carry one-way passengers on its own regular service assigned by contract;

''(3) it shall stop at other domestic ports only for the same time and the same purpose as is permitted with respect to a foreign-flag vessel which is carrying passengers who embarked at a domestic port, except that a cruise may end at a different port or coast from that where it began and may embark or disembark passengers at other domestic ports, either when not involving transportation in the domestic offshore trade in competition with a United States-flag passenger vessel offering berth service therein, or, if involving such transportation, with the consent of such carrier: *Provided, however*, That nothing herein shall be construed to repeal or modify section 805(a) of this Act [now 46 U.S.C. 58101].

''(4) Any other provisions of the Merchant Marine Act, 1936 [former 46 U.S.C. App. 1101 et seq., see Disposition Table preceding section 101 of this title] or of the Shipping Act, 1916 [former 46 U.S.C. App. 801 et seq., see Disposition Table preceding section 101 of this title], to the contrary notwithstanding, with the approval of the Secretary of Transportation, it may carry cargo and mail between ports to the extent such carriage is not in direct competition with a carrier offering United States-flag berth service between those ports, or, if such carriage is in direct competition with one or more carriers offering United States-flag berth service between such ports, with the consent of the next scheduled United States-flag carrier, which consent shall not be unreasonably withheld in the judgment of the Maritime Administrator.

''Section 605(c) of this Act shall not apply to cruises authorized under this section. Notwithstanding the applicable provisions of sections 605(a) and 506 [set out above] of this Act requiring the reduction of operating differential subsidy and the partial payback of construction differential subsidy for operating in the domestic trades, such reduction of operating subsidy and partial payback of construction subsidy under sections 605(a) and 506, respectively, shall not apply to cruises or domestic services authorized under this section.

''(e) Upon the application of any operator for approval of a specific cruise, the Secretary of Transportation, after notice to all other American flag operators who may be affected and after affording all such

operators an opportunity to submit written data, views or arguments, with or without opportunity to present the same orally in any manner, and after consideration of all relevant matter presented, shall approve the proposed cruise, if he determines that the proposed cruise will not substantially adversely affect an existing operator's service performed with passenger vessels of United States registry. Such approval shall not be given more than two years in advance of the beginning of the cruise.''

(As added Pub. L. 87–45, §1, May 27, 1961, 75 Stat. 89; and amended Pub. L. 90–358, §§1, 2, June 22, 1968, 82 Stat. 248; Pub. L. 91–250, May 14, 1970, 84 Stat. 215; Pub. L. 92–323, June 30, 1972, 86 Stat. 389; Pub. L. 97–31, §12(102), Aug. 6, 1981, 95 Stat. 162.)

Suspension of Operating Differential Subsidy Contracts by Operator Recipients

''SEC. 614. (a) Any operator receiving operating differential subsidy funds may elect, for all or a portion of its ships, to suspend its operating differential subsidy contract with all attendant statutory and contractual restrictions, except as to those pertaining to the domestic intercoastal or coastwise service, including any agreement providing for the replacement of vessels, if—

''(1) the vessel is less than ten years of age;

''(2) the suspension period is not less than twelve months;

''(3) the operator's financial condition is maintained at a level acceptable to the Secretary of Commerce; and

''(4) the owner agrees to pay to the Secretary, upon such terms and conditions as he may prescribe, an amount which bears the same proportion to the construction differential subsidy paid by the Secretary as the portion of the suspension period during which the vessel is operated in any preference trade from which a subsidized vessel would otherwise be excluded by law or contract bears to the entire economic life of the vessel.

''(b) Any operator making an election under this section is entitled to full reinstatement of the suspended contract on request. The Secretary of Commerce may prescribe rules and regulations consistent with the purpose of this section.''

(As added Pub. L. 97–35, title XVI, §1603, Aug. 13, 1981, 95 Stat. 751.)

Construction, Reconstruction, or Acquisition of Vessels Over Five Thousand Deadweight Tons in Foreign Shipyards; Preconditions

''SEC. 615. (a) The Secretary of Commerce may, until September 30, 1983, authorize an operator receiving or applying for operating differential subsidy under this title to construct, reconstruct, or acquire its vessels of over five thousand deadweight tons in a foreign shipyard if the Secretary finds and certifies in writing that such operator's application for construction differential subsidy cannot be approved due to the unavailability of funds in the construction differential subsidy account. Vessels constructed, reconstructed, or modified pursuant to this section shall be deemed to have been United States built for the purposes of this title, section 901(b) of this Act [now 46 U.S.C. 55305], and section 5(7) of the Port and Tanker Safety Act of 1978 (46 U.S.C. 391(a)(7) [391a(7)]) [now 46 U.S.C. 3704–3709]: *Provided*, That the provisions of section 607 of this Act shall not apply to vessels constructed, reconstructed, modified, or acquired pursuant to this section.

''(b) The provisions of this section shall be effective for fiscal year 1983 only if the President in his annual budget message for that year requests at least $100,000,000 in construction differential subsidy or proposes an alternate program that would create equivalent merchant shipbuilding activity in privately owned United States shipyards and the Secretary reports to Congress on the effect such action will have on the shipyard mobilization base at least thirty days prior to making the certification referred to in subsection (a).''

(As added Pub. L. 97–35, title XVI, §1610, Aug. 13, 1981, 95 Stat. 753.)

Wind-Up of Program

''SEC. 616. (a) After the date of enactment of the Maritime Security Act of 1996 [Oct. 8, 1996], the Secretary of Transportation shall not enter into any new contract for operating-differential subsidy under this subtitle.

''(b) Notwithstanding any other provision of this Act [former 46 U.S.C. App. 1101 et seq., see Disposition Table preceding section 101 of this title], any operating-differential subsidy contract in effect under this title on the day before the date of enactment of the Maritime Security Act of 1996 [Oct. 8, 1996], shall continue in effect and terminate as set forth in the contract, unless voluntarily terminated at an earlier date by the parties (other than the United States Government) to the contract.

''(c) The essential service requirements of section[s] 601(a) and 603(b), and the provisions of sections 605(c) and 809(a) [set out as a note below], shall not apply to the operating-differential subsidy program under this subtitle effective upon the earlier of—

''(1) the date that a payment is made, under the Maritime Security Program established by subtitle B [former 46 U.S.C. App. 1187 et seq.] to a contractor under that subtitle who is not party to an operating-differential subsidy contract under this subtitle, with the Secretary to cause notice of the date of such payment to be published in the Federal Register as soon as possible; or

''(2) with respect to a particular contractor under the operating-differential subsidy program, the date that contractor enters into a contract with the Secretary under the Maritime Security Program established by subtitle B.

''(d)(1) Notwithstanding any other provision of law, a vessel may be transferred and registered under an effective United States-controlled foreign flag if—

''(A) the operator of the vessel receives an operating-differential subsidy pursuant to a contract under this subtitle which is in force on October 1, 1994, and the Secretary approves the replacement of such vessel with a comparable vessel, or

''(B) the vessel is covered by an operating agreement under subtitle B, and the Secretary approves the replacement of such vessel with a comparable vessel for inclusion in the Maritime Security Fleet established under subtitle B.

''(2) Any such vessel may be requisitioned by the Secretary of Transportation pursuant to section 902 [now 46 U.S.C. 56301 et seq.].''

(As added Pub. L. 104–239, §3(b), Oct. 8, 1996, 110 Stat. 3127.)

[Title VI of act June 29, 1936, ch. 858, comprising this note, consisted of sections 601 to 611 and 613 to 616 which were classified to sections 1171 to 1181 and 1183 to 1185a, respectively, of the former Appendix to this title, prior to the enactment of Pub. L. 109–304 and elimination of that Appendix. For complete disposition of those sections, see Disposition Table preceding section 101 of this title.]

CONTRACT PROVISIONS

Act June 29, 1936, ch. 858, title VIII, §§801, 802, 809, 49 Stat. 2011, 2015, as amended, provided as follows:

Provision for Books and Records; Filing Balance Sheets; Inspection and Auditing by Secretary; Rescission of Contract on Failure to Comply With Provisions

''SEC. 801. Every contract executed by the Secretary of Transportation under the provisions of title VI or VII of this Act [former 46 U.S.C. App. 1171 et seq., 1191 et seq., see Disposition Table preceding section 101 of this title] shall contain provisions requiring (1) that, the contractor and every affiliate, domestic agent, subsidiary, or holding company connected with, or directly or indirectly controlling or controlled by, the contrac-

tor, to keep its books, records, and accounts, relating to the maintenance, operation, and servicing of the vessels, services, routes, and lines covered by the contract, in such form and under such regulations as may be prescribed by the Secretary of Transportation: *Provided*, That the provisions of this paragraph shall not require the duplication of books, records, and accounts required to be kept in some other form by the Interstate Commerce Commission; (2) that the contractor and every affiliate, domestic agent, subsidiary, or holding company connected with, or directly or indirectly controlling or controlled by, the contractor, to file, upon notice from the Secretary of Transportation, balance sheets, profit and loss statements, and such other statements of financial operations, special report, memoranda of any facts and transactions, which in the opinion of the Secretary of Transportation affect the financial results in, the performance of, or transactions or operations under, such contract; (3) that the Secretary of Transportation shall be authorized to examine and audit the books, records, and accounts of all persons referred to in this section whenever he may deem it necessary or desirable; and (4) that upon the willful failure or refusal of any person described in this section to comply with the contract provisions required by this section, the Secretary of Transportation shall have the right to rescind the contract, and upon such rescission, the United States shall be relieved of all further liability on such contract.''

(As amended Pub. L. 97–31, § 12(119), Aug. 6, 1981, 95 Stat. 164.)

Purchase or Requisition of Vessels by United States; Amount of Payment

''SEC. 802. Every contract executed by the Secretary of Transportation under authority of title V of this Act [former 46 U.S.C. App. 1151 et seq., see Disposition Table preceding section 101 of this title] shall provide that—

''In the event the United States shall, through purchase or requisition, acquire ownership of the vessel or vessels on which a construction-differential subsidy was paid, the owner shall be paid therefor the value thereof, but in no event shall such payment exceed the actual depreciated construction cost thereof (together with the actual depreciated cost of capital improvements thereon, but excluding the cost of national-defense features) less the depreciated amount of construction-differential subsidy theretofore paid incident to the construction or reconditioning of such vessel or vessels, or the fair and reasonable scrap value of such vessel as determined by the Secretary of Transportation, whichever is the greater. Such determination shall be final. In computing the depreciated value of such vessel, depreciation shall be computed on each vessel on the schedule adopted by the Bureau of Internal Revenue [Internal Revenue Service] for income-tax purposes.

''The foregoing provision respecting the requisition or the acquisition of ownership by the United States shall run with the title to such vessel or vessels and be binding on all owners thereof.''

(As amended June 29, 1936, ch. 858, title VIII, § 802, 49 Stat. 2011; June 23, 1938, ch. 600, § 33, 52 Stat. 962; Aug. 7, 1939, ch. 555, § 2, 53 Stat. 1254; Pub. L. 97–31, § 12(120), Aug. 6, 1981, 95 Stat. 164.)

Contracts Designed Equitably for All Ports; Minimum Allocation of Funds; Report to Congress; Preference to Citizens of United States

''SEC. 809. (a) Contracts under this Act [former 46 U.S.C. App. 1101 et seq., see Disposition Table preceding section 101 of this title] shall be entered into so as to equitably serve, insofar as possible, the foreign-trade requirements of the Atlantic, Gulf, Great Lakes, and Pacific ports of the United States. In order to assure equitable treatment for each range of ports referred to in the preceding sentence, not less than 10 percent of the funds appropriated for construction-differential subsidy and operating-differential subsidy pursuant to this Act or any law authorizing funds for the purposes of this Act shall be allocated to each such port range: *Provided*, *however*, That such allocation shall apply to the extent that subsidy contracts are approved by the Secretary of Transportation. For the purposes of this section, the Secretary shall establish trade routes, services, or lines that take into account the seasonal closure of the Saint Lawrence Seaway and provide for alternate routing of ships via a different range of ports during that closure so as to maintain continuity of service on a year-round basis. For the purposes of section 605(c) [set out above], such an alternate routing via a different range of ports shall be deemed to be service from Great Lakes ports, provided such alternative routing is based upon receipt or delivery of cargo at Great Lakes-Saint Lawrence Seaway ports under through intermodal bills of lading. The Secretary shall include in the annual report pursuant to section 208 of this Act [former 46 U.S.C. App. 1118, see 46 U.S.C. 50111(a)] a detailed report (1) describing the actions that have been taken pursuant to this Act to assure insofar as possible that direct and adequate service is provided by United States-flag commercial vessels to each range of ports referred to in this section; and (2) including any recommendations for additional legislation that may be necessary to achieve the purpose of this section. In awarding contracts under this Act, preference shall be given to persons who are citizens of the United States and who have the support, financial and otherwise, of the domestic communities primarily interested.

''(b) [Repealed. Pub. L. 109–304, § 19, Oct. 6, 2006, 120 Stat. 1710.]''

(As amended Pub. L. 91–469, § 26(a), Oct. 21, 1970, 84 Stat. 1034; Pub. L. 94–10, § 3, Mar. 23, 1975, 89 Stat. 16; Pub. L. 94–127, § 4, Nov. 13, 1975, 89 Stat. 680; Pub. L. 96–470, title II, § 201(a), Oct. 19, 1980, 94 Stat. 2241; Pub. L. 97–31, § 12(121), Aug. 6, 1981, 95 Stat. 164; Pub. L. 97–35, title XVI, § 1604, Aug. 13, 1981, 95 Stat. 751; Pub. L. 109–304, §§ 14(b), 19, Oct. 6, 2006, 120 Stat. 1702, 1710.)

ENROLLMENT IN SEALIFT READINESS PROGRAM

Act June 29, 1936, ch. 858, title IX, § 909, as added by Pub. L. 97–35, title XVI, § 1605, Aug. 13, 1981, 95 Stat. 752, provided that: ''No vessel may receive construction differential subsidy or operating differential subsidy if it is not offered for enrollment in a sealift readiness program approved by the Secretary of Defense.''

§ 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 50501 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 50501 of this title.

(2) VESSEL OWNED BY SECTION 50501 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 50501 of this title 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 50501 of this title, 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 50501 of this title, 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 50501 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 50501 of this title.

(d) REQUEST BY SECRETARY OF DEFENSE.—The Secretary of Defense shall request the Secretary

of Homeland Security to issue any waiver under section 501 of this title 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 documented under chapter 121 of this title, shall be eligible 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 documented under chapter 121; 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; amended Pub. L. 109–304, § 13(a)(1), Oct. 6, 2006, 120 Stat. 1700.)

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.

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.

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–304, § 13(a)(1)(A), (B), substituted ''section 50501'' for ''section 2'' in the headings of pars. (1), (2), and (4) and substituted ''section 50501 of this title'' for ''section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)'' in pars. (1), (2)(A)(i), (ii)(II), (B), and (4)(B).

Subsec. (d). Pub. L. 109–304, § 13(a)(1)(C), substituted ''section 501 of this title'' for ''the first section of Public Law 81–891 (64 Stat. 1120; 46 U.S.C. App. note prec. 3)''.

Subsec. (e)(1). Pub. L. 109–304, § 13(a)(1)(D), substituted ''documented under chapter 121 of this title,'' for ''a documented vessel (as that term is defined in section 12101 of this title)'' in introductory provisions and ''documented under chapter 121'' for ''a documented vessel (as defined in that section)'' in subpar. (B).

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 [now section 106] 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 oper-

ator 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 50501 of this title,

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 subparagraph (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 50501 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 50501 of this title; 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 50501 of this title.

(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 agreements 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)(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); or

(ii)(I) not later than 9 months after the first date amounts are available to carry out this chapter, the operator of the existing tank vessel enters into an agreement to charter one or more tank vessels to be built in the United States and operated as a documented vessel or documented vessels;

(II) the combined tonnage of the vessels required to be chartered under subclause (I) is equal to or greater than the tonnage of the existing tank vessel subject to an operating agreement;

(III) the operator enters into an agreement with the Secretary that is substantially the same as an Emergency Preparedness Agreement under section 53107 of this title, under which the operator shall make available commercial transportation resources as provided in that section;

(IV) if the person that is the owner or operator of the existing tank vessel owns or operates more than one existing tank vessel subject to an operating agreement, the combined tonnage of those vessels required to be chartered under subclause (I) by that person is equal to or greater than the combined tonnage of all such existing tank vessels owned or operated by such person that are subject to operating agreements.

(B) No payment under this chapter may be made for an existing tank vessel with respect to which a binding contract is entered into under subparagraph (A)(i) 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.

(C) For purpose of subparagraph (A)(ii), tonnage shall be 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.

(D) No payment under this chapter may be made for an existing tank vessel with respect to which an agreement is entered into under subparagraph (A)(ii) for any period occurring—

(i) after the date that is 5 years after the first date that amounts became available to carry out this chapter, if the vessel or vessels required to be chartered under subparagraph (A)(ii) have not been delivered; or

(ii) after delivery of the vessel or vessels required to be chartered under such subparagraph, if any of such vessels is not chartered by the operator of the existing 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; amended Pub. L. 109–304, § 13(a)(2), Oct. 6, 2006, 120 Stat. 1700; Pub. L. 109–364, div. C, title XXXV, § 3502(b)(1), Oct. 17, 2006, 120 Stat. 2515.)

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.

AMENDMENTS

2006—Subsec. (c)(1). Pub. L. 109–304, § 13(a)(2)(A)–(C), substituted ''section 50501 of this title'' for ''section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)'' in subpars. (A)(iii) and (C)(i) and (ii), ''applying subparagraph'' for ''applying subparagraphs'' in subpar. (B), and ''section 50501'' for ''section 2'' in subpar. (C) heading.

Subsec. (c)(3)(B). Pub. L. 109–304, § 13(a)(2)(D), substituted ''agreements'' for ''agreement''.

Subsec. (c)(4)(A). Pub. L. 109–364, § 3502(b)(1)(A)–(D), redesignated cls. (i) and (ii) as cl. (i), subcls. (I) and (II), respectively, in subcl. (II) substituted ''; or'' for period at end, and added cl. (ii).

Subsec. (c)(4)(B). Pub. L. 109–364, § 3502(b)(1)(E), inserted ''with respect to which a binding contract is entered into under subparagraph (A)(i)'' after ''existing tank vessel''.

Subsec. (c)(4)(C), (D). Pub. L. 109–364, § 3502(b)(1)(F), added subpars. (C) and (D).

§ 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 50501 of this title; 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 50501 of this title.

(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 56101 of this title; and

(3) if chapter 563 of this title 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 chapter 563.

(Added Pub. L. 108–136, div. C, title XXXV, § 3531(a), Nov. 24, 2003, 117 Stat. 1810; amended Pub. L. 109–304, § 13(a)(3), Oct. 6, 2006, 120 Stat. 1701.)

AMENDMENTS

2006—Subsec. (c)(3)(B)(ii). Pub. L. 109–304, § 13(a)(3)(A), substituted ''section 50501 of this title'' for ''section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)'' in subcls. (I) and (II).

Subsec. (e)(2). Pub. L. 109–304, § 13(a)(3)(B), substituted ''section 56101 of this title'' for ''section 9 of the Shipping Act, 1916 (46 U.S.C. App. 808)''.

Subsec. (e)(3). Pub. L. 109–304, § 13(a)(3)(C), substituted ''chapter 563 of this title'' and ''chapter 563'' for ''section 902 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1242)'' and ''section 902 of such Act'', respectively.

§ 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 12111 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 Secretary 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.—

(1) IN GENERAL.—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.

(2) LIMITATION.—The Secretary of Defense may not approve under paragraph (1) transfer of an operating agreement to a person that is not a citizen of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802),[1] unless the Secretary of Defense determines that there is no person who is a citizen under such section and is interested in obtaining the operating agreement for a vessel that is otherwise eligible to be included in the Fleet under section 53102(b) and meets the requirements of the Department 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, approves replacement of the vessel.

(Added Pub. L. 108–136, div. C, title XXXV, § 3531(a), Nov. 24, 2003, 117 Stat. 1812; amended Pub. L. 109–304, § 13(a)(4), Oct. 6, 2006, 120 Stat. 1701; Pub. L. 109–364, div. C, title XXXV, § 3502(a), Oct. 17, 2006, 120 Stat. 2514.)

REFERENCES IN TEXT

Section 2 of the Shipping Act, 1916, referred to in subsec. (e)(2), is section 2 of act Sept. 7, 1916, ch. 451, 39 Stat. 728, which was classified to sections 802 and 803 of former Title 46, Appendix, Shipping, and was repealed and restated in sections 50501 and 50502 of this title by Pub. L. 109–304, §§ 8(b), 19, Oct. 6, 2006, 120 Stat. 1556, 1710. For disposition of sections of former Title 46, Appendix, to this title, see Disposition Table preceding section 101 of this title.

AMENDMENTS

2006—Subsec. (a)(1)(A). Pub. L. 109–304, § 13(a)(4)(A), substituted ''section 12111'' for ''section 12105''.

Subsec. (e). Pub. L. 109–364 designated existing provisions as par. (1), inserted heading and aligned margins in par. (1), and added par. (2).

Subsec. (f). Pub. L. 109–304, § 13(a)(4)(B), substituted ''approves'' for ''approve''.

§ 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 55302(a), 55304, 55305, or 55314 of this title, section 2631 of title 10, 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 55302(a), 55305, or 55314 of this title 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 50501 of this title, applying the 75 percent ownership requirement of that section.

(3) PARTICIPATES IN A NONCONTIGUOUS DOMESTIC TRADE DEFINED.—In this subsection the term ''participates in a noncontiguous domestic 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.

(f) PRIORITY IN ALLOCATION OF AVAILABLE AMOUNTS.—If the amount available for a fiscal year for making payments under operating agreements under this chapter is not sufficient to pay the full amount authorized under each

[1] See References in Text note below.

agreement pursuant to this section for such fiscal year, the amount available shall be allocated among such agreements in a manner that gives priority to payments for vessels that are subject to agreements under section 3517 of the Maritime Security Act of 2003 (46 U.S.C. 53101 note).

(Added Pub. L. 108–136, div. C, title XXXV, § 3531(a), Nov. 24, 2003, 117 Stat. 1813; amended Pub. L. 109–304, § 13(a)(5), Oct. 6, 2006, 120 Stat. 1701; Pub. L. 109–364, div. C, title XXXV, § 3502(c), Oct. 17, 2006, 120 Stat. 2516.)

REFERENCES IN TEXT

Section 3517 of the Maritime Security Act of 2003, referred to in subsec. (f), is section 3517 of Pub. L. 108–136, which is set out as a note under section 53101 of this title.

AMENDMENTS

2006—Subsec. (d)(1). Pub. L. 109–304, § 13(a)(5)(A), substituted ''section 55302(a), 55304, 55305, or 55314 of this title, section 2631 of title 10'' for ''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)''.

Subsec. (d)(2). Pub. L. 109–304, § 13(a)(5)(B), substituted ''section 55302(a), 55305, or 55314 of this title'' for ''section 901(a), 901(b), or 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(a), 1241(b), or 1241f),''.

Subsec. (e)(2). Pub. L. 109–304, § 13(a)(5)(C), substituted ''section 50501 of this title, applying the 75 percent ownership requirement of that section'' for ''section 2(c) of the Shipping Act, 1916 (46 U.S.C. App. 802(c))''.

Subsec. (f). Pub. L. 109–364 added subsec. (f).

§ 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 55302(a), 55304, 55305, or 55314 of this title, section 2631 of title 10, 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 sections 55302(a), 55304, 55305, and 55314 of this title and section 2631 of title 10 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 Defense 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; amended Pub. L. 109–304, § 13(a)(6), Oct. 6, 2006, 120 Stat. 1701.)

AMENDMENTS

2006—Subsec. (f). Pub. L. 109–304 substituted ''section 55302(a), 55304, 55305, or 55314 of this title, section 2631 of title 10'' for ''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)'' in introductory provisions and ''sections 55302(a), 55304, 55305, and 55314 of this title and section 2631 of title 10'' for ''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)'' in par. (2).

§ 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 55305(a) of this title 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; amended Pub. L. 109–304, § 13(a)(7), Oct. 6, 2006, 120 Stat. 1701.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–304 substituted ''section 55305(a) of this title'' for ''section 901(b)(1) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b)(1))''.

§ 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 former section 12102 of this title and sections 808 and 1162 of the former Appendix to this title, repealing sections 1187 to 1187e and 1222 of the former 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 former 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.)

CHAPTER 533—CONSTRUCTION RESERVE FUNDS

Sec.
53301. Definitions.
53302. Authority for construction reserve funds.
53303. Persons eligible to establish funds.
53304. Vessel ownership.
53305. Eligible fund deposits.
53306. Recognition of gain for tax purposes.
53307. Basis for determining gain or loss and for depreciating new vessels.
53308. Order and proportions of deposits and withdrawals.
53309. Accumulation of deposits.
53310. Obligation of deposits and period for construction of certain vessels.
53311. Taxation of deposits on failure of conditions.
53312. Assessment and collection of deficiency tax.

§ 53301. Definitions

(a) IN GENERAL.—In this chapter:

(1) CONSTRUCTION CONTRACT.—The term ''construction contract'' includes, for a taxpayer constructing a new vessel in a shipyard owned by that taxpayer, an agreement between the taxpayer and the Secretary of Transportation for that construction containing provisions the Secretary considers advisable to carry out this chapter.

(2) NEW VESSEL.—The term ''new vessel'' means—

(A) a vessel—

(i) constructed in the United States after December 31, 1939, constructed with a construction-differential subsidy under title V of the Merchant Marine Act, 1936, or constructed with financing or a financing guarantee under chapter 537 or 575 of this title;

(ii) documented or agreed with the Secretary to be documented under the laws of the United States; and

(iii)(I) of a type, size, and speed that the Secretary determines is suitable for use on the high seas or Great Lakes in carrying out this subtitle, but not less than 2,000 gross tons or less than 12 knots speed unless the Secretary certifies in each case that a vessel of lesser tonnage or speed is desirable for use by the United States Government in case of war or national emergency; or

(II) constructed to replace a vessel bought or requisitioned by the Government; and

(B) a vessel reconstructed or reconditioned for use only on the Great Lakes, including the Saint Lawrence River and Gulf, if the Secretary finds that the reconstruction or reconditioning will promote the objectives of this subtitle.

(b) ADDITIONAL TAX-RELATED TERMS.—Other terms used in this chapter have the same meaning as in chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 1).

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1587.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53301(a)(1) ..	46 App.:1161(n).	June 29, 1936, ch. 858, title V, § 511(n), as added Dec. 23, 1944, ch. 714, § 2, 58 Stat. 920; Pub. L. 97–31, § 12(92)(A), Aug. 6, 1981, 95 Stat. 161.
53301(a)(2)(A).	46 App.:1161(a).	June 29, 1936, ch. 858, title V, § 511(a), as added Oct. 10, 1940, ch. 849, 54 Stat. 1106; Pub. L. 97–31, § 12(92)(A), Aug. 6, 1981, 95 Stat. 161.
53301(a)(2)(B).	46 App.:1161(*o*).	June 29, 1936, ch. 858, title V, § 511(*o*), as added July 17, 1952, ch. 939, § 14, 66 Stat. 764; Pub. L. 97–31, § 12(92)(A), Aug. 6, 1981, 95 Stat. 161.
53301(b)	46 App.:1161(m).	June 29, 1936, ch. 858, title V, § 511(m), as added Oct. 10, 1940, ch. 849, 54 Stat. 1108.

In subsection (a)(2)(A)(i), the words ''constructed with a construction-differential subsidy under title V of the Merchant Marine Act, 1936, or constructed with financing or a financing guarantee under chapter 537 or 575 of this title'' are substituted for ''the construction of which has been financed under subchapters V or VII of this chapter, or the construction of which has been aided by a mortgage insured under subchapter XI of this chapter'' because of the reorganization of the material and the omission from the revised title of the provisions relating to the construction-differential subsidy program.

Subsection (a)(2)(B) is substituted for the source provision to state more directly that a vessel described in the source provision is a new vessel for purposes of this chapter.

REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in subsec. (a)(2)(A)(i), is act June 29, 1936, ch. 858, 49 Stat. 1985. Title V of the Act enacted provisions set out as notes under section 53101 of this title. For complete classification of this Act to the Code, see Short Title of 1936 Amendment note set out under section 101 of this title and Tables.

§ 53302. Authority for construction reserve funds

(a) GENERAL AUTHORITY.—An eligible person under section 53303 of this title may establish a construction reserve fund for the construction, reconstruction, reconditioning, or acquisition of a new vessel or for other purposes authorized by this chapter.

(b) APPLICATION OF CERTAIN LAWS AND REGULATIONS.—The fund shall be established, maintained, expended, and used as provided by this chapter and regulations prescribed jointly by the Secretary of Transportation and the Secretary of the Treasury.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1587.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53302(a)	46 App.:1161(b) (1st sentence words before 6th comma and between 10th and 16th commas).	June 29, 1936, ch. 858, title V, § 511(b) (1st sentence words before 6th comma and between 10th and 16th commas, last sentence), as added Oct. 10, 1940, ch. 849, 54 Stat. 1106; June 17, 1943, ch. 130, subdiv. (a), 57 Stat. 157; July 17, 1952, ch. 939, § 9, 66 Stat. 762; Pub. L. 97–31, § 12(92)(A), Aug. 6, 1981, 95 Stat. 161.
53302(b)	46 App.:1161(b) (last sentence).	

In subsection (a), the words ''necessary to carrying out the policy set forth in section 1101 of this Appendix'' are omitted as unnecessary.

§ 53303. Persons eligible to establish funds

A construction reserve fund may be established by a citizen of the United States that—

(1) is operating a vessel in the foreign or domestic commerce of the United States or in the fisheries;

(2) owns, in whole or in part, a vessel being operated in the foreign or domestic commerce of the United States or in the fisheries;

(3) was operating a vessel in the foreign or domestic commerce of the United States or in the fisheries when it was bought or requisitioned by the United States Government;

(4) owned, in whole or in part, a vessel being operated in the foreign or domestic commerce of the United States or in the fisheries when it was bought or requisitioned by the Government; or

(5) had acquired or was having constructed a vessel to operate in the foreign or domestic commerce of the United States or in the fisheries when it was bought or requisitioned by the Government.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1587.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53303	46 App.:1161(b) (1st sentence words between 6th and 10th commas).	June 29, 1936, ch. 858, title V, § 511(b) (1st sentence words between 6th and 10th commas), as added Oct. 10, 1940, ch. 849, 54 Stat. 1106; June 17, 1943, ch. 130, subdiv. (a), 57 Stat. 157; July 17, 1952, ch. 939, § 9, 66 Stat. 762.

§ 53304. Vessel ownership

In this chapter, a vessel is deemed to be constructed or acquired by a taxpayer if constructed or acquired by a corporation when the taxpayer owns at least 95 percent of each class of stock of the corporation.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1588.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53304	46 App.:1161(*l*).	June 29, 1936, ch. 858, title V, § 511(*l*), as added Oct. 10, 1940, ch. 849, 54 Stat. 1108.

§ 53305. Eligible fund deposits

A construction reserve fund may include deposits of—

(1) the proceeds from the sale of a vessel;

(2) indemnities for the loss of a vessel;

(3) earnings from the operation of a documented vessel and from services incident to the operation; and

(4) interest or other amounts accrued on deposits in the fund.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1588.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53305	46 App.:1161(b) (1st sentence words after 16th comma).	June 29, 1936, ch. 858, title V, § 511(b) (1st sentence words after 16th comma), as added Oct. 10, 1940, ch. 849, 54 Stat. 1106; June 17, 1943, ch. 130, subdiv. (a), 57 Stat. 157; July 17, 1952, ch. 939, § 9, 66 Stat. 762.

In paragraph (3), the words ''documented vessel'' are substituted for ''vessels documented under the laws of the United States'' because of the definition of ''documented vessel'' in chapter 1 of the revised title.

In paragraph (4), the words ''interest or other amounts accrued on deposits in the fund'' are substituted for ''receipts, in the form of interest or otherwise, with respect to amounts previously deposited'' for clarity and to eliminate unnecessary words.

§ 53306. Recognition of gain for tax purposes

(a) DEFINITIONS.—In this section, the terms ''net proceeds'' and ''net indemnity'' mean the sum of—

(1) the adjusted basis of the vessel; and

(2) the amount of gain the taxpayer would recognize without regard to this section.

(b) RECOGNITION OF GAIN.—In computing net income under the income or excess profits tax laws of the United States, a taxpayer does not recognize a gain on the sale or the actual or constructive total loss of a vessel if the taxpayer—

(1) deposits an amount equal to the net proceeds of the sale or the net indemnity for the loss in a construction reserve fund within 60 days after receiving the payment of proceeds or indemnity; and

(2) elects under this section not to recognize the gain.

(c) WHEN ELECTION MUST BE MADE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the taxpayer must make the election referred to in subsection (b) in the taxpayer's income tax return for the taxable year in which the gain was realized.

(2) RECEIPT AFTER TAXABLE YEAR.—If the vessel is bought or requisitioned by the United States Government, or is lost, and the taxpayer receives payment for the vessel or indemnity for the loss from the Government after the end of the taxable year in which it was bought, requisitioned, or lost, the taxpayer must make the election referred to in subsection (b) within 60 days after receiving the payment or indemnity, on a form prescribed by the Secretary of the Treasury.

(d) EFFECT OF STATUTE OF LIMITATION.—If the taxpayer makes an election under subsection (c)(2), and computation or recomputation under this section is otherwise allowable but is prevented by a statute of limitation on the date the election is made or within 6 months thereafter, the computation or recomputation nevertheless shall be made notwithstanding the statute if the taxpayer files a claim for the computation or recomputation within 6 months after the date of making the election.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1588.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53306	46 App.:1161(c).	June 29, 1936, ch. 858, title V, § 511(c), as added Oct. 10, 1940, ch. 849, 54 Stat. 1106; June 17, 1943, ch. 130, subdiv. (b), 57 Stat. 157; Dec. 23, 1944, ch. 714, § 1, 58 Stat. 920; July 17, 1952, ch. 939, § 10, 66 Stat. 762.

In subsection (c)(2), the words ''in any taxable year beginning after December 31, 1939'' are omitted as obsolete. The words ''prescribed by the Secretary of the Treasury'' are substituted for ''prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury'' for consistency in the revised title and with other titles of the United States Code. See 26 U.S.C. 7805.

§ 53307. Basis for determining gain or loss and for depreciating new vessels

Under the income or excess profits tax laws of the United States, the basis for determining a gain or loss and for depreciation of a new vessel constructed, reconstructed, reconditioned, or acquired by the taxpayer, or for which purchase-money indebtedness is liquidated as provided in section 53310 of this title, with amounts from a construction reserve fund, shall be reduced by that part of the deposits in the fund expended in the construction, reconstruction, reconditioning, acquisition, or liquidation of purchase-money indebtedness of the new vessel that represents a gain not recognized for tax purposes under section 53306 of this title.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1589.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53307	46 App.:1161(d).	June 29, 1936, ch. 858, title V, § 511(d), as added Oct. 10, 1940, ch. 849, 54 Stat. 1106; July 17, 1952, ch. 939, § 11, 66 Stat. 763.

§ 53308. Order and proportions of deposits and withdrawals

In this chapter—

(1) if the net proceeds of a sale or the net indemnity for a loss is deposited in more than one deposit, the amount consisting of the gain shall be deemed to be deposited first;

(2) amounts expended, obligated, or otherwise withdrawn shall be applied against the amounts deposited in the fund in the order of deposit; and

(3) if a deposit consists in part of a gain not recognized under section 53306 of this title, any expenditure, obligation, or withdrawal applied against that deposit shall be deemed to be a gain in the proportion that the part of the deposit consisting of a gain bears to the total amount of the deposit.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1589.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53308	46 App.:1161(e).	June 29, 1936, ch. 858, title V, § 511(e), as added Oct. 10, 1940, ch. 849, 54 Stat. 1107.

§ 53309. Accumulation of deposits

For any taxable year, amounts on deposit in a construction reserve fund on the last day of the taxable year, for which the requirements of section 53310 of this title have been satisfied (to the extent they apply on the last day of the taxable year), are deemed to have been retained for the reasonable needs of the business within the meaning of section 537(a) of the Internal Revenue Code of 1986 (26 U.S.C. 537(a)).

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1589.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53309	46 App.:1161(f).	June 29, 1936, ch. 858, title V, § 511(f), as added Oct. 10, 1940, ch. 849, 54 Stat. 1107.

The words ''are deemed to have been retained for the reasonable needs of the business within the meaning of section 537(a) of the Internal Revenue Code of 1986 (26 U.S.C. 537(a))'' are substituted for ''shall not constitute an accumulation of earnings or profits within the meaning of section 102 of the Internal Revenue Code'' because section 102 of the Internal Revenue Code of 1939 has been superseded by part 1 of subchapter G of chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. 531 et seq.). See also 46 C.F.R. § 287.16 (2003).

§ 53310. Obligation of deposits and period for construction of certain vessels

(a) APPLICATION OF SECTIONS 53306 AND 53309.—Sections 53306 and 53309 of this title apply to a deposit in a construction reserve fund only if, within 3 years after the date of the deposit (and any extension under subsection (c))—

(1)(A) a contract is made for the construction or acquisition of a new vessel or, with the approval of the Secretary of Transportation, for a part interest in a new vessel or for the reconstruction or reconditioning of a new vessel;

(B) the deposit is expended or obligated for expenditure under that contract;

(C) at least 12.5 percent of the construction or contract price of the vessel is paid or irrevocably committed for payment; and

(D) the plans and specifications for the vessel are approved by the Secretary to the extent the Secretary considers necessary; or

(2) the deposit is expended or obligated for expenditure for the liquidation of existing or subsequently incurred purchase-money indebtedness to a person not a parent company of, or a company affiliated or associated with, the mortgagor on a new vessel.

(b) ADDITIONAL REQUIREMENTS FOR CERTAIN VESSELS.—In addition to the requirements of subsection (a)(1), for a vessel not constructed under a construction-differential subsidy contract or not bought from the Secretary of Transportation—

(1) at least 5 percent of the construction (or, if the contract covers more than one vessel, at

least 5 percent of the construction of the first vessel) must be completed within 6 months after the date of the construction contract (or within the period of an extension under subsection (c)), as estimated by the Secretary and certified by the Secretary to the Secretary of the Treasury; and

(2) construction under the contract must be completed with reasonable dispatch thereafter.

(c) EXTENSIONS.—The Secretary of Transportation may grant extensions of the period within which the deposits must be expended or obligated or within which the construction must have progressed to the extent of 5 percent completion under this section. However, the extensions may not be for a total of more than 2 years for the expenditure or obligation of deposits or one year for the progress of construction.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1589.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53310(a)	46 App.:1161(g) (less (1)(B)).	June 29, 1936, ch. 858, title V, § 511(g), (h), as added Oct. 10, 1940, ch. 849, 54 Stat. 1107; June 17, 1943, ch. 130, subdivs. (c), (d), 57 Stat. 158; July 17, 1952, ch. 939, §§ 12, 13(a), 66 Stat. 763; Pub. L. 86–237, § 1, Sept. 8, 1959, 73 Stat. 471; Pub. L. 87–303, § 3, Sept. 26, 1961, 75 Stat. 661; Pub. L. 87–782, § 1, Oct. 10, 1962, 76 Stat. 796; Pub. L. 88–227, § 1, Dec. 23, 1963, 77 Stat. 470; Pub. L. 88–595, § 1, Sept. 12, 1964, 78 Stat. 943; Pub. L. 97–31, § 12(92), Aug. 6, 1981, 95 Stat. 161.
53310(b)	46 App.:1161(g)(1)(B).	
53310(c)	46 App.:1161(h).	

In this section, the language about joint regulations in 46 App. U.S.C. 1161(g) and (h) is omitted as unnecessary because of section 53302(b) of the revised title.

In subsection (a), the words ''(i) two years from the date of deposit or the date of any extension thereof which may be granted by the Secretary of Transportation pursuant to the provisions of subsection (h) of this section, in the case of deposits made prior to the date on which these amendatory provisions become effective, or'' in 46 App. U.S.C. 1161(g)(1) and (2) are omitted as obsolete. In paragraph (1)(A), the words ''or, with the approval of the Secretary of Transportation, for a part interest in a new vessel or for the reconstruction or reconditioning of a new vessel'' are substituted for ''(or in the discretion of the Secretary of Transportation, for a part interest therein), or, with the approval of the Secretary of Transportation, for the reconstruction or reconditioning of a new vessel or vessels'' to eliminate unnecessary words.

In subsection (c), the proviso in 46 App. U.S.C. 1161(h) is omitted as obsolete.

§ 53311. Taxation of deposits on failure of conditions

A deposited gain, if otherwise taxable income under the law applicable to the taxable year in which the gain was realized, shall be included in gross income for that taxable year, except for purposes of the declared value excess profits tax and the capital stock tax, if—

(1) the deposited gain is not expended or obligated within the appropriate period under section 53310 of this title;

(2) the deposited gain is withdrawn before the end of that period;

(3) the construction related to that deposited gain has not progressed to the extent of 5 percent of completion within the appropriate period under section 53310 of this title; or

(4) the Secretary of Transportation finds and certifies to the Secretary of the Treasury that, for causes within the control of the taxpayer, the entire construction related to that deposited gain is not completed with reasonable dispatch.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1590.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53311	46 App.:1161(i).	June 29, 1936, ch. 858, title V, § 511(i), as added Oct. 10, 1940, ch. 849, 54 Stat. 1107; July 17, 1952, ch. 939, § 13(b), 66 Stat. 764; Pub. L. 97–31, § 12(92)(A), Aug. 6, 1981, 95 Stat. 161.

The last sentence of 46 App. U.S.C. 1161(i) is omitted as obsolete.

§ 53312. Assessment and collection of deficiency tax

Notwithstanding any other provision of law, a deficiency in tax for a taxable year resulting from the inclusion of an amount in gross income as provided by section 53311 of this title, and the amount to be treated as a deficiency under section 53311 instead of as an adjustment for the declared value excess profits tax, may be assessed or a civil action may be brought to collect the deficiency without assessment, at any time. Interest on a deficiency or amount to be treated as a deficiency does not begin until the date the deposited gain or part of the deposited gain in question is required to be included in gross income under section 51111.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1590.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53312	46 App.:1161(j).	June 29, 1936, ch. 858, title V, § 511(j), as added Oct. 10, 1940, ch. 849, 54 Stat. 1108.

CHAPTER 535—CAPITAL CONSTRUCTION FUNDS

Sec.
53501. Definitions.
53502. Regulations.
53503. Establishing a capital construction fund.
53504. Deposits and withdrawals.
53505. Ceiling on deposits.
53506. Investment and fiduciary requirements.
53507. Nontaxation of deposits.
53508. Separate accounts within a fund.
53509. Qualified withdrawals.
53510. Tax treatment of qualified withdrawals and basis of property.
53511. Tax treatment of nonqualified withdrawals.
53512. FIFO and LIFO withdrawals.
53513. Corporate reorganizations and partnership changes.
53514. Relationship of old fund to new fund.
53515. Records and reports.

Sec.
53516. Termination of agreement after change in regulations.
53517. Reports.

§ 53501. Definitions

In this chapter:

(1) AGREEMENT VESSEL.—The term ''agreement vessel'' means—

(A) an eligible vessel or a qualified vessel that is subject to an agreement under this chapter; and

(B) a barge or container that is part of the complement of a vessel described in subparagraph (A) if provided for in the agreement.

(2) ELIGIBLE VESSEL.—The term ''eligible vessel'' means—

(A) a vessel—

(i) constructed in the United States (and, if reconstructed, reconstructed in the United States), constructed outside the United States but documented under the laws of the United States on April 15, 1970, or constructed outside the United States for use in the United States foreign trade pursuant to a contract made before April 15, 1970;

(ii) documented under the laws of the United States; and

(iii) operated in the foreign or domestic trade of the United States or in the fisheries of the United States; and

(B) a commercial fishing vessel—

(i) constructed in the United States and, if reconstructed, reconstructed in the United States;

(ii) of at least 2 net tons but less than 5 net tons;

(iii) owned by a citizen of the United States;

(iv) having its home port in the United States; and

(v) operated in the commercial fisheries of the United States.

(3) JOINT REGULATIONS.—The term ''joint regulations'' means regulations prescribed jointly by the Secretary and the Secretary of the Treasury under section 53502(b) of this title.

(4) NONCONTIGUOUS TRADE.—The term ''noncontiguous trade'' means—

(A) trade between—

(i) one of the contiguous 48 States; and

(ii) Alaska, Hawaii, Puerto Rico, or an insular territory or possession of the United States; and

(B) trade between—

(i) a place in Alaska, Hawaii, Puerto Rico, or an insular territory or possession of the United States; and

(ii) another place in Alaska, Hawaii, Puerto Rico, or an insular territory or possession of the United States.

(5) QUALIFIED VESSEL.—The term ''qualified vessel'' means—

(A) a vessel—

(i) constructed in the United States (and, if reconstructed, reconstructed in the United States), constructed outside the United States but documented under the laws of the United States on April 15, 1970, or constructed outside the United States for use in the United States foreign trade pursuant to a contract made before April 15, 1970;

(ii) documented under the laws of the United States; and

(iii) agreed, between the Secretary and the person maintaining the capital construction fund established under section 53503 of this title, to be operated in the United States foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States; and

(B) a commercial fishing vessel—

(i) constructed in the United States and, if reconstructed, reconstructed in the United States;

(ii) of at least 2 net tons but less than 5 net tons;

(iii) owned by a citizen of the United States;

(iv) having its home port in the United States; and

(v) operated in the commercial fisheries of the United States.

(6) SECRETARY.—The term ''Secretary'' means—

(A) the Secretary of Commerce with respect to an eligible vessel or a qualified vessel operated or to be operated in the fisheries of the United States; and

(B) the Secretary of Transportation with respect to other vessels.

(7) UNITED STATES FOREIGN TRADE.—The term ''United States foreign trade'' includes those areas in domestic trade in which a vessel built with a construction-differential subsidy is allowed to operate under the first sentence of section 506 of the Merchant Marine Act, 1936.

(8) VESSEL.—The term ''vessel'' includes—

(A) cargo handling equipment that the Secretary determines is intended for use primarily on the vessel; and

(B) an ocean-going towing vessel, an ocean-going barge, or a comparable towing vessel or barge operated on the Great Lakes.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1591.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53501(1)	46 App.:1177(b)(3), (k)(3).	June 29, 1936, ch. 858, title VI, § 607(b)(3), (k)(1)–(3), (5)–(9), 49 Stat. 2005; June 23, 1938, ch. 600, §§ 23–28, 52 Stat. 960; Aug. 4, 1939, ch. 417, § 10, 53 Stat. 1185; July 17, 1952, ch. 939, §§ 17–19, 66 Stat. 764; Pub. L. 85–637, Aug. 14, 1958, 72 Stat. 216; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 87–45, § 6, May 27, 1961, 75 Stat. 91; Pub. L. 87–271, Sept. 21, 1961, 75 Stat. 570; restated Pub. L. 91–469, § 21(a), Oct. 21, 1970, 84 Stat. 1027, 1031, 1032; Pub. L. 93–116, Oct. 1, 1973, 87 Stat. 421; Pub. L. 97–31, § 12(97), Aug. 6, 1981, 95 Stat. 162.
53501(2)	46 App.:1177(k)(1). 46 App.:1177–1.	Pub. L. 94–455, title VIII, § 807, Oct. 4, 1976, 90 Stat. 1606.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53501(3)	46 App.:1177(k)(6).	
53501(4)	46 App.:1177(k)(8).	
53501(5)	46 App.:1177(k)(1) (last sentence), (2). 46 App.:1177–1.	
53501(6)	46 App.:1177(k)(9).	
53501(7)	46 App.:1177(k)(5).	
53501(8)	46 App.:1177(k)(7).	

The codification of the laws in this chapter is not intended to alter the existing jurisdictional relationship of the Secretaries who administer those laws.

In paragraph (2)(A)(iii), the word ''trade'' is substituted for ''commerce'' for consistency in the chapter.

REFERENCES IN TEXT

Section 506 of the Merchant Marine Act, 1936, referred to in par. (7), is section 506 of act June 29, 1936, ch. 858, 49 Stat. 1985, which is set out as a note under section 53101 of this title.

§ 53502. Regulations

(a) IN GENERAL.—Except as provided in subsection (b), the Secretary shall prescribe regulations to carry out this chapter.

(b) TAX LIABILITY.—The Secretary and the Secretary of the Treasury shall prescribe joint regulations for the determination of tax liability under this chapter.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1593.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53502	46 App.:1177(*l*) (2d sentence).	June 29, 1936, ch. 858, title VI, § 607(*l*) (2d sentence), 49 Stat. 2005; June 23, 1938, ch. 600, §§ 23–28, 52 Stat. 960; Aug. 4, 1939, ch. 417, § 10, 53 Stat. 1185; July 17, 1952, ch. 939, §§ 17–19, 66 Stat. 764; Pub. L. 85–637, Aug. 14, 1958, 72 Stat. 216; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 87–45, § 6, May 27, 1961, 75 Stat. 91; Pub. L. 87–271, Sept. 21, 1961, 75 Stat. 570; restated Pub. L. 91–469, § 21(a), Oct. 21, 1970, 84 Stat. 1032; Pub. L. 97–31, § 12(97)(A), Aug. 6, 1981, 95 Stat. 162.

Subsection (a) is added for clarity because various provisions of the source language for this chapter imply that the Secretary is to prescribe regulations individually (except for regulations affecting a determination of tax liability). See, e.g., 46 App. U.S.C. 1177(a) (last sentence), (f)(1) (last sentence), and (*l*) (last sentence).

In subsection (b), the words ''not inconsistent with the foregoing provisions of this section, as may be necessary or appropriate'' are omitted as surplus.

§ 53503. Establishing a capital construction fund

(a) IN GENERAL.—A citizen of the United States owning or leasing an eligible vessel may make an agreement with the Secretary under this chapter to establish a capital construction fund for the vessel.

(b) ALLOWABLE PURPOSE.—The purpose of the agreement shall be to provide replacement vessels, additional vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States, for operation in the United States foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1593.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53503(a)	46 App.:1177(a) (1st sentence).	June 29, 1936, ch. 858, title VI, § 607(a) (1st sentence), (2d sentence related to purpose), 49 Stat. 2005; June 23, 1938, ch. 600, §§ 23–28, 52 Stat. 960; Aug. 4, 1939, ch. 417, § 10, 53 Stat. 1185; July 17, 1952, ch. 939, §§ 17–19, 66 Stat. 764; Pub. L. 85–637, Aug. 14, 1958, 72 Stat. 216; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 87–45, § 6, May 27, 1961, 75 Stat. 91; Pub. L. 87–271, Sept. 21, 1961, 75 Stat. 570; restated Pub. L. 91–469, § 21(a), Oct. 21, 1970, 84 Stat. 1026; Pub. L. 97–31, § 12(97)(A), Aug. 6, 1981, 95 Stat. 162.
53503(b)	46 App.:1177(a) (2d sentence related to purpose).	

§ 53504. Deposits and withdrawals

(a) REQUIRED DEPOSITS.—An agreement to establish a capital construction fund shall provide for the deposit in the fund of the amounts agreed to be appropriate to provide for qualified withdrawals under section 53509 of this title.

(b) APPLICABLE REQUIREMENTS.—Deposits in and withdrawals from the fund are subject to the requirements included in the agreement or prescribed by the Secretary by regulation. However, the Secretary may not require a person to deposit in the fund for a taxable year more than 50 percent of that portion of the person's taxable income for that year (as determined under section 53505(a)(1) of this title) that is attributable to the operation of an agreement vessel.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1593.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53504(a)	46 App.:1177(a) (2d sentence related to deposits).	June 29, 1936, ch. 858, title VI, § 607(a) (2d sentence related to deposits), (last sentence), 49 Stat. 2005; June 23, 1938, ch. 600, §§ 23–28, 52 Stat. 960; Aug. 4, 1939, ch. 417, § 10, 53 Stat. 1185; July 17, 1952, ch. 939, §§ 17–19, 66 Stat. 764; Pub. L. 85–637, Aug. 14, 1958, 72 Stat. 216; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 87–45, § 6, May 27, 1961, 75 Stat. 91; Pub. L. 87–271, Sept. 21, 1961, 75 Stat. 570; restated Pub. L. 91–469, § 21(a), Oct. 21, 1970, 84 Stat. 1026; Pub. L. 97–31, § 12(97)(A), Aug. 6, 1981, 95 Stat. 162.
53504(b)	46 App.:1177(a) (last sentence).	

In subsection (a), the words ''agreed to be appropriate'' are substituted for ''agreed upon as necessary or appropriate'' to eliminate unnecessary words.

§ 53505. Ceiling on deposits

(a) MAXIMUM DEPOSITS.—The amount deposited in a capital construction fund for a taxable year may not exceed the sum of—

(1) that portion of the taxable income of the owner or lessee for the taxable year (computed under chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 1) but without regard to the carryback of net operating loss or net capital loss or this chapter) that is attributable to the operation of agreement vessels in the foreign or domestic trade of the United States or in the fisheries of the United States;

(2) the amount allowable as a deduction under section 167 of such Code (26 U.S.C. 167) for the taxable year for agreement vessels;

(3) if the transaction is not taken into account for purposes of paragraph (1), the net proceeds (as defined in joint regulations) from the disposition of an agreement vessel or from insurance or indemnity attributable to an agreement vessel; and

(4) the receipts from the investment or reinvestment of amounts held in the fund.

(b) REDUCTIONS FOR LESSEES.—For a lessee, the maximum amount that may be deposited for an agreement vessel under subsection (a)(2) for any period shall be reduced by any amount the owner is required or permitted, under the capital construction fund agreement, to deposit for that period for the vessel under subsection (a)(2).

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1593.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53505	46 App.:1177(b)(1), (2).	June 29, 1936, ch. 858, title VI, § 607(b)(1), (2), 49 Stat. 2005; June 23, 1938, ch. 600, §§ 23–28, 52 Stat. 960; Aug. 4, 1939, ch. 417, § 10, 53 Stat. 1185; July 17, 1952, ch. 939, §§ 17–19, 66 Stat. 764; Pub. L. 85–637, Aug. 14, 1958, 72 Stat. 216; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 87–45, § 6, May 27, 1961, 75 Stat. 91; Pub. L. 87–271, Sept. 21, 1961, 75 Stat. 570; restated Pub. L. 91–469, § 21(a), Oct. 21, 1970, 84 Stat. 1027.

In subsection (a)(1), the word ''trade'' is substituted for ''commerce'' for consistency in the chapter.

§ 53506. Investment and fiduciary requirements

(a) IN GENERAL.—Amounts in a capital construction fund shall be kept in the depository specified in the agreement and shall be subject to trustee and other fiduciary requirements prescribed by the Secretary. Except as provided in subsection (b), amounts in the fund may be invested only in interest-bearing securities approved by the Secretary.

(b) STOCK INVESTMENTS.—

(1) IN GENERAL.—With the approval of the Secretary, an agreed percentage (but not more than 60 percent) of the assets of the fund may be invested in the stock of domestic corporations that—

(A) is fully listed and registered on an exchange registered with the Securities and Exchange Commission as a national securities exchange; and

(B) would be acquired by a prudent investor seeking a reasonable income and the preservation of capital.

(2) PREFERRED STOCK.—The preferred stock of a corporation is deemed to satisfy the requirements of this subsection, even though it may not be registered and listed because it is nonvoting stock, if the common stock of the corporation satisfies the requirements and the preferred stock otherwise would satisfy the requirements.

(c) MAINTAINING AGREED PERCENTAGE.—If at any time the fair market value of the stock in the fund is more than the agreed percentage of the assets in the fund, any subsequent investment of amounts deposited in the fund, and any subsequent withdrawal from the fund, shall be made in a way that tends to restore the fair market value of the stock to not more than the agreed percentage.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1594.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53506	46 App.:1177(c).	June 29, 1936, ch. 858, title VI, § 607(c), 49 Stat. 2005; June 23, 1938, ch. 600, §§ 23–28, 52 Stat. 960; Aug. 4, 1939, ch. 417, § 10, 53 Stat. 1185; July 17, 1952, ch. 939, §§ 17–19, 66 Stat. 764; Pub. L. 85–637, Aug. 14, 1958, 72 Stat. 216; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 87–45, § 6, May 27, 1961, 75 Stat. 91; Pub. L. 87–271, Sept. 21, 1961, 75 Stat. 570; restated Pub. L. 91–469, § 21(a), Oct. 21, 1970, 84 Stat. 1027; Pub. L. 97–31, § 12(97)(A), Aug. 6, 1981, 95 Stat. 162.

In subsection (b)(1)(B), the words ''prudent investor'' are substituted for ''prudent men of discretion and intelligence in such matters'' to eliminate unnecessary words.

§ 53507. Nontaxation of deposits

(a) TAX TREATMENT.—Subject to subsection (b), under the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.)—

(1) taxable income (determined without regard to this chapter and section 7518 of such Code (26 U.S.C. 7518)) for the taxable year shall be reduced by the amount deposited for the taxable year out of amounts referred to in section 53505(a)(1) of this title;

(2) a gain from a transaction referred to in section 53505(a)(3) of this title shall not be taken into account if an amount equal to the net proceeds (as defined in joint regulations) from the transaction is deposited in the fund;

(3) the earnings (including gains and losses) from the investment and reinvestment of amounts held in the fund shall not be taken into account;

(4) the earnings and profits of a corporation (within the meaning of section 316 of such Code (26 U.S.C. 316)) shall be determined without regard to this chapter and section 7518 of such Code (26 U.S.C. 7518); and

(5) in applying the tax imposed by section 531 of such Code (26 U.S.C. 531), amounts held in the fund shall not be taken into account.

(b) CONDITION.—This section applies to an amount only if the amount is deposited in the fund under the agreement within the time provided in joint regulations.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1594.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53507	46 App.:1177(d).	June 29, 1936, ch. 858, title VI, § 607(d), 49 Stat. 2005; June 23, 1938, ch. 600, §§ 23–28, 52 Stat. 960; Aug. 4, 1939, ch. 417, § 10, 53 Stat. 1185; July 17, 1952, ch. 939, §§ 17–19, 66 Stat. 764; Pub. L. 85–637, Aug. 14, 1958, 72 Stat. 216; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 87–45, § 6, May 27, 1961, 75 Stat. 91; Pub. L. 87–271, Sept. 21, 1961, 75 Stat. 570; restated Pub. L. 91–469, § 21(a), Oct. 21, 1970, 84 Stat. 1028; Pub. L. 99–514, title II, § 261(e)(1), (2), Oct. 22, 1986, 100 Stat. 2215.

§ 53508. Separate accounts within a fund

(a) IN GENERAL.—A capital construction fund shall have three accounts:

(1) The capital account.

(2) The capital gain account.

(3) The ordinary income account.

(b) CAPITAL ACCOUNT.—The capital account shall consist of—

(1) amounts referred to in section 53505(a)(2) of this title;

(2) amounts referred to in section 53505(a)(3) of this title, except that portion representing a gain not taken into account because of section 53507(a)(2) of this title;

(3) the percentage applicable under section 243(a)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 243(a)(1)) of any dividend received by the fund for which the person maintaining the fund would be allowed (were it not for section 53507(a)(3) of this title) a deduction under section 243 of such Code (26 U.S.C. 243); and

(4) interest income exempt from taxation under section 103 of such Code (26 U.S.C. 103).

(c) CAPITAL GAIN ACCOUNT.—The capital gain account shall consist of—

(1) amounts representing capital gains on assets held for more than 6 months and referred to in section 53505(a)(3) or (4) of this title; minus

(2) amounts representing capital losses on assets held in the fund for more than 6 months.

(d) ORDINARY INCOME ACCOUNT.—The ordinary income account shall consist of—

(1) amounts referred to in section 53505(a)(1) of this title;

(2)(A) amounts representing capital gains on assets held for not more than 6 months and referred to in section 53505(a)(3) or (4) of this title; minus

(B) amounts representing capital losses on assets held in the fund for not more than 6 months;

(3) interest (except tax-exempt interest referred to in subsection (b)(4)) and other ordinary income (except any dividend referred to in paragraph (5)) received on assets held in the fund;

(4) ordinary income from a transaction described in section 53505(a)(3) of this title; and

(5) that portion of any dividend referred to in subsection (b)(3) not taken into account under subsection (b)(3).

(e) WHEN LOSSES ALLOWED.—Except on termination of a fund, capital losses referred to in subsection (c) or (d)(2) shall be allowed only as an offset to gains referred to in subsection (c) or (d)(2), respectively.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1595.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53508	46 App.:1177(e).	June 29, 1936, ch. 858, title VI, § 607(e), 49 Stat. 2005; June 23, 1938, ch. 600, §§ 23–28, 52 Stat. 960; Aug. 4, 1939, ch. 417, § 10, 53 Stat. 1185; July 17, 1952, ch. 939, §§ 17–19, 66 Stat. 764; Pub. L. 85–637, Aug. 14, 1958, 72 Stat. 216; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 87–45, § 6, May 27, 1961, 75 Stat. 91; Pub. L. 87–271, Sept. 21, 1961, 75 Stat. 570; restated Pub. L. 91–469, § 21(a), Oct. 21, 1970, 84 Stat. 1028; Pub. L. 99–514, title II, § 261(e)(3), (4), Oct. 22, 1986, 100 Stat. 2215.

§ 53509. Qualified withdrawals

(a) IN GENERAL.—Subject to subsection (b), a withdrawal from a capital construction fund is a qualified withdrawal if it is made under the terms of the agreement and is for—

(1) the acquisition, construction, or reconstruction of a qualified vessel or a barge or container that is part of the complement of a qualified vessel; or

(2) the payment of the principal on indebtedness incurred in the acquisition, construction, or reconstruction of a qualified vessel or a barge or container that is part of the complement of a qualified vessel.

(b) BARGES AND CONTAINERS.—Except as provided in regulations prescribed by the Secretary, subsection (a) applies to a barge or container only if it is constructed in the United States.

(c) TREATMENT AS NONQUALIFIED WITHDRAWAL.—Under joint regulations, if the Secretary determines that a substantial obligation under an agreement is not being fulfilled, the Secretary, after notice and opportunity for a hearing to the person maintaining the fund, may treat any amount in the fund as an amount withdrawn from the fund in a nonqualified withdrawal.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1596.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53509	46 App.:1177(f).	June 29, 1936, ch. 858, title VI, § 607(f), 49 Stat. 2005; June 23, 1938, ch. 600, §§ 23–28, 52 Stat. 960; Aug. 4, 1939, ch. 417, § 10, 53 Stat. 1185; July 17, 1952, ch. 939, §§ 17–19, 66 Stat. 764; Pub. L. 85–637, Aug. 14, 1958, 72 Stat. 216; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 87–45, § 6, May 27, 1961, 75 Stat. 91; Pub. L. 87–271, Sept. 21, 1961, 75 Stat. 570; restated Pub. L. 91–469, § 21(a), Oct. 21, 1970, 84 Stat. 1029; Pub. L. 97–31, § 12(97)(A), Aug. 6, 1981, 95 Stat. 162.

In subsection (c), the words ''any amount in the fund'' are substituted for ''the entire fund or any portion thereof'' to eliminate unnecessary words.

§ 53510. Tax treatment of qualified withdrawals and basis of property

(a) ORDER OF WITHDRAWALS.—A qualified withdrawal from a capital construction fund shall be treated as made—

(1) first from the capital account;

(2) second from the capital gain account; and

(3) third from the ordinary income account.

(b) ORDINARY INCOME ACCOUNT WITHDRAWALS.—If a portion of a qualified withdrawal for a vessel, barge, or container is made from the ordinary income account, the basis of the vessel, barge, or container shall be reduced by an amount equal to that portion.

(c) CAPITAL GAIN ACCOUNT WITHDRAWALS.—If a portion of a qualified withdrawal for a vessel, barge, or container is made from the capital gain account, the basis of the vessel, barge, or container shall be reduced by an amount equal to that portion.

(d) WITHDRAWALS TO PAY PRINCIPAL.—If a portion of a qualified withdrawal to pay the principal on indebtedness is made from the ordinary income account or the capital gain account, an amount equal to the total reduction that would be required by subsections (b) and (c) if the withdrawal were a qualified withdrawal for a purpose described in those subsections shall be applied, in the order provided in joint regulations, to reduce the basis of vessels, barges, and containers owned by the person maintaining the fund. The remaining amount of the withdrawal shall be treated as a nonqualified withdrawal.

(e) GAIN ON PROPERTY WITH REDUCED BASIS.—If property, the basis of which was reduced under subsection (b), (c), or (d), is disposed of, any gain realized on the disposition, to the extent it does not exceed the total reduction in the basis of the property under those subsections, shall be treated as an amount referred to in section 53511(c)(1) of this title withdrawn on the date of disposition of the property. Subject to conditions prescribed in joint regulations, this subsection does not apply to a disposition if there is a redeposit, in an amount determined under joint regulations, that restores the fund as far as practicable to the position it was in before the withdrawal.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1596.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53510	46 App.:1177(g).	June 29, 1936, ch. 858, title VI, § 607(g); 49 Stat. 2005; June 23, 1938, ch. 600, §§ 23–28, 52 Stat. 960; Aug. 4, 1939, ch. 417, § 10, 53 Stat. 1185; July 17, 1952, ch. 939, §§ 17–19, 66 Stat. 764; Pub. L. 85–637, Aug. 14, 1958, 72 Stat. 216; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 87–45, § 6, May 27, 1961, 75 Stat. 91; Pub. L. 87–271, Sept. 21, 1961, 75 Stat. 570; restated Pub. L. 91–469, § 21(a), Oct. 21, 1970, 84 Stat. 1029; Pub. L. 99–514, title II, § 261(e)(5), Oct. 22, 1986, 100 Stat. 2215.

§ 53511. Tax treatment of nonqualified withdrawals

(a) IN GENERAL.—Except as provided in section 53513 of this title, a withdrawal from a fund that is not a qualified withdrawal shall be treated as a nonqualified withdrawal.

(b) ORDER OF WITHDRAWALS.—A nonqualified withdrawal shall be treated as made—

(1) first from the ordinary income account;

(2) second from the capital gain account; and

(3) third from the capital account.

(c) TAX TREATMENT.—For purposes of the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.)—

(1) a nonqualified withdrawal from the ordinary income account shall be included in income as an item of ordinary income for the taxable year in which the withdrawal is made;

(2) a nonqualified withdrawal from the capital gain account shall be included in income for the taxable year in which the withdrawal is made as an item of gain realized during that year from the disposition of an asset held for more than 6 months; and

(3) for the period through the last date prescribed for payment of tax for the taxable year in which the withdrawal is made—

(A) no interest shall be payable under section 6601 of such Code (26 U.S.C. 6601) and no addition to the tax shall be payable under section 6651 of such Code (26 U.S.C. 6651);

(B) interest on the amount of the additional tax attributable to an amount treated as a nonqualified withdrawal from the ordinary income account or the capital gain account shall be paid at the rate determined under subsection (d) from the last date prescribed for payment of the tax for the taxable year for which the amount was deposited in the fund; and

(C) no interest shall be payable on amounts treated as withdrawn on a last-in-first-out basis under section 53512 of this title.

(d) INTEREST RATE.—The rate of interest under subsection (c)(3)(B) for a nonqualified withdrawal made in a taxable year beginning after 1971 shall be determined and published jointly by the Secretary and the Secretary of the Treasury. The rate shall be such that its relationship to 8 percent is comparable, as determined by the Secretaries under joint regulations, to the relationship between—

(1) the money rates and investment yields for the calendar year immediately before the beginning of the taxable year; and

(2) the money rates and investment yields for the calendar year 1970.

(e) NONQUALIFIED WITHDRAWALS.—

(1) IN GENERAL.—The following applicable percentage of any amount that remains in a capital construction fund at the close of the following specified taxable year following the taxable year for which the amount was deposited shall be treated as a nonqualified withdrawal:

If the amount remains in the fund at the close of the—	The applicable percentage is—
26th taxable year	20 percent
27th taxable year	40 percent
28th taxable year	60 percent
29th taxable year	80 percent
30th taxable year	100 percent.

(2) EARNINGS.—The earnings of a capital construction fund for any taxable year (except net gains) shall be treated under this subsection as an amount deposited for the taxable year.

(3) CONTRACT FOR QUALIFIED WITHDRAWAL.—Under paragraph (1), an amount shall not be treated as remaining in a capital construction fund at the close of a taxable year to the extent there is a binding contract at the close of the taxable year for a qualified withdrawal of the amount for an identified item for which the withdrawal may be made.

(4) EXCESS EARNINGS.—If the Secretary determines that the balance in a capital construction fund exceeds the amount appropriate to meet the vessel construction program objectives of the person that established the fund, the amount of the excess shall be treated as a nonqualified withdrawal under paragraph (1) unless the person develops appropriate program objectives within 3 years to dissipate the excess.

(5) AMOUNTS IN FUND ON JANUARY 1, 1987.—Under this subsection, amounts in a capital construction fund on January 1, 1987, shall be treated as having been deposited in that fund on that date.

(f) TAX DETERMINATIONS.—

(1) IN GENERAL.—For a taxable year for which there is a nonqualified withdrawal (including an amount treated as a nonqualified withdrawal under subsection (e)), the tax imposed by chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 1) shall be determined by—

(A) excluding the withdrawal from gross income; and

(B) increasing the tax imposed by chapter 1 of such Code by the product of the amount of the withdrawal and the highest tax rate specified in section 1 (or section 11 for a corporation) of such Code (26 U.S.C. 1, 11).

(2) MAXIMUM TAX RATE.—For that portion of a nonqualified withdrawal made from the capital gain account during a taxable year to which section 1(h) or 1201(a) of such Code (26 U.S.C. 1(h), 1201(a)) applies, the tax rate used under paragraph (1)(B) may not exceed 15 percent (or 34 percent for a corporation).

(3) TAX BENEFIT RULE.—If any portion of a nonqualified withdrawal is properly attributable to deposits (except earnings on deposits) made by the taxpayer in a taxable year that did not reduce the taxpayer's liability for tax under chapter 1 of such Code (26 U.S.C. ch. 1) for a taxable year before the taxable year in which the withdrawal occurs—

(A) that portion shall not be taken into account under paragraph (1); and

(B) an amount equal to that portion shall be allowed as a deduction under section 172 of such Code (26 U.S.C. 172) for the taxable year in which the withdrawal occurs.

(4) COORDINATION WITH DEDUCTION FOR NET OPERATING LOSSES.—A nonqualified withdrawal excluded from gross income under paragraph (1) shall be excluded in determining taxable income under section 172(b)(2) of such Code (26 U.S.C. 172(b)(2)).

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1597.)

AMENDMENT OF SUBSECTION (f)(2)

Subsection (f)(2) of this section was derived from the last paragraph of section 1177(h)(6)(A) of the former Appendix to this title, which was amended by section 301(a)(2)(E) of Pub. L. 108–27 by substituting ''15 percent'' for ''20 percent''. Section 303 of Pub. L. 108–27, as amended by section 102 of Pub. L. 109–222, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of Title 26, Internal Revenue Code, provided that such amendment shall not apply to taxable years beginning after December 31, 2010, and that the Internal Revenue Code of 1986 shall be applied and administered to such years as if the amendment had never been enacted. For applicability of section 303 of Pub. L. 108–27 to subsection (f)(2) of this section, see section 18(c), (d) of Pub. L. 109–304, set out as a note preceding section 101 of this title.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53511	46 App.:1177(h) (less (2) (last sentence)).	June 29, 1936, ch. 858, title VI, § 607(h) (less (2) (last sentence)), 49 Stat. 2005; June 23, 1938, ch. 600, §§ 23–28, 52 Stat. 960; Aug. 4, 1939, ch. 417, § 10, 53 Stat. 1185; July 17, 1952, ch. 939, §§ 17–19, 66 Stat. 764; Pub. L. 85–637, Aug. 14, 1958, 72 Stat. 216; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 87–45, § 6, May 27, 1961, 75 Stat. 91; Pub. L. 87–271, Sept. 21, 1961, 75 Stat. 570; restated Pub. L. 91–469, § 21(a), Oct. 21, 1970, 84 Stat. 1030; Pub. L. 97–31, § 12(97)(A), Aug. 6, 1981, 95 Stat. 162; Pub. L. 99–514, title II, § 261(e)(6), Oct. 22, 1986, 100 Stat. 2215; Pub. L. 100–647, title I, § 1002(m)(2), Nov. 10, 1988, 102 Stat. 3382; Pub. L. 101–508, title XI, § 11101(d)(7)(B), Nov. 5, 1990, 104 Stat. 1388–405; Pub. L. 105–34, title III, § 311(c)(2), Aug. 5, 1997, 111 Stat. 835; Pub. L. 108–27, title III, § 301(a)(2)(E), May 28, 2003, 117 Stat. 758.

In subsection (c)(3)(C), the words ''or in the case of any nonqualified withdrawal arising from the applica-

tion of the recapture provision of section 1176(5) of this Appendix as in effect on December 31, 1969'' are omitted as obsolete.

In subsection (d), the words ''made in a taxable year beginning in 1970 or 1971 is 8 percent'' are omitted as obsolete.

§ 53512. FIFO and LIFO withdrawals

(a) FIFO.—Except as provided in subsection (b), an amount withdrawn from an account under this chapter shall be treated as withdrawn on a first-in-first-out basis.

(b) LIFO.—An amount withdrawn from an account under this chapter shall be treated as withdrawn on a last-in-first-out basis if it is—

(1) a nonqualified withdrawal for research, development, and design expenses incident to new and advanced vessel design, machinery, and equipment; or

(2) an amount treated as a nonqualified withdrawal under section 53510(d) of this title.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1599.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53512	46 App.:1177(h)(2) (last sentence).	June 29, 1936, ch. 858, title VI, § 607(h)(2) (last sentence), 49 Stat. 2005; June 23, 1938, ch. 600, §§ 23–28, 52 Stat. 960; Aug. 4, 1939, ch. 417, § 10, 53 Stat. 1185; July 17, 1952, ch. 939, §§ 17–19, 66 Stat. 764; Pub. L. 85–637, Aug. 14, 1958, 72 Stat. 216; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 87–45, § 6, May 27, 1961, 75 Stat. 91; Pub. L. 87–271, Sept. 21, 1961, 75 Stat. 570; restated Pub. L. 91–469, § 21(a), Oct. 21, 1970, 84 Stat. 1030.

§ 53513. Corporate reorganizations and partnership changes

Under joint regulations—

(1) a transfer of a capital construction fund from one person to another person in a transaction to which section 381 of the Internal Revenue Code of 1986 (26 U.S.C. 381) applies may be treated as if the transaction is not a nonqualified withdrawal; and

(2) a similar rule shall be applied to a continuation of a partnership (within the meaning of subchapter K of chapter 1 of such Code (26 U.S.C. 701 et seq.)).

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1599.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53513	46 App.:1177(i).	June 29, 1936, ch. 858, title VI, § 607(i), 49 Stat. 2005; June 23, 1938, ch. 600, §§ 23–28, 52 Stat. 960; Aug. 4, 1939, ch. 417, § 10, 53 Stat. 1185; July 17, 1952, ch. 939, §§ 17–19, 66 Stat. 764; Pub. L. 85–637, Aug. 14, 1958, 72 Stat. 216; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 87–45, § 6, May 27, 1961, 75 Stat. 91; Pub. L. 87–271, Sept. 21, 1961, 75 Stat. 570; restated Pub. L. 91–469, § 21(a), Oct. 21, 1970, 84 Stat. 1031.

§ 53514. Relationship of old fund to new fund

(a) DEFINITION.—In this section, the term ''old fund'' means a capital construction fund maintained before October 21, 1970.

(b) ELECTION TO MAINTAIN OLD FUND.—A person maintaining an old fund may elect to continue the old fund, but may not—

(1) hold amounts in the old fund beyond the expiration date provided in the agreement under which the old fund is maintained (determined without regard to an extension or renewal made after April 14, 1970); or

(2) maintain simultaneously the old fund and a new fund established under this chapter.

(c) APPLICATION OF NEW FUND AGREEMENT TO OLD FUND AMOUNTS.—If a person makes an agreement under this chapter to establish a new fund, the person may agree to extend the agreement to some or all of the amounts in an old fund. Each item in the old fund to be transferred shall be transferred in a nontaxable transaction to the appropriate account in the new fund. For purposes of section 53511(c)(3) of this title, the date of the deposit of an item so transferred shall be July 1, 1971, or the date of the deposit in the old fund, whichever is later.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1599.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53514	46 App.:1177(j).	June 29, 1936, ch. 858, title VI, § 607(j), 49 Stat. 2005; June 23, 1938, ch. 600, §§ 23–28, 52 Stat. 960; Aug. 4, 1939, ch. 417, § 10, 53 Stat. 1185; July 17, 1952, ch. 939, §§ 17–19, 66 Stat. 764; Pub. L. 85–637, Aug. 14, 1958, 72 Stat. 216; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 87–45, § 6, May 27, 1961, 75 Stat. 91; Pub. L. 87–271, Sept. 21, 1961, 75 Stat. 570; restated Pub. L. 91–469, § 21(a), Oct. 21, 1970, 84 Stat. 1031.

§ 53515. Records and reports

A person maintaining a fund under this chapter shall keep records and make reports as required by the Secretary or the Secretary of the Treasury.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1599.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53515	46 App.:1177(*l*) (1st sentence).	June 29, 1936, ch. 858, title VI, § 607(*l*) (1st sentence), 49 Stat. 2005; June 23, 1938, ch. 600, §§ 23–28, 52 Stat. 960; Aug. 4, 1939, ch. 417, § 10, 53 Stat. 1185; July 17, 1952, ch. 939, §§ 17–19, 66 Stat. 764; Pub. L. 85–637, Aug. 14, 1958, 72 Stat. 216; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 87–45, § 6, May 27, 1961, 75 Stat. 91; Pub. L. 87–271, Sept. 21, 1961, 75 Stat. 570; restated Pub. L. 91–469, § 21(a), Oct. 21, 1970, 84 Stat. 1032; Pub. L. 97–31, § 12(97)(A), Aug. 6, 1981, 95 Stat. 162.

§ 53516. Termination of agreement after change in regulations

If, after an agreement has been made under this chapter, a change is made either in the joint regulations or in the regulations prescribed by the Secretary under this chapter that could have a substantial effect on the rights or duties of a person maintaining a fund under this chapter, that person may terminate the agreement.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1600.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53516	46 App.:1177(*l*) (last sentence).	June 29, 1936, ch. 858, title VI, § 607(*l*) (last sentence), 49 Stat. 2005; June 23, 1938, ch. 600, §§ 23–28, 52 Stat. 960; Aug. 4, 1939, ch. 417, § 10, 53 Stat. 1185; July 17, 1952, ch. 939, §§ 17–19, 66 Stat. 764; Pub. L. 85–637, Aug. 14, 1958, 72 Stat. 216; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 87–45, § 6, May 27, 1961, 75 Stat. 91; Pub. L. 87–271, Sept. 21, 1961, 75 Stat. 570; restated Pub. L. 91–469, § 21(a), Oct. 21, 1970, 84 Stat. 1032; Pub. L. 97–31, § 12(97)(A), Aug. 6, 1981, 95 Stat. 162.

§ 53517. Reports

(a) IN GENERAL.—Within 120 days after the close of each calendar year, the Secretary of Transportation and the Secretary of Commerce each shall provide the Secretary of the Treasury a written report on the capital construction funds under the particular Secretary's jurisdiction for the calendar year.

(b) CONTENTS.—The report shall state the name and taxpayer identification number of each person—

(1) establishing a capital construction fund during the calendar year;

(2) maintaining a capital construction fund on the last day of the calendar year;

(3) terminating a capital construction fund during the calendar year;

(4) making a deposit to or withdrawal from a capital construction fund during the calendar year, and the amount of the deposit or withdrawal; or

(5) having been determined during the calendar year to have failed to fulfill a substantial obligation under a capital construction fund agreement to which the person is a party.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1600.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53517	46 App.:1177(m).	June 29, 1936, ch. 858, title VI, § 607(m), as added Pub. L. 99–514, § 261(d), Oct. 22, 1986, 100 Stat. 2214.

CHAPTER 537—LOANS AND GUARANTEES

SUBCHAPTER I—GENERAL

Sec.
53701. Definitions.
53702. General authority.
53703. Application procedures.
53704. Funding limits.
53705. Pledge of United States Government.
53706. Eligible purposes of obligations.
53707. Findings related to obligors and operators.
53708. Findings related to economic soundness.
53709. Amount of obligations.
53710. Contents of obligations.
53711. Security interest.
53712. Monitoring financial condition and operations of obligor.
53713. Administrative fees.
53714. Guarantee fees.
53715. Escrow fund.
53716. Deposit fund.
53717. Management of funds in the Treasury.
53718. Annual report to Congress.

SUBCHAPTER II—DEFAULT PROVISIONS

53721. Rights of obligee.
53722. Actions by Secretary.
53723. Payments by Secretary and issuance of obligations.
53724. Rights to secured property.
53725. Actions against obligor.

SUBCHAPTER III—PARTICULAR PROJECTS

53731. Commercial demonstration ocean thermal energy conversion facilities and plantships.
53732. Eligible export vessels.
53733. Shipyard modernization and improvement.
53734. Replacement of vessels because of changes in operating standards.
53735. Fisheries financing and capacity reduction.

SUBCHAPTER I—GENERAL

§ 53701. Definitions

In this chapter:

(1) ACTUAL COST.—The term ''actual cost'' means the sum of—

(A) all amounts paid by or for the account of the obligor as of the date on which a determination is made under section 53715(d)(1) of this title; and

(B) all amounts that the Secretary reasonably estimates the obligor will become obligated to pay from time to time thereafter, for the construction, reconstruction, or reconditioning of the vessel, including guarantee fees that will become payable under section 53714 of this title in connection with all obligations issued for construction, reconstruction, or reconditioning of the vessel or equipment to be delivered, and all obligations issued for the delivered vessel or equipment.

(2) CONSTRUCTION, RECONSTRUCTION, AND RECONDITIONING.—The terms ''construction'', ''reconstruction'', and ''reconditioning'' include designing, inspecting, outfitting, and equipping.

(3) DEPRECIATED ACTUAL COST.—The term ''depreciated actual cost'' of a vessel means—

(A) if the vessel was not reconstructed or reconditioned, the actual cost of the vessel depreciated on a straight line basis over the useful life of the vessel as determined by the Secretary, not to exceed 25 years from the date of delivery by the builder; or

(B) if the vessel was reconstructed or reconditioned, the sum of—

(i) the actual cost of the vessel depreciated on a straight line basis from the

date of delivery by the builder to the date of the reconstruction or reconditioning, using the original useful life of the vessel, and from the date of the reconstruction or reconditioning, using a useful life of the vessel determined by the Secretary; and

(ii) any amount paid or obligated to be paid for the reconstruction or reconditioning, depreciated on a straight line basis using a useful life of the vessel determined by the Secretary.

(4) ELIGIBLE EXPORT VESSEL.—The term ''eligible export vessel'' means a vessel that—

(A) is constructed, reconstructed, or reconditioned in the United States for use in world-wide trade; and

(B) will, on delivery or redelivery, become or remain documented under the laws of a country other than the United States.

(5) FISHERY FACILITY.—

(A) IN GENERAL.—Subject to subparagraph (B), the term ''fishery facility'' means—

(i) for operations on land—

(I) a structure or appurtenance thereto designed for the unloading and receiving from vessels, the processing, the holding pending processing, the distribution after processing, or the holding pending distribution, of fish from a fishery;

(II) the land necessary for the structure or appurtenance; and

(III) equipment that is for use with the structure or appurtenance and that is necessary for performing a function referred to in subclause (I);

(ii) for operations not on land, a vessel built in the United States and used for, equipped to be used for, or of a type normally used for, the processing of fish; or

(iii) for aquaculture, including operations on land or elsewhere—

(I) a structure or appurtenance thereto designed for aquaculture;

(II) the land necessary for the structure or appurtenance;

(III) equipment that is for use with the structure or appurtenance and that is necessary for performing a function referred to in subclause (I); and

(IV) a vessel built in the United States and used for, equipped to be used for, or of a type normally used for, aquaculture.

(B) REQUIRED OWNERSHIP.—Under subparagraph (A), the structure, appurtenance, land, equipment, or vessel must be owned by—

(i) an individual who is a citizen of the United States; or

(ii) an entity that is a citizen of the United States under section 50501 of this title and that is at least 75 percent owned (as determined under that section) by citizens of the United States.

(6) FISHING VESSEL.—The term ''fishing vessel'' has the meaning given that term in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802), and any reference in this chapter to a vessel designed principally for commercial use in the fishing trade or industry is deemed to be a reference to a fishing vessel.

(7) MORTGAGE.—The term ''mortgage'' includes—

(A) a preferred mortgage as defined in section 31301 of this title; and

(B) a mortgage on a vessel that will become a preferred mortgage when filed or recorded under chapter 313 of this title.

(8) OBLIGATION.—The term ''obligation'' means an instrument of indebtedness issued for a purpose described in section 53706 of this title, except—

(A) an obligation issued by the Secretary under section 53723 of this title; and

(B) an obligation eligible for investment of funds under section 53715(f) or 53717 of this title.

(9) OBLIGEE.—The term ''obligee'' means the holder of an obligation.

(10) OBLIGOR.—The term ''obligor'' means a party primarily liable for payment of the principal of or interest on an obligation.

(11) OCEAN THERMAL ENERGY CONVERSION FACILITY OR PLANTSHIP.—The term ''ocean thermal energy conversion facility or plantship'' means an at-sea facility or vessel, whether mobile, floating unmoored, moored, or standing on the seabed, that uses temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work, and includes—

(A) equipment installed on the facility or vessel to use the electricity or other form of energy to produce, process, refine, or manufacture a product;

(B) a cable or pipeline used to deliver the electricity, freshwater, or product to shore; and

(C) other associated equipment and appurtenances of the facility or vessel to the extent they are located seaward of the high water mark.

(12) SECRETARY.—The term ''Secretary'' means—

(A) the Secretary of Commerce with respect to fishing vessels and fishery facilities; and

(B) the Secretary of Transportation with respect to other vessels and general shipyard facilities (as defined in section 53733(a) of this title).

(13) VESSEL.—The term ''vessel'' means any type of vessel, whether in existence or under construction, including—

(A) a cargo vessel;

(B) a passenger vessel;

(C) a combination cargo and passenger vessel;

(D) a tanker;

(E) a tug or towboat;

(F) a barge;

(G) a dredge;

(H) a floating drydock with a capacity of at least 35,000 lifting tons and a beam of at least 125 feet between the wing walls;

(I) an oceanographic research vessel;

(J) an instruction vessel;

(K) a pollution treatment, abatement, or control vessel;

(L) a fishing vessel whose ownership meets the citizenship requirements under section

50501 of this title for documenting vessels to operate in the coastwise trade; and

(M) an ocean thermal energy conversion facility or plantship that is or will be documented under the laws of the United States.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1601; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(A), (b)(1), Jan. 6, 2006, 119 Stat. 3555.)

AMENDMENTS NOT SHOWN IN TEXT

This section was derived from section 1271 of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(A), (b)(1), Jan. 6, 2006, 119 Stat. 3555. For applicability of those amendments to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Section 1271 of the former Appendix to this title was amended in subsecs. (c), (f), and (g) (corresponding to pars. (8), (1), and (3), respectively, of this section) by striking ''Secretary'' each place it appears and inserting ''Secretary or Administrator'', in subsec. (n) (corresponding to par. (12) of this section) by striking ''subchapter,'' and all that follows and inserting ''subchapter.'', and by adding at the end the following:

''(p) The term 'Administrator' means the Administrator of the Maritime Administration.''

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53701(1)	46 App.:1271(f).	June 29, 1936, ch. 858, title XI, § 1101, as added June 23, 1938, ch. 600, § 46, 52 Stat. 969; Sept. 3, 1954, ch. 1265, § 1, 68 Stat. 1267; Aug. 7, 1956, ch. 1026, § 1(a), (b), 70 Stat. 1087; Pub. L. 86–127, § 1(1), July 31, 1959, 73 Stat. 272; Pub. L. 86–685, § 1, Sept. 2, 1960, 74 Stat. 733; Pub. L. 87–303, § 2, Sept. 26, 1961, 75 Stat. 661; Pub. L. 91–469, § 29, Oct. 21, 1970, 84 Stat. 1035; Pub. L. 92–507, § 1, Oct. 19, 1972, 86 Stat. 909; Pub. L. 96–320, title II, § 202(a), Aug. 3, 1980, 94 Stat. 992; Pub. L. 96–561, title II, § 220(1), Dec. 22, 1980, 94 Stat. 3291; Pub. L. 97–31, § 12(135), Aug. 6, 1981, 95 Stat. 165; Pub. L. 100–710, title I, § 104(d), Nov. 23, 1988, 102 Stat. 4750; Pub. L. 102–567, title III, § 304, Oct. 29, 1992, 106 Stat. 4283; Pub. L. 103–160, title XIII, § 1356(1), 1357(b), Nov. 30, 1993, 107 Stat. 1812, 1815; Pub. L. 104–208, title I, § 101 [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009–41; Pub. L. 104–239, § 11(1), Oct. 8, 1996, 110 Stat. 3134; Pub. L. 108–136, title XXXV, § 3521(b), Nov. 24, 2003, 117 Stat. 1799.
53701(2)	46 App.:1271(h).	
53701(3)	46 App.:1271(g).	
53701(4)	46 App.:1271(*o*).	
53701(5)	46 App.:1271(j), (k), (m).	
53701(6)	46 App.:1271(*l*).	
53701(7)	46 App.:1271(a).	
53701(8)	46 App.:1271(c).	
53701(9)	46 App.:1271(e).	
53701(10)	46 App.:1271(d).	
53701(11)	46 App.:1271(i).	
53701(12)	46 App.:1271(n).	
53701(13)	46 App.:1271(b).	

In paragraph (2), the words ''but shall not be limited to'' are omitted as unnecessary.

In paragraph (4)(B), the words ''become or remain'' are substituted for ''be placed under or continued to be'' for clarity.

In paragraph (5)(B)(i), the words ''individual who is a citizen of the United States'' are substituted for ''individual who is a citizen or national of the United States or a citizen of the Northern Mariana Islands'' in 46 App. U.S.C. 1271(k) because of the definition of ''citizen of the United States'' in chapter 1 of the revised title. Citizens of the Northern Mariana Islands became citizens or non-citizen nationals of the United States (either of which is a ''citizen of the United States'' as defined in chapter 1 of the revised title) when the Covenant establishing the Commonwealth of the Northern Mariana Islands became effective on November 4, 1986.

In paragraph (5)(B)(ii), the words ''corporation, partnership, association, or other'' are omitted as suplus [sic]. The words ''the term 'State' as used therein includes any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, or any other Commonwealth, territory, or possession of the United States'' in 46 App. U.S.C. 1271(k) are omitted as unnecessary because of the definitions of ''State'' and ''United States'' in chapter 1 of the revised title. The definition of ''United States'' in 46 App. U.S.C. 1271(m) is omitted as unnecessary because of the definition of ''United States'' in chapter 1. The words ''and nationals of the United States or citizens of the Northern Mariana Islands shall be treated as citizens of the United States in meeting such ownership requirement'' are omitted as unnecessary because of the definition of ''citizen of the United States'' in chapter 1 of the revised title.

In paragraph (8), before subparagraph (A), the words ''instrument of indebtedness'' are substituted for ''note, bond, debenture, or other evidence of indebtedness'' to eliminate unnecessary words. In subparagraph (B), the reference to section 53717 is substituted for the reference to 46 App. U.S.C. 1272 because the accounts under section 53717 replace the Federal Ship Financing Fund. See the explanation for section 53717.

§ 53702. General authority

(a) IN GENERAL.—The Secretary, on terms the Secretary may prescribe, may guarantee or make a commitment to guarantee the payment of the principal of and interest on an obligation eligible to be guaranteed under this chapter. A guarantee or commitment to guarantee shall cover 100 percent of the principal and interest.

(b) DIRECT LOANS FOR FISHERIES.—

(1) IN GENERAL.—Notwithstanding any other provision of this chapter, any obligation involving a fishing vessel, fishery facility, aquaculture facility, individual fishing quota, or fishing capacity reduction program issued under this chapter after October 11, 1996, shall be a direct loan obligation for which the Secretary shall be the obligee, rather than an obligation issued to an obligee other than the Secretary and guaranteed by the Secretary. A direct loan obligation under this subsection shall be treated in the same manner and to the same extent as an obligation guaranteed under this chapter except with respect to provisions of this chapter that by their nature can only be applied to obligations guaranteed under this chapter.

(2) INTEREST RATE.—Notwithstanding any other provision of this chapter, the annual rate of interest an obligor shall pay on a direct loan obligation under this subsection is 2 percent plus the additional percent the Secretary must pay as interest to borrow from the Treasury the funds to make the loan.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1603; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(C), (d), Jan. 6, 2006, 119 Stat. 3555, 3557.)

AMENDMENT NOT SHOWN IN TEXT

Subsec. (a) of this section was derived from section 1273(a) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(C), Jan. 6, 2006, 119 Stat. 3555. For applicability of that amendment to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Section 1273(a) of the former Appendix to this title was amended by striking ''Secretary'' each place it appears and inserting ''Secretary or Administrator''.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53702(a)	46 App.:1273(a).	June 29, 1936, ch. 858, title XI, § 1103(a), as added June 23, 1938, ch. 600, § 46, 52 Stat. 969; Aug. 15, 1953, ch. 513, § 1, 67 Stat. 626; Sept. 3, 1954, ch. 1265, § 3, 68 Stat. 1268; June 25, 1956, ch. 438, 70 Stat. 332; Aug. 7, 1956, ch. 1026, § 1(a), (c), (d), 70 Stat. 1087; Pub. L. 91–469, § 30, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, § 3, Oct. 19, 1972, 86 Stat. 910; Pub. L. 97–31, § 12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 99–509, title V, § 5002, Oct. 21, 1986, 100 Stat. 1912; Pub. L. 103–160, div. A, title XIII, § 1356(5), Nov. 30, 1993, 107 Stat. 1814.
53702(b)	46 App.:1279g.	June 29, 1936, ch. 858, title XI, § 1112, as added Pub. L. 104–297, title III, § 303(a), Oct. 11, 1996, 110 Stat. 3616.

In subsection (a), the words ''on terms the Secretary may prescribe'' are added based on language in 46 App. U.S.C. 1274(a) (before cl. (1)). The words ''the unpaid balance of'' are omitted as unnecessary.

CODIFICATION

Subsec. (b) of this section was derived from section 1112 of act June 29, 1936, ch. 858, as added by Pub. L. 104–297, § 303(a), which was classified to section 1279g of the former Appendix to this title. Section 1112 was renumbered section 1114 of the Act by Pub. L. 109–163, div. C, title XXXV, § 3507(d), Jan. 6, 2006, 119 Stat. 3557. See Historical and Revision notes above and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

§ 53703. Application procedures

(a) TIME FOR DECISION.—

(1) IN GENERAL.—The Secretary shall approve or deny an application for a loan guarantee under this chapter within 270 days after the date on which the signed application is received by the Secretary.

(2) EXTENSION.—On request by an applicant, the Secretary may extend the 270-day period in paragraph (1) to a date not later than 2 years after the date on which the signed application was received by the Secretary.

(b) CERTIFICATION OF REVIEW.—The Secretary may not guarantee or make a commitment to guarantee an obligation under this chapter unless the Secretary certifies that a full and fair consideration of all the regulatory requirements, including economic soundness and financial requirements applicable to the obligor and related parties, and a thorough assessment of the technical, economic, and financial aspects of the loan application, has been made.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1604; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(D), (2)(G), (b)(7), Jan. 6, 2006, 119 Stat. 3555, 3556.)

AMENDMENTS NOT SHOWN IN TEXT

Subsec. (a) of this section was derived from section 1274(n) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(D), (2)(G), (b)(7), Jan. 6, 2006, 119 Stat. 3555, 3556. Section 1274(n) of the former Appendix to this title was amended by striking ''Secretary'' each place it appears (except in par. (1) the first place it appears) and inserting ''Secretary or Administrator'', by striking ''Secretary'' each place it appears (except the first) and inserting ''Administrator'', and by striking ''The Secretary of Transportation'' in par. (1) and inserting ''The Administrator''.

Subsec. (b) of this section was derived from section 1274(l) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(D), Jan. 6, 2006, 119 Stat. 3555. Section 1274(l) of the former Appendix to this title was amended by striking ''Secretary'' each place it appears and inserting ''Secretary or Administrator''.

For applicability of those amendments to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53703(a)	46 App.:1274(n).	June 29, 1936, ch. 858, title XI, § 1104A(*l*), (n), as added Pub. L. 108–136, title XXXV, §§ 3523(b), 3525, Nov. 24, 2003, 117 Stat. 1800, 1801.
53703(b)	46 App.:1274(*l*).	

§ 53704. Funding limits

(a) GENERAL LIMITATIONS.—The total unpaid principal amount of obligations guaranteed under this chapter and outstanding at one time may not exceed $12,000,000,000. Of that amount—

(1) $850,000,000 shall be limited to obligations related to fishing vessels and fishery facilities; and

(2) $3,000,000,000 shall be limited to obligations related to eligible export vessels.

(b) ADDITIONAL LIMITATIONS.—Additional limitations may not be imposed on new commitments to guarantee loans for any fiscal year, except in amounts established in advance by annual authorization laws. A vessel eligible for a guarantee under this chapter may not be denied eligibility because of its type.

(c) LIMITS BASED ON RISK FACTORS.—

(1) DEFINITION.—In this subsection, the term ''cost'' has the meaning given that term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

(2) SYSTEM OF RISK CATEGORIES.—The Secretary shall—

(A) establish, and update annually, a system of risk categories for obligations guaranteed under this chapter that categorizes the relative risk of guarantees based on the risk factors set forth in paragraph (4);

(B) determine annually for each risk category a subsidy rate equivalent to the cost of obligations in the category, expressed as a percentage of the amount guaranteed for obligations in the category; and

(C) ensure that each risk category is comprised of loans that are relatively homogeneous in cost and share characteristics predictive of defaults and other costs, given the facts known at the time of obligation or commitment, using a risk category system that is based on historical analysis of program data and statistical evidence concerning the likely costs of defaults or other costs that are expected to be associated with the loans in the category.

(3) USE OF SYSTEM.—

(A) PLACING OBLIGATION IN CATEGORY.—Before making a guarantee under this chapter for an obligation, and annually for projects subject to a guarantee, the Secretary shall apply the risk factors specified in paragraph (4) to place the obligation in a risk category established under paragraph (2).

(B) REDUCTION OF AVAILABLE AMOUNT.—The Secretary shall consider the total amount available to the Secretary for making guarantees under this chapter to be reduced by the amount determined by multiplying—

(i) the amount guaranteed under this chapter for an obligation; by

(ii) the subsidy rate for the category in which the obligation is placed under subparagraph (A).

(C) ESTIMATED COST.—The estimated cost to the United States Government of a guarantee under this chapter for an obligation is deemed to be the amount determined under subparagraph (B) for the obligation.

(D) RESTRICTION ON FURTHER GUARANTEES.—The Secretary may not guarantee obligations under this chapter after the total amount available to the Secretary under appropriations laws for the cost of loan guarantees is considered to be reduced to zero under subparagraph (B).

(4) RISK FACTORS.—The risk factors referred to in this subsection are—

(A) if applicable, the country risk for each eligible export vessel financed or to be financed by an obligation;

(B) the period for which an obligation is guaranteed or to be guaranteed;

(C) the amount of an obligation guaranteed or to be guaranteed in relation to the total cost of the project financed or to be financed by the obligation;

(D) the financial condition of an obligor or applicant for a guarantee;

(E) if applicable, other guarantees related to the project;

(F) if applicable, the projected employment of each vessel or equipment to be financed with an obligation;

(G) if applicable, the projected market that will be served by each vessel or equipment to be financed with an obligation;

(H) the collateral provided for a guarantee for an obligation;

(I) the management and operating experience of an obligor or applicant for a guarantee;

(J) whether a guarantee under this chapter is or will be in effect during the construction period of the project; and

(K) the concentration risk presented by an unduly large percentage of loans outstanding by any one borrower or group of affiliated borrowers.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1604; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(C), Jan. 6, 2006, 119 Stat. 3555.)

AMENDMENT NOT SHOWN IN TEXT

Subsec. (c) of this section was derived from section 1273(h) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(C), Jan. 6, 2006, 119 Stat. 3555. For applicability of that amendment to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Section 1273(h) of the former Appendix to this title was amended by striking ''Secretary'' each place it appears and inserting ''Secretary or Administrator''.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53704(a)	46 App.:1273(f) (1st sentence).	June 29, 1936, ch. 858, title XI, § 1103(f), as added June 23, 1938, ch. 600, § 46, 52 Stat. 969; Aug. 15, 1953, ch. 513, § 1, 67 Stat. 626; Sept. 3, 1954, ch. 1265, § 3, 68 Stat. 1268; June 25, 1956, ch. 438, 70 Stat. 332; Aug. 7, 1956, ch. 1026, § 1(a), (c), (d), 70 Stat. 1087; Pub. L. 91–469, § 30, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, § 3, Oct. 19, 1972, 86 Stat. 910; Pub. L. 93–70, § 3, July 10, 1973, 87 Stat. 168; Pub. L. 94–127, § 5, Nov. 13, 1975, 89 Stat. 681; Pub. L. 95–298, § 5, June 26, 1978, 92 Stat. 340; Pub. L. 96–320, title II, § 203(b)(1), Aug. 3, 1980, 94 Stat. 994; Pub. L. 96–561, title II, § 220(2), Dec. 22, 1980, 94 Stat. 3292; Pub. L. 97–35, title XVI, § 1606(a), (b), Aug. 13, 1981, 95 Stat. 752; Pub. L. 97–424, title IV, § 425, Jan. 6, 1983, 96 Stat. 2167; Pub. L. 103–160, title XIII, § 1356(2)(A), Nov. 30, 1993, 107 Stat. 1812; Pub. L. 108–136, title XXXV, § 3528(b), Nov. 24, 2003, 117 Stat. 1802.
53704(b)	46 App.:1273(f) (2d, last sentences).	
53704(c)	46 App.:1273(h).	June 29, 1936, ch. 858, title XI, § 1103(h), as added Pub. L. 104–239, § 13(a), Oct. 8, 1996, 110 Stat. 3134; Pub. L. 108–136, title XXXV, § 3528(b), Nov. 24, 2003, 117 Stat. 1802.

§ 53705. Pledge of United States Government

(a) FULL FAITH AND CREDIT.—The full faith and credit of the United States Government is pledged to the payment of a guarantee made under this chapter, for both principal and inter-

est, including interest (as may be provided for in the guarantee) accruing between the date of default under a guaranteed obligation and the date of payment in full of the guarantee.

(b) INCONTESTABILITY.—A guarantee or commitment to guarantee made under this chapter is conclusive evidence of the eligibility of the obligation for the guarantee. The validity of a guarantee or commitment to guarantee made under this chapter is incontestable.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1606; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(C), Jan. 6, 2006, 119 Stat. 3555.)

AMENDMENT NOT SHOWN IN TEXT

Subsec. (b) of this section was derived from section 1273(e) (1st sentence) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(C), Jan. 6, 2006, 119 Stat. 3555. For applicability of that amendment to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Section 1273(e) of the former Appendix to this title was amended by striking ''Secretary'' each place it appears and inserting ''Secretary or Administrator''.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53705(a)	46 App.:1273(d).	June 29, 1936, ch. 858, title XI, § 1103(d), (e) (1st sentence), as added June 23, 1938, ch. 600, § 46, 52 Stat. 969; Aug. 15, 1953, ch. 513, § 1, 67 Stat. 626; Sept. 3, 1954, ch. 1265, § 3, 68 Stat. 1268; June 25, 1956, ch. 438, 70 Stat. 332; Aug. 7, 1956, ch. 1026, § 1(a), (c), (d), 70 Stat. 1087; Pub. L. 91–469, § 30, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, § 3, Oct. 19, 1972, 86 Stat. 910; Pub. L. 97–31, § 12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 98–595, § 1(1), Oct. 30, 1984, 98 Stat. 3130.
53705(b)	46 App.:1273(e) (1st sentence).	

§ 53706. Eligible purposes of obligations

(a) IN GENERAL.—To be eligible for a guarantee under this chapter, an obligation must aid in any of the following:

(1)(A) Financing (including reimbursement of an obligor for expenditures previously made for) the construction, reconstruction, or reconditioning of a vessel (including an eligible export vessel) designed principally for research, or for commercial use—

(i) in the coastwise or intercoastal trade;

(ii) on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States;

(iii) in foreign trade as defined in section 109(b) of this title;

(iv) as an ocean thermal energy conversion facility or plantship;

(v) as a floating drydock in the construction, reconstruction, reconditioning, or repair of vessels; or

(vi) as an eligible export vessel in worldwide trade.

(B) A guarantee under subparagraph (A) may not be made more than one year after delivery of the vessel (or redelivery if the vessel was reconstructed or reconditioned) unless the proceeds of the obligation are used to finance the construction, reconstruction, or reconditioning of a vessel or of facilities or equipment related to marine operations.

(2) Financing (including reimbursement of an obligor for expenditures previously made for) the construction, reconstruction, reconditioning, or purchase of a vessel owned by citizens of the United States and designed principally for research, or for commercial use in the fishing industry.

(3) Financing the purchase, reconstruction, or reconditioning of a vessel or fishery facility—

(A) for which an obligation was guaranteed under this chapter; and

(B) that, under subchapter II of this chapter—

(i) is a vessel or fishery facility for which an obligation was accelerated and paid;

(ii) was acquired by the Federal Ship Financing Fund or successor account under section 53717 of this title; or

(iii) was sold at foreclosure begun or intervened in by the Secretary.

(4) Financing any part of the repayment to the United States Government of any amount of a construction-differential subsidy paid for a vessel.

(5) Refinancing an existing obligation (regardless of whether guaranteed under this chapter) issued for a purpose described in paragraphs (1)–(4), including a short-term obligation incurred to obtain temporary funds with the intention of refinancing.

(6) Financing or refinancing (including reimbursement of an obligor for expenditures previously made for) the construction, reconstruction, reconditioning, or purchase of a fishery facility.

(7) Financing or refinancing—

(A) the purchase of individual fishing quotas in accordance with section 303(d)(4) of the Magnuson-Stevens Fishery Conservation and Management Act (including the reimbursement of obligors for expenditures previously made for such a purchase);

(B) activities that assist in the transition to reduced fishing capacity; or

(C) technologies or upgrades designed to improve collection and reporting of fishery-dependent data, to reduce bycatch, to improve selectivity or reduce adverse impacts of fishing gear, or to improve safety.

(b) NON-VESSELS TREATED AS VESSELS.—An obligation guaranteed under subsection (a)(6) or (7) shall be treated, for purposes of this chapter, in the same manner and to the same extent as an obligation that aids in financing the construction, reconstruction, reconditioning, or purchase of a vessel, except with respect to provisions that by their nature can only be applied to vessels.

(c) PRIORITIES FOR CERTAIN VESSELS.—In guaranteeing or making a commitment to guarantee an obligation under this chapter, the Secretary shall give priority to—

(1) a vessel that is otherwise eligible for a guarantee and is constructed with assistance

under subtitle D of the Maritime Security Act of 2003 (46 U.S.C. 53101 note); and

(2) after applying paragraph (1), a vessel that is otherwise eligible for a guarantee and that the Secretary of Defense determines—

(A) is suitable for service as a naval auxiliary in time of war or national emergency; and

(B) meets a shortfall in sealift capacity or capability.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1606; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(D), (2)(A), (B), (b)(2), Jan. 6, 2006, 119 Stat. 3555, 3556; Pub. L. 109–479, title II, § 209, Jan. 12, 2007, 120 Stat. 3617.)

AMENDMENTS NOT SHOWN IN TEXT

Subsecs. (a) and (b) of this section were derived from section 1274(a) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(D), Jan. 6, 2006, 119 Stat. 3555. Section 1274(a) of the former Appendix to this title was amended by striking ''Secretary'' each place it appears and inserting ''Secretary or Administrator''.

Subsec. (c) of this section was derived from subsecs. (i) and (j) of section 1273 of the former Appendix to this title, which were amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(2)(A), (B), (b)(2), Jan. 6, 2006, 119 Stat. 3555, 3556. Section 1273(i) of the former Appendix to this title was amended by striking ''Secretary'' and inserting ''Administrator''. Section 1273(j) of the former Appendix to this title was amended by striking ''Secretary'' the first place it appears and inserting ''Administrator'' and by adding at the end the following:

''The Secretary of Defense shall determine whether a vessel satisfies paragraphs (1) and (2) [now subpars. (A) and (B) of subsec. (c)(2) of this section] by not later than 30 days after receipt of a request from the Administrator for such a determination.''

For applicability of those amendments to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53706(a)	46 App.:1274(a) (less last sentence).	June 29, 1936, ch. 858, title XI, § 1104A(a) [§ 1104A formerly § 1104], as added June 23, 1938, ch. 600, § 46, 52 Stat. 970; Aug. 4, 1939, ch. 417, § 14, 53 Stat. 1187; Sept. 28, 1950, ch. 1093, § 4, 64 Stat. 1078; Aug. 15, 1953, ch. 513, § 2, 67 Stat. 626; Sept. 3, 1954, ch. 1265, § 4, 68 Stat. 1269; Pub. L. 86–123, §§ 1(3), 2, July 31, 1959, 73 Stat. 269, 271; Pub. L. 86–127, § 1(3), (4), July 31, 1959, 73 Stat. 273; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 86–685, §§ 2, 3, Sept. 2, 1960, 74 Stat. 733; Pub. L. 90–341, June 15, 1968, 82 Stat. 180; Pub. L. 91–469, §§ 31, 32, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, § 3, Oct. 19, 1972, 86 Stat. 910; Pub. L. 96–320, title II, § 202(b), Aug. 3, 1980, 94 Stat. 992; Pub. L. 96–561, title II, § 220(3)(A), Dec. 22, 1980, 94 Stat. 3292; Pub. L. 97–31, § 12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 98–595, § 1(2)–(5), Oct. 30, 1984, 98 Stat. 3130; § 1104 renumbered as § 1104A, Pub. L. 101–380, title IV, § 4115(f)(1), Aug. 18, 1990, 104 Stat. 521; Pub. L. 103–160, title XIII, § 1356(3)(A), Nov. 30, 1993, 107 Stat. 1813; Pub. L. 104–208, title I, § 101 [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009–41; Pub. L. 104–297, title III, § 302(a)(1)–(4), Oct. 11, 1996, 110 Stat. 3615.
53706(b)	46 App.:1274(a) (last sentence).	
53706(c)	46 App.:1273(i), (j).	June 29, 1936, ch. 858, title XI, § 1103(i), (j), as added Pub. L. 108–136, title X, § 1014(a), title XXXV, § 3544, Nov. 24, 2003, 117 Stat. 1591, 1822.

In subsection (a), before paragraph (1), the words ''To be eligible for a guarantee under this chapter, an obligation must aid in any of the following'' are substituted for ''Pursuant to the authority granted under section 1273(a) of this Appendix, the Secretary, upon such terms as he shall prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in'' to eliminate unnecessary words.

In subsection (a)(2), the words ''citizens of the United States'' are substituted for ''citizens or nationals of the United States or citizens of the Northern Mariana Islands'' because of the definition of ''citizen of the United States'' in chapter 1 of the revised title. Citizens of the Northern Mariana Islands became citizens or non-citizen nationals of the United States (either of which is a ''citizen of the United States'' as defined in chapter 1 of the revised title) when the Covenant establishing the Commonwealth of the Northern Mariana Islands became effective November 4, 1986.

REFERENCES IN TEXT

Section 303(d)(4) of the Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (a)(7)(A), is section 303(d)(4) of Pub. L. 94–265, which is classified to section 1853(d)(4) of Title 16, Conservation.

The Maritime Security Act of 2003, referred to in subsec. (c)(1), 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 former Appendix to this title and enacted provisions set out as a note under section 53101 of this title. For complete classification of this Act to the Code, see Short Title of 2003 Amend-

ment note set out under section 101 of this title and Tables.

AMENDMENTS

2007—Subsec. (a)(7). Pub. L. 109–479 amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''Financing or refinancing (including reimbursement of an obligor for expenditures previously made for) the purchase of an individual fishing quota in accordance with section 303(d)(4) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853(d)(4)).''

PROHIBITION OF NEW LOANS FOR CONSTRUCTION OF FISHING VESSELS UNDER CERTAIN CONDITIONS

Pub. L. 104–297, title III, § 302(b)(2), Oct. 11, 1996, 110 Stat. 3615, as amended by Pub. L. 105–277, div. C, title II, § 212, Oct. 21, 1998, 112 Stat. 2681–635; Pub. L. 107–206, title I, § 1103, Aug. 2, 2002, 116 Stat. 884, provided that: ''No loans may be provided or guaranteed by the Federal Government for the construction or rebuilding of a vessel intended for use as a fishing vessel (as defined in section 2101 of title 46, United States Code), if such vessel will be greater than 165 feet in registered length, 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), or have an engine or engines capable of producing a total of more than 3,000 shaft horsepower, after such construction or rebuilding is completed. This prohibition shall not apply to vessels to be used in the menhaden fishery or in tuna purse seine fisheries outside the exclusive economic zone of the United States or the area of the South Pacific Regional Fisheries Treaty.''

[Pub. L. 107–206, title I, § 1103, Aug. 2, 2002, 116 Stat. 884, which directed the amendment of title II of division C of Public Law 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'', was executed to section 302(b)(2) of Pub. L. 104–297, set out above, as amended by section 212 of Pub. L. 105–277, to reflect the probable intent of Congress.]

§ 53707. Findings related to obligors and operators

(a) RESPONSIBLE OBLIGOR.—The Secretary may not guarantee or make a commitment to guarantee an obligation under this chapter unless the Secretary finds that the obligor is responsible and has the ability, experience, financial resources, and other qualifications necessary for the adequate operation and maintenance of each vessel that will serve as security for the guarantee.

(b) OPERATORS OF LINER VESSELS.—The Secretary of Transportation may not guarantee or make a commitment to guarantee a loan for the construction, reconstruction, or reconditioning of a liner vessel under this chapter unless the Chairman of the Federal Maritime Commission certifies that the operator of the vessel has not been found by the Commission to have committed, within the previous 5 years—

(1) a violation of part A of subtitle IV of this title that involves unjust or unfair discriminatory treatment or undue or unreasonable prejudice or disadvantage with respect to a United States shipper, ocean transportation intermediary, ocean common carrier, or port; or

(2) a violation of part B of subtitle IV of this title.

(c) OPERATORS OF FISHING VESSELS.—The Secretary of Commerce may not guarantee or make a commitment to guarantee a loan for the construction, reconstruction, or reconditioning of a fishing vessel under this chapter if the operator of the vessel has been—

(1) held liable, or the vessel has been held liable in rem, for a civil penalty under section 308 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858) and the operator has not paid the penalty;

(2) found guilty of an offense under section 309 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1859) and not paid the assessed fine or served the assessed sentence;

(3) held liable for a civil or criminal penalty under section 105 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1375) and not paid the assessed fine or served the assessed sentence; or

(4) held liable for a civil penalty by the Coast Guard under this title or title 33 and not paid the assessed fine.

(d) WAIVERS CONCERNING FINANCIAL CONDITION.—The Secretary shall prescribe regulations concerning circumstances under which waivers of, or exceptions to, otherwise applicable regulatory requirements concerning financial condition can be made. The regulations shall require that—

(1) the economic soundness requirements in section 53708(a) of this title are met after the waiver of the financial condition requirement; and

(2) the waiver shall provide for the imposition of other requirements on the obligor designed to compensate for the increased risk associated with the obligor's failure to meet regulatory requirements applicable to financial condition.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1607; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(D), (b)(3)(B), (C), (c)(1), Jan. 6, 2006, 119 Stat. 3555, 3556.)

AMENDMENTS NOT SHOWN IN TEXT

Subsec. (a) of this section was derived from section 1274(b)(1) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(D), Jan. 6, 2006, 119 Stat. 3555. Section 1274(b)(1) of the former Appendix to this title was amended by striking ''Secretary'' each place it appears and inserting ''Secretary or Administrator''.

Subsec. (b) of this section was derived from section 1273a(a) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(c)(1), Jan. 6, 2006, 119 Stat. 3556. Section 1273a(a) of the former Appendix to this title was amended by striking ''Secretary of Transportation'' and inserting ''Administrator of the Maritime Administration''.

Subsec. (d)(2) of this section was derived from section 1274(d)(4)(B) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(b)(3)(B), (C), Jan. 6, 2006, 119 Stat. 3556. Section 1274(d)(4)(B) of the former Appendix to this title was amended by striking ''the waiver'' and inserting ''if deemed necessary by the Secretary or Administrator, the waiver'' and by striking ''the increased'' and inserting ''any significant increase in''.

For applicability of those amendments to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53707(a)	46 App.:1274(b)(1).	June 29, 1936, ch. 858, title XI, §1104A(b)(1) [§1104A formerly §1104], as added June 23, 1938, ch. 600, §46, 52 Stat. 970; Aug. 4, 1939, ch. 417, §14, 53 Stat. 1187; Sept. 28, 1950, ch. 1093, §4, 64 Stat. 1078; Aug. 15, 1953, ch. 513, §2, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §4, 68 Stat. 1269; Pub. L. 86–123, §§1(3), 2, July 31, 1959, 73 Stat. 269, 271; Pub. L. 86–127, §1(3), (4), July 31, 1959, 73 Stat. 273; Pub. L. 86–518, §1, June 12, 1960, 74 Stat. 216; Pub. L. 86–685, §§2, 3, Sept. 2, 1960, 74 Stat. 733; Pub. L. 90–341, June 15, 1968, 82 Stat. 180; Pub. L. 91–469, §§31, 32, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, §3, Oct. 19, 1972, 86 Stat. 911; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166; §1104 renumbered as §1104A, Pub. L. 101–380, title IV, §4115(f)(1), Aug. 18, 1990, 104 Stat. 521.
53707(b)	46 App.:1273a(a).	Pub. L. 105–258, title IV, §401, Oct. 14, 1998, 112 Stat. 1916.
53707(c)	46 App.:1273a(b).	
53707(d)	46 App.:1274(d)(4).	June 29, 1936, ch. 858, title XI, §1104A(d)(4), as added Pub. L. 108–136, title XXXV, §3522, Nov. 24, 2003, 117 Stat. 1800.

§ 53708. Findings related to economic soundness

(a) BY SECRETARY OF TRANSPORTATION.—The Secretary of Transportation may not guarantee or make a commitment to guarantee an obligation under this chapter unless the Secretary finds that the property or project for which the obligation will be executed will be economically sound. In making that finding, the Secretary shall consider—

(1) the need in the particular segment of the maritime industry for new or additional capacity, including any impact on existing equipment for which a guarantee under this chapter is in effect;

(2) the market potential for employment of the vessel over the life of the guarantee;

(3) projected revenues and expenses associated with employment of the vessel;

(4) any charter, contract of affreightment, transportation agreement, or similar agreement or undertaking relevant to the employment of the vessel;

(5) other relevant criteria; and

(6) for inland waterways, the need for technical improvements, including increased fuel efficiency or improved safety.

(b) BY SECRETARY OF COMMERCE.—The Secretary of Commerce may not guarantee or make a commitment to guarantee an obligation under this chapter unless the Secretary finds, at or prior to the time the commitment is made or the guarantee becomes effective, that—

(1) the property or project for which the obligation will be executed will be economically sound; and

(2) for a fishing vessel, the purpose of the financing or refinancing is consistent with—

(A) the wise use of the fisheries resources and the development, advancement, management, conservation, and protection of the fisheries resources; or

(B) the need for technical improvements, including increased fuel efficiency or improved safety.

(c) USED FISHING VESSELS AND FACILITIES.—The Secretary of Commerce may not guarantee or make a commitment to guarantee an obligation under this chapter for the purchase of a used fishing vessel or used fishery facility unless the vessel or facility will be—

(1) reconstructed or reconditioned in the United States and will contribute to the development of the United States fishing industry; or

(2) used—

(A) in the harvesting of fish from an underused fishery; or

(B) for a purpose described in the definition of ''fishery facility'' in section 53701 of this title with respect to an underused fishery.

(d) INDEPENDENT ANALYSIS.—The Secretary may make a determination that aspects of an application under this chapter require independent analysis to be conducted by third party experts due to risk factors associated with markets, technology, financial structures, or other risk factors identified by the Secretary. Any independent analysis conducted under this subsection shall be performed by a party chosen by the Secretary.

(e) ADDITIONAL EQUITY BECAUSE OF INCREASED RISKS.—Notwithstanding any other provision of this chapter, the Secretary may make a determination that an application under this title requires additional equity because of increased risk factors associated with markets, technology, financial structures, or other risk factors identified by the Secretary.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1608; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(D), (2)(D), (b)(3)(A), (4), Jan. 6, 2006, 119 Stat. 3555, 3556.)

AMENDMENTS NOT SHOWN IN TEXT

Subsec. (a) of this section was derived from section 1274(d)(1)(A) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, §3507(a)(2)(D), (b)(3)(A), Jan. 6, 2006, 119 Stat. 3555, 3556. Section 1274(d)(1)(A) of the former Appendix to this title was amended by striking ''Secretary'' each place it appears except the first and inserting ''Administrator'' and by striking ''Secretary of Transportation'' and inserting ''Administrator''.

Subsecs. (d) and (e) of this section were derived from pars. (2) and (3), respectively, of section 1274(f) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(D), (b)(4), Jan. 6, 2006, 119 Stat. 3555, 3556. Section 1274(f) of the former Appendix to this title was amended by striking ''Secretary'' each place it appears and inserting ''Secretary or Administrator'', by striking ''financial structures, or other risk factors identified by the Secretary or Adminis-

trator.'' in pars. (2) and (3) and inserting ''or financial structures.'', and by adding at the end the following:

''(5) A third party independent analysis conducted under paragraph (2) [now subsec. (d) of this section] shall be performed by a private sector expert in assessing such risk factors who is selected by the Administrator.''

For applicability of those amendments to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53708(a)	46 App.:1274(d)(1)(A).	June 29, 1936, ch. 858, title XI, §1104A(d)(1), (2) [§1104A formerly §1104], as added June 23, 1938, ch. 600, §46, 52 Stat. 970; Aug. 4, 1939, ch. 417, §14, 53 Stat. 1187; Sept. 28, 1950, ch. 1093, §4, 64 Stat. 1078; Aug. 15, 1953, ch. 513, §2, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §4, 68 Stat. 1269; Pub. L. 86–123, §§1(3), 2, July 31, 1959, 73 Stat. 269, 271; Pub. L. 86–127, §1(3), (4), July 31, 1959, 73 Stat. 273; Pub. L. 86–518, §1, June 12, 1960, 74 Stat. 216; Pub. L. 86–685, §§2, 3, Sept. 2, 1960, 74 Stat. 733; Pub. L. 90–341, June 15, 1968, 82 Stat. 180; Pub. L. 91–469, §§31, 32, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, §3, Oct. 19, 1972, 86 Stat. 910; Pub. L. 96–561, title II, §220(3)(C), Dec. 22, 1980, 94 Stat. 3293; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 97–35, title XVI, §1606(c), Aug. 13, 1981, 95 Stat. 752; Pub. L. 98–595, §1(6), Oct. 30, 1984, 98 Stat. 3130; §1104 renumbered as §1104A, Pub. L. 101–380, title IV, §4115(f)(1), Aug. 18, 1990, 104 Stat. 521.
53708(b)	46 App.:1274(d)(1)(B).	
53708(c)	46 App.:1274(d)(2).	
53708(d)	46 App.:1274(f)(2).	June 29, 1936, ch. 858, title XI, §1104A(f)(2), (3), as added Pub. L. 108–136, title XXXV, §3526(2)(C), Nov. 24, 2003, 117 Stat. 1801.
53708(e)	46 App.:1274(f)(3).	

§ 53709. Amount of obligations

(a) IN GENERAL.—The principal of an obligation may not be guaranteed in an amount greater than the amount determined by multiplying the percentage applicable under subsection (b) by—

(1) the amount paid by or for the account of the obligor (as determined by the Secretary, which determination shall be conclusive) for the construction, reconstruction, or reconditioning of the vessel used as security for the guarantee; or

(2) if the obligor creates an escrow fund under section 53715 of this title, the actual cost of the vessel.

(b) LIMITATIONS ON AMOUNT BORROWED.—

(1) IN GENERAL.—Except as otherwise provided, the principal amount of an obligation guaranteed under this chapter may not exceed 75 percent of the actual cost or depreciated actual cost, as determined by the Secretary, of the vessel used as security for the guarantee.

(2) CERTAIN APPROVED VESSELS.—The principal amount may not exceed 87.5 percent of the actual cost or depreciated actual cost if—

(A) the size and speed of the vessel are approved by the Secretary;

(B) the vessel is or would have been eligible for mortgage aid for construction under section 509 of the Merchant Marine Act, 1936, or would have been eligible except that the vessel was built with a construction-differential subsidy and the subsidy has been repaid; and

(C) the vessel is of a type described in that section for which the minimum down payment required by that section is 12.5 percent of the cost of the vessel.

(3) BARGES.—For a barge constructed without a construction-differential subsidy or for which the subsidy has been repaid, the principal amount may not exceed 87.5 percent of the actual cost or depreciated actual cost.

(4) FISHING VESSELS AND FISHERY FACILITIES.—For a fishing vessel or fishery facility, the principal amount may not exceed 80 percent of the actual cost or depreciated actual cost. However, debt for the vessel or facility may not be placed through the Federal Financing Bank.

(5) OTEC.—For an ocean thermal energy conversion facility or plantship constructed without a construction-differential subsidy, the principal amount may not exceed 87.5 percent of the actual cost or depreciated actual cost of the facility or plantship.

(6) ELIGIBLE EXPORT VESSELS.—For an eligible export vessel, the principal amount may not exceed 87.5 percent of the actual cost or depreciated actual cost.

(c) SECURITY INVOLVING MULTIPLE VESSELS.—The principal amount of an obligation having more than one vessel as security for the guarantee may not exceed the sum of the principal amounts allowable for all the vessels.

(d) PROHIBITION ON UNIFORM PERCENTAGE LIMITATIONS.—The Secretary may not establish a percentage under any provision of subsection (b) that is to be applied uniformly to all guarantees or commitments to guarantee made under that provision.

(e) PROHIBITION ON MINIMUM PRINCIPAL AMOUNT.—The Secretary may not establish, as a condition of eligibility for a guarantee under this chapter, a minimum principal amount for an obligation covering the reconstruction or reconditioning of a fishing vessel or fishery facility. For purposes of this chapter, the reconstruction or reconditioning of a fishing vessel or fishery facility does not include the routine minor repair or maintenance of the vessel or facility.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1609; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(C), (D), Jan. 6, 2006, 119 Stat. 3555.)

AMENDMENTS NOT SHOWN IN TEXT

Subsecs. (a) to (d) of this section were derived from sections 1273(c) and 1274(b)(2), (c)(1) (last sentence), and (i) of the former Appendix to this title, which were amended by Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(C), (D), Jan. 6, 2006, 119 Stat. 3555. For applicability of those amendments to this

section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Those provisions of the former Appendix to this title were amended by striking ''Secretary'' each place it appears and inserting ''Secretary or Administrator''.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53709(a)	46 App.:1273(c).	June 29, 1936, ch. 858, title XI, §1103(c), as added June 23, 1938, ch. 600, §46, 52 Stat. 969; Aug. 15, 1953, ch. 513, §1, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §3, 68 Stat. 1268; June 25, 1956, ch. 438, 70 Stat. 332; Aug. 7, 1956, ch. 1026, §1(a), (c), (d), 70 Stat. 1087; Pub. L. 91–469, §30, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, §3, Oct. 19, 1972, 86 Stat. 910; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166.
53709(b)	46 App.:1274(b)(2).	June 29, 1936, ch. 858, title XI, §1104A(b)(2), (last 2 sentences), (c)(1) (last sentence) [§1104A formerly §1104], as added June 23, 1938, ch. 600, §46, 52 Stat. 970; Aug. 4, 1939, ch. 417, §14, 53 Stat. 1187; Sept. 28, 1950, ch. 1093, §4, 64 Stat. 1078; Aug. 15, 1953, ch. 513, §2, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §4, 68 Stat. 1269; Pub. L. 86–123, §§1(3), 2, July 31, 1959, 73 Stat. 269, 271; Pub. L. 86–127, §1(3), (4), July 31, 1959, 73 Stat. 273; Pub. L. 86–518, §1, June 12, 1960, 74 Stat. 216; Pub. L. 86–685, §§2, 3, Sept. 2, 1960, 74 Stat. 733; Pub. L. 90–341, June 15, 1968, 82 Stat. 180; Pub. L. 91–469, §§31, 32, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, §3, Oct. 19, 1972, 86 Stat. 910; Pub. L. 95–257, Apr. 7, 1978, 92 Stat. 194; Pub. L. 96–320, title II, §202(c), Aug. 3, 1980, 94 Stat. 992; Pub. L. 96–561, title II, §220(3)(B), Dec. 22, 1980, 94 Stat. 3293; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 99–509, title V, §5003, Oct. 21, 1986, 100 Stat. 1912; §1104 renumbered as §1104A, Pub. L. 101–380, title IV, §4115(f)(1), Aug. 18, 1990, 104 Stat. 521; Pub. L. 103–160, div. A, title XIII, §1356(3)(B), (C), Nov. 30, 1993, 107 Stat. 1813; Pub. L. 104–297, title III, §302(a)(5), Oct. 11, 1996, 110 Stat. 3615.
53709(c)	46 App.:1274(c)(1) (last sentence).	
53709(d)	46 App.:1274(i).	June 29, 1936, ch. 858, title XI, §1104A(i), as added Pub. L. 103–160, div. A, title XIII, §1356(3)(E), Nov. 30, 1993, 107 Stat. 1814.
53709(e)	46 App.:1274(b) (last 2 sentences).	

Subsections (a) and (d) are substituted for the source provisions for clarity and to eliminate unnecessary words.

REFERENCES IN TEXT

Section 509 of the Merchant Marine Act, 1936, referred to in subsec. (b)(2)(B), is section 509 of act June 29, 1936, ch. 858, 49 Stat. 1985, which is set out as a note under section 53101 of this title.

§ 53710. Contents of obligations

(a) IN GENERAL.—An obligation guaranteed under this chapter must—

(1) provide for payments by the obligor satisfactory to the Secretary;

(2) provide for interest (exclusive of guarantee fees and other fees) at a rate not more than the annual rate on the unpaid principal that the Secretary determines is reasonable, considering the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary;

(3) have a maturity date satisfactory to the Secretary, but—

(A) not more than 25 years after the date of delivery of the vessel used as security for the guarantee; or

(B) if the vessel has been reconstructed or reconditioned, not more than the later of—

(i) 25 years after the date of delivery of the vessel; or

(ii) the remaining years of useful life of the vessel as determined by the Secretary; and

(4) provide, or a related agreement must provide, that if the vessel used as security for the guarantee is a delivered vessel, the vessel shall be—

(A) in class A–1, American Bureau of Shipping, or meet other standards acceptable to the Secretary, with all required certificates, including marine inspection certificates of the Coast Guard or, in the case of an eligible export vessel, of the appropriate foreign authorities under a treaty, convention, or other international agreement to which the United States is a party, and with all outstanding requirements and recommendations necessary for class retention accomplished, unless the Secretary permits a deferment of repairs necessary to meet these requirements; and

(B) well equipped, in good repair, and in every respect seaworthy and fit for service.

(b) PROVISIONS FOR CERTAIN PASSENGER VESSELS.—

(1) IN GENERAL.—With the Secretary's approval, if the vessel used as security for the guarantee is a passenger vessel having the tonnage, speed, passenger accommodations, and other characteristics described in section 503 of the Merchant Marine Act, 1936, an obligation guaranteed under this chapter or a related agreement may provide that—

(A) the only recourse by the United States Government against the obligor for payments under the guarantee will be repossession of the vessel and assignment of insurance claims; and

(B) the obligor's liability for payments under the guarantee will be satisfied and discharged by the surrender of the vessel and all interest in the vessel to the Government in the condition described in paragraph (2).

(2) SURRENDER OF VESSEL.—

(A) IN GENERAL.—On surrender, the vessel must be—

(i) free and clear of all liens and encumbrances except the security interest conveyed to the Secretary under this chapter;

(ii) in class; and

(iii) in as good order and condition (ordinary wear and tear excepted) as when acquired by the obligor.

(B) COVERING DEFICIENCIES BY INSURANCE.—To the extent covered by insurance, a deficiency related to a requirement in subparagraph (A) may be satisfied by assignment of the obligor's insurance claims to the Government.

(c) OTHER PROVISIONS TO PROTECT SECURITY INTERESTS.—An obligation guaranteed under this chapter and any related agreement must contain other provisions for the protection of the security interests of the Government (including acceleration, assumption, and subrogation provisions and the issuance of notes by the obligor to the Secretary), liens and releases of liens, payment of taxes, and other matters that the Secretary may prescribe.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1610; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(D), (2)(C), Jan. 6, 2006, 119 Stat. 3555.)

AMENDMENTS NOT SHOWN IN TEXT

Subsecs. (a) and (c) of this section were derived from subsecs. (b)(3) to (6) and (h), respectively, of section 1274 of the former Appendix to this title, which were amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(D), Jan. 6, 2006, 119 Stat. 3555, by striking ''Secretary'' each place it appears and inserting ''Secretary or Administrator''.

Subsec. (b) of this section was derived from section 1274(b)(7) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(2)(C), Jan. 6, 2006, 119 Stat. 3555, by striking ''Secretary'' each place it appears and inserting ''Administrator''.

For applicability of those amendments to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53710(a)(1) ..	46 App.:1274(b)(4).	June 29, 1936, ch. 858, title XI, § 1104A(b)(3)–(7), (h) [§ 1104A formerly § 1104], as added June 23, 1938, ch. 600, § 46, 52 Stat. 970; Aug. 4, 1939, ch. 417, § 14, 53 Stat. 1187; Sept. 28, 1950, ch. 1093, § 4, 64 Stat. 1078; Aug. 15, 1953, ch. 513, § 2, 67 Stat. 626; Sept. 3, 1954, ch. 1265, § 4, 68 Stat. 1269; Pub. L. 86–123, §§ 1(3), 2, July 31, 1959, 73 Stat. 269, 271; Pub. L. 86–127, § 1(3), (4), July 31, 1959, 73 Stat. 273; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 86–685, §§ 2, 3, Sept. 2, 1960, 74 Stat. 733; Pub. L. 90–341, June 15, 1968, 82 Stat. 180; Pub. L. 91–469, §§ 31, 32, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, § 3, Oct. 19, 1972, 86 Stat. 911, 914; Pub. L. 97–31, § 12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 98–595, § 1(7), Oct. 30, 1984, 98 Stat. 3131; § 1104 renumbered as § 1104A, Pub. L. 101–380, title IV, § 4115(f)(1), Aug. 18, 1990, 104 Stat. 521; Pub. L. 103–160, title XIII, § 1356(3)(C), Nov. 30, 1993, 107 Stat. 1813.
53710(a)(2) ..	46 App.:1274(b)(5).	
53710(a)(3) ..	46 App.:1274(b)(3).	
53710(a)(4) ..	46 App.:1274(b)(6).	
53710(b)	46 App.:1274(b)(7).	
53710(c)	46 App.:1274(h).	

During review of this bill, the American Bureau of Shipping, through counsel, explained that it disagrees with an existing interpretation by the Maritime Administration of language restated in subsection (a)(4)(A) of this section, and requested the Committee to clarify that this codification should not be construed as a ratification of that regulatory interpretation. The Committee therefore states that this codification should not be construed as an expression of any opinion whatsoever concerning any such administrative interpretation.

In subsection (a)(3), the words ''subject to the provisions of paragraph (2) of subsection (c) of this section'' are omitted as unnecessary.

In subsection (a)(4)(B), the words ''well equipped, in good repair, and in every respect seaworthy and fit for service'' are substituted for ''tight, stanch, strong, and well and sufficiently tackled, appareled, furnished, and equipped, and in every respect seaworthy and in good running condition and repair, and in all respects fit for service'' to eliminate unnecessary words.

In subsection (b)(1), the reference to section 503 of the Merchant Marine Act, 1936, is substituted for the reference to ''subchapter V of this chapter'' because the relevant characteristics referred to in the text are contained in that section and because that section is part of the construction-differential subsidy program, which is not being restated.

REFERENCES IN TEXT

Section 503 of the Merchant Marine Act, 1936, referred to in subsec. (b)(1), is section 503 of act June 29, 1936, ch. 858, 49 Stat. 1985, which is set out as a note under section 53101 of this title.

§ 53711. Security interest

(a) IN GENERAL.—The Secretary may guarantee an obligation under this chapter only if the obligor conveys or agrees to convey to the Secretary a security interest the Secretary considers necessary to protect the interest of the United States Government.

(b) MULTIPLE VESSELS AND TYPES OF SECURITY.—The security interest may relate to more than one vessel and may consist of more than one type of security. If the security interest relates to more than one vessel, the obligation may have the latest maturity date allowable under section 53710(a)(3) of this title for any of the vessels used as security for the guarantee. However, the Secretary may require such payments of principal prior to maturity, with respect to all related obligations, as the Secretary considers necessary to maintain adequate security for the guarantee.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1612; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(C), (D), Jan. 6, 2006, 119 Stat. 3555.)

AMENDMENTS NOT SHOWN IN TEXT

This section was derived from sections 1273(b) and 1274(c)(1) (1st sentence) and (2) of the former Appendix to this title, which were amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(C), (D), Jan. 6, 2006, 119 Stat. 3555. For applicability of those amendments to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Those provisions of the former Appendix to this title were amended by striking ''Secretary'' each place it appears and inserting ''Secretary or Administrator''.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53711(a)	46 App.:1273(b).	June 29, 1936, ch. 858, title XI, § 1103(b), as added June 23, 1938, ch. 600, § 46, 52 Stat. 969; Aug. 15, 1953, ch. 513, § 1, 67 Stat. 626; Sept. 3, 1954, ch. 1265, § 3, 68 Stat. 1268; June 25, 1956, ch. 438, 70 Stat. 332; Aug. 7, 1956, ch. 1026, § 1(a), (c), (d), 70 Stat. 1087; Pub. L. 91–469, § 30, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, § 3, Oct. 19, 1972, 86 Stat. 910; Pub. L. 97–31, § 12(136), Aug. 6, 1981, 95 Stat. 166.
53711(b)	46 App.:1274(c)(1) (1st sentence), (2).	June 29, 1936, ch. 858, title XI, § 1104A(c)(1) (1st sentence), (2) [§ 1104A formerly § 1104], as added June 23, 1938, ch. 600, § 46, 52 Stat. 970; Aug. 4, 1939, ch. 417, § 14, 53 Stat. 1187; Sept. 28, 1950, ch. 1093, § 4, 64 Stat. 1078; Aug. 15, 1953, ch. 513, § 2, 67 Stat. 626; Sept. 3, 1954, ch. 1265, § 4, 68 Stat. 1269; Pub. L. 86–123, §§ 1(3), 2, July 31, 1959, 73 Stat. 269, 271; Pub. L. 86–127, § 1(3), (4), July 31, 1959, 73 Stat. 273; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 86–685, §§ 2, 3, Sept. 2, 1960, 74 Stat. 733; Pub. L. 90–341, June 15, 1968, 82 Stat. 180; Pub. L. 91–469, §§ 31, 32, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, § 3, Oct. 19, 1972, 86 Stat. 912; Pub. L. 97–31, § 12(136), Aug. 6, 1981, 95 Stat. 166; § 1104 renumbered as § 1104A, Pub. L. 101–380, title IV, § 4115(f)(1), Aug. 18, 1990, 104 Stat. 521.

In subsection (a), the words ''a security interest the Secretary considers necessary'' are substituted for ''such security interest, which may include a mortgage or mortgages on a vessel or vessels, as the Secretary may reasonably require'' to eliminate unnecessary words.

§ 53712. Monitoring financial condition and operations of obligor

(a) IN GENERAL.—The Secretary shall monitor the financial condition and operations of the obligor on a regular basis during the term of the guarantee. The Secretary shall document the results of the monitoring on an annual or quarterly basis depending on the condition of the obligor. If the Secretary determines that the financial condition of the obligor warrants additional protections to the Secretary, the Secretary shall take appropriate action under subsection (b). If the Secretary determines that the financial condition of the obligor jeopardizes its continued ability to perform its responsibilities in connection with the guarantee of an obligation by the Secretary, the Secretary shall make an immediate determination whether default should take place and whether further measures described in subsection (b) should be taken to protect the interests of the Secretary while ensuring that program objectives are met.

(b) CONTRACT PROVISIONS TO PROTECT SECRETARY.—The Secretary shall include provisions in a loan agreement with an obligor that provides additional authority to the Secretary to take action to limit potential losses in connection with a defaulted loan or a loan that is in jeopardy due to the deteriorating financial condition of the obligor. These provisions include requirements for additional collateral or greater equity contributions that are effective upon the occurrence of verifiable conditions relating to the obligor's financial condition or the status of the vessel or shipyard project.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1612; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(D), (b)(6), Jan. 6, 2006, 119 Stat. 3555, 3556.)

AMENDMENTS NOT SHOWN IN TEXT

This section was derived from subsecs. (k) and (m) of section 1274 of the former Appendix to this title, which were amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(D), (b)(6), Jan. 6, 2006, 119 Stat. 3555, 3556. For applicability of those amendments to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Subsecs. (k) and (m) of section 1274 of the former Appendix to this title were amended by striking ''Secretary'' each place it appears and inserting ''Secretary or Administrator'', and subsec. (m) was further amended by striking the last sentence [now the last sentence of subsec. (b) of this section] and inserting ''If the Secretary or Administrator has waived a requirement under subsection (d) of this section [now sections 53707(d), 53708(a) to (c), and 53732(c)(1) and (d) of this title], the loan agreement shall include requirements for additional payments, collateral, or equity contributions to meet such waived requirement upon the occurrence of verifiable conditions indicating that the obligor's financial condition enables the obligor to meet the waived requirement.''

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53712(a)	46 App.:1274(k).	June 29, 1936, ch. 858, title XI, § 1104A(k), (m), as added Pub. L. 108–136, title XXXV, § 3523, Nov. 24, 2003, 117 Stat. 1800.
53712(b)	46 App.:1274(m).	

§ 53713. Administrative fees

(a) IN GENERAL.—The Secretary shall charge and collect from the obligor fees the Secretary considers reasonable for—

(1) investigating an application for a guarantee;

(2) appraising property offered as security for a guarantee;

(3) issuing a commitment;

(4) providing services related to an escrow fund under section 53715 of this title; and

(5) inspecting property during construction, reconstruction, or reconditioning.

(b) TOTAL FEE LIMITATION.—The total fees under subsection (a) may not exceed 0.5 percent of the original principal amount of the obligations to be guaranteed.

(c) FEES FOR INDEPENDENT ANALYSIS.—The Secretary may charge and collect fees to cover the costs of independent analysis under section 53708(d) of this title. Notwithstanding section 3302 of title 31, any fee collected under this subsection shall—

(1) be credited as an offsetting collection to the account that finances the administration of the loan guarantee program;

(2) be available for expenditure only to pay the costs of activities and services for which the fee is imposed; and

(3) remain available until expended.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1612; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(D), Jan. 6, 2006, 119 Stat. 3555.)

AMENDMENT NOT SHOWN IN TEXT

This section was derived from pars. (1) and (4) of section 1274(f) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(D), Jan. 6, 2006, 119 Stat. 3555. For applicability of that amendment to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Section 1274(f) of the former Appendix to this title was amended by striking ''Secretary'' each place it appears and inserting ''Secretary or Administrator''.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53713(a)	46 App.:1274(f)(1) (words before proviso).	June 29, 1936, ch. 858, title XI, § 1104A(f)(1), (4) [§ 1104A formerly § 1104], as added June 23, 1938, ch. 600, § 46, 52 Stat. 970; Aug. 4, 1939, ch. 417, § 14, 53 Stat. 1187; Sept. 28, 1950, ch. 1093, § 4, 64 Stat. 1078; Aug. 15, 1953, ch. 513, § 2, 67 Stat. 626; Sept. 3, 1954, ch. 1265, § 4, 68 Stat. 1269; Pub. L. 86–123, §§ 1(3), 2, July 31, 1959, 73 Stat. 269, 271; Pub. L. 86–127, § 1(3), (4), July 31, 1959, 73 Stat. 273; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 86–685, §§ 2, 3, Sept. 2, 1960, 74 Stat. 733; Pub. L. 90–341, June 15, 1968, 82 Stat. 180; Pub. L. 91–469, §§ 31, 32, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, § 3, Oct. 19, 1972, 86 Stat. 913; Pub. L. 97–31, § 12(136), Aug. 6, 1981, 95 Stat. 166; § 1104 renumbered as § 1104A, Pub. L. 101–380, title IV, § 4115(f)(1), Aug. 18, 1990, 104 Stat. 521; Pub. L. 107–314, title XXXV, § 3503(2), Dec. 2, 2002, 116 Stat. 2754; Pub. L. 108–136, title XXXV, § 3526(2), Nov. 24, 2003, 117 Stat. 1801.
53713(b)	46 App.:1274(f)(1) (proviso).	
53713(c)	46 App.:1274(f)(4).	

§ 53714. Guarantee fees

(a) REGULATIONS.—Subject to this section, the Secretary shall prescribe regulations to assess a fee for guaranteeing an obligation under this chapter.

(b) COMPUTATION OF FEE.—

(1) IN GENERAL.—The amount of the fee for a guarantee under this chapter shall be equal to the sum of the amounts determined under paragraph (2) for the years in which the guarantee is in effect.

(2) PRESENT VALUE FOR EACH YEAR.—The amount referred to in paragraph (1) for a year in which the guarantee is in effect is the present value of the amount calculated under paragraph (3). To determine the present value, the Secretary shall apply a discount rate determined by the Secretary of the Treasury, considering current market yields on outstanding obligations of the United States Government having periods to maturity comparable to the period to maturity for the guaranteed obligation.

(3) CALCULATION OF AMOUNT.—The amount referred to in paragraph (2) shall be calculated by multiplying—

(A) the estimated average unpaid principal amount of the obligation that will be outstanding during the year (excluding the average amount, other than interest, on deposit during the year in an escrow fund under section 53715 of this title); by

(B) the fee rate set under paragraph (4).

(4) SETTING FEE RATES.—To set the fee rate referred to in paragraph (3)(B), the Secretary shall establish a formula that—

(A) takes into account the security provided for the guaranteed obligation; and

(B) is a sliding scale based on the creditworthiness of the obligor, using—

(i) the lowest allowable rate under paragraph (5) for the most creditworthy obligors; and

(ii) the highest allowable rate under paragraph (5) for the least creditworthy obligors.

(5) PERMISSIBLE RANGE OF RATES.—The fee rate set under paragraph (4) shall be—

(A) for a delivered vessel or equipment, at least 0.5 percent and not more than 1 percent; and

(B) for a vessel to be constructed, reconstructed, or reconditioned or equipment to be delivered, at least 0.25 percent and not more than 0.5 percent.

(c) WHEN FEE COLLECTED.—A fee for the guarantee of an obligation under this chapter shall be collected not later than the date on which an amount is first paid on the obligation.

(d) FINANCING THE FEE.—A fee paid under this section is eligible to be financed under this chapter and shall be included in the actual cost of the obligation guaranteed.

(e) NOT REFUNDABLE.—A fee paid under this section is not refundable. However, an obligor shall receive credit for the amount paid for the remaining term of the obligation if the obligation is refinanced and guaranteed under this chapter after the refinancing.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1613; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(D), Jan. 6, 2006, 119 Stat. 3555.)

AMENDMENT NOT SHOWN IN TEXT

This section was derived from section 1274(e) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(D), Jan. 6, 2006, 119 Stat. 3555. For applicability of that amendment to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Section 1274(e) of the former Appendix to this title was amended by striking ''Secretary'' each place it appears (except in par. (2)(F) [restated in subsec. (b)(2) of this section] the

second place it appears) and inserting ''Secretary or Administrator''.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53714(a)	46 App.:1274(e)(1).	June 29, 1936, ch. 858, title XI, §1104A(e) [§1104A formerly §1104], as added June 23, 1938, ch. 600, §46, 52 Stat. 970; Aug. 4, 1939, ch. 417, §14, 53 Stat. 1187; Sept. 28, 1950, ch. 1093, §4, 64 Stat. 1078; Aug. 15, 1953, ch. 513, §2, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §4, 68 Stat. 1269; Pub. L. 86–123, §§1(3), 2, July 31, 1959, 73 Stat. 269, 271; Pub. L. 86–127, §1(3), (4), July 31, 1959, 73 Stat. 273; Pub. L. 86–518, §1, June 12, 1960, 74 Stat. 216; Pub. L. 86–685, §§2, 3, Sept. 2, 1960, 74 Stat. 733; Pub. L. 90–341, June 15, 1968, 82 Stat. 180; Pub. L. 91–469, §§31, 32, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, §3, Oct. 19, 1972, 86 Stat. 913; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 98–595, §1(12), Oct. 30, 1984, 98 Stat. 3131; §1104 renumbered as §1104A, Pub. L. 101–380, title IV, §4115(f)(1), Aug. 18, 1990, 104 Stat. 521; Pub. L. 104–239, §13(c), Oct. 8, 1996, 110 Stat. 3136.
53714(b)	46 App.:1274(e)(2).	
53714(c)	46 App.:1274(e)(3).	
53714(d)	46 App.:1274(e)(5).	
53714(e)	46 App.:1274(e)(4).	

§ 53715. Escrow fund

(a) IN GENERAL.—If the proceeds of an obligation guaranteed under this chapter are to be used to finance the construction, reconstruction, or reconditioning of a vessel that will serve as security for a guarantee under this chapter, the Secretary may accept and hold in escrow, under an escrow agreement with the obligor, a portion of the proceeds of all obligations guaranteed under this chapter whose proceeds are to be so used which is equal to—

(1) the excess of—

(A) the principal amount of all obligations whose proceeds are to be so used; over

(B) 75 percent or 87.5 percent, whichever is applicable under section 53709(b) of this title, of the amount paid by or for the account of the obligor for the construction, reconstruction, or reconditioning of the vessel; plus

(2) any interest the Secretary may require on the amount described in paragraph (1).

(b) SECURITY INVOLVING BOTH UNCOMPLETED AND DELIVERED VESSELS.—If the security for the guarantee of an obligation relates both to a vessel to be constructed, reconstructed, or reconditioned and to a delivered vessel, the principal amount of the obligation shall be prorated for purposes of subsection (a) under regulations prescribed by the Secretary.

(c) DISBURSEMENT BEFORE TERMINATION OF AGREEMENT.—

(1) PURPOSES.—The Secretary shall disburse amounts in the escrow fund, as specified in the escrow agreement, to—

(A) pay amounts the obligor is obligated to pay for—

(i) the construction, reconstruction, or reconditioning of a vessel used as security for the guarantee; and

(ii) interest on the obligations;

(B) redeem the obligations under a refinancing guaranteed under this chapter; and

(C) pay any excess interest deposits to the obligor at times provided for in the escrow agreement.

(2) MANNER OF PAYMENT.—If a payment becomes due under the guarantee before the termination of the escrow agreement, the amount in the escrow fund at the time the payment becomes due, including realized income not yet paid to the obligor, shall be paid into the appropriate account under section 53717 of this title. The amount shall be credited against amounts due or to become due from the obligor to the Secretary on the guaranteed obligations or, to the extent not so required, be paid to the obligor.

(d) PAYMENTS REQUIRED BEFORE DISBURSEMENT.—

(1) IN GENERAL.—No disbursement shall be made under subsection (c) to any person until the total amount paid by or for the account of the obligor from sources other than the proceeds of the obligation equals at least 25 percent or 12.5 percent, whichever is applicable under section 53709(b) of this title, of the aggregate actual cost of the vessel, as previously approved by the Secretary. If the aggregate actual cost of the vessel has increased since the Secretary's initial approval or if it increases after the first disbursement is permitted under this subsection, then no further disbursements shall be made under subsection (c) until the total amount paid by or for the account of the obligor from sources other than the proceeds of the obligation equals at least 25 percent or 12.5 percent, as applicable, of the increase, as determined by the Secretary, in the aggregate actual cost of the vessel. This paragraph does not require the Secretary to consent to finance any increase in actual cost unless the Secretary determines that such an increase in the obligation meets all the terms and conditions of this chapter or other applicable law.

(2) DOCUMENTED PROOF OF PROGRESS REQUIREMENT.—The Secretary shall, by regulation, establish a transparent, independent, and risk-based process for verifying and documenting the progress of projects under construction before disbursing guaranteed loan funds. At a minimum, the process shall require documented proof of progress in connection with the construction, reconstruction, or reconditioning of a vessel or vessels before disbursements are made from the escrow fund. The Secretary may require that the obligor provide a certificate from an independent party certifying that the requisite progress in construction, reconstruction, or reconditioning has taken place.

(e) DISBURSEMENT ON TERMINATION OF AGREEMENT.—

(1) IN GENERAL.—If a payment has not become due under the guarantee before the ter-

mination of the escrow agreement, the balance of the escrow fund at the time of termination shall be disbursed to—

(A) prepay the excess of—

(i) the principal amount of all obligations whose proceeds are to be used to finance the construction, reconstruction, or reconditioning of the vessel used or to be used as security for the guarantee; over

(ii) 75 percent or 87.5 percent, whichever is applicable under section 53709(b) of this title, of the actual cost of the vessel to the extent paid; and

(B) pay interest on that prepaid amount of principal.

(2) REMAINING BALANCE.—Any remaining balance of the escrow fund shall be paid to the obligor.

(f) INVESTMENT.—The Secretary may invest and reinvest any part of an escrow fund in obligations of the United States Government with maturities such that the escrow fund will be available as required for purposes of the escrow agreement. Investment income shall be paid to the obligor when received.

(g) TERMS TO PROTECT GOVERNMENT.—The escrow agreement shall contain other terms the Secretary considers necessary to protect fully the interests of the Government.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1614; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(H), (3), Jan. 6, 2006, 119 Stat. 3555.)

AMENDMENTS NOT SHOWN IN TEXT

This section was derived from section 1279a of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(H), (3), Jan. 6, 2006, 119 Stat. 3555. For applicability of those amendments to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Section 1279a of the former Appendix to this title was amended by striking ''Secretary'' each place it appears and inserting ''Secretary or Administrator'' and by striking ''Secretary's'' in subsec. (g)(1) [now subsec. (d)(1) of this section] and inserting ''Secretary's or Administrator's''.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53715(a)	46 App.:1279a(a) (less proviso).	June 29, 1936, ch. 858, title XI, § 1108, formerly § 1111, as added Pub. L. 86–127, § 1(2), July 31, 1959, 73 Stat. 272; renumbered Pub. L. 92–507, § 5, Oct. 19, 1972, 86 Stat. 916; Pub. L. 97–31, § 12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 108–136, title XXXV, § 3521(a), Nov. 24, 2003, 117 Stat. 1799.
53715(b)	46 App.:1279a(a) (proviso).	
53715(c)	46 App.:1279a(b).	
53715(d)	46 App.:1279a(g).	
53715(e)	46 App.:1279a(c).	
53715(f)	46 App.:1279a(d), (e).	
53715(g)	46 App.:1279a(f).	

§ 53716. Deposit fund

(a) IN GENERAL.—There is a deposit fund in the Treasury for purposes of this section. The Secretary, in accordance with an agreement under subsection (b), may deposit into and hold in the fund cash belonging to an obligor to serve as collateral for a guarantee made under this chapter with respect to the obligor.

(b) AGREEMENT.—The Secretary and an obligor shall make a reserve fund or other collateral account agreement to govern the deposit, withdrawal, retention, use, and reinvestment of cash of the obligor held in the fund. The agreement shall contain—

(1) terms and conditions required by this section;

(2) terms that grant to the United States Government a security interest in all amounts deposited into the fund; and

(3) any additional terms considered by the Secretary to be necessary to protect fully the interests of the Government.

(c) INVESTMENT.—The Secretary may invest and reinvest any part of the amounts in the fund in obligations of the Government with maturities such that amounts in the fund will be available as required for purposes of the agreement under subsection (b). Cash balances in the fund in excess of current requirements shall be maintained in a form of uninvested funds, and the Secretary of the Treasury shall pay interest on these funds.

(d) WITHDRAWALS.—

(1) IN GENERAL.—Cash deposited into the fund may not be withdrawn without the consent of the Secretary.

(2) USE OF INCOME.—Subject to paragraph (3), the Secretary may pay any income earned on cash of an obligor deposited into the fund in accordance with the agreement with the obligor under subsection (b).

(3) RETENTION AGAINST DEFAULT.—The Secretary may retain and offset any or all of the cash of an obligor in the fund, and any income realized thereon, as part of the Secretary's recovery against the obligor in case of a default by the obligor on an obligation.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1616; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(H), (3), Jan. 6, 2006, 119 Stat. 3555.)

AMENDMENTS NOT SHOWN IN TEXT

This section was derived from section 1279b of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(H), (3), Jan. 6, 2006, 119 Stat. 3555. For applicability of those amendments to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Section 1279b of the former Appendix to this title was amended by striking ''Secretary'' each place it appears (except the second place in subsec. (c) [now subsec. (c) of this section]) and inserting ''Secretary or Administrator'' and by striking ''Secretary's'' in subsec. (d)(3) [now subsec. (d)(3) of this section] and inserting ''Secretary's or Administrator's''.

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53716	46 App.:1279b.	June 29, 1936, ch. 858, title XI, § 1109, as added Pub. L. 107–107, title XXXV, § 3503, Dec. 28, 2001, 115 Stat. 1392.

In subsection (a), the word ''established'' is omitted for consistency with other codified titles of the United States Code.

§ 53717. Management of funds in the Treasury

(a) DEFINITION.—In this section, the term ''FCRA'' means the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

(b) LOAN GUARANTEES BY SECRETARY OF TRANSPORTATION.—

(1) WHEN NOT SUBJECT TO FCRA.—The Secretary of Transportation shall account for payments and disbursements involving obligations guaranteed under this chapter and not subject to FCRA in an account in the Treasury entitled the Federal Ship Financing Fund Liquidating Account (a liquidating account as defined in FCRA).

(2) WHEN SUBJECT TO FCRA.—The Secretary of Transportation shall account for payments and disbursements involving obligations guaranteed under this chapter and subject to FCRA in a separate account in the Treasury entitled the Federal Ship Financing Guaranteed Loan Financing Account (a financing account as defined in FCRA).

(c) LOAN GUARANTEES BY SECRETARY OF COMMERCE.—

(1) WHEN NOT SUBJECT TO FCRA.—The Secretary of Commerce shall account for payments and disbursements involving obligations guaranteed under this chapter and not subject to FCRA in a separate account in the Treasury established for this purpose.

(2) WHEN SUBJECT TO FCRA.—The Secretary of Commerce shall account for payments and disbursements involving obligations guaranteed under this chapter and subject to FCRA in a separate account in the Treasury established for this purpose.

(d) DIRECT LOANS BY SECRETARY OF COMMERCE.—The Secretary of Commerce shall account for payments and disbursements involving direct loans made under this chapter in a separate account in the Treasury established for this purpose.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1616; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(B), (D), (c)(2), Jan. 6, 2006, 119 Stat. 3555, 3556.)

AMENDMENTS NOT SHOWN IN TEXT

This section was derived from sections 1272, 1274(g), and 1280 of the former Appendix to this title, which were amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(B), (D), (c)(2), Jan. 6, 2006, 119 Stat. 3555, 3556. For applicability of those amendments to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Sections 1272 and 1274(g) of the former Appendix to this title were amended by striking ''Secretary'' each place it appears and inserting ''Secretary or Administrator'', and section 1280 of the former Appendix to this title was amended by inserting ''or the Administrator of the Maritime Administration'' after ''Secretary''.

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53717	46 App.:1272.	June 29, 1936, ch. 858, title XI, § 1102, as added June 23, 1938, ch. 600, § 46, 52 Stat. 969; Sept. 3, 1954, ch. 1265, § 2, 68 Stat. 1268; Pub. L. 86–123, § 1(2), July 31, 1959, 73 Stat. 269; Pub. L. 92–507, § 2, Oct. 19, 1972, 86 Stat. 910; Pub. L. 97–31, § 12(136), Aug. 6, 1981, 95 Stat. 166.
	46 App.:1274(g).	June 29, 1936, ch. 858, title XI, § 1104A(g) [§ 1104A formerly § 1104], as added June 23, 1938, ch. 600, § 46, 52 Stat. 970; Aug. 4, 1939, ch. 417, § 14, 53 Stat. 1187; Sept. 28, 1950, ch. 1093, § 4, 64 Stat. 1078; Aug. 15, 1953, ch. 513, § 2, 67 Stat. 626; Sept. 3, 1954, ch. 1265, § 4, 68 Stat. 1269; Pub. L. 86–123, §§ 1(3), 2, July 31, 1959, 73 Stat. 269, 271; Pub. L. 86–127, § 1(3), (4), July 31, 1959, 73 Stat. 273; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 86–685, §§ 2, 3, Sept. 2, 1960, 74 Stat. 733; Pub. L. 90–341, June 15, 1968, 82 Stat. 180; Pub. L. 91–469, §§ 31, 32, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, § 3, Oct. 19, 1972, 86 Stat. 914; Pub. L. 96–561, title II, § 220(3)(D), Dec. 22, 1980, 94 Stat. 3294; Pub. L. 97–31, § 12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 97–35, title XVI, § 1606(d), Aug. 13, 1981, 95 Stat. 752; § 1104 renumbered as § 1104A, Pub. L. 101–380, title IV, § 4115(f)(1), Aug. 18, 1990, 104 Stat. 521.
	46 App.:1280.	Pub. L. 85–469, title I, § 101 (par. under heading ''Federal Ship Mortgage Insurance Fund''), June 25, 1958, 72 Stat. 231; Pub. L. 97–31, § 12(137), Aug. 6, 1981, 95 Stat. 166.

The Federal Ship Financing Fund which had been created by 46 App. U.S.C. 1272 is obsolete as a result of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.). This section codifies the current requirements and practices for the management of funds under this chapter, based on the requirements of that Act.

REFERENCES IN TEXT

The Federal Credit Reform Act of 1990, referred to in subsec. (a), is title V of Pub. L. 93–344, as added by Pub. L. 101–508, title XIII, § 13201(a), Nov. 5, 1990, 104 Stat. 1388–609, which is classified generally to subchapter III (§ 661 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

§ 53718. Annual report to Congress

The Secretary of Transportation shall report to Congress annually on the loan guarantee program under this chapter. Each report shall include—

(1) the size, in dollars, of the portfolio of loans guaranteed;

(2) the size, in dollars, of projects in the portfolio facing financial difficulties;

(3) the number and type of projects covered;

(4) a profile of pending loan applications;

(5) the amount of appropriations available for new guarantees;

(6) a profile of each project approved since the last report; and

(7) a profile of any defaults since the last report.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1617; Pub. L. 109–163, div. C, title XXXV, § 3507(c)(3), Jan. 6, 2006, 119 Stat. 3556.)

AMENDMENT NOT SHOWN IN TEXT

This section was derived from section 1280b of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(c)(3), Jan. 6, 2006, 119 Stat. 3556. For applicability of that amendment to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Section 1280b of the former Appendix to this title was amended by striking ''Secretary of Transportation'' and inserting ''Administrator of the Maritime Administration''.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53718	46 App.:1280b.	Pub. L. 108–136, title XXXV, § 3527, Nov. 24, 2003, 117 Stat. 1802.

SUBCHAPTER II—DEFAULT PROVISIONS

§ 53721. Rights of obligee

(a) DEMANDS BY OBLIGEES.—Except as provided in subsection (c), if an obligor has continued in default for 30 days in the payment of principal or interest on an obligation guaranteed under this chapter, the obligee or the obligee's agent may demand that the Secretary pay the unpaid principal amount of the obligation and the unpaid interest on the obligation to the date of payment. The demand must be made within the earlier of—

(1) a period that may be specified in the guarantee or a related agreement; or

(2) 90 days from the date of the default.

(b) PAYMENTS BY SECRETARY.—

(1) IN GENERAL.—If a demand is made under subsection (a), the Secretary shall pay to the obligee or the obligee's agent the unpaid principal amount of the obligation and the unpaid interest on the obligation to the date of payment. Payment shall be made within the earlier of—

(A) a period that may be specified in the guarantee or a related agreement; or

(B) 30 days from the date of the demand.

(2) IF NO EXISTING DEFAULT.—The Secretary is not required to make payment under this subsection if, within the appropriate period under paragraph (1), the Secretary finds that the obligor was not in default or that the default was remedied before the demand.

(c) ASSUMPTION OF RIGHTS AND OBLIGATIONS BEFORE DEMAND.—An obligee or the obligee's agent may not demand payment under this section if the Secretary, before the demand and on terms that may be provided in the obligation or a related agreement, has assumed the obligor's rights and duties under the obligation and any related agreement and made any payment in default. However, the guarantee of the obligation remains in effect after the Secretary's assumption.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1617; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(C), (F), Jan. 6, 2006, 119 Stat. 3555.)

AMENDMENTS NOT SHOWN IN TEXT

This section was derived from sections 1273(e) (last sentence) and 1275(a) of the former Appendix to this title, which were amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(C), (F), Jan. 6, 2006, 119 Stat. 3555. For applicability of those amendments to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Those provisions of the former Appendix to this title were amended by striking ''Secretary'' each place it appears and inserting ''Secretary or Administrator''.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53721(a)	46 App.:1275(a) (1st sentence less parenthetical).	June 29, 1936, ch. 858, title XI, § 1105(a), as added June 23, 1938, ch. 600, § 46, 52 Stat. 971; Aug. 15, 1953, ch. 513, § 3, 67 Stat. 626; Sept. 3, 1954, ch. 1265, § 5, 68 Stat. 1272; Aug. 7, 1956, ch. 1026, § 1(e)–(g), 70 Stat. 1087; Pub. L. 85–520, July 15, 1958, 72 Stat. 358; Pub. L. 91–469, § 33, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, § 3, Oct. 19, 1972, 86 Stat. 914; Pub. L. 97–31, § 12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 98–595, § 1(8), Oct. 30, 1984, 98 Stat. 3131.
53721(b)(1) ..	46 App.:1275(a) (last sentence less proviso).	
53721(b)(2) ..	46 App.:1275(a) (last sentence proviso).	
53721(c)	46 App.:1273(e) (last sentence).	June 29, 1936, ch. 858, title XI, § 1103(e) (last sentence), as added Pub. L. 98–595, § 1(1), Oct. 30, 1984, 98 Stat. 3130.
	46 App.:1275(a) (1st sentence parenthetical).	

§ 53722. Actions by Secretary

(a) GENERAL AUTHORITY.—On default under an obligation or related agreement between the Secretary and the obligor, the Secretary, on terms that may be provided in the obligation or agreement, may—

(1) assume the obligor's rights and duties under the obligation or agreement, make any payment in default, and notify the obligee or the obligee's agent of the default and the Secretary's assumption; or

(2) notify the obligee or the obligee's agent of the default.

(b) DEMANDS BY OBLIGEES.—

(1) DEMAND.—If the Secretary proceeds under subsection (a)(2), the obligee or the obligee's agent may demand that the Secretary pay the unpaid principal amount of the obligation and the unpaid interest on the obligation. The demand must be made within the earlier of—

(A) a period that may be specified in the guarantee or a related agreement; or

(B) 60 days from the date of the Secretary's notice.

(2) PAYMENT.—If a demand is made under paragraph (1), the Secretary shall pay to the obligee or the obligee's agent the unpaid principal amount of the obligation and the unpaid interest on the obligation to the date of payment. Payment shall be made within the earlier of—

(A) a period that may be specified in the guarantee or a related agreement; or

(B) 30 days from the date of the demand.

(c) CONTINUED EFFECT OF GUARANTEE.—A guarantee of an obligation remains in effect after an assumption of the obligation by the Secretary.

(d) ADDITIONAL RESPONSES.—If there is a default on an obligation, the Secretary shall conduct operations under this chapter in a manner that—

(1) maximizes the net present value return from the sale or disposition of assets associated with the obligation, including prompt referral to the Attorney General for collection as appropriate;

(2) minimizes the amount of any loss realized in the resolution of the guarantee;

(3) ensures adequate competition and fair and consistent treatment of offerors; and

(4) requires appraisal of assets by an independent appraiser.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1618; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(C), (F), Jan. 6, 2006, 119 Stat. 3555.)

AMENDMENTS NOT SHOWN IN TEXT

Subsecs. (a) to (c) of this section were derived from sections 1273(e) (last sentence) and 1275(b) of the former Appendix to this title, which were amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(C), (F), Jan. 6, 2006, 119 Stat. 3555. For applicability of those amendments to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Those provisions of the former Appendix to this title were amended by striking ''Secretary'' each place it appears and inserting ''Secretary or Administrator''.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53722(a), (b)	46 App.:1275(b).	June 29, 1936, ch. 858, title XI, § 1105(b), as added June 23, 1938, ch. 600, § 46, 52 Stat. 971; Aug. 15, 1953, ch. 513, § 3, 67 Stat. 626; Sept. 3, 1954, ch. 1265, § 5, 68 Stat. 1272; Aug. 7, 1956, ch. 1026, § 1(e)–(g), 70 Stat. 1087; Pub. L. 85–520, July 15, 1958, 72 Stat. 358; Pub. L. 91–469, § 33, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, § 3, Oct. 19, 1972, 86 Stat. 914; Pub. L. 97–31, § 12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 98–595, § 1(9), Oct. 30, 1984, 98 Stat. 3131.
53722(c)	46 App.:1273(e) (last sentence).	June 29, 1936, ch. 858, title XI, § 1103(e) (last sentence), as added Pub. L. 98–595, § 1(1), Oct. 30, 1984, 98 Stat. 3130.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53722(d)	46 App.:1275(f).	June 29, 1936, ch. 858, title XI, § 1105(f), as added Pub. L. 108–136, title XXXV, § 3524, Nov. 24, 2003, 117 Stat. 1801.

In subsection (a), before paragraph (1), the words ''an obligation or related agreement'' are substituted for ''a mortgage, loan agreement, or other security agreement'' for consistency in the revised chapter.

§ 53723. Payments by Secretary and issuance of obligations

(a) CASH PAYMENT.—Amounts required to be paid by the Secretary under section 53721 or 53722 of this title shall be paid in cash.

(b) ISSUANCE OF OBLIGATIONS.—If amounts in the appropriate account under section 53717 of this title are not sufficient to make a payment required under section 53721 or 53722 of this title, the Secretary may issue obligations to the Secretary of the Treasury. The Secretary, with the approval of the Secretary of the Treasury, shall prescribe the form, denomination, maturity, and other terms (except the interest rate) of the obligations. The Secretary of the Treasury shall set the interest rate for the obligations, considering the current average market yield on outstanding marketable obligations of the United States Government of comparable maturities during the month before the obligations are issued.

(c) PURCHASE OF OBLIGATIONS.—The Secretary of the Treasury shall purchase the obligations issued under this section. To purchase the obligations, the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of securities issued under chapter 31 of title 31. The purposes for which securities may be issued under that chapter are extended to include the purchase of obligations under this subsection. The Secretary of the Treasury may sell obligations purchased under this section. A redemption, purchase, or sale of the obligations by the Secretary of the Treasury is a public debt transaction of the Government.

(d) DEPOSITS AND REDEMPTIONS.—The Secretary shall deposit amounts borrowed under this section in the appropriate account under section 53717 of this title and make redemptions of the obligations from that account.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1618; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(G), Jan. 6, 2006, 119 Stat. 3555.)

AMENDMENT NOT SHOWN IN TEXT

This section was derived from section 1275(d) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(G), Jan. 6, 2006, 119 Stat. 3555. For applicability of that amendment to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Section 1275(d) of the former Appendix to this title was amended by striking ''Secretary'' the first, second, third, fifth, and last places it appears and inserting ''Secretary or Administrator''.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53723	46 App.:1275(d).	June 29, 1936, ch. 858, title XI, § 1105(d), as added June 23, 1938, ch. 600, § 46, 52 Stat. 972; Aug. 15, 1953, ch. 513, § 3, 67 Stat. 626; Sept. 3, 1954, ch. 1265, § 5, 68 Stat. 1272; Aug. 7, 1956, ch. 1026, § 1(e)–(g), 70 Stat. 1087; Pub. L. 85–520, July 15, 1958, 72 Stat. 358; Pub. L. 91–469, § 33, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, § 3, Oct. 19, 1972, 86 Stat. 914; Pub. L. 96–561, title II, § 220(4), Dec. 22, 1980, 94 Stat. 3294; Pub. L. 97–31, § 12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 97–35, title XVI, § 1606(e), Aug. 13, 1981, 95 Stat. 752.

In subsections (b) and (d), the words ''appropriate account under section 53717 of this title'' are substituted for ''Federal Ship Financing Fund'' because the accounts under section 53717 replace the Federal Ship Financing Fund. See the explanation for section 53717.

§ 53724. Rights to secured property

(a) ACQUISITION OF SECURITY RIGHTS.—When the Secretary makes a payment on, or assumes, an obligation under section 53721 or 53722 of this title, the Secretary acquires the rights under the security agreement with the obligor in the security held by the Secretary to guarantee the obligation.

(b) USE AND DISPOSITION OF SECURED PROPERTY.—Notwithstanding any other law relating to the acquisition, handling, or disposal of property by the United States Government, the Secretary has the right, in the Secretary's discretion, to complete, reconstruct, recondition, renovate, repair, maintain, operate, charter, or sell any property acquired under a security agreement with an obligor, or to place a vessel so acquired in the National Defense Reserve Fleet. The terms of a sale under this subsection shall be as approved by the Secretary.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1619; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(F), Jan. 6, 2006, 119 Stat. 3555.)

AMENDMENT NOT SHOWN IN TEXT

This section was derived from section 1275(c) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(F), Jan. 6, 2006, 119 Stat. 3555. For applicability of that amendment to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Section 1275(c) of the former Appendix to this title was amended by striking ''Secretary'' each place it appears and inserting ''Secretary or Administrator''.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53724	46 App.:1275(c).	June 29, 1936, ch. 858, title XI, § 1105(c), as added June 23, 1938, ch. 600, § 46, 52 Stat. 971; Aug. 15, 1953, ch. 513, § 3, 67 Stat. 626; Sept. 3, 1954, ch. 1265, § 5, 68 Stat. 1272; Aug. 7, 1956, ch. 1026, § 1(e)–(g), 70 Stat. 1087; Pub. L. 85–520, July 15, 1958, 72 Stat. 358; Pub. L. 91–469, § 33, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, § 3, Oct. 19, 1972, 86 Stat. 914; Pub. L. 97–31, § 12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 98–595, § 1(10), Oct. 30, 1984, 98 Stat. 3131.

§ 53725. Actions against obligor

(a) IN GENERAL.—For a default under a guaranteed obligation or related agreement, the Secretary may take any action against the obligor or another liable party that the Secretary considers necessary to protect the interests of the United States Government. A civil action may be brought in the name of the United States or the obligee. The obligee shall make available to the Government all records and evidence necessary to prosecute the action.

(b) TITLE, POSSESSION, AND PURCHASE.—

(1) IN GENERAL.—The Secretary may—

(A) accept a conveyance of title to and possession of property from the obligor or another party liable to the Secretary; and

(B) purchase the property for an amount not greater than the unpaid principal amount of the obligation and interest thereon.

(2) PAYMENT OF EXCESS.—If, through the sale of property, the Secretary receives an amount of cash greater than the unpaid principal amount of the obligation, the unpaid interest on the obligation, and the expenses of collecting those amounts, the Secretary shall pay the excess to the obligor.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1619; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(F), Jan. 6, 2006, 119 Stat. 3555.)

AMENDMENT NOT SHOWN IN TEXT

This section was derived from section 1275(e) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(F), Jan. 6, 2006, 119 Stat. 3555. For applicability of that amendment to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Section 1275(e) of the former Appendix to this title was amended by striking ''Secretary'' each place it appears and inserting ''Secretary or Administrator''.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53725	46 App.:1275(e).	June 29, 1936, ch. 858, title XI, § 1105(e), as added June 23, 1938, ch. 600, § 46, 52 Stat. 971; Aug. 15, 1953, ch. 513, § 3, 67 Stat. 626; Sept. 3, 1954, ch. 1265, § 5, 68 Stat. 1272; Aug. 7, 1956, ch. 1026, § 1(e)–(g), 70 Stat. 1087; Pub. L. 85–520, July 15, 1958, 72 Stat. 358; Pub. L. 91–469, § 33, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, § 3, Oct. 19, 1972, 86 Stat. 915; Pub. L. 97–31, § 12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 98–595, § 1(11), Oct. 30, 1984, 98 Stat. 3131.

In subsection (a), the words ''may take any action'' are substituted for ''shall take such action . . . that, in his discretion, may be required'' for clarity and to eliminate unnecessary words.

SUBCHAPTER III—PARTICULAR PROJECTS

§ 53731. Commercial demonstration ocean thermal energy conversion facilities and plantships

(a) IN GENERAL.—Under subchapter I of this chapter, the Secretary may guarantee or make a commitment to guarantee the payment of the principal of and interest on an obligation that aids in financing (including reimbursement of an obligor for expenditures previously made for) the construction, reconstruction, or reconditioning of a commercial demonstration ocean thermal energy conversion facility or plantship. This section may be used to guarantee obligations for a total of not more than 5 separate facilities and plantships or a demonstrated 400 megawatt capacity, whichever comes first.

(b) APPLICABILITY OF OTHER PROVISIONS.—Except as otherwise provided in this section, a guarantee or commitment to guarantee under this section is subject to all the provisions applicable to a guarantee or commitment to guarantee under subchapter I of this chapter.

(c) ECONOMIC SOUNDNESS.—The required determination of economic soundness under section 53708 of this title applies to a guarantee or commitment to guarantee for that portion of a facility or plantship not to be supported with appropriated Federal funds.

(d) REASONABLENESS OF RISK.—A guarantee or commitment to guarantee may not be made under this section unless the Secretary of Energy, in consultation with the Secretary, certifies to the Secretary that, for the facility or plantship for which the guarantee or commitment to guarantee is sought, there is sufficient guarantee of performance and payment to lower the risk to the United States Government to a reasonable level. In deciding whether to issue such a certification, the Secretary of Energy shall consider—

(1) the successful demonstration of the technology to be used in the facility at a scale sufficient to establish the likelihood of technical and economic viability in the proposed market; and

(2) the need of the United States to develop new and renewable sources of energy and the benefits to be realized from the construction and successful operation of the facility or plantship.

(e) AMOUNT OF OBLIGATION.—The total principal amount of an obligation guaranteed under this section may not exceed 87.5 percent of—

(1) the actual cost or depreciated actual cost of the facility or plantship; or

(2) if the facility or plantship is supported with appropriated Federal funds, the total principal amount of that portion of the actual cost or depreciated actual cost for which the obligor is obligated to secure financing under the agreement between the obligor and the Department of Energy or other Federal agency.

(f) OTEC DEMONSTRATION FUND.—

(1) IN GENERAL.—There is a special subaccount, known as the OTEC Demonstration Fund, in the account established under section 53717(b)(1) of this title.

(2) USE AND OPERATION.—The OTEC Demonstration Fund shall be used for obligation guarantees authorized under this section that do not qualify under subchapter I of this chapter. Except as otherwise provided in this section, the OTEC Demonstration Fund shall be operated in the same manner as the parent account. However—

(A) amounts received by the Secretary under subchapter I of this chapter related to guarantees or commitments to guarantee made under this section shall be deposited only in the OTEC Demonstration Fund; and

(B) when obligations issued by the Secretary under section 53723 of this title related to the OTEC Demonstration Fund are outstanding, any amount received by the Secretary under subchapter I of this chapter related to ocean thermal energy conversion facilities or plantships shall be deposited in the OTEC Demonstration Fund.

(3) TRANSFERS.—Assets in the OTEC Demonstration Fund may be transferred to the parent account when and to the extent the balance in the OTEC Demonstration Fund exceeds the total guarantees or commitments to guarantee made under this section then outstanding, plus obligations issued by the Secretary under section 53723 of this title related to the OTEC Demonstration Fund.

(4) LIABILITY.—The parent account is not liable for a guarantee or commitment to guarantee made under this section.

(5) MAXIMUM UNPAID PRINCIPAL AMOUNT.—The total unpaid principal amount of the obligations guaranteed with the backing of the OTEC Demonstration Fund and outstanding at any one time may not exceed $1,650,000,000.

(g) ISSUANCE AND PAYMENT OF OBLIGATIONS.—Section 53723 of this title applies to the OTEC Demonstration Fund. However, obligations issued by the Secretary under that section related to the OTEC Demonstration Fund shall be payable only from proceeds realized by the OTEC Demonstration Fund.

(h) TAXATION OF INTEREST.—Interest on an obligation guaranteed under this section shall be included in gross income under chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 1).

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1620; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(2)(H), Jan. 6, 2006, 119 Stat. 3555.)

AMENDMENT NOT SHOWN IN TEXT

This section was derived from section 1279c of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(2)(H), Jan. 6, 2006, 119 Stat. 3555. For applicability of that amendment to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Section 1279c of the former Appendix to this title was amended by striking ''Secretary'' each place it appears except the first and fourth places in subsection (b) and inserting ''Administrator''.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53731(a)	46 App.:1279c(a) (1st sentence), (1), (4).	June 29, 1936, ch. 858, title XI, § 1110, as added Pub. L. 96–320, title II, § 203(a), Aug. 3, 1980, 94 Stat. 992; Pub. L. 97–31, § 12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 97–35, title XVI, § 1606(f), Aug. 13, 1981, 95 Stat. 752; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 104–239, § 11(3), Oct. 8, 1996, 110 Stat. 3134.
53731(b)	46 App.:1279c(a) (2d sentence words before (1)).	
53731(c)	46 App.:1279c(a)(2).	
53731(d)	46 App.:1279c(b).	
53731(e)	46 App.:1279c(a)(3).	
53731(f)	46 App.:1279c(c).	
53731(g)	46 App.:1279c(d).	
53731(h)	46 App.:1279c(e).	

In subsection (a), the words ''upon such terms as he shall prescribe'' are omitted as unnecessary because section 53702(a) of the revised title provides the Secretary authority to prescribe the terms. The text of 46 App. U.S.C. 1279c(a)(1) is omitted as obsolete.

In subsection (f)(1), the words ''account established under section 53717(b)(1) of this title'' are substituted for ''Federal Ship Financing Fund'' because the accounts under section 53717 replace the Federal Ship Financing Fund. See the explanation for section 53717.

In subsection (f)(2)(B), the word ''conversion'' is substituted for ''conversional'' to correct an apparent error.

§ 53732. Eligible export vessels

(a) APPLICABLE TERMS.—The Secretary may guarantee an obligation for an eligible export vessel in accordance with—

(1) the terms applicable under this chapter for vessels documented under the laws of the United States; or

(2) other terms the Secretary determines are more favorable than those terms and compatible with export credit terms offered by foreign governments for the sale of vessels built in foreign shipyards.

(b) INTERAGENCY COUNCIL.—

(1) ESTABLISHMENT.—There is an interagency council to carry out this section.

(2) COMPOSITION.—The council is composed of the following individuals or their designees:

(A) The Secretary of Transportation, who is the chairman of the council.

(B) The Secretary of the Treasury.

(C) The Secretary of State.

(D) The Assistant to the President for Economic Policy.

(E) The United States Trade Representative.

(F) The President and Chairman of the Export-Import Bank of the United States.

(3) FUNCTIONS.—The council shall—

(A) obtain information on shipbuilding loan guarantees, direct and indirect subsidies, and other favorable treatment of shipyards provided by foreign governments to shipyards in competition with United States shipyards;

(B) consult regularly with United States shipbuilders to obtain the essential information about international shipbuilding competition on which to set terms for loan guarantees under subsection (a)(2); and

(C) provide guidance to the Secretary in establishing terms for loan guarantees under subsection (a)(2).

(4) ANNUAL REPORT.—Not later than January 31 of each year, the Secretary shall submit to Congress a report on activities of the Secretary under this section during the preceding year. The report shall include—

(A) documentation of sources of information about assistance by governments of other countries to shipyards in those countries; and

(B) a summary of recommendations made to the Secretary during the preceding year about applications submitted to the Secretary during that year for loan guarantees to construct eligible export vessels.

(c) REQUIRED FINDINGS.—

(1) BENEFIT TO SHIPBUILDING INDUSTRY.—The Secretary may not guarantee or make a commitment to guarantee an obligation for an eligible export vessel unless the Secretary finds that the construction, reconstruction, or reconditioning of the vessel will aid in the transition of United States shipyards to commercial activities or will preserve shipbuilding assets that would be essential in time of war or national emergency.

(2) PRIORITY OF DOCUMENTED VESSELS.—The Secretary may not make a commitment to guarantee an obligation for an eligible export vessel unless the Secretary determines that making the commitment will not result in denial of an economically sound application for a commitment to guarantee an obligation for a vessel documented under the laws of the United States and operating in the domestic or foreign commerce of the United States. The Secretary has sole discretion in making the determination. In making the determination, the Secretary shall consider—

(A) the status and economic soundness of pending applications for commitments to guarantee obligations for vessels documented under the laws of the United States that are operating or will be operating in the domestic or foreign commerce of the United States; and

(B) the amount of guarantee authority available.

(d) RESTRICTION ON TRANSFER OF VESSEL.—The Secretary may not guarantee or make a com-

mitment to guarantee an obligation for an eligible export vessel unless the owner of the vessel agrees with the Secretary that the vessel will not be transferred to a country designated by the Secretary of Defense as a country whose interests are hostile to the interests of the United States.

(e) REVIEW BY SECRETARY OF DEFENSE.—

(1) NOTIFICATION.—The Secretary shall promptly notify the Secretary of Defense of the receipt of an application for a loan guarantee for an eligible export vessel.

(2) DISAPPROVAL.—The Secretary of Defense, within 30 days after receiving the notice, may disapprove the guarantee based on an assessment of the potential use of the vessel in a manner that may harm the national security interests of the United States. The Secretary may not disapprove a guarantee solely because of the type of vessel to be constructed.

(3) DELEGATION.—The authority of the Secretary of Defense to disapprove a guarantee under this subsection may be delegated only to a civilian officer of the Department of Defense appointed by the President by and with the advice and consent of the Senate.

(4) PROHIBITION.—The Secretary may not make a loan guarantee disapproved by the Secretary of Defense under this subsection.

(f) EXPIRATION OF AUTHORITY.—The Secretary may not issue a commitment to guarantee an obligation for an eligible export vessel under this chapter after the last date on which such a commitment may be issued under any treaty or convention entered into after November 30, 1993, that prohibits guarantee of such an obligation.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1621; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(C), (D), (2)(E), (F), (I), (J), (b)(3)(A), (5), (8), Jan. 6, 2006, 119 Stat. 3555, 3556.)

AMENDMENTS NOT SHOWN IN TEXT

Subsection (a) of this section was derived from section 1279d(a) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(2)(I), Jan. 6, 2006, 119 Stat. 3555. Section 1279d(a) of the former Appendix to this title was amended by striking ''Secretary'' each place it appears and inserting ''Administrator''.

Subsection (b) of this section was derived from section 1279d(b) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(2)(I), (J), (b)(8), Jan. 6, 2006, 119 Stat. 3555, 3556. Section 1279d(b) of the former Appendix to this title was amended by striking ''Secretary'' each place it appears in par. (2) [now pars. (3)(A) and (C)] and par. (4) (except the first) and inserting ''Administrator'' and by striking ''Secretary of Transportation'' each place it appears and inserting ''Administrator''.

Subsection (c)(1) of this section was derived from section 1274(d)(3)(A) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(D), (2)(E), Jan. 6, 2006, 119 Stat. 3555. Section 1274(d)(3)(A) of the former Appendix to this title was amended by striking ''Secretary'' each place it appears and inserting ''Secretary or Administrator'' and by striking ''Secretary'' each place it appears and inserting ''Administrator''.

Subsections (c)(2) and (f) of this section were derived from section 1273(g) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(C), Jan. 6, 2006, 119 Stat. 3555, 3556. Section 1273(g) of the former Appendix to this title was amended by striking ''Secretary'' each place it appears and inserting ''Secretary or Administrator''.

Subsection (d) of this section was derived from section 1274(d)(3)(B) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(b)(3)(A), Jan. 6, 2006, 119 Stat. 3556. Section 1274(d)(3)(B) of the former Appendix to this title was amended by striking ''Secretary of Transportation'' and inserting ''Administrator''.

Subsection (e) of this section was derived from section 1274(j) of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(2)(F), (b)(5), Jan. 6, 2006, 119 Stat. 3555, 3556. Section 1274(j) of the former Appendix to this title was amended by striking ''Secretary'' in par. (1) [now pars. (1) to (3)] the first, fifth, and seventh places it appears and inserting ''Administrator'' and by striking ''The Secretary of Transportation'' in par. (2) [now par. (4)] and inserting ''The Administrator''.

For applicability of those amendments to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53732(a)	46 App.:1279d(a).	June 29, 1936, ch. 858, title XI, § 1111, as added Pub. L. 103–160, div. A, title XIII, § 1355(a), Nov. 30, 1993, 107 Stat. 1811.
53732(b)	46 App.:1279d(b).	
53732(c)(1) ..	46 App.:1274(d)(3)(A).	June 29, 1936, ch. 858, title XI, § 1104A(d)(3), (j), as added Pub. L. 103–160, div. A, title XIII, § 1356(3)(D), (E), Nov. 30, 1993, 107 Stat. 1813, 1814.
53732(c)(2) ..	46 App.:1273(g)(1).	June 29, 1936, ch. 858, title XI, § 1103(g), as added Pub. L. 103–160, div. A, title XIII, § 1356(2)(B), Nov. 30, 1993, 107 Stat. 1812.
53732(d)	46 App.:1274(d)(3)(B).	
53732(e)	46 App.:1274(j).	
53732(f)	46 App.:1273(g)(2).	

In subsection (f), the source provides that the authority to issue commitments to guarantee obligations for eligible export vessels expires after the later of three events. The first event, which is ''(A) the 5th anniversary of the date on which the Secretary publishes final regulations setting forth the application procedures for the issuance of commitments to guarantee obligations for eligible export vessels'', is omitted because the final regulations were published on September 16, 1994. See 59 Fed. Reg. 47548. The second event, which is ''(B) the last day of any 5-year period in which funding and guarantee authority for obligations for eligible export vessels have been continuously available'', is omitted because that date was November 11, 1998, five years after enactment of the Department of Defense Appropriations Act, 1994 (Pub. L. 103–139, Nov. 11, 1993, 107 Stat. 1418).

§ 53733. Shipyard modernization and improvement

(a) DEFINITIONS.—In this section:

(1) ADVANCED SHIPBUILDING TECHNOLOGY.—The term ''advanced shipbuilding technology'' includes—

(A) numerically controlled machine tools, robots, automated process control equipment, computerized flexible manufacturing systems, associated computer software, and other technology for improving shipbuilding and related industrial production that advance the state-of-the-art; and

(B) novel techniques and processes designed to improve shipbuilding quality, productivity, and practice, and to promote sustainable development, including engineering design, quality assurance, concurrent engineering, continuous process production technology, energy efficiency, waste minimization, design for recyclability or parts reuse, inventory management, upgraded worker skills, and communications with customers and suppliers.

(2) GENERAL SHIPYARD FACILITY.—The term ''general shipyard facility'' means—

(A) for operations on land—

(i) a structure or appurtenance thereto designed for the construction, reconstruction, repair, rehabilitation, or refurbishment of a vessel, including a graving dock, building way, ship lift, wharf, or pier crane;

(ii) the land necessary for the structure or appurtenance; and

(iii) equipment that is for use with the structure or appurtenance and that is necessary for performing a function referred to in clause (i); and

(B) for operations not on land, a vessel, floating drydock, or barge built in the United States and used for, equipped to be used for, or of a type normally used for, performing a function referred to in subparagraph (A)(i).

(3) MODERN SHIPBUILDING TECHNOLOGY.—The term ''modern shipbuilding technology'' means the best available proven technology, techniques, and processes appropriate to enhancing the productivity of shipyards.

(b) GENERAL AUTHORITY.—Under subchapter I of this chapter, the Secretary may guarantee or make a commitment to guarantee the payment of the principal of and interest on an obligation for advanced shipbuilding technology and modern shipbuilding technology of a general shipyard facility in the United States. Only a private shipyard is eligible to receive a guarantee.

(c) APPLICABILITY OF OTHER PROVISIONS.—Except as otherwise provided in this section, a guarantee or commitment to guarantee under this section is subject to all the provisions applicable to a guarantee or commitment to guarantee under subchapter I of this chapter.

(d) AMOUNT OF OBLIGATION.—The principal amount of an obligation guaranteed under this chapter may not exceed 87.5 percent of the actual cost of the advanced shipbuilding technology or modern shipbuilding technology.

(e) TRANSFER OF AMOUNTS.—The Secretary may accept the transfer of amounts from a department, agency, or instrumentality of the United States Government and may use those amounts to cover the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) of making guarantees or commitments to guarantee under this section.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1623; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(2)(K), Jan. 6, 2006, 119 Stat. 3555.)

AMENDMENT NOT SHOWN IN TEXT

This section was derived in part from section 1279e of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(2)(K), Jan. 6, 2006, 119 Stat. 3555. For applicability of that amendment to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Section 1279e of the former Appendix to this title was amended by striking ''Secretary'' each place it appears and inserting ''Administrator''.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53733(a)	46 App.:1279e(d).	June 29, 1936, ch. 858, title XI, § 1112, as added Pub. L. 103–160, div. A, title XIII, § 1357(a), Nov. 30, 1993, 107 Stat. 1814.
53733(b)	46 App.:1279e(a). 46 App.:1280a.	Pub. L. 103–160, title XIII, § 1358, Nov. 30, 1993, 107 Stat. 1816.
53733(c)	46 App.:1279e(b) (words before ''except'').	
53733(d)	46 App.:1279e(b) (words beginning with ''except'').	
53733(e)	46 App.:1279e(c).	

In subsection (a)(2)(A)(i), the words ''(as defined in title 1)'' are omitted as unnecessary because chapter 1 of the revised title contains a title-wide definition of ''vessel'' that incorporates the definition in title 1, United States Code.

In subsection (b), the words ''and subject to the terms the Secretary shall be prescribe'' are omitted as unnecessary because section 53702(a) of the revised title provides the Secretary authority to prescribe the terms. The words ''Only a private shipyard is eligible to receive a guarantee'' are substituted for 46 App. U.S.C. 1280a to eliminate unnecessary words.

§ 53734. Replacement of vessels because of changes in operating standards

(a) GENERAL AUTHORITY.—Notwithstanding any other provision of this chapter, the Secretary, on terms the Secretary may prescribe, may guarantee or make a commitment to guarantee the payment of the principal of and interest on an obligation that aids in financing or refinancing (including reimbursement of an obligor for expenditures previously made for) a contract for the construction or reconstruction of a vessel if—

(1) the vessel is designed and to be used for commercial use in coastwise, intercoastal, or foreign trade;

(2) the construction or reconstruction is necessary to replace a vessel that cannot continue to be operated because of a change required by law in the standards for the operation of vessels, and the applicant for the guarantee or commitment would not otherwise legally be able to continue operating vessels in the trades in which the applicant operated vessels before the change;

(3) the applicant is presently engaged in transporting cargoes in vessels of the type and

class that will be constructed or reconstructed under this section and agrees to employ vessels constructed or reconstructed under this section as replacements only for vessels made obsolete by the change in operating standards;

(4) the capacity of the vessels to be constructed or reconstructed under this section will not increase the cargo carrying capacity of the vessels being replaced;

(5) the Secretary has not determined that the market demand for the vessel over its useful life will diminish so as to make granting the guarantee fiduciarily imprudent;

(6) the vessel, if to be reconstructed, will have a useful life of at least 15 years after the reconstruction; and

(7) the Secretary has considered the criteria specified in section 53708(a)(3)–(5) of this title.

(b) TERM AND AMOUNT OF OBLIGATION.—

(1) TERM.—The term of an obligation guaranteed under this section may not exceed 25 years.

(2) AMOUNT.—The amount of an obligation guaranteed under this section may not exceed 87.5 percent of the actual cost or depreciated actual cost to the applicant for the construction or reconstruction of the vessel. The Secretary may not establish a percentage under this paragraph that is to be applied uniformly to all guarantees or commitments to guarantee made under this section.

(c) APPLICABILITY OF OTHER PROVISIONS.—A guarantee or commitment to guarantee under this section is also subject to sections 53701, 53702(a), 53704, 53705, 53707(a), 53708(d) and (e), 53709(a), 53710(a)(1), (2), and (4) and (c), 53711(a), 53713, 53714, 53717, and 53721–53725 of this title.

(d) SECURITY AGAINST DEFAULT.—The Secretary shall require by regulation that an applicant under this section provide adequate security against default.

(e) GUARANTEE FEES.—The Secretary may establish a fee for the guarantee of an obligation under this section that is in addition to the fee established under section 53714 of this title. The fee may be—

(1) an annual fee of not more than an additional 1 percent added to the fee established under section 53714 of this title; or

(2) a fee based on the amount of the obligation versus the percentage of the obligor's fleet being replaced by vessels constructed or reconstructed under this section.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1624; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(E), Jan. 6, 2006, 119 Stat. 3555.)

AMENDMENT NOT SHOWN IN TEXT

This section was derived from section 1274a of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(E), Jan. 6, 2006, 119 Stat. 3555. For applicability of that amendment to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Section 1274a of the former Appendix to this title was amended by striking ''Secretary'' each place it appears and inserting ''Secretary or Administrator''.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53734(a)	46 App.:1274a(a), (b)(3).	June 29, 1936, ch. 858, title XI, § 1104B, as added Pub. L. 101–380, title IV, § 4115(f)(2), Aug. 18, 1990, 104 Stat. 521; amended Pub. L. 102–587, title VI, § 6204, Nov. 4, 1992, 106 Stat. 5094; Pub. L. 103–160, div. A, title XIII, § 1356(4), Nov. 30, 1993, 107 Stat. 1814; Pub. L. 104–239, § 11(2), Oct. 8, 1996, 110 Stat. 3134.
53734(b)	46 App.:1274a(b) (less (3)).	
53734(c)	46 App.:1274a(d).	
53734(d)	46 App.:1274a(c)(1) (1st sentence).	
53734(e)	46 App.:1274a(c)(1) (2d sentence), (2).	

In subsection (a), in paragraph (1), the words ''as defined in section 1244 of this Appendix'' are omitted because the definition of ''foreign commerce or trade'' in chapter 1 of the revised title applies without having to say so specifically. Paragraph (6) is substituted for 46 App. U.S.C. 1274a(b)(3) to improve the organization of the source provisions.

In subsection (b)(2), the words ''by rule, regulation, or procedure'' are omitted as unnecessary and for consistency with section 53709(d) of the revised title.

In subsections (c) and (e), the language concerning the Vessel Replacement Guarantee Fund and the Federal Ship Financing Fund is omitted as obsolete. See the explanation for section 53717.

§ 53735. Fisheries financing and capacity reduction

(a) DEFINITION.—In this section, the term ''program'' means a fishing capacity reduction program established under section 312 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a).

(b) GUARANTEE AUTHORITY.—The Secretary may guarantee the repayment of debt obligations issued by entities under this section. Debt obligations to be guaranteed may be issued by any entity that has been approved by the Secretary and has agreed with the Secretary to conditions the Secretary considers necessary for this section to achieve the objective of the program and to protect the interest of the United States.

(c) REQUIREMENTS OF OBLIGATIONS.—A debt obligation guaranteed under this section shall—

(1) be treated in the same manner and to the same extent as other obligations guaranteed under this chapter, except with respect to provisions of this chapter that by their nature cannot be applied to obligations guaranteed under this section;

(2) have the fishing fees established under the program paid into a separate subaccount of the fishing capacity reduction fund established under this section;

(3) not exceed $100,000,000 in an unpaid principal amount outstanding at any one time for a program;

(4) have such maturity (not to exceed 20 years), take such form, and contain such conditions as the Secretary determines necessary for the program to which they relate;

(5) have as the exclusive source of repayment (subject to the second sentence of subsection (d)(2)) and as the exclusive payment

security, the fishing fees established under the program; and

(6) at the discretion of the Secretary be issued in the public market or sold to the Federal Financing Bank.

(d) FISHING CAPACITY REDUCTION FUND.—

(1) IN GENERAL.—There is a separate account in the Treasury, known as the Fishing Capacity Reduction Fund. Within the Fund, at least one subaccount shall be established for each program into which shall be paid all fishing fees established under the program and other amounts authorized for the program.

(2) AVAILABILITY OF AMOUNTS.—Amounts in the Fund shall be available, without appropriation or fiscal year limitation, to the Secretary to pay the cost of the program, including payments to financial institutions to pay debt obligations incurred by entities under this section. Funds available for this purpose from other amounts available for the program may also be used to pay those debt obligations.

(3) INVESTMENT.—Amounts in the Fund that are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of the United States Government.

(e) REGULATIONS.—The Secretary shall prescribe regulations the Secretary considers necessary to carry out this section.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1625; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(H), (d), Jan. 6, 2006, 119 Stat. 3555, 3557.)

AMENDMENT NOT SHOWN IN TEXT

This section was derived from section 1279f of the former Appendix to this title, which was amended by Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(H), Jan. 6, 2006, 119 Stat. 3555. For applicability of that amendment to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Section 1279f of the former Appendix to this title was amended by striking ''Secretary'' each place it appears and inserting ''Secretary or Administrator''.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53735(a)	46 App.:1279f(e).	June 29, 1936, ch. 858, title XI, § 1111, as added Pub. L. 104–297, title III, § 303, Oct. 11, 1996, 110 Stat. 3616; Pub. L. 104–208, title I, § 101 [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009–41.
53735(b)	46 App.:1279f(a).	
53735(c)	46 App.:1279f(b).	
53735(d)	46 App.:1279f(c).	
53735(e)	46 App.:1279f(d).	

CODIFICATION

This section was derived from section 1111 of act June 29, 1936, ch. 858, as added by Pub. L. 104–297, § 303, which was classified to section 1279f of the former Appendix to this title. Section 1111 was renumbered section 1113 of the Act by Pub. L. 109–163, div. C, title XXXV, § 3507(d), Jan. 6, 2006, 119 Stat. 3557. See Historical and Revision notes above and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

CHAPTER 539—WAR RISK INSURANCE

Sec.
53901. Definitions.
53902. Authority to provide insurance.
53903. Insurable interests.
53904. Liability insurance for persons involved in war or defense efforts.
53905. Agency insurance.
53906. Hull insurance valuation.
53907. Reinsurance.
53908. Additional insurance privately obtained.
53909. War risk insurance revolving fund.
53910. Administrative.
53911. Civil actions for losses.
53912. Expiration date.

§ 53901. Definitions

In this chapter:

(1) AMERICAN VESSEL.—The term ''American vessel'' includes—

(A) a documented vessel with a registry or coastwise endorsement under chapter 121 of this title;

(B) an undocumented vessel owned or chartered by or made available to the United States Government; and

(C) a tug, barge, or other watercraft (whether or not documented) owned by a citizen of the United States and used in essential water transportation or in the fisheries, except only for sport fishing.

(2) CARGO.—The term ''cargo'' includes a loaded or empty container on a vessel.

(3) TRANSPORTATION IN THE WATERBORNE COMMERCE OF THE UNITED STATES.—The term ''transportation in the waterborne commerce of the United States'' includes the operation of a vessel in the fisheries, except only for sport fishing.

(4) WAR RISKS.—The term ''war risks'' includes, to the extent the Secretary of Transportation determines—

(A) any part of a loss excluded from marine insurance coverage under a ''free of capture or seizure'' clause or analogous clause; and

(B) any other loss from a hostile act, including confiscation, expropriation, nationalization, or deprivation.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1626.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53901(1)	46 App.:1281(a).	June 29, 1936, ch. 858, title XII, §§ 1201(a), (b), as added Sept. 7, 1950, ch. 906, 64 Stat. 773.
53901(2)	46 App.:1283(b) (last sentence).	June 29, 1936, ch. 858, title XII, § 1203(b) (last sentence), as added Sept. 7, 1950, ch. 906, 64 Stat. 774; Pub. L. 94–523, § 2, Oct. 17, 1976, 90 Stat. 2474.
53901(3)	46 App.:1281(b).	
53901(4)	46 App.:1281(c).	June 29, 1936, ch. 858, title XII, § 1201(c), as added Sept. 7, 1950, ch. 906, 64 Stat. 773; restated Pub. L. 107–107, title XXXV, § 3502, Dec. 28, 2001, 115 Stat. 1392.

In paragraph (1)(A), the words ''a documented vessel with a registry or coastwise endorsement under chapter 121 of this title'' are substituted for ''any vessel registered, enrolled, or licensed under the laws of the United States'' because of 46 U.S.C. 12101(b).

In paragraph (1)(B). the words ''or any department or agency thereof'' are omitted as surplus.

In paragraph (1)(C), the word ''fisheries'' is substituted for ''fishing trade or industry'' because of the definition of ''fisheries'' in chapter 1 of the revised title.

§ 53902. Authority to provide insurance

(a) IN GENERAL.—With the approval of the President, and after such consultation with interested agencies of United States Government as the President may require, the Secretary of Transportation may provide insurance and reinsurance against loss or damage from war risks as provided by this chapter whenever it appears to the Secretary that insurance adequate for the needs of the waterborne commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do insurance business in a State of the United States.

(b) CONSIDERATION OF RISK.—Insurance or reinsurance under this chapter shall be based, insofar as practicable, on consideration of the risk involved.

(c) AVAILABILITY OF VESSEL DURING WAR OR NATIONAL EMERGENCY.—Insurance or reinsurance for a vessel may be provided under this chapter only on the condition that the vessel will be available to the Government in time of war or national emergency.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1627.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53902	46 App.:1282.	June 29, 1936, ch. 858, title XII, § 1202, as added Sept. 7, 1950, ch. 906, 64 Stat. 773; Pub. L. 101–115, § 7(a), Oct. 13, 1989, 103 Stat. 694.

§ 53903. Insurable interests

(a) IN GENERAL.—The Secretary of Transportation may provide insurance and reinsurance under this chapter for—

(1) an American vessel, including a vessel under construction;

(2) a foreign vessel—

(A) owned by a citizen of the United States; or

(B) engaged in transportation in the waterborne commerce of the United States or in such other transportation by water or such other services as the Secretary considers to be in the interest of the national defense or national economy of the United States, when so engaged;

(3) cargo—

(A) shipped or to be shipped on a vessel insurable under this section, including by express or registered mail;

(B) owned by a citizen or resident of the United States;

(C) imported to or exported from the United States, or sold or purchased by a citizen or resident of the United States, under a contract of sale or purchase the terms of which provide that the risk of loss by war risks or the obligation to provide insurance against war risks is on a citizen or resident of the United States; or

(D) shipped between ports in the United States;

(4) disbursements, including advances to masters and general average disbursements, and freight and passage money of a vessel insurable under this section;

(5) personal effects of an individual on a vessel insurable under this section;

(6) loss of life, injury, or detention by an enemy of the United States after capture, with respect to an individual on a vessel insurable under this section; and

(7) statutory or contractual obligations or other liabilities of a vessel insurable under this section or of the owner or charterer of such a vessel, of a nature customarily covered by insurance.

(b) CONSIDERATIONS FOR FOREIGN VESSELS.—In determining whether to provide insurance or reinsurance for a foreign vessel, the Secretary shall consider the characteristics, employment, and general management of the vessel by the owner or charterer.

(c) NON-WAR RISKS.—Insurance of a risk under subsection (a)(5)–(7), insofar as it involves a liability related to an individual on the vessel, may include risks other than war risks to the extent the Secretary considers advisable.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1627.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53903(a)	46 App.:1283(a) (1st sentence), (b) (1st sentence), (c)–(f).	June 29, 1936, ch. 858, title XII, § 1203(a) (1st, 2d sentences), (b) (1st sentence), (c)–(f), as added Sept. 7, 1950, ch. 906, 64 Stat. 773, 774; Pub. L. 94–523, §§ 1–3, Oct. 17, 1976, 90 Stat. 2474.
53903(b)	46 App.:1283(a) (2d sentence).	
53903(c)	46 App.:1284.	June 29, 1936, ch. 858, title XII, § 1204, as added Sept. 7, 1950, ch. 906, 64 Stat. 774.

In subsections (a)(2) and (b), the words ''foreign vessel'' are substituted for ''foreign-flag vessels'' because of the definition of ''foreign vessel'' in chapter 1 of the revised title.

In paragraph (3), references to the territories and possessions of the United States are omitted as unnecessary because of the definition of ''United States'' in chapter 1 of the revised title.

In paragraph (5), the words ''individual on a vessel insurable under this section'' are substituted for ''masters, officers, and crews of such vessels, and of other persons transported on such vessels'' to eliminate unnecessary words.

In paragraph (6), the words ''individual on a vessel insurable under this section'' are substituted for ''Masters, officers, members of the crews of such vessels and other persons employed or transported thereon'' to eliminate unnecessary words.

§ 53904. Liability insurance for persons involved in war or defense efforts

(a) IN GENERAL.—The Secretary of Transportation may provide insurance under this chapter against legal liability that a person may incur in providing services or facilities for a vessel if, in the opinion of the Secretary, the insurance—

(1) is required in prosecuting a war or for national defense; and

(2) cannot be obtained at reasonable rates or on reasonable terms and conditions from ap-

proved companies authorized to do insurance business in a State of the United States.

(b) LIMITATIONS.—Employer liability insurance and worker compensation insurance against legal liability to employees may not be provided under this section.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1628.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53904	46 App.:1286.	June 29, 1936, ch. 858, title XII, § 1206, as added Sept. 7, 1950, ch. 906, 64 Stat. 774; Aug. 3, 1956, ch. 929, § 5, 70 Stat. 986.

In subsection (a), the words ''a vessel'' are substituted for ''any American- or foreign-flag vessel, public or private'' to eliminate unnecessary words.

§ 53905. Agency insurance

(a) IN GENERAL.—With the approval of the President, an agency of the United States Government may obtain insurance provided for by this chapter from the Secretary of Transportation, except as provided in sections 17302 and 17303 of title 40.

(b) PREMIUM WAIVERS.—With the approval of the President, the Secretary of Transportation may provide insurance under this chapter at the request of the Secretary of Defense and other agencies the President may prescribe, without payment of an insurance premium if the Secretary of Defense or agency agrees to indemnify the Secretary of Transportation against loss covered by the insurance. The Secretary of Defense and agencies may make such an indemnity agreement.

(c) PRESIDENTIAL APPROVAL.—The signature of the President (or an official designated by the President) on the agreement shall be treated as the approval required by section 53902(a) of this title.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1628.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53905	46 App.:1285.	June 29, 1936, ch. 858, title XII, § 1205, as added Sept. 7, 1950, ch. 906, 64 Stat. 774; Pub. L. 105–261, div. A, title X, § 1071(a), Oct. 17, 1998, 112 Stat. 2137.

§ 53906. Hull insurance valuation

(a) STATED VALUATION.—The valuation in a hull insurance policy for actual or constructive total loss of the insured vessel shall be a stated valuation determined by the Secretary of Transportation. The stated valuation—

(1) shall exclude national defense features paid for by the United States Government; and

(2) may not exceed the amount that would be payable if the ownership of the vessel had been requisitioned under chapter 563 of this title at the time the insurance attached under the policy.

(b) REJECTING STATED VALUATION.—Within 60 days after the insurance attaches under a policy referred to in subsection (a) or within 60 days after the Secretary determines the valuation, whichever is later, the insured may reject the valuation and pay, at the rate provided in the policy, premiums based on the asserted valuation the insured specifies at the time of rejection. However, the asserted valuation is not binding on the Government in any subsequent action on the policy.

(c) AMOUNT OF CLAIM.—If a vessel is actually or constructively totally lost and the insured under a policy referred to in subsection (a) has not rejected the stated valuation determined by the Secretary, the amount of a claim adjusted, compromised, settled, adjudged, or paid may not exceed the stated valuation. However, if the insured has rejected the valuation, the insured—

(1) shall be paid, as a tentative advance only, 75 percent of the stated valuation; and

(2) may bring a civil action against the United States in a court having jurisdiction of the claim to recover a valuation equal to the just compensation the court determines would have been payable if the ownership of the vessel had been requisitioned under chapter 563 of this title at the time the insurance attached under the policy.

(d) ADJUSTING PREMIUMS.—If a court makes a determination as provided under subsection (c)(2), premiums paid under the policy shall be adjusted based on the court's determination and the rates provided for in the policy.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1629.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53906	46 App.:1289(a)(2).	June 29, 1936, ch. 858, title XII, § 1209(a)(2), as added Sept. 7, 1950, ch. 906, 64 Stat. 775; Aug. 3, 1956, ch. 929, § 1, 70 Stat. 984; Pub. L. 88–478, § 1, Aug. 22, 1964, 78 Stat. 587.

In subsection (c), the words ''*Provided*, That in the event of an election by the insured to reject the stated valuation fixed by the Secretary and to sue in the courts, the amount of the judgment will be payable without regard to the limitations contained in section 1242–1 of this Appendix, although the excess of any amounts advanced on account of just compensation over the amount of the court judgment will be required to be refunded'' are omitted as obsolete because the section referred to, which was from the Department of Commerce and Related Agencies Appropriation Act, 1959 (Pub. L. 85–469, 72 Stat. 231), has been omitted from the United States Code as obsolete.

§ 53907. Reinsurance

(a) IN GENERAL.—To the extent the Secretary of Transportation is authorized to provide insurance under this chapter, the Secretary may provide reinsurance to a company authorized to do insurance business in a State of the United States. The Secretary may obtain reinsurance from such a company for any insurance provided by the Secretary under this chapter.

(b) RATES.—The Secretary may not provide reinsurance at rates less than, nor obtain reinsurance at rates more than, the rates established by the Secretary on the same or similar risks or the rates charged by the insurance company for

the insurance reinsured, whichever is more advantageous to the Secretary. However, the Secretary may provide an allowance to the insurance company for the costs of services and facilities the company provides, in an amount the Secretary considers reasonable according to good business practice. The allowance to the company may not include any amount for soliciting or stimulating insurance business.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1629.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53907	46 App.:1287.	June 29, 1936, ch. 858, title XII, § 1207, as added Sept. 7, 1950, ch. 906, 64 Stat. 775.

In subsection (a), the words ''insurance under this chapter'' are substituted for ''marine, war risk, and liability insurance'' for consistency in this chapter. The words ''in whole or in part'' are omitted as unnecessary. The words ''obtain reinsurance from'' are substituted for ''reinsure with, or cede or retrocede to'' for clarity and to eliminate unnecessary words.

§ 53908. Additional insurance privately obtained

With the approval of the Secretary of Transportation, a person having an insurable interest in a vessel may obtain insurance on the vessel with other underwriting agents in addition to the insurance with the Secretary. The Secretary is not entitled to the benefit of the additional insurance.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1630.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53908	46 App.:1293.	June 29, 1936, ch. 858, title XII, § 1213, as added Sept. 7, 1950, ch. 906, 64 Stat. 777; Pub. L. 97–31, § 12(141), Aug. 6, 1981, 95 Stat. 166.

§ 53909. War risk insurance revolving fund

(a) IN GENERAL.—There is a war risk insurance revolving fund in the Treasury.

(b) DEPOSITS.—There shall be deposited in the fund amounts appropriated to carry out this chapter and amounts received in carrying out this chapter.

(c) PAYMENTS.—There shall be paid from the fund amounts for return premiums, losses, settlements, judgments, and all liabilities incurred by the United States Government under this chapter.

(d) INVESTMENT.—The Secretary of Transportation may request the Secretary of the Treasury to invest such portion of the fund as is not, in the judgment of the Secretary of Transportation, required to meet the current needs of the fund. These investments shall be made by the Secretary of the Treasury in public debt securities of the Government, with maturities suitable to the needs of the fund, and bearing interest rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the Government of comparable maturity. Interest and benefits from the securities shall be deposited in the fund.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1630; Pub. L. 109–364, div. C, title XXXV, § 3510(a)(1), Oct. 17, 2006, 120 Stat. 2520.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53909	46 App.:1288.	June 29, 1936, ch. 858, title XII, § 1208, as added Sept. 7, 1950, ch. 906, 64 Stat. 775; Pub. L. 87–743, Oct. 3, 1962, 76 Stat. 740; Pub. L. 97–31, § 12(139), Aug. 6, 1981, 95 Stat. 166; Pub. L. 108–375, div. C, title XXXV, § 3502(b), Oct. 28, 2004, 118 Stat. 2195.
	46 App.:1288a.	Nov. 1, 1951, ch. 664, par. under heading ''War–Risk Insurance Revolving Fund'', 65 Stat. 746; Pub. L. 97–31, § 12(140), Aug. 6, 1981, 95 Stat. 166.

In subsection (c), the reference to the Fiscal Service [previously Division of Disbursement] in the Treasury Department is omitted as unnecessary.

In subsection (d), the amendment by section 3502(b) of Public Law 108–375, which struck the third sentence in 46 App. U.S.C. 1288 and inserted new material, was executed as if it were intended to strike the fourth sentence instead, to reflect probably [sic] intent.

The text of 46 App. U.S.C. 1288(b) is omitted as unnecessary because enactment of a law authorizing certain governmental functions is itself an authorization of appropriations to carry out those functions. The text of 46 App. U.S.C. 1288a is omitted as executed and impliedly repealed by 46 App. U.S.C. 1119.

AMENDMENTS

2006—Pub. L. 109–364, which directed amendment of section 1288(a) of the former Appendix to this title, from which this section was derived, was already reflected in text of this section as enacted by Pub. L. 109–304. See Historical and Revision Notes relating to subsection (d) above.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. C, title XXXV, § 3510(a)(2), Oct. 17, 2006, 120 Stat. 2520, provided that: ''The amendments made by paragraph (1) [amending section 1288(a) of the former Appendix to this title, from which this section was derived] shall be effective as if enacted by section 3502 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (118 Stat. 2195) [Pub. L. 108–375].''

§ 53910. Administrative

(a) ACCORDANCE WITH COMMERCIAL PRACTICE.—In carrying out this chapter, the Secretary of Transportation may act in accordance with commercial practice in the marine insurance business.

(b) REGULATIONS.—The Secretary may prescribe regulations the Secretary considers appropriate to carry out this chapter.

(c) POLICIES, RATES, AND ANNUAL FEES.—The Secretary may prescribe and change forms and policies, and fix and change the amounts insured and rates of premium, under this chapter.

(d) ANNUAL FEES.—The Secretary may charge and collect an annual fee in an amount calculated to cover the expenses of processing applications for insurance, employing underwriting agents, and appointing experts under this chapter.

(e) PAYMENT OF CLAIMS AND JUDGMENTS.—The Secretary may settle and pay claims, and pay judgments against the United States, related to insurance under this chapter.

(f) UNDERWRITING AGENTS.—

(1) IN GENERAL.—The Secretary may, and when the Secretary finds it practical to do so shall, employ a domestic company or group of domestic companies, authorized to do marine insurance business in a State of the United States, to act as underwriting agent for the Secretary. The services of an underwriting agent may be used in adjusting claims, but a claim may not be paid until approved by the Secretary.

(2) COMPENSATION.—The Secretary may allow the company or group of companies reasonable compensation for services as the underwriting agent. The compensation may include an allowance for expenses reasonably incurred by the agent, but may not include any amount for soliciting or stimulating business.

(g) FEES FOR ARRANGING INSURANCE.—Except as provided in subsection (f)(2), the Secretary may not pay an insurance broker or other person acting in a similar intermediary capacity a fee or other consideration for participating in arranging insurance when the Secretary directly insures any of the risk.

(h) EMPLOYMENT OF MARINE INSURANCE EXPERTS.—The Secretary, without regard to the laws and regulations on the employment of Federal employees, may appoint and prescribe the duties of experts in marine insurance as the Secretary considers necessary to carry out this chapter.

(i) SERVICES OF OTHER GOVERNMENT AGENCIES.—With the consent of another agency of the United States Government, the Secretary may use information, services, facilities, officers, and employees of the agency in carrying out this chapter.

(j) VESSEL LOCATION REPORTING.—The Secretary may prescribe by regulation vessel location reporting requirements for a vessel insured under this chapter.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1630.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53910(a)	46 App.:1289(c) (1st sentence).	June 29, 1936, ch. 858, title XII, § 1209(a)(1), (b)–(f), as added Sept. 7, 1950, ch. 906, 64 Stat. 775; Aug. 3, 1956, ch. 929, § 1, 70 Stat. 984; Pub. L. 94–523, § 4, Oct. 17, 1976, 90 Stat. 2474.
53910(b)	46 App.:1289(a)(1) (1st–19th words).	
53910(c)	46 App.:1289(b) (1st sentence).	
53910(d)	46 App.:1289(b) (last sentence).	
53910(e)	46 App.:1289(a)(1) (20th–last words).	
53910(f)	46 App.:1289(d).	
53910(g)	46 App.:1289(c) (last sentence).	
53910(h)	46 App.:1289(e).	
53910(i)	46 App.:1289(f).	
53910(j)	46 App.:1283(a) (last sentence).	June 29, 1936, ch. 858, title XII, § 1203(a) (last sentence), as added Sept. 7, 1950, ch. 906, 64 Stat. 774; Pub. L. 94–523, § 1, Oct. 17, 1976, 90 Stat. 2474.

Subsection (e) is substituted for ''may adjust and pay losses, compromise and settle claims, whether in favor of or against the United States and pay the amount of any judgment rendered against the United States in any suit, or the amount of any settlement agreed upon, in respect of any claim under insurance authorized by this subchapter'' to eliminate unnecessary words.

§ 53911. Civil actions for losses

(a) IN GENERAL.—If there is a disagreement about a loss insured under this chapter, a civil action in admiralty may be brought against the United States in the district court of the United States for the district in which the plaintiff or the plaintiff's agent resides. If the plaintiff has no residence in the United States, the action may be brought in the United States District Court for the District of Columbia or in the district court for any district in which the Attorney General agrees to accept service. Any person who may have an interest in the insurance may be made a party, either initially or on the motion of either party.

(b) EXCLUSIVE REMEDY.—A civil action against the United States under this section is exclusive of any other action by reason of the same subject matter against an officer, employee, or agent employed or retained by the Government under this chapter.

(c) PROCEDURE.—A civil action under this section shall be heard and determined under chapter 309 of this title.

(d) TOLLING OF LIMITATIONS PERIOD.—If a claim is filed with the Secretary of Transportation, the running of the limitations period for bringing a civil action is suspended until the Secretary denies the claim, and for 60 days thereafter. The Secretary is deemed to have denied the claim if the Secretary does not act on the claim within 6 months after the claim is filed, unless the Secretary for good cause shown agrees with the claimant on a different period for the Secretary to act on the claim.

(e) INTERPLEADER.—If the Secretary acknowledges the indebtedness of the Government under the insurance and there is a dispute about the persons entitled to receive payment, the Government may bring a civil action interpleading those persons. The action shall be brought in the United States District Court for the District of Columbia or in the district court for the district in which any of those persons resides. A person not residing or found in the district may be made a party by service in any reasonable manner the court directs. If the court is satisfied that unknown persons might make a claim under the insurance, the court may direct service on those unknown persons by publication in the Federal Register. Judgment after service by publication in the Federal Register discharges the Government from further liability to all persons.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1631.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53911	46 App.:1292.	June 29, 1936, ch. 858, title XII, § 1212, as added Sept. 7, 1950, ch. 906, 64 Stat. 776.

§ 53912. Expiration date

The authority of the Secretary of Transportation to provide insurance and reinsurance under this chapter expires on December 31, 2010.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1632.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
53912	46 App.:1294.	June 29, 1936, ch. 858, title XII, § 1214, as added Sept. 7, 1950, ch. 906, 64 Stat. 777; Aug. 3, 1955, ch. 492, 69 Stat. 440; Pub. L. 86–120, July 31, 1959, 73 Stat. 266; Pub. L. 89–89, July 27, 1965, 79 Stat. 264; Pub. L. 91–469, § 34, Oct. 21, 1970, 84 Stat. 1035; Pub. L. 94–523, § 5, Oct. 17, 1976, 90 Stat. 2474; Pub. L. 96–195, Feb. 25, 1980, 94 Stat. 63; Pub. L. 99–59, July 3, 1985, 99 Stat. 110; Pub. L. 101–115, § 7(b), Oct. 13, 1989, 103 Stat. 694; Pub. L. 104–106, title X, § 1094, Feb. 10, 1996, 110 Stat. 461; Pub. L. 104–239, § 12, Oct. 8, 1996, 110 Stat. 3134; Pub. L. 108–375, div. C, title XXXV, § 3502(a), Oct. 28, 2004, 118 Stat. 2195.

PART D—PROMOTIONAL PROGRAMS

CHAPTER 551—COASTWISE TRADE

Sec.
55101. Application of coastwise laws.
55102. Transportation of merchandise.
55103. Transportation of passengers.
55104. Transportation of passengers between Puerto Rico and other ports in the United States.
55105. Transportation of hazardous waste.
55106. Merchandise transferred between barges.
55107. Empty cargo containers and barges.
55108. Platform jackets.
55109. Dredging.
55110. Transportation of dredged material.
55111. Towing.
55112. Vessel escort operations and towing assistance.
55113. Use of foreign documented oil spill response vessels.
55114. Unloading fish from foreign vessels.
55115. Supplies on fish processing vessels.
55116. Canadian rail lines.
55117. Great Lakes rail route.
55118. Foreign railroads whose road enters by ferry, tugboat, or towboat.
55119. Yukon River.
55120. Transshipment of imported merchandise intended for immediate exportation.
55121. Transportation of merchandise and passengers on Canadian vessels.

§ 55101. Application of coastwise laws

(a) IN GENERAL.—Except as provided in subsection (b), the coastwise laws apply to the United States, including the island territories and possessions of the United States.

(b) EXCEPTIONS.—The coastwise laws do not apply to—

(1) American Samoa;

(2) the Northern Mariana Islands, except as provided in section 502(b) 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. 1801 note);

(3) Canton Island until the President declares by proclamation that the coastwise laws apply to Canton Island; or

(4) the Virgin Islands until the President declares by proclamation that the coastwise laws apply to the Virgin Islands.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1632.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55101(a)	46 App.:877 (words before last proviso).	June 5, 1920, ch. 250, § 21, 41 Stat. 997; Apr. 16, 1936, ch. 228, 49 Stat. 1207; Pub. L. 97–31, § 12(47), Aug. 6, 1981, 95 Stat. 157.
55101(b)(1) ..	48:1664.	June 14, 1934, ch. 523, 48 Stat. 963.
55101(b)(2) ..	48:1801 note (Covenant § 503(b)).	Pub. L. 94–241, § 1, Mar. 24, 1976, 90 Stat. 263; Pub. L. 98–213, § 9, Dec. 8, 1983, 97 Stat. 1461; Pub. L. 104–208, div. A, title I, § 101(d) [title I], Sept. 30, 1996, 110 Stat. 3009–196.
55101(b)(3) ..	46 App.:877 note.	Proc. No. 3215, Dec. 12, 1957, 72 Stat. c19.
55101(b)(4) ..	46 App.:877 (last proviso).	

In subsection (a), the words ''apply to the United States, including'' are substituted for ''extend to'' for clarity. The words ''From and after February 1, 1922'' and ''not covered thereby on June 5, 1920'' are omitted as obsolete. The requirement to establish adequate steamship service to the island Territories and possessions is omitted as obsolete.

Subsection (b)(2) is based on section 503(b) 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. 1801 note).

Subsection (b)(3) is based on Proc. No. 3215, Dec. 12, 1957, 72 Stat. c19, which provided that the President, ''under and by virtue of the authority vested in me by the aforesaid section 21 of the Merchant Marine Act, 1920 [46 App. U.S.C. 877], do hereby declare and proclaim that the period for the establishment of an adequate shipping service for Canton Island is extended until further notice by proclamation of the President, and that the extension of the coastwise laws of the United States to Canton Island is deferred until it is declared by proclamation of the President that such adequate shipping service has been established''.

In subsection (b)(4), the words ''and fix a date for the going into effect of same'' are omitted as surplus.

The provisos of 46 App. U.S.C. 877 relating to the Philippine Islands are omitted as obsolete because of the independence of the Philippine Islands. See Proc. No. 2695, July 4, 1946, 60 Stat. 1352 (22 U.S.C. 1394 note).

REFERENCES IN TEXT

Section 502(b) of the Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America, referred to in subsec. (b)(2), is contained in section 1 of Pub. L. 94–241, set out as a note under section 1801 of Title 48, Territories and Insular Possessions.

CANTON ISLAND; SOVEREIGNTY OF KIRIBATI

By a treaty of friendship, TIAS 10777, which entered into force Sept. 23, 1983, the United States recognized the sovereignty of Kiribati over Canton Island.

§ 55102. Transportation of merchandise

(a) DEFINITION.—In this section, the term ''merchandise'' includes—

(1) merchandise owned by the United States Government, a State, or a subdivision of a State; and

(2) valueless material.

(b) REQUIREMENTS.—Except as otherwise provided in this chapter or chapter 121 of this title, a vessel may not provide any part of the transportation of merchandise by water, or by land and water, between points in the United States to which the coastwise laws apply, either directly or via a foreign port, unless the vessel—

(1) is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade; and

(2) has been issued a certificate of documentation with a coastwise endorsement under chapter 121 or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement.

(c) PENALTY.—Merchandise transported in violation of subsection (b) is liable to seizure by and forfeiture to the Government. Alternatively, an amount equal to the value of the merchandise (as determined by the Secretary of Homeland Security) or the actual cost of the transportation, whichever is greater, may be recovered from any person transporting the merchandise or causing the merchandise to be transported.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1632.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55102	46 App.:883 (words before 1st proviso, 11th proviso).	June 5, 1920, ch. 250, § 27 (words before 1st proviso, 11th proviso), 41 Stat. 999; July 2, 1935, ch. 355, 49 Stat. 442; Pub. L. 95–410, title II, § 213, Oct. 3, 1978, 92 Stat. 904; Pub. L. 101–329 [100–329], § 1(a)(1), [§ 1(a)] June 7, 1988, 102 Stat. 588; Pub. L. 102–587, title V, § 5501(b), Nov. 4, 1992, 106 Stat. 5085.

In subsection (a)(1), the words ''(as defined in section 2101 of the [sic] title 46)'' are omitted because the definition of ''State'' is being moved to chapter 1 and will apply to the entire title.

In subsection (b), the words ''may not provide any part of the transportation of'' are substituted for ''No . . . shall be transported'' and ''or for any part of the transportation'' because of the reorganization of the language. The words ''including Districts, Territories, and possessions thereof'' are omitted because of the definition of ''United States'' in chapter 1 of the revised title. The words ''to which the coastwise laws apply'' are substituted for ''embraced within the coastwise laws'' for consistency with section 55101. The words ''is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade'' are substituted for ''owned by persons who are citizens of the United States'', and the words ''has been issued a certificate of documentation with a coastwise endorsement under chapter 121'' are substituted for ''documented under the laws of the United States'', for clarity and consistency in the revised title. The words ''or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement'' are added for consistency with section 12102 as revised by the bill. The requirement that the vessel be built in the United States is omitted from this section for consistency with the requirements for a coastwise endorsement, which also require that the vessel be built in the United States except in certain circumstances. The words ''or vessels to which the privilege of engaging in the coastwise trade is extended by section 808 of this Appendix or section 22 of this Act'' are omitted because the relevant portion of section 808, and section 22, have been repealed.

In subsection (c), the words ''any person'' are substituted for ''any consignor, seller, owner, importer, consignee, agent, or other person or persons'' to eliminate unnecessary words.

§ 55103. Transportation of passengers

(a) IN GENERAL.—Except as otherwise provided in this chapter or chapter 121 of this title, a vessel may not transport passengers between ports or places in the United States to which the coastwise laws apply, either directly or via a foreign port, unless the vessel—

(1) is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade; and

(2) has been issued a certificate of documentation with a coastwise endorsement under chapter 121 or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement.

(b) PENALTY.—The penalty for violating subsection (a) is $300 for each passenger transported and landed.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1633.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55103	46 App.:289.	June 19, 1886, ch. 421, § 8, 24 Stat. 81; Feb. 17, 1898, ch. 26, § 2, 30 Stat. 248.

This section is substituted for the source provision for consistency with section 55102. See 19 C.F.R. §§ 4.80, 4.80a (2004).

In subsection (b), the penalty amount reflects the adjustment for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note). See 19 C.F.R. § 4.80(b)(2) (2004).

§ 55104. Transportation of passengers between Puerto Rico and other ports in the United States

(a) DEFINITIONS.—In this section:

(1) CERTIFICATE.—The term ''certificate'' means a certificate of financial responsibility for indemnification of passengers for nonperformance of transportation issued by the Federal Maritime Commission under section 44102 of this title.

(2) PASSENGER VESSEL.—The term ''passenger vessel'' means a vessel of similar size, or offering similar service, as any other vessel transporting passengers under subsection (b).

(b) EXEMPTION.—Except as otherwise provided in this section, a vessel not qualified to engage in the coastwise trade may transport passengers between a port in Puerto Rico and another port in the United States.

(c) EXPIRATION OF EXEMPTION.—

(1) WHEN COASTWISE-QUALIFIED VESSEL OFFERING SERVICE.—On a showing to the Secretary of the department in which the Coast Guard is operating, by the vessel owner or charterer, that a United States passenger vessel qualified to engage in the coastwise trade is offering or advertising passenger service between a port in Puerto Rico and another port in the United States pursuant to a certificate, the Secretary shall notify the owner or operator of each vessel transporting passengers under subsection (b) to terminate that transportation within 270 days after the Secretary's notification. Except as provided in subsection (d), the authority to transport passengers under subsection (b) expires at the end of that 270-day period.

(2) WHEN NON-COASTWISE-QUALIFIED VESSEL OFFERING SERVICE.—On a showing to the Sec-

retary, by the vessel owner or charterer, that a United States passenger vessel not qualified to engage in the coastwise trade is offering or advertising passenger service between a port in Puerto Rico and another port in the United States pursuant to a certificate, the Secretary shall notify the owner or operator of each foreign vessel transporting passengers under subsection (b) to terminate that transportation within 270 days after the Secretary's notification. Except as provided in subsection (d), the authority of a foreign vessel to transport passengers under subsection (b) expires at the end of that 270-day period.

(d) DELAYING EXPIRATION.—If the vessel offering or advertising the service described in subsection (c) has not begun that service within 270 days after the Secretary's notification, the expiration provided by subsection (c) is delayed until 90 days after the vessel offering or advertising the service begins that service.

(e) REINSTATEMENT OF EXEMPTION.—If the Secretary finds that the service on which an expiration was based is no longer available, the expired authority to transport passengers is reinstated.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1633.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55104(a)(1) ..	46 App.:289c(b) (related to meaning of certificate).	Pub. L. 98–563, Oct. 30, 1984, 98 Stat. 2916.
55104(a)(2) ..	46 App.:289c(e).	
55104(b)	46 App.:289c(a).	
55104(c)	46 App.:289c(b).	
55104(d)	46 App.:289c(c).	
55104(e)	46 App.:289c(d).	

In subsection (a), the definition of ''certificate'' is added based on the language in 46 App. U.S.C. 289c(b)(1) and (2) to avoid repeating the substance of the definition twice in the section.

In subsection (b), the words ''Notwithstanding any other provision of law'' and ''directly or by way of a foreign port'' are omitted as unnecessary.

§ 55105. Transportation of hazardous waste

(a) IN GENERAL.—The transportation of hazardous waste, as defined in section 1004(5) of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6903(5)), from a point in the United States to sea for incineration is deemed to be transportation of merchandise under section 55102 of this title.

(b) NONAPPLICATION TO CERTAIN FOREIGN VESSELS.—

(1) IN GENERAL.—Subsection (a) does not apply to transportation performed by a foreign ocean incineration vessel owned by or under construction on May 1, 1982, for a corporation wholly owned by citizens of the United States under section 50501(a)–(c) of this title.

(2) STANDARDS FOR INCINERATION EQUIPMENT.—Incineration equipment on a vessel described in paragraph (1) must meet standards of the Coast Guard and the Environmental Protection Agency.

(3) INSPECTION.—A vessel described in paragraph (1) shall be inspected by the Coast Guard, regardless of whether inspected by the nation in which it is registered. The inspection shall be the same as would be required of a vessel of the United States, including drydock inspection and internal examination of tanks and void spaces. The inspection may be made concurrently with an inspection by that nation or within one year after the initial issuance or next scheduled issuance of the Safety of Life at Sea Safety Construction Certificate. In making the inspection, the Coast Guard shall refer to the condition of the hull and superstructure established by the initial foreign certification as the basis for evaluating the current condition of the hull and superstructure. The Coast Guard shall allow the substitution of fittings, material, apparatus, equipment, and appliances different from those required for vessels of the United States if satisfied they are equivalent and at least as effective as those required for vessels of the United States. A satisfactory inspection under this paragraph shall be certified in writing by the Secretary of the department in which the Coast Guard is operating.

(c) EFFECTIVE DATE.—Subsection (a) is not effective until an appropriate vessel has been built and documented under chapter 121 of this title.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1634; Pub. L. 109–241, title IX, § 902(*o*), July 11, 2006, 120 Stat. 569.)

AMENDMENT NOT SHOWN IN TEXT

The last sentence of subsection (b)(3) of this section was derived from the fifth sentence of section 883 of the former Appendix to this title, which was amended by Pub. L. 109–241, title IX, § 902(o), July 11, 2006, 120 Stat. 569. For applicability of that amendment to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. That amendment struck out ''Satisfactory inspection shall be certified in writing by the Secretary of Transportation'' and inserted ''Satisfactory inspection shall be certified, in writing, by the Secretary of Homeland Security.''

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55105	46 App.:883 (2d–6th sentences, last sentence less provisos).	June 5, 1920, ch. 250, § 27 (2d–6th sentences, last sentence less provisos), 41 Stat. 999; July 2, 1935, ch. 355, 49 Stat. 442; Pub. L. 97–389, title V, § 502, Dec. 29, 1982, 96 Stat. 1954.

In subsection (a), the words ''after December 31, 1983'' are omitted as obsolete. The words ''transportation of merchandise under section 55102 of this title'' are substituted for ''For the purposes of this section'' and ''transportation by water of merchandise between points in the United States'' for consistency with section 55102.

In subsection (b)(2), the words ''all current'' are omitted as surplus.

Subsection (c) is substituted for ''or after such time as an appropriate vessel has been constructed and documented as a vessel of the United States'' to improve the organization.

REFERENCES IN TEXT

Section 1004(5) of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6903(5)), referred to in subsec. (a), probably means section 1004(5) of the Solid

Waste Disposal Act (42 U.S.C. 6903(5)), as added by section 2 of the Resource Conservation and Recovery Act of 1976, Pub. L. 94–580.

§ 55106. Merchandise transferred between barges

(a) IN GENERAL.—On terms and conditions the Secretary of Homeland Security may prescribe by regulation, the Secretary may suspend the application of section 55102 of this title to the transportation of merchandise that is transferred, when moving in the foreign trade of the United States, from a barge certified by the owner or operator as designed specifically for carriage on a vessel and carried regularly on a vessel in foreign trade, to another such barge owned or leased by the same owner or operator. However, this subsection does not apply to transportation between the continental United States and noncontiguous States, territories, or possessions to which the coastwise laws apply.

(b) RECIPROCITY REQUIREMENT FOR FOREIGN VESSELS.—This section applies to a vessel of foreign registry only if the Secretary of Homeland Security finds, based on information from the Secretary of State, that the government of the nation of registry extends reciprocal privileges to vessels of the United States.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1635.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55106	46 App.:883 (7th proviso).	June 5, 1920, ch. 250, § 27 (7th proviso), 41 Stat. 999; July 2, 1935, ch. 355, 49 Stat. 442; Pub. L. 92–163, § 1, Nov. 23, 1971, 85 Stat. 486.

In subsection (a), the words ''non-self-propelled'' are omitted as unnecessary because of the definition of ''barge'' in chapter 1 of the revised title. The words ''between points in the United States'' and ''without regard to whether any such barge is under foreign registry or qualified to engage in the coastwise trade'' are omitted as surplus.

§ 55107. Empty cargo containers and barges

(a) IN GENERAL.—Subject to subsections (b) and (c), and on terms and conditions the Secretary of Homeland Security may prescribe by regulation, section 55102 of this title does not apply to the transportation of—

(1) empty cargo vans, empty lift vans, or empty shipping tanks;

(2) equipment for use with cargo vans, lift vans, or shipping tanks;

(3) empty barges specifically designed for carriage aboard a vessel and equipment (except propulsion equipment) for use with those barges;

(4) empty instruments for international traffic exempted from the customs laws under section 322(a) of the Tariff Act of 1930 (19 U.S.C. 1322(a)); or

(5) stevedoring equipment and material.

(b) CONDITIONS.—

(1) PARAGRAPHS (1)–(4).—Paragraphs (1)–(4) of subsection (a) apply only if the items named are owned or leased by the owner or operator of the vessel and transported for its use in handling its cargo in foreign trade.

(2) PARAGRAPH (5).—Paragraph (5) of subsection (a) applies only if the items named are—

(A) owned or leased by the owner or operator of the vessel or by the stevedoring company having the contract for the loading or unloading of the vessel; and

(B) transported without charge for use in the handling of cargo in foreign trade.

(c) RECIPROCITY REQUIREMENT FOR FOREIGN VESSELS.—This section applies to a vessel of foreign registry only if the Secretary of Homeland Security finds, based on information from the Secretary of State, that the government of the nation of registry extends reciprocal privileges to vessels of the United States.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1635.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55107	46 App.:883 (6th proviso).	June 5, 1920, ch. 250, § 27 (6th proviso), 41 Stat. 999; July 2, 1935, ch. 355, 49 Stat. 442; Pub. L. 89–194, Sept. 21, 1965, 79 Stat. 823; Pub. L. 90–474, Aug. 11, 1968, 80 Stat. 700; Pub. L. 92–163, § 1, Nov. 23, 1971, 85 Stat. 486.

In subsection (a), before paragraph (1), the words ''by vessels of the United States not qualified to engage in the coastwise trade, or by vessels of foreign registry'' are omitted as unnecessary. In paragraph (4), the words ''by the Secretary of the Treasury'' are omitted as unnecessary because the section referred to provides who administers it.

§ 55108. Platform jackets

(a) DEFINITIONS.—In this section:

(1) COASTWISE QUALIFIED VESSEL.—The term ''coastwise qualified vessel'' means a vessel that has been issued a certificate of documentation with a coastwise endorsement under chapter 121 of this title.

(2) PLATFORM JACKET.—The term ''platform jacket'' refers to a single physical component and includes any type of offshore exploration, development, or production structure or component thereof, including—

(A) platform jackets;

(B) tension leg or SPAR platform superstructures (including the deck, drilling rig and support utilities, and supporting structure);

(C) hull (including vertical legs and connecting pontoons or vertical cylinder);

(D) tower and base sections of a platform jacket;

(E) jacket structures; and

(F) deck modules (known as ''topsides'').

(b) AUTHORIZED TRANSPORTATION.—Section 55102 of this title does not apply to the transportation of a platform jacket in or on a non-coastwise qualified launch barge between two points in the United States, at one of which there is an installation or other device within the meaning of section 4(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1333(a)), if—

(1) the launch barge was built before December 31, 2000, and has a launch capacity of at least 12,000 long tons; and

(2) the Secretary of Transportation makes a determination, in accordance with procedures established under subsection (c), that a suitable coastwise qualified vessel is not available for use in the transportation and, if needed, launch or installation of a platform jacket.

(c) PROCEDURES TO MAXIMIZE USE OF COASTWISE QUALIFIED VESSELS.—The Secretary of Transportation shall adopt procedures implementing this section that are reasonably designed to provide timely information so as to maximize the use of coastwise qualified vessels. The procedures shall, among other things, establish that for purposes of this section, a coastwise qualified vessel shall be deemed to be not available only if—

(1) on application by an owner or operator for the use of a non-coastwise qualified launch barge for transportation of a platform jacket under this section (which application shall include all relevant information, including engineering details and timing requirements), the Secretary promptly publishes a notice in the Federal Register—

(A) describing the project and the platform jacket involved;

(B) advising that all relevant information reasonably needed to assess the transportation requirements for the platform jacket will be made available to interested parties on request; and

(C) requesting that information on the availability of coastwise qualified vessels be submitted within 30 days after publication of that notice; and

(2)(A) no information is submitted to the Secretary within that 30 day period; or

(B) the owner or operator of a coastwise qualified vessel submits information to the Secretary asserting that the owner or operator has a suitable coastwise qualified vessel available for the transportation, but the Secretary determines, within 90 days after the notice is first published, that the coastwise qualified vessel is not suitable or reasonably available for the transportation.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1636.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55108	46 App.:883 (last proviso).	June 5, 1920, ch. 250, § 27 (last proviso), 41 Stat. 999; July 2, 1935, ch. 355, 49 Stat. 442; Pub. L. 101–329 [100–329], § 1(a)(2), June 7, 1988, 102 Stat. 588; Pub. L. 107–295, title II, § 213(c), Nov. 25, 2002, 116 Stat. 2100; Pub. L. 108–293, title IV, § 417, Aug. 9, 2004, 118 Stat. 1048.

In subsection (a), the words ''coastwise endorsement under chapter 121'' are substituted for ''coastwise endorsement under section 12106'' because section 12106 is being restated in various sections in revised chapter 121.

In subsection (b), the words ''Section 55102 of this title does not apply'' are substituted for ''shall not be deemed transportation subject to this section'' for consistency in the chapter.

§ 55109. Dredging

(a) IN GENERAL.—Except as provided in subsection (b), a vessel may engage in dredging in the navigable waters of the United States only if—

(1) the vessel is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade;

(2) the charterer, if any, is a citizen of the United States for purposes of engaging in the coastwise trade; and

(3) the vessel has been issued a certificate of documentation with a coastwise endorsement under chapter 121 of this title or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement.

(b) DREDGING OF GOLD IN ALASKA.—A documented vessel with a registry endorsement may engage in the dredging of gold in Alaska.

(c) PENALTY.—If a vessel is operated in knowing violation of this section, the vessel and its equipment are liable to seizure by and forfeiture to the United States Government.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1637.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55109	46 App.:292.	May 28, 1906, ch. 2566, § 1, 34 Stat. 204; Pub. L. 102–87, title V, § 5501(a)(1), Nov. 4, 1992, 106 Stat. 5084.

Subsection (a)(1) is substituted for ''(1) the vessel meets the requirements of section 883 of this Appendix and sections 802 and 803 of this Appendix for engaging in the coastwise trade'' for consistency with other sections of the revised title and to eliminate unnecessary words. Section 883 requires (among other things) that the vessel be owned by citizens of the United States, and section 802 contains the requirements for certain entities to qualify as citizens. Those requirements are restated in section 50501 which applies to this section. Section 883 also requires that the vessel be built in and documented under the laws of the United States. Those latter two requirements are covered by subsection (a)(3). Note that the build requirement is a requirement for a coastwise endorsement.

In subsection (a)(3), the words ''or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement'' are added for consistency with section 12102 as revised by the bill.

NONAPPLICABILITY TO CERTAIN VESSELS

Pub. L. 109–304, § 19, Oct. 6, 2006, 120 Stat. 1711, repealed section 1 of act May 28, 1906, ch. 2566, 34 Stat. 204 (section 292 of the former Appendix to this title, from which this section was derived), except as may be applicable under section 5501(a)(2) of Pub. L. 102–587, set out below.

Pub. L. 102–587, title V, § 5501(a)(2), (3), Nov. 4, 1992, 106 Stat. 5084, as amended by Pub. L. 109–304, § 17(i), Oct. 6, 2006, 120 Stat. 1709, provided that:

''(2) The amendment made by paragraph (1) [amending section 292 of the former Appendix to this title, from which this section was derived] does not apply to—

''(A)(i) the vessel STUYVESANT, official number 648540;

''(ii) any other hopper dredging vessel documented under chapter 121 of title 46, United States Code before the effective date of this Act [Nov. 4, 1992] and chartered to Stuyvesant Dredging Company or to an entity in which it has an ownership interest; how-

ever, this exception expires on December 3, 2022 or when the vessel STUYVESANT ceases to be documented under chapter 121, whichever first occurs; and

''(iii) any other non-hopper dredging vessel documented under chapter 121 and chartered to Stuyvesant Dredging Company or to an entity in which it has an ownership interest, as is necessary (a) to fulfill dredging obligations under a specific contract, including any extension periods; or (b) as temporary replacement capacity for a vessel which has become disabled but only for so long as the disability shall last and until the vessel is in a position to fully resume dredging operations; however, this exception expires on December 8, 2022 or when the vessel STUYVESANT ceases to be documented under chapter 121, whichever first occurs;

''(B) the vessel COLUMBUS, official number 590658, except that the vessel's certificate of documentation shall be endorsed to prohibit the vessel from engaging in the transportation of merchandise (except valueless material), including dredge material of value, between places within the navigable waters of the United States;

''(C) a vessel that is engaged in dredged material excavation if that excavation is not more than a minority of the total cost of the construction contract in which the excavation is a single, integral part, and the vessel is—

''(i) built in the United States;

''(ii) a non-self-propelled mechanical clamshell dredging vessel; and

''(iii) owned or chartered by a corporation that had on file with the Secretary of Transportation, on August 1, 1989, the certificate specified in section 27A of the Merchant Marine Act, 1920 (46 App. U.S.C. 883–1) [now 46 U.S.C. 12118]; or

''(D) any other documented vessel engaged in dredging and time chartered to an entity that, on August 1, 1989, was, and has continuously remained, the parent of a corporation that had on file with the Secretary of Transportation on August 1, 1989, a certificate specified in section 27A of the Merchant Marine Act, 1920 (46 App. U.S.C. 883–1) [now 46 U.S.C. 12118] if the vessel is—

''(i) not engaged in a federally funded navigation dredging project; and

''(ii) engaged only in dredging associated with, and integral to, accomplishment of that parent's regular business requirements.

''(3) The exceptions provided by paragraph (2) shall apply under section 55109 of title 46, United States Code, to the same extent as under former section 1 of the Act of May 28, 1906 [section 292 of the former Appendix to this title, from which this section was derived], as amended by paragraph (1).''

HISTORICAL AND REVISION NOTES

[H.R. Rep. No. 109–170, at 180 (2005) provided: Section 17(i) of the bill [H.R. 1442, enacted as Pub. L. 109–304] amends section 5501(a) of the Oceans Act of 1992 (Public Law 102–587, 106 Stat. 5084) [see note above] by adding a new paragraph (3). The intent of this amendment is to maintain the status quo under paragraph (2) of section 5501(a) of that Act, as it exists prior to the enactment of this codification legislation. Section 55109 of title 46, United States Code, as contained in this bill, is intended as a codification without substantive change of section 1 of the Act of May 28, 1906, as amended (46 App. U.S.C. 292). Therefore, the exceptions from that latter provision, which currently exist under such paragraph (2), are intended to continue to exist to the same extent under new section 55109 of title 46. In addition, if the original intent of such paragraph (2) was that the restriction contained in the pre-1992 amended version of that 1906 provision continues to apply to the vessels, persons, and entities described in such paragraph (2), then that outcome is intended to remain unchanged by this legislation, despite the repeal by this legislation of that 1906 provision. No expression as to the original intent of such paragraph (2) is intended by this legislation.]

§ 55110. Transportation of dredged material

Section 55102 of this title applies to the transportation of valueless material or dredged material, regardless of whether it has commercial value, from a point in the United States or on the high seas within the exclusive economic zone, to another point in the United States or on the high seas within the exclusive economic zone.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1637.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55110	46 App.:883 (12th proviso).	June 5, 1920, ch. 250, § 27 (12th proviso), 41 Stat. 999; Pub. L. 100–329, § 1(a), June 7, 1988, 102 Stat. 588.

The words ''or place'' are omitted as surplus. The words ''as defined in the Presidential Proclamation of March 10, 1983'' are omitted because ''exclusive economic zone'' is defined in chapter 1 of the revised title.

NONAPPLICABILITY OF PUB. L. 100–329 TO CERTAIN VESSELS

Pub. L. 102–587, title V, § 5501(c), Nov. 4, 1992, 106 Stat. 5085, provided that: ''The Act of June 7, 1988 (Public Law 100–329; 102 Stat. 588) [amending sections 316 and 883 (from which this section was derived) of the former Appendix to this title and enacting provisions set out below], including the amendments made by that Act, does not apply to a vessel—

''(1) engaged in the transportation of valueless material or valueless dredged material; and

''(2) owned or chartered by a corporation that had on file with the Secretary of Transportation on August 1, 1989, the certificate specified in section 27A of the Merchant Marine Act, 1920 (46 App. U.S.C. 883–1) [now 46 U.S.C. 12118].''

TRANSPORTATION OF MUNICIPAL SEWAGE SLUDGE

Pub. L. 100–329, § 3, June 7, 1988, 102 Stat. 589, provided that: ''Notwithstanding the provisions of section 1 of this Act [amending section 883 of the former Appendix to this title, from which this section was derived], a vessel may transport municipal sewage sludge if that vessel, regardless of where it was built, is documented under the laws of the United States and, on the date of enactment of this Act [June 7, 1988], that vessel—

''(1) is in use by a municipality for the transportation of sewage sludge; or

''(2) is under contract with a municipality for the transportation of sewage sludge.''

VESSEL UNDER CONTRACT WITH MUNICIPALITY FOR TRANSPORTATION OF SEWAGE SLUDGE: APPLICABILITY OF PROVISIONS

Pub. L. 100–329, § 4, June 7, 1988, 102 Stat. 589, provided that: ''For purposes of the first paragraph of section 805(a) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1223(a)) [now 46 U.S.C. 58101], a vessel described in section 3(2) of this Act [set out as a note above] is not a vessel engaged in domestic intercoastal or coastwise service, but the prohibitions in the second paragraph apply to that vessel.''

CERTIFICATE OF DOCUMENTATION TO VESSEL TRANSPORTING VALUELESS MATERIAL IN COASTWISE TRADE, OR DREDGED MATERIAL, WHETHER OR NOT OF VALUE; ISSUANCE, ENDORSEMENT, ETC.

Pub. L. 100–329, § 5, June 7, 1988, 102 Stat. 589, provided that: ''Notwithstanding the provisions of section 1 of this Act [amending section 883 of the former Appendix to this title, from which this section was derived], the Secretary of the department in which the Coast Guard

is operating may issue a certificate of documentation under section 12106 [see section 12112] of title 46, United States Code, to a vessel that—

''(1) is engaged in transporting only valueless material in the coastwise trade or transporting dredged material, whether or not of value, (A) from a point or place on the high seas within the Exclusive Economic Zone as defined in the Presidential Proclamation of March 10, 1983 [16 U.S.C. 1453 note], to a point or place in the United States or to another point or place on the high seas within such Exclusive Economic Zone or (B) from a point or place within the United States to a point or place on the high seas within such Exclusive Economic Zone;

''(2) had a certificate of documentation issued under section 12105 [see section 12111] of that title on October 1, 1987;

''(3) had been sold foreign or placed under a foreign registry before that certificate was issued; and

''(4) was built in the United States;

except that such certificate of documentation shall be endorsed to restrict the use of such vessel to the transportation of valueless material in the coastwise trade, and to the transportation of dredged material, whether or not of value, (i) from a point or place on the high seas within such Exclusive Economic Zone to a point or place in the United States or to another point or place on the high seas within such Exclusive Economic Zone, or (ii) from a point or place within the United States to a point or place on the high seas within such Exclusive Economic Zone.''

§ 55111. Towing

(a) IN GENERAL.—Except when towing a vessel in distress, a vessel may not do any part of any towing described in subsection (b) unless the towing vessel—

(1) is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade; and

(2) has been issued a certificate of documentation with a coastwise endorsement under chapter 121 of this title or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement.

(b) APPLICABLE TOWING.—Subsection (a) applies to the towing of—

(1) a vessel between ports or places in the United States to which the coastwise laws apply, either directly or via a foreign port or place;

(2) a vessel from point to point within the harbors of ports or places to which the coastwise laws apply; or

(3) a vessel transporting valueless material or dredged material, regardless of whether it has commercial value, from a point in the United States or on the high seas within the exclusive economic zone, to another point in the United States or on the high seas within the exclusive economic zone.

(c) PENALTIES.—

(1) OWNER AND MASTER.—The owner and master of a vessel towing another vessel in violation of this section are each liable for a penalty of at least $350 but not more than $1,100. A penalty under this paragraph constitutes a lien on the vessel. The lien is enforceable in a district court of the United States for any district in which the vessel is found. Clearance may not be granted to the vessel until the penalties have been paid.

(2) VESSEL.—In addition to the penalties under paragraph (1), the towing vessel is liable for a penalty of $60 per ton based on the tonnage of each towed vessel.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1637.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55111	46 App.:316(a), (b).	R.S. § 4370; June 11, 1940, ch. 324, 54 Stat. 304; Pub. L. 99–307, § 10, May 19, 1986, 100 Stat. 447; Pub. L. 100–329, § 2, June 7, 1988, 102 Stat. 589; Pub. L. 104–324, title XI, § 1115(b)(3), Oct. 19, 1996, 110 Stat. 3972.

In subsection (a), the words ''or to do any part of such towing'' and ''other than a vessel in distress'' in the source provision are made applicable to all the towing described in subsection (b) for clarity and consistency. In paragraph (1), the words ''wholly owned by citizens of the United States for purposes of engaging in the coastwise trade'' are substituted for ''wholly owned by a person who is a citizen of the United States within the meaning of the laws respecting the documentation of vessels'' for consistency in this chapter.

Subsection (a)(2) is substituted for ''having in force a certificate of documentation issued under section 12106 of title 46'' for consistency in this chapter and with section 12102(b) as revised by the bill.

In subsection (b)(1), the words ''in the United States to which the coastwise laws apply'' are substituted for ''in the United States, its Territories or possessions, embraced within the coastwise laws of the United States'' because of the definition of ''United States'' in chapter 1 of the revised title and because of section 55101 of the revised title.

In subsection (b)(3), the words ''or place'' are omitted as surplus. The words ''as defined in the Presidential Proclamation of March 10, 1983'' are omitted because ''exclusive economic zone'' is defined in chapter 1 of the revised title.

In subsection (c), the penalty amounts reflect the adjustment for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note). See 19 C.F.R. § 4.92 (2004). In paragraph (2), the words ''which sum may be recovered by way of libel or suit'' are omitted as surplus.

The text of 46 App. U.S.C. 316(b) is omitted as unnecessary because of the definition of ''person'' in section 1 of title 1.

NONAPPLICABILITY OF PUB. L. 100–329 TO CERTAIN VESSEL

Amendment by Pub. L. 100–329 to section 316 of the former Appendix to this title, from which this section was derived, not applicable to a vessel engaged in the transportation of valueless material or valueless dredged material and owned or chartered by a corporation that had on file with Secretary of Transportation on Aug. 1, 1989, the certificate specified in section 883–1 of the former Appendix to this title (now section 12118 of this title), see section 5501(c) of Pub. L. 102–587, set out as a note under section 55110 of this title.

§ 55112. Vessel escort operations and towing assistance

(a) IN GENERAL.—Except in the case of a vessel in distress, only a vessel of the United States may perform the following escort vessel operations within the navigable waters of the United States:

(1) Operations that commence or terminate at a port or place in the United States.

(2) Operations required by United States law or regulation.

(3) Operations provided in whole or in part within or through navigation facilities owned, maintained, or operated by the United States Government or the approaches to those facilities, other than facilities operated by the St. Lawrence Seaway Development Corporation on the St. Lawrence River portion of the Seaway.

(b) ESCORT VESSELS.—For purposes of this section, an escort vessel is—

(1) any vessel that is assigned and dedicated to assist another vessel, whether or not tethered to that vessel, solely as a safety precaution to assist in controlling the speed or course of the assisted vessel in the event of a steering or propulsion equipment failure, or any other similar emergency circumstance, or in restricted waters where additional assistance in maneuvering the vessel is required to ensure its safe operation; and

(2) in the case of a vessel being towed under section 55111 of this title, any vessel that is assigned and dedicated to the vessel being towed in addition to any towing vessel required under that section.

(c) RELATIONSHIP TO OTHER LAW.—This section does not affect section 55111 of this title.

(d) PENALTY.—A person violating this section is liable to the Government for a civil penalty of not more than $10,000 for each day during which the violation occurs.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1638.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55112	46 App.:316a.	Pub. L. 107–295, title IV, § 404, Nov. 25, 2002, 116 Stat. 2114.

In subsection (a), the words ''(as that term is defined in section 2101 of title 46, United States Code)'' are omitted because the definition of ''vessel of the United States'' is being moved from section 2101 to chapter 1 of the revised title and will apply title-wide.

§ 55113. Use of foreign documented oil spill response vessels

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) the foreign country has by its laws accorded to vessels of the United States the same privileges accorded to vessels of the foreign country under this section.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1638.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55113	46:12101 note.	Pub. L. 104–324, title XI, § 1117, Oct. 19, 1996, 110 Stat. 3973.

§ 55114. Unloading fish from foreign vessels

(a) PROHIBITIONS.—Except as otherwise provided by this section or a treaty or convention to which the United States is a party, a foreign vessel may not unload, in a port of the United States—

(1) its catch of fish taken on board on the high seas or fish products processed from that catch of fish; or

(2) fish or fish products taken on board that vessel on the high seas from a vessel engaged in fishing operations or the processing of fish or fish products.

(b) REGULATIONS ON OBTAINING INFORMATION.—The Secretary of Commerce may prescribe regulations the Secretary considers necessary to obtain information on the transportation of fish products by vessels of the United States for foreign fish processing vessels to points in the United States.

(c) VIRGIN ISLANDS.—

(1) IN GENERAL.—A foreign vessel of not more than 50 feet overall in length may unload its catch of fresh fish (whole or with the heads, viscera, or fins removed, but not frozen, otherwise processed, or further advanced) in a port of the Virgin Islands for immediate consumption in those islands. Fish unloaded under this paragraph may be sold or transferred only for immediate consumption. In the absence of satisfactory evidence that a sale or transfer to an agent, representative, or employee of a freezer or cannery is for immediate consumption, the sale or transfer is deemed not to be for immediate consumption. This paragraph does not prohibit the freezing, smoking, or other processing of fresh fish by the ultimate consumer of the fish.

(2) SEIZURE, FORFEITURE, AND PENALTY.—Fish unloaded in the Virgin Islands that are retained, sold, or transferred, except as allowed by paragraph (1), are liable to seizure by and forfeiture to the United States Government. A person retaining, selling, transferring, buying, or receiving the fish is liable to the Government for a civil penalty of not more than $1,000 for each violation. A penalty or forfeiture under this paragraph may be compromised, modified, or remitted under section 2107(b) of this title.

(d) NORTHERN MARIANA ISLANDS.—Subsection (a) does not apply to the Northern Mariana Islands.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1639.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
55114(a)	46 App.:251(a) (1st sentence).	R.S. § 4311; Sept. 2, 1950, ch. 842, 64 Stat. 577; Pub. L. 87–220, § 1, Sept. 13, 1961, 75 Stat. 493; Pub. L. 96–61, § 2, Aug. 15, 1979, 93 Stat. 407; Pub. L. 96–594, title I, § 126(b), Dec. 24, 1980, 94 Stat. 3459; Pub. L. 100–239, § 8(a), Jan. 11, 1988, 101 Stat. 1783.
55114(b)	46 App.:251(a) (last sentence).	
55114(c)(1) ..	46 App.:251(b).	
55114(c)(2) ..	46 App.:251(c).	
	46 App.:251a.	Pub. L. 87–220, § 2, Sept. 13, 1961, 75 Stat. 493.
55114(d)	48:1801 note (Covenant § 503(b)).	

In subsection (a), before paragraph (1), the words ''whether documented as a cargo vessel or otherwise'' are omitted as unnecessary.

In subsection (c)(2), the words ''severally'' and ''in addition to any other penalty provided in law'' are omitted as unnecessary. The last sentence is substituted for 46 App. U.S.C. 251a.

Subsection (d) is based on section 503(b) 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. 1801 note).

§ 55115. Supplies on fish processing vessels

Section 55102 of this title does not apply to supplies aboard a United States documented fish processing vessel that are necessary and used for processing or assembling fishery products aboard such a vessel.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1640.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
55115	46 App.:883 (10th proviso).	June 5, 1920, ch. 250, § 27 (10th proviso), 41 Stat. 999; July 2, 1935, ch. 355, 49 Stat. 442; Pub. L. 97–389, title V, § 504, Dec. 29, 1982, 96 Stat. 1956.

The words ''Section 55102 of this title does not apply to'' are substituted for ''for the purposes of this section'' and ''shall be considered ship's equipment and not merchandise'' for consistency in the chapter.

§ 55116. Canadian rail lines

Section 55102 of this title does not apply to the transportation of merchandise between points in the continental United States, including Alaska, over through routes in part over Canadian rail lines and connecting water facilities if the routes are recognized by the Surface Transportation Board and rate tariffs for the routes have been filed with the Board.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1640.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
55116	46 App.:883 (3d proviso).	June 5, 1920, ch. 250, § 27 (3d proviso), 41 Stat. 999; July 2, 1935, ch. 355, 49 Stat. 442; Pub. L. 85–508, § 27(a), July 7, 1958, 72 Stat. 351; Pub. L. 104–324, title VII, § 747(1), Oct. 19, 1996, 110 Stat. 3943.

§ 55117. Great Lakes rail route

Section 55102 of this title does not apply to the transportation of merchandise loaded on a railroad car or to a motor vehicle with or without a trailer, and with its passengers or contents when accompanied by the operator, when the railroad car or motor vehicle is transported in a railroad car ferry operated between fixed terminals on the Great Lakes as part of a rail route, if—

(1) the car ferry is owned by a common carrier by water and operated as part of a rail route with the approval of the Surface Transportation Board;

(2) the stock of the common carrier by water, or its predecessor, was owned or controlled by a common carrier by rail prior to June 5, 1920;

(3) the stock of the common carrier owning the car ferry is, with the approval of the Board, now owned or controlled by a common carrier by rail; and

(4) the car ferry is built in and documented under the laws of the United States.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1640.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
55117	46 App.:883 (5th proviso).	June 5, 1920, ch. 250, § 27, as added Apr. 11, 1935, ch. 58, 49 Stat. 154.

§ 55118. Foreign railroads whose road enters by ferry, tugboat, or towboat

A foreign railroad, whose road enters the United States by ferry, tugboat, or towboat, may own and operate a vessel not having a coastwise endorsement in connection with the water transportation of the passenger, freight, express, baggage, and mail cars used by that road, together with the passengers, freight, express matter, baggage, and mails transported in those cars. However, the foreign railroad is subject to the same restrictions imposed by law on a vessel of the United States entering a port of the United States from the same foreign country. Except as otherwise authorized by this chapter, the ferry, tugboat, or towboat may not, under penalty of forfeiture, be used in the transportation of merchandise between ports or places in the United States to which the coastwise laws apply.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1640.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
55118	46 App.:316(c).	R.S. § 4370(c); restated June 11, 1940, ch. 324, 54 Stat. 304.

The words ''company or corporation'' after ''foreign railroad'' are omitted as unnecessary. The words ''vessel not having a coastwise endorsement'' are substituted for ''such vessel'' (referring to a vessel described in 46 App. U.S.C. 316(a)) for clarity and because of the reorganization of the source material in the revised title. The words ''However, the foreign railroad is subject to the same restrictions imposed by law on a vessel of the United States entering a port of the

United States from the same foreign country'' are substituted for ''without being subject to any other or different restrictions than those imposed by law on any vessel of the United States entering ports of the United States from ports in the same foreign country'' to eliminate unnecessary words. The words ''Except as otherwise authorized by this chapter'' are substituted for ''except as authorized by section 883 of this Appendix'' because of the reorganization of the source material in the revised title. The words ''its Territories or possessions'' are omitted as unnecessary because of the definition of ''United States'' in chapter 1 of the revised title.

§ 55119. Yukon River

Section 55102 of this title does not apply to the transportation of merchandise on the Yukon River until the Alaska Railroad is completed and the Secretary of Transportation finds that proper facilities will be available for transportation by citizens of the United States to properly handle the traffic.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1640.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55119	46 App.:883 (4th proviso).	June 5, 1920, ch. 250, § 27 (4th proviso), 41 Stat. 999; Exec. Order No. 6166, June 10, 1933, § 12; July 2, 1935, ch. 355, 49 Stat. 442; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; Reorg. Plan No. 21 of 1950, eff. May 24, 1950, § 204, 64 Stat. 1276; Pub. L. 97–31, § 12(49), Aug. 6, 1981, 95 Stat. 157.

§ 55120. Transshipment of imported merchandise intended for immediate exportation

The Secretary of Homeland Security may prescribe regulations for the transshipment and transportation of merchandise that is imported into the United States by sea for immediate exportation to a foreign port by sea, or by a river, the right to ascend or descend which for the purposes of commerce is secured by treaty to the citizens of the United States and the subjects of a foreign power.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1641.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55120	46 App.:291.	Feb. 17, 1898, ch. 26, § 3, 30 Stat. 248.

§ 55121. Transportation of merchandise and passengers on Canadian vessels

(a) BETWEEN ROCHESTER AND ALEXANDRIA BAY.—Until passenger service is established by vessels of the United States between the port of Rochester, New York, and the port of Alexandria Bay, New York, the Secretary of Homeland Security may issue annually permits to Canadian passenger vessels to transport passengers between those ports. Canadian vessels holding such a permit are not subject to section 55103 of this title.

(b) WITHIN ALASKA OR BETWEEN ALASKA AND OTHER POINTS IN THE UNITED STATES.—Until the Secretary of Transportation determines that service by vessels of the United States is available to provide the transportation described in paragraph (1) or (2), sections 55102 and 55103 of this title do not apply to the transportation on Canadian vessels of—

(1) passengers between ports in southeastern Alaska; or

(2) passengers or merchandise between Hyder, Alaska, and other points in southeastern Alaska or in the United States outside Alaska.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1641.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55121(a)	46 App.:289a.	Apr. 26, 1938, ch. 174, 52 Stat. 223; 1946 Reorg. Plan No. 3, §§ 101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.
55121(b)	46 App.:289b.	Pub. L. 87–77, June 30, 1961, 75 Stat. 196; Pub. L. 97–31, § 12(22), Aug. 6, 1981, 95 Stat. 155.

In subsection (a), the Secretary of Homeland Security is substituted for the Commissioner of Customs because the functions of the Customs Service and of the Secretary of the Treasury relating thereto were transferred to the Secretary of Homeland Security by section 403(1) of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2178). The functions of the Commissioner of Customs previously were vested in the Secretary of the Treasury under section 321(c) of title 31. For prior related transfers of functions, see the transfer of functions note under 46 App. U.S.C. 289a.

CHAPTER 553—PASSENGER AND CARGO PREFERENCES

SUBCHAPTER I—GENERAL

Sec.
55301. Priority loading for coal.
55302. Transportation of United States Government personnel.
55303. Motor vehicles owned by United States Government personnel.
55304. Exports financed by the United States Government.
55305. Cargoes procured, furnished, or financed by the United States Government.

SUBCHAPTER II—EXPORT TRANSPORTATION OF AGRICULTURAL COMMODITIES

55311. Findings and purposes.
55312. Determining prevailing world market price.
55313. Exemption of certain agricultural exports from cargo preference provisions.
55314. Transportation requirements for certain exports sponsored by the Secretary of Agriculture.
55315. Minimum tonnage.
55316. Financing the transportation of agricultural commodities.
55317. Termination of subchapter.
55318. Effect on other law.

SUBCHAPTER III—AMERICAN GREAT LAKES VESSELS

55331. Definitions.
55332. Designating American Great Lakes vessels.
55333. Exemption from restriction on transporting certain cargo.
55334. Restrictions on operations.
55335. Revocations and terminations of designations.
55336. Civil penalty.

SUBCHAPTER I—GENERAL

§ 55301. Priority loading for coal

A vessel engaged in the coastwise transportation of coal produced in the United States, from a port in the United States to another port in the United States, shall be given priority in loading at any of those ports ahead of a waiting vessel engaged in the export transportation of coal produced in the United States. However, if the Secretary of Transportation finds that it is in the national interest, the Secretary may eliminate this priority loading at any port. The Secretary shall report to Congress within 30 days an action eliminating priority loading under this section.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1642.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55301	46 App.:1121–1.	Pub. L. 96–387, § 5, Oct. 7, 1980, 94 Stat. 1546; Pub. L. 97–31, § 12(68), Aug. 6, 1981, 95 Stat. 159; Pub. L. 99–662, title IX, § 947, Nov. 17, 1986, 100 Stat. 4200.

§ 55302. Transportation of United States Government personnel

(a) IN GENERAL.—An officer or employee of the United States Government traveling by sea on official business overseas or to or from a territory or possession of the United States shall travel and transport personal effects on a vessel documented under the laws of the United Sates if such a vessel is available, unless the necessity of the mission requires the use of a foreign vessel.

(b) REGULATIONS.—The Administrator of General Services shall prescribe regulations under which agencies may not pay for or reimburse an officer or employee for travel or transportation expenses incurred on a foreign vessel in the absence of satisfactory proof of the necessity of using the vessel.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1642.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55302	46 App.:1241(a).	June 29, 1936, ch. 858, title IX, § 901(a), 49 Stat. 2015; Aug. 26, 1954, ch. 936, 68 Stat. 832; Pub. L. 104–316, title I, § 125, Oct. 19, 1996, 110 Stat. 3839.

In subsection (a), the words ''by sea'' are added for clarity. The words ''a territory or possession of the United States'' are substituted for ''any of the possessions of the United States'' for consistency in the revised title.

EXEMPTIONS

Functions authorized by Foreign Assistance Act of 1961, as amended, as exempt, see Ex. Ord. No. 11223, eff. May 12, 1965, 30 F.R. 6635, set out under section 2393 of Title 22, Foreign Relations and Intercourse.

§ 55303. Motor vehicles owned by United States Government personnel

Notwithstanding any other law, privately-owned American shipping services may be used to transport motor vehicles owned by personnel of the United States Government whenever transportation of those vehicles at Government expense is otherwise authorized by law.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1642.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55303	46 App.:1241(c).	June 29, 1936, ch. 858, title IX, § 901(c), as added May 28, 1956, ch. 325, 70 Stat. 187.

§ 55304. Exports financed by the United States Government

It is the sense of Congress that any loans made by an instrumentality of the United States Government to foster the exporting of agricultural or other products shall provide that the products may be transported only on vessels of the United States unless, as to any or all of those products, the Secretary of Transportation, after investigation, certifies to the instrumentality that vessels of the United States are not available in sufficient number, in sufficient tonnage capacity, on necessary schedules, or at reasonable rates.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1642.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55304	46 App.:1241–1.	Mar. 26, 1934, ch. 90, 48 Stat. 500; June 29, 1936, ch. 858, § 204, 49 Stat. 1987; Pub. L. 97–31, § 12(127), Aug. 6, 1981, 95 Stat. 165.

This section codifies the Joint Resolution of March 26, 1934 (ch. 90, 48 Stat. 500) (also commonly known as Public Resolution 17). The codification of this provision is not intended to change its status as a ''Sense of Congress'' provision in any way. The words ''Reconstruction Finance Corporation or'' are omitted as obsolete because the Reconstruction Finance Corporation was abolished by section 6 of Reorganization Plan No. 1 of 1957 (5 App. U.S.C.).

§ 55305. Cargoes procured, furnished, or financed by the United States Government

(a) DEFINITION.—In this section, the term ''privately-owned commercial vessel of the United States'' does not include a vessel that, after September 21, 1961, was built or rebuilt outside the United States or documented under the laws of a foreign country, until the vessel has been documented under the laws of the United States for at least 3 years.

(b) MINIMUM TONNAGE.—When the United States Government procures, contracts for, or otherwise obtains for its own account, or furnishes to or for the account of a foreign country without provision for reimbursement, any equipment, materials, or commodities, within or without the United States, or advances funds or credits, or guarantees the convertibility of foreign currencies in connection with the furnishing of the equipment, materials, or commodities, the appropriate agencies shall take steps necessary and practicable to ensure that at least 50 percent of the gross tonnage of the equip-

ment, materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers) which may be transported on ocean vessels is transported on privately-owned commercial vessels of the United States, to the extent those vessels are available at fair and reasonable rates for commercial vessels of the United States, in a manner that will ensure a fair and reasonable participation of commercial vessels of the United States in those cargoes by geographic areas.

(c) WAIVERS.—The President, the Secretary of Defense, or Congress (by concurrent resolution or otherwise) may waive this section temporarily by—

(1) declaring the existence of an emergency justifying a waiver; and

(2) notifying the appropriate agencies of the waiver.

(d) PROGRAMS OF OTHER AGENCIES.—An agency having responsibility under this section shall administer its programs with respect to this section under regulations prescribed by the Secretary of Transportation. The Secretary shall review the administration of those programs and report annually to Congress on their administration.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1642.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55305(a)	46 App.:1241(b)(1) (2d, last provisos).	June 29, 1936, ch. 858, title IX, § 901(b), as added Aug. 26, 1954, ch. 936, 68 Stat. 832; Pub. L. 87–266, Sept. 21, 1961, 75 Stat. 565; Pub. L. 91–469, § 27, Oct. 21, 1970, 84 Stat. 1034; Pub. L. 97–31, § 12(126), Aug. 6, 1981, 95 Stat. 165.
55305(b)	46 App.:1241(b)(1) (words before 1st proviso).	
55305(c)	46 App.:1241(b)(1) (1st proviso).	
55305(d)	46 App.:1241(b)(2).	

In this section, the words ''commercial vessels of the United States'' are substituted for ''United States-flag commercial vessels'' for consistency in the revised title.

In subsection (a), the words ''the provisions of this subsection shall not apply to cargoes carried in the vessels of the Panama Canal Company'' are omitted as obsolete. The words ''Nothing herein shall repeal or otherwise modify the provisions of section 1241–1 of this Appendix'' are omitted as unnecessary. The last proviso in 46 App. U.S.C. 1241(b)(1) is omitted as obsolete.

SUBCHAPTER II—EXPORT TRANSPORTATION OF AGRICULTURAL COMMODITIES

§ 55311. Findings and purposes

(a) FINDINGS.—Congress finds that—

(1) a productive and healthy agricultural industry and a strong and active United States maritime industry are vitally important to the economic well-being and security of the United States;

(2) both industries must compete in international markets increasingly dominated by foreign trade barriers and the subsidization practices of foreign governments; and

(3) increased agricultural exports and the use of merchant vessels of the United States contribute positively to the United States balance of trade and generate employment opportunities in the United States.

(b) PURPOSES.—The purposes of this subchapter are to—

(1) enable the Secretary of Agriculture to plan export programs effectively, by clarifying the ocean transportation requirements applicable to those programs;

(2) take immediate and positive steps to promote the growth of the cargo-carrying capacity of the United States merchant marine;

(3) expand international trade in United States agricultural commodities and products and develop, maintain, and expand markets for United States agricultural exports;

(4) improve the efficiency of administration of both the commodity purchasing and selling activities and the ocean transportation activities associated with export programs sponsored by the Secretary;

(5) stimulate and promote the agricultural and maritime industries of the United States and encourage cooperative efforts by both industries to address their common problems; and

(6) provide for the appropriate disposition of these findings and purposes.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1643.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55311	46 App.:1241d.	Pub. L. 99–198, title XI, § 1141, Dec. 23, 1985, 99 Stat. 1490.

In subsection (a)(1), the word ''security'' is substituted for ''national security objectives'' to eliminate unnecessary words.

In subsection (b), the words ''Secretary of Agriculture'' in paragraph (1) and ''Secretary'' in paragraph (4) are substituted for ''Department of Agriculture'' because all functions of the Department are vested in the Secretary under 7 U.S.C. 2202 and 6911 and Reorganization Plan No. 2 of 1953 (5 App. U.S.C.).

§ 55312. Determining prevailing world market price

(a) AGRICULTURAL COMMODITIES AND PRODUCTS.—The prevailing world market price for agricultural commodities or their products shall be determined under this subchapter under procedures prescribed by the Secretary of Agriculture. The Secretary shall prescribe the procedures by regulation, with notice and opportunity for public comment under section 553 of title 5.

(b) SERVICES AND NON-AGRICULTURAL COMMODITIES AND PRODUCTS.—If a determination of the prevailing world market price of any other type of materials, goods, equipment, or service is required to determine whether a barter or exchange transaction is subject to section 55314(b)(6) or (7) of this title, the determination shall be made by the Secretary of Agriculture in consultation with the heads of other appropriate agencies.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1644.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
55312	46 App.:1241f(e).	June 29, 1936, ch. 858, title IX, § 901b(e), as added Pub. L. 99–198, title XI, § 1142, Dec. 23, 1985, 99 Stat. 1492.

§ 55313. Exemption of certain agricultural exports from cargo preference provisions

Sections 55304 and 55305 of this title do not apply to export activities of the Secretary of Agriculture or the Commodity Credit Corporation under which—

(1) agricultural commodities or their products acquired by the Corporation are made available to United States exporters, users, processors, or foreign purchasers for the purpose of developing, maintaining, or expanding export markets for United States agricultural commodities or their products at prevailing world market prices;

(2) payments are made available to United States exporters, users, or processors or, except as provided in section 55314 of this title, cash grants are made available to foreign purchasers, for the purpose described in paragraph (1);

(3) commercial credit guarantees are blended with direct credits from the Corporation to reduce the effective rate of interest on export sales of United States agricultural commodities or their products;

(4) credit or credit guarantees for not more than 3 years are extended by the Corporation to finance or guarantee export sales of United States agricultural commodities or their products; or

(5) agricultural commodities or their products owned or controlled by or under loan from the Corporation are exchanged or bartered for materials, goods, equipment, or services at least equal in value to the agricultural commodities or their products for which they are exchanged or bartered (determined on the basis of prevailing world market prices at the time of the exchange or barter), but this paragraph does not exempt from the cargo preference provisions referred to in section 55314(b) of this title any requirement otherwise applicable to the materials, goods, equipment, or services imported under the transaction.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1644.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
55313	46 App.:1241e.	June 29, 1936, ch. 858, title IX, § 901a, as added Pub. L. 99–198, title XI, § 1142, Dec. 23, 1985, 99 Stat. 1490.

§ 55314. Transportation requirements for certain exports sponsored by the Secretary of Agriculture

(a) MINIMUM TONNAGE.—

(1) IN GENERAL.—In addition to the requirement under section 55305 of this title for the transportation of a percentage of gross tonnage on commercial vessels of the United States, 25 percent of the gross tonnage of agricultural commodities or their products specified in subsection (b) shall be transported each calendar year on commercial vessels of the United States that—

(A) are necessary for national security; and

(B) if more than 25 years old, were rebuilt within the last 5 years and certified by the Secretary of Transportation as having a useful life of at least 5 years after that rebuilding.

(2) CALENDAR YEAR.—To provide for effective and equitable administration of the cargo preference laws, the calendar year for the purpose of compliance with minimum percentage requirements is the 12-month period beginning October 1 of each year.

(b) APPLICABLE EXPORT ACTIVITY.—This section applies to export activity (except inspection or weighing activities, other activities carried out for health or safety, or technical assistance provided in the handling of commercial transactions) of the Secretary of Agriculture or the Commodity Credit Corporation—

(1) carried out under the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 et seq.);

(2) carried out under section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431);

(3) carried out under the Bill Emerson Humanitarian Trust Act (7 U.S.C. 1736f–1);

(4) under which agricultural commodities or their products are—

(A) donated through foreign governments or private or public agencies, including intergovernmental organizations; or

(B) sold for foreign currencies or for dollars on credit terms of more than 10 years;

(5) under which agricultural commodities or their products are made available for emergency food relief at less than prevailing world market prices;

(6) under which a cash grant is made directly or through an intermediary to a foreign purchaser to enable the purchaser to obtain United States agricultural commodities or their products in an amount greater than the difference between the prevailing world market price and the United States market price, free along side vessel at a United States port; or

(7) under which agricultural commodities owned or controlled by or under loan from the Corporation are exchanged or bartered for materials, goods, equipment, or services produced in foreign countries, except export activities described in section 55313(5) of this title.

(c) ADDITIONAL REQUIREMENTS.—

(1) APPLICATION OF SECTION 55305.—The requirement for transportation on vessels of the United States under subsection (a) is subject to the same terms and conditions as provided in section 55305 of this title.

(2) ALLOCATION OF COMMODITIES.—Subject to paragraph (3), in carrying out this section and section 55305 of this title, the Corporation shall take steps necessary and practicable, and

consistent with this section and section 55305, without detriment to any port range to allocate, on the principle of lowest landed cost without regard to the country of registry of the vessel, 25 percent of the bagged, processed, or fortified commodities provided under title II of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1721 et seq.).

(3) CALCULATIONS.—In carrying out paragraph (2), first there shall be calculated the allocation of 100 percent of the quantity to be procured on an overall lowest landed cost basis without regard to the country of registry of the vessel, and then there shall be allocated to the Great Lakes port range any cargoes for which it has the lowest landed cost under that calculation. The requirements for transportation on vessels of the United States under this section and section 55305 of this title do not apply to commodities allocated to the Great Lakes port range under paragraph (2). Commodities allocated to the Great Lakes port range under paragraph (2) may not be reallocated or diverted to another port range to meet those requirements to the extent that the total tonnage of commodities to which paragraph (2) applies that is furnished and transported from the Great Lakes port range is less than 25 percent of the total annual tonnage of the commodities furnished.

(4) AWARDING CONTRACTS.—In awarding a contract for the transportation by vessel of commodities from the Great Lakes port range pursuant to an export activity referred to in subsection (b), an agency—

(A) shall consider expressions of freight interest for any vessel from a vessel operator who meets reasonable requirements for financial and operational integrity; and

(B) may not deny award of the contract to a person based on the type of vessel on which the transportation would be provided (including on the basis that the transportation would not be provided on a liner vessel, as that term is used in the Shipping Act of 1984, as in effect on November 14, 1995), if the person otherwise satisfies reasonable requirements for financial and operational integrity.

(5) NONAVAILABILITY OF VESSELS.—A determination of nonavailability of vessels of the United States resulting from the application of this subsection may not reduce the gross tonnage of commodities required by this section and section 55305 of this title to be transported on vessels of the United States.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1645.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55314(a)(1) ..	46 App.:1241f(a).	June 29, 1936, ch. 858, title IX, § 901b(a)–(d), as added Pub. L. 99–198, title XI, § 1142, Dec. 23, 1985, 99 Stat. 1491; Pub. L. 101–624, title XV, § 1525, Nov. 28, 1990, 104 Stat. 3667; Pub. L. 104–239, § 17, Oct. 8, 1996, 110 Stat. 3138; Pub. L. 108–136, title XXXV, § 3514, Nov. 24, 2003, 117 Stat. 1792.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
	46 App.:1241*o*.	June 29, 1936, ch. 858, title IX, § 901k, as added Pub. L. 99–198, title XI, § 1142, Dec. 23, 1985, 99 Stat. 1496.
55314(a)(2) ..	46 App.:1241f(c)(2).	
55314(b)	46 App.:1241f(b), (d).	
55314(c)	46 App.:1241f(c)(1), (3), (4).	

In this section, the words ''commercial vessels of the United States'' are substituted for ''United States-flag commercial vessels'' for consistency in the revised title.

In subsection (a)(1), before subparagraph (A), the text of 46 App. U.S.C. 1241f(a)(2)(A) and (B) is omitted as obsolete. Subparagraphs (A) and (B) are substituted for 46 App. U.S.C. 1241*o* to improve the organization and to eliminate unnecessary words.

In subsection (a)(2), the words ''the 12-month period beginning October 1 of each year'' are substituted for ''12 month periods commencing April 1, 1986, the 18-month period beginning April 1, 2002, and the 12-month period beginning October 1, 2003, and each year thereafter'' to eliminate obsolete and unnecessary language.

In subsection (c)(4), before subparagraph (A), the words ''or instrumentality'' are omitted as unnecessary because of the definition of ''agency'' in chapter 1.

REFERENCES IN TEXT

The Agricultural Trade Development and Assistance Act of 1954, referred to in subsecs. (b)(1) and (c)(2), is act July 10, 1954, ch. 469, 68 Stat. 454, which is classified generally to chapter 41 (§ 1691 et seq.) of Title 7, Agriculture. Title II of the Act is classified generally to subchapter III (§ 1721 et seq.) of chapter 41 of Title 7. For complete classification of this Act to the Code, see Short Title note set out under section 1691 of Title 7 and Tables.

The Shipping Act of 1984, referred to in subsec. (c)(4)(B), is Pub. L. 98–237, Mar. 20, 1984, 98 Stat. 67, which was classified principally to chapter 36 (§ 1701 et seq.) of the former Appendix to this title. The Act was primarily repealed and restated in part A of subtitle IV of this title by Pub. L. 109–304, §§ 7, 19, Oct. 6, 2006, 120 Stat. 1523, 1710. For complete classification of Pub. L. 98–237 to the Code, see Tables. For disposition of sections of the former Appendix to this title, see Disposition Table preceding section 101 of this title.

§ 55315. Minimum tonnage

(a) DEFINITION.—In this section, the term ''base period'' means the 5-year period running from the sixth through the second prior fiscal years.

(b) REQUIREMENT.—For each fiscal year, the minimum quantity of agricultural commodities to be exported under programs subject to section 55314 of this title is the average of the tonnage exported under those programs during the base period, discarding the high and low years.

(c) WAIVERS.—The President may waive the minimum quantity for a fiscal year under this section if the President determines and reports to Congress, together with reasons, that the quantity cannot be used effectively for the purposes of those programs or, based on a certification by the Secretary of Agriculture, that the commodities are not available for reasons that include the unavailability of funds.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1646.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55315	46 App.:1241g.	June 29, 1936, ch. 858, title IX, § 901c, as added Pub. L. 99–198, title XI, § 1142, Dec. 23, 1985, 99 Stat. 1493.

In subsection (b), the words ''For fiscal year 1986 and'' are omitted as obsolete.

§ 55316. Financing the transportation of agricultural commodities

(a) FINANCING OF INCREASED CHARGES.—The Secretary of Transportation shall finance any increased ocean freight charges incurred in any fiscal year that result from the application of section 55314 of this title.

(b) REIMBURSEMENT OF INCREASED CHARGES.—

(1) IN GENERAL.—The Secretary of Transportation shall reimburse the Secretary of Agriculture and the Commodity Credit Corporation for the amount by which, in any fiscal year—

(A) the total cost of ocean freight and ocean freight differential for which obligations are incurred by the Secretary of Agriculture and the Corporation on exports of agricultural commodities and their products under the agricultural export programs specified in section 55314(b) of this title; exceeds

(B) 20 percent of the value of the commodities and their products and the cost of the ocean freight and ocean freight differential on which obligations are incurred by the Secretary of Agriculture and the Corporation during that fiscal year.

(2) COMMODITIES SHIPPED FROM INVENTORY.—For purposes of this subsection, commodities shipped from the inventory of the Corporation shall be valued as provided in section 412(d) of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1736f(d)).

(c) ISSUANCE AND PURCHASE OF OBLIGATIONS.—

(1) ISSUANCE.—To meet the expenses required to be assumed under subsections (a) and (b), the Secretary of Transportation shall issue obligations to the Secretary of the Treasury. The Secretary of Transportation, with the approval of the Secretary of the Treasury, shall prescribe the form, denomination, maturity, and other terms (except the interest rate) of the obligations. The Secretary of the Treasury shall set the interest rate for the obligations, considering the average market yield on outstanding marketable obligations of the United States Government of comparable maturities during the month before the obligations are issued.

(2) PURCHASE.—The Secretary of the Treasury shall purchase the obligations issued under this subsection. To purchase the obligations, the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of securities issued under chapter 31 of title 31. The purposes for which securities may be issued under that chapter are extended to include the purchase of obligations under this subsection. A redemption or purchase of the obligations by the Secretary of the Treasury is a public debt transaction of the Government.

(d) SOURCE OF FUNDS FOR REIMBURSEMENT.—Reimbursement of the Secretary of Transportation for costs incurred under this section shall be made with appropriated funds rather than through cancellation of notes.

(e) APPROPRIATIONS.—

(1) AUTHORIZATION.—Each fiscal year, there is authorized to be appropriated an amount sufficient to reimburse the Secretary of Transportation for the costs incurred under this section, including administrative expenses and the principal and interest due on obligations issued to the Secretary of the Treasury.

(2) APPROPRIATION FOR ADMINISTRATIVE EXPENSES.—Each fiscal year, such amounts as may be necessary are hereby appropriated to pay interest and to liquidate debt on obligations issued to the Secretary of the Treasury under this section.

(f) NOTIFICATION TO CONGRESS OF INSUFFICIENCY.—If the Secretary of Transportation is unable to obtain the funds necessary to finance the increased ocean freight charges resulting from the requirements of subsections (a) and (b) and section 55314(a) of this title, the Secretary shall notify Congress within 10 working days of the discovery of the insufficiency.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1647.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55316(a)	46 App.:1241h(a).	June 29, 1936, ch. 858, title IX, § 901d, as added Pub. L. 99–198, title XI, § 1142, Dec. 23, 1985, 99 Stat. 1493.
55316(b)	46 App.:1241h(b).	
55316(c)	46 App.:1241h(c).	
55316(d)	46 App.:1241h(d) (last sentence).	
55316(e)(1) ..	46 App.:1241h(d) (1st sentence).	
55316(e)(2) ..	46 App.:1241h note.	Pub. L. 100–202, 101(a) [title V (par. under heading ''Ocean Freight Differential'')], Dec. 22, 1987, 101 Stat. 1329, 1329–27.
55316(f)	46 App.:1241h(e).	

In subsection (b)(2), the words ''section 412(d) of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1736f(d))'' are substituted for ''section 1733(b) of title 7'' because the latter provision, as amended in 1990, no longer contains provisions on valuation of commodities shipped from the inventory of the Commodity Credit Corporation, and a provision substantially the same as former 7 U.S.C. 1733(b) is now at 7 U.S.C. 1736f(e).

In subsection (c)(1), the words ''considering the current average market yield on outstanding marketable obligations of the United States Government of comparable maturities during the month before the obligations are issued'' are substituted for ''taking into consideration the average market yield on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the average maturities of such obligations during the month preceding the issuance of such obligations of the Secretary of Transportation'' to eliminate unnecessary words.

In subsection (c)(2), the words ''after December 23, 1985'' are omitted as obsolete.

In subsection (e)(1), the words ''commencing with the fiscal year beginning October 1, 1986'' are omitted as obsolete.

In subsection (f), the words ''Notwithstanding the provisions of this section'' are omitted as unnecessary.

§ 55317. Termination of subchapter

This subchapter terminates 90 days after the date on which a notification is made under section 55316(f) of this title, except for shipments of agricultural commodities and their products subject to contracts made before the end of that 90-day period, unless within that 90-day period the Secretary of Transportation proclaims that funds are available to finance increased freight charges resulting from the requirements of sections 55314(a) and 55316(a) and (b) of this title. On the termination of this subchapter under this section—

(1) this subchapter does not exempt export activities from, or subject export activities to, the cargo preference laws; and

(2) the 50-percent requirement in section 55305 of this title remains in effect.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1648.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55317	46 App.:1241j.	June 29, 1936, ch. 858, title IX, § 901f, as added Pub. L. 99–198, title XI, § 1142, Dec. 23, 1985, 99 Stat. 1494.

The words ''except to the extent those activities are exempt under section 1707a(b) of title 7'' are omitted because the provision referred to has been repealed.

§ 55318. Effect on other law

This subchapter does not affect chapter 5 of title 5.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1648.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55318	46 App.:1241p.	Pub. L. 99–198, title XI, § 1143, Dec. 23, 1985, 99 Stat. 1496.

The words ''section 1707a(b)(8) of title 7'' are omitted because the provision referred to has been repealed.

SUBCHAPTER III—AMERICAN GREAT LAKES VESSELS

§ 55331. Definitions

In this subchapter:

(1) AMERICAN GREAT LAKES VESSEL.—The term ''American Great Lakes vessel'' means a vessel so designated under section 55332 of this title, but only during the period the designation is in effect.

(2) GREAT LAKES.—The term ''Great Lakes'' means Lake Superior, Lake Michigan, Lake Huron, Lake Erie, Lake Ontario, the Saint Lawrence River west of Saint Regis, New York, and their connecting and tributary waters.

(3) GREAT LAKES SHIPPING SEASON.—The term ''Great Lakes shipping season'' means the period each year during which the Saint Lawrence Seaway is open for navigation by vessels, as declared by the Saint Lawrence Seaway Development Corporation.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1648.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55331	46 App.:1241v.	Pub. L. 101–624, title XV, § 1527, Nov. 28, 1990, 104 Stat. 3668.

In paragraph (1), the words ''but only during the period the designation is in effect'' are added for clarity.

In paragraph (3), the words ''created by the Act of May 13, 1954 (33 U.S.C. 981 et seq.)'' are omitted as unnecessary.

The definition of ''Secretary'' in 46 App. U.S.C. 1241v(4) is omitted as unnecessary because the full title of the Secretary of Transportation is used the first time the Secretary is referred to in each section.

§ 55332. Designating American Great Lakes vessels

(a) DESIGNATIONS.—The Secretary of Transportation shall designate a vessel as an American Great Lakes vessel if—

(1) an application for designation is submitted to the Secretary under regulations prescribed by the Secretary;

(2) the vessel is documented under the laws of the United States;

(3) the vessel, on the effective date of the designation, is—

(A) at least 1, but not more than 6, years old; or

(B) at least 1, but not more than 11, years old if the Secretary finds that suitable vessels are not available to provide the type of service for which the vessel will be used after the designation;

(4) the vessel has not previously been designated as an American Great Lakes vessel; and

(5) the owner makes an agreement as provided under subsection (b).

(b) AGREEMENTS.—A vessel may be designated as an American Great Lakes vessel only if the person that will be the owner of the vessel at the time of the designation makes an agreement with the Secretary providing that if the Secretary determines that the vessel is necessary to the defense of the United States, the United States Government will have an exclusive right, during the 120-day period following the date of a revocation of the designation under section 55335 of this title, to purchase the vessel for a price equal to the greater of—

(1) the approximate world market value of the vessel; or

(2) the cost of the vessel to the owner less a reasonable amount for depreciation.

(c) CERTAIN FOREIGN DOCUMENTATION AND SALE NOT PROHIBITED.—Notwithstanding any other law, if the Government does not exercise its right of purchase under an agreement under subsection (b), the owner of the vessel is not prohibited from—

(1) documenting the vessel under the laws of a foreign country; or

(2) selling the vessel to a person not a citizen of the United States.

(d) REGULATIONS.—The Secretary shall prescribe regulations establishing requirements for submitting applications under this section.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1649.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55332	46 App.:1241r.	Pub. L. 101–624, title XV, § 1522, Nov. 28, 1990, 104 Stat. 3665.

In subsection (a), the words ''for purposes of sections 1241q to 1241v of this Appendix'' are omitted as unnecessary.

In subsection (c), before paragraph (1), the words ''construction and purchase'' before ''agreement'' are omitted because the source provision for subsection (b) does not say anything about construction.

In subsection (d), the words ''Not later than 60 days after November 28, 1990'' are omitted as obsolete.

§ 55333. Exemption from restriction on transporting certain cargo

The 3-year documentation requirement of section 55305(a) of this title does not apply to a vessel designated as an American Great Lakes vessel during the period of its designation.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1649.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55333	46 App.:1241q.	Pub. L. 101–624, title XV, § 1521, Nov. 28, 1990, 104 Stat. 3665.

This section is substituted for the source provisions to eliminate unnecessary words.

§ 55334. Restrictions on operations

(a) PROHIBITIONS.—Except as provided in subsection (b), an American Great Lakes vessel may not be used to—

(1) engage in trade—

(A) from a port in the United States that is not located on the Great Lakes; or

(B) between ports in the United States;

(2) transport bulk cargo (as defined in section 40102 of this title) that is subject to section 55305 or 55314 of this title or section 2631 of title 10; or

(3) provide a service (except ocean freight service) as—

(A) a contract carrier; or

(B) a common carrier on a fixed advertised schedule offering frequent sailings at regular intervals in the foreign trade of the United States.

(b) OFF-SEASON EXCEPTION.—An American Great Lakes vessel may be used for not more than 90 days during any 12-month period to engage in trade prohibited by subsection (a)(1)(A), except during the Great Lakes shipping season.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1649.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55334	46 App.:1241s.	Pub. L. 101–624, title XV, § 1523, Nov. 28, 1990, 104 Stat. 3666.

§ 55335. Revocations and terminations of designations

(a) REVOCATIONS.—After notice and an opportunity for a hearing, the Secretary of Transportation may revoke a designation of a vessel as an American Great Lakes vessel if the Secretary finds that—

(1) the vessel does not meet a requirement for the designation;

(2) the vessel has been operated in violation of this subchapter; or

(3) the owner or operator of the vessel has violated an agreement made under section 55332(b) of this title.

(b) TERMINATIONS.—On petition and a showing of good cause by the owner of a vessel, the Secretary may terminate the designation of a vessel as an American Great Lakes vessel. The Secretary may impose conditions in a termination order to prevent significant adverse effects on other operators of vessels of the United States.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1650.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55335	46 App.:1241t(a), (c).	Pub. L. 101–624, title XV, § 1524(a), (c), Nov. 28, 1990, 104 Stat. 3667.

In subsection (a)(3), the words ''construction and purchase'' before ''agreement'' are omitted because the source provision for section 55332(b) of the revised title does not say anything about construction.

In subsection (b), the words ''vessels of the United States'' are substituted for ''United States-flag vessel'' for consistency in the revised title.

§ 55336. Civil penalty

After notice and an opportunity for a hearing, the Secretary of Transportation may impose a civil penalty of not more than $1,000,000 on the owner of an American Great Lakes vessel for any act for which the designation may be revoked under section 55335 of this title.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1650.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55336	46 App.:1241t(b).	Pub. L. 101–624, title XV, § 1524(b), Nov. 28, 1990, 104 Stat. 3667.

CHAPTER 555—MISCELLANEOUS

Sec.
55501. Mobile trade fairs.

§ 55501. Mobile trade fairs

(a) IN GENERAL.—The Secretary of Commerce shall encourage and promote the development and use of mobile trade fairs designed to show and sell the products of United States business and agriculture at foreign ports and at other commercial centers throughout the world where the operators of the fairs use, insofar as practicable, vessels and aircraft of the United States in transporting their exhibits.

(b) TECHNICAL AND FINANCIAL ASSISTANCE.—When the Secretary determines that a mobile

trade fair provides an economical and effective means of promoting export sales, the Secretary may provide to the operator of the fair—

(1) technical assistance and support; and

(2) financial assistance to defray certain expenses incurred outside the United States, except the cost of transportation on foreign vessels and aircraft.

(c) USE OF FOREIGN CURRENCIES.—To carry out this section, the President may use, in addition to amounts appropriated to carry out trade promotion activities, foreign currencies owned by or owed to the United States Government.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1650.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
55501	46 App.:1122b.	June 29, 1936, ch. 858, title II, § 212(B), as added Pub. L. 87–839, § 1, Oct. 18, 1962, 76 Stat. 1074; Pub. L. 89–66, July 7, 1965, 79 Stat. 211; Pub. L. 90–434, July 27, 1968, 82 Stat. 449; Pub. L. 100–418, title X, § 10003(a), Aug. 23, 1988, 102 Stat. 1572.

PART E—CONTROL OF MERCHANT MARINE CAPABILITIES

CHAPTER 561—RESTRICTIONS ON TRANSFERS

Sec.
56101. Approval required to transfer vessel to noncitizen.
56102. Additional controls during war or national emergency.
56103. Conditional approvals.
56104. Penalty for false statements.
56105. Forfeiture procedure.

§ 56101. Approval required to transfer vessel to noncitizen

(a) RESTRICTIONS.—

(1) IN GENERAL.—Except as otherwise provided in this section, section 12119 of this title, or section 611 of the Merchant Marine Act, 1936, a person may not, without the approval of the Secretary of Transportation—

(A) sell, lease, charter, deliver, or in any other manner transfer, or agree to sell, lease, charter, deliver, or in any other manner transfer, to a person not a citizen of the United States, an interest in or control of—

(i) a documented vessel owned by a citizen of the United States; or

(ii) a vessel last documented under the laws of the United States; or

(B) place under foreign registry, or operate under the authority of a foreign country, a documented vessel or a vessel last documented under the laws of the United States.

(2) EXCEPTIONS.—Paragraph (1)(A) does not apply to a vessel that has been operated only for pleasure or only as a fishing vessel, fish processing vessel, or fish tender vessel (as defined in section 2101 of this title).

(b) APPROVAL BEFORE DOCUMENTATION.—To promote financing with respect to a vessel to be documented under chapter 121 of this title, the Secretary may grant approval under subsection (a) before the vessel is documented.

(c) EXCEPTIONS.—Notwithstanding any other provision of this subtitle, the Merchant Marine Act, 1936, or any contract with the Secretary made under this subtitle or that Act, a person may place a vessel under foreign registry without the approval of the Secretary if—

(1)(A) the Secretary, in conjunction with the Secretary of Defense, determines that at least one replacement vessel of equal or greater military capability and of a capacity that is equivalent or greater, as measured by deadweight tons, gross tons, or container equivalent units, as appropriate, is documented under chapter 121 of this title by the owner of the vessel placed under foreign registry; and

(B) the replacement vessel is not more than 10 years old on the date of that documentation; or

(2) an operating agreement covering the vessel under chapter 531 of this title has expired.

(d) STATUS OF PROHIBITED TRANSACTION.—A charter, sale, or transfer of a vessel, or of an interest in or control of a vessel, in violation of this section is void.

(e) PENALTIES.—

(1) CRIMINAL PENALTY.—A person that knowingly sells, charters, or transfers a vessel, or an interest in or control of a vessel, in violation of this section shall be fined under title 18, imprisoned for not more than 5 years, or both.

(2) CIVIL PENALTY.—A person that sells, charters, or transfers a vessel, or an interest in or control of a vessel, in violation of this section is liable to the United States Government for a civil penalty of not more than $10,000 for each violation.

(3) FORFEITURE.—A documented vessel may be seized by and forfeited to the Government if, in violation of this section, a person—

(A) knowingly sells, charters, or transfers the vessel or an interest in or control of the vessel; or

(B) places the vessel under foreign registry or operates the vessel under the authority of a foreign country.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1651.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
56101(a)	46 App.:808(c).	Sept. 7, 1916, ch. 451, § 9(c), (d), 39 Stat. 730; July 15, 1918, ch. 152, § 3, 40 Stat. 900; June 5, 1920, ch. 250, § 18, 41 Stat. 994; Exec. Order No. 6166, § 12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; June 23, 1938, ch. 600, § 42, 52 Stat. 964; Pub. L. 89–346, § 1, Nov. 8, 1965, 79 Stat. 1305; Pub. L. 97–31, § 12(26), Aug. 6, 1981, 95 Stat. 155; Pub. L. 100–710, title I, § 104(b)(3), Nov. 23, 1988, 102 Stat. 4750; Pub. L. 101–225, title III, § 304(a), Dec. 12, 1989, 103 Stat. 1924; Pub. L. 104–324, title XI, [§]1113(c), (e), Oct. 19, 1996, 110 Stat. 3970, 3971; Pub. L. 107–295, title II, § 205(d), Nov. 25, 2002, 116 Stat. 2096.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
	46 App.:808a.	Pub. L. 98–454, title III, § 302, Oct. 5, 1984, 98 Stat. 1734.
56101(b)	46 App.:808(f)	Sept. 7, 1916, ch. 451, § 9(f), as added Pub. L. 104–324, title XI, § 1136(b), Oct. 19, 1996, 110 Stat. 3987; Pub. L. 108–136, title XXXV, § 3532(a)(1), Nov. 24, 2003, 117 Stat. 1817.
56101(c)	46 App.:808(e)	Sept. 7, 1916, ch. 451, § 9(e), as added Pub. L. 104–239, § 6, Oct. 8, 1996, 110 Stat. 3132; Pub. L. 108–136, title XXXV, § 3532(a)(2), Nov. 24, 2003, 117 Stat. 1817.
56101(d)	46 App.:808(d)(1).	
56101(e)	46 App.:808(d)(2)–(4).	

In subsection (a), the text of 46 App. U.S.C. 808a is omitted as unnecessary. In paragraph (1), the words ''owned by a citizen of the United States'' are omitted as unnecessary because ownership by a citizen is a requirement for documentation. See section 12103 as revised by the bill.

In subsection (c), before paragraph (1), the words ''Notwithstanding any other provision of this subtitle, the Merchant Marine Act, 1936, or any contract with the Secretary made under this subtitle or that Act'' are substituted for ''Notwithstanding subsection (c)(2) of this section, the Merchant Marine Act, 1936 [46 App. U.S.C. 1101 et seq.], or any contract entered into with the Secretary of Transportation under that Act'' because the Merchant Marine Act, 1936, is restated principally in this subtitle, but other provisions of that Act are being neither restated nor repealed.

REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in subsecs. (a)(1), (c), is act June 29, 1936, ch. 858, 49 Stat. 1985, which enacted provisions set out as notes under section 53101 of this title. For complete classification of this Act to the Code, see Short Title of 1936 Amendment note set out under section 101 of this title and Tables.

§ 56102. Additional controls during war or national emergency

(a) IN GENERAL.—During war, or a national emergency declared by Presidential proclamation, a person may not, without the approval of the Secretary of Transportation—

(1) place under foreign registry a vessel owned in whole or in part by a citizen of the United States or a corporation incorporated under the laws of the United States or of a State;

(2) sell, mortgage, lease, charter, deliver, or in any other manner transfer, or agree to sell, mortgage, lease, charter, deliver, or in any other manner transfer, to a person not a citizen of the United States—

(A) a vessel owned as described in paragraph (1), or an interest therein;

(B) a vessel documented under the laws of the United States, or an interest therein; or

(C) a facility for building or repairing vessels, or an interest therein;

(3) issue, assign, or transfer to a person not a citizen of the United States an instrument of indebtedness secured by a mortgage of a vessel to a trustee, by an assignment of an owner's interest in a vessel under construction to a trustee, or by a mortgage of a facility for building or repairing vessels to a trustee, unless the trustee or a substitute trustee is approved by the Secretary under subsection (b);

(4) enter into an agreement or understanding to construct a vessel in the United States for, or to be delivered to, a person not a citizen of the United States without expressly stipulating that construction will not begin until after the war or national emergency has ended;

(5) enter into an agreement or understanding whereby there is vested in, or for the benefit of, a person not a citizen of the United States the controlling interest in a corporation that is incorporated under the laws of the United States or a State and that owns a vessel or facility for building or repairing vessels; or

(6) cause or procure a vessel, constructed in whole or in part in the United States and never cleared for a foreign port, to depart from a port of the United States before it has been documented under the laws of the United States.

(b) TRUSTEES.—

(1) APPROVAL.—The Secretary shall approve a trustee or substitute trustee under subsection (a)(3) if and only if the trustee is a bank or trust company that—

(A) is organized as a corporation, and is doing business, under the laws of the United States or a State;

(B) is authorized under those laws to exercise corporate trust powers;

(C) is a citizen of the United States;

(D) is subject to supervision or examination by Federal or State authority; and

(E) has a combined capital and surplus (as set forth in its most recent published report of condition) of at least $3,000,000.

(2) DISAPPROVAL.—If a trustee or substitute trustee ceases to meet the conditions in paragraph (1), the Secretary shall disapprove the trustee or substitute trustee. After the disapproval, the restrictions on transfer or assignment without the Secretary's approval in subsection (a)(3) apply.

(3) OPERATION OF VESSEL.—During a period when subsection (a) applies, a trustee referred to in subsection (a)(3), even though approved as a trustee by the Secretary, may not operate the vessel under the mortgage or assignment without the Secretary's approval.

(c) STATUS OF PROHIBITED TRANSACTION.—A transaction in violation of this section is void.

(d) RECOVERY OF CONSIDERATION.—

(1) IN GENERAL.—A person that deposited or paid consideration in connection with a transaction prohibited by this section may recover the consideration after tender of the vessel, facility, stock, or other security, or interest therein, to the person entitled to it, or the forfeiture thereof to the United States Government.

(2) EXCEPTION.—Paragraph (1) does not apply if the person in whose interest the consideration was deposited, or to whom it was paid, entered into the transaction in the belief that the person depositing or paying the consideration was a citizen of the United States.

(e) PENALTIES.—

(1) CRIMINAL PENALTY.—A person that violates, or attempts or conspires to violate, this section shall be fined under title 18, imprisoned for not more than 5 years, or both.

(2) FORFEITURE.—The following shall be forfeited to the Government:

(A) A vessel, a facility for building or repairing vessels, or an interest in a vessel or such a facility, that is sold, mortgaged, leased, chartered, delivered, transferred, or documented, or agreed to be sold, mortgaged, leased, chartered, delivered, transferred, or documented, in violation of this section.

(B) Stock and other securities sold or transferred, or agreed to be sold or transferred, in violation of this section.

(C) A vessel departing in violation of subsection (a)(6).

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1652.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
56102(a)	46 App.:835(a)–(c) (less provisos), (d)–(f).	Sept. 7, 1916, ch. 451, § 37, as added July 15, 1918, ch. 152, § 4, 40 Stat. 901; Exec. Order No. 6166, § 12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; Pub. L. 89–346, § 2, Nov. 8, 1965, 79 Stat. 1306; Pub. L. 97–31, § 12(30), Aug. 6, 1981, 95 Stat. 156.
56102(b)	46 App.:835(c) (provisos).	
56102(c)	46 App.:835 (2d par. after cl. (f), last par. words before 9th comma).	
56102(d)	46 App.:835 (last par. words after 9th comma).	
56102(e)	46 App.:835 (1st, 3d pars. after cl. (f)).	

In this section, the words ''facility for building or repairing vessels'' are substituted for ''shipyard, dry dock, shipbuilding or ship-repairing plant or facility'' (or similar language) to eliminate unnecessary words.

In subsection (a)(1), the words ''transfer to'' and ''or flag'' are omitted as surplus. The words ''Territory, District, or possession thereof'' are omitted as unnecessary because of the definition of ''State'' in chapter 1 of the revised title.

In subsection (a)(3), the words ''instrument of indebtedness'' are substituted for ''bond, note, or other evidence of indebtedness'' to eliminate unnecessary words. The words ''right, title, or'' are omitted as unnecessary.

In subsection (a)(5), the words ''or the majority of the voting power'' are omitted as covered by ''controlling interest''.

In subsection (b)(1), before subparagraph (A), the words ''and only if'' are added for clarity because the Secretary is required to disapprove a trustee that ceases to meet the specified conditions.

Subsections (c) and (d) are substituted for the source provisions to eliminate unnecessary words.

In subsection (e)(1), the words ''guilty of a misdemeanor'' are omitted, and the words ''fined under title 18'' are substituted for ''punishable by a fine of not more than $5000'', because of chapter 227 of title 18.

§ 56103. Conditional approvals

(a) IN GENERAL.—In approving an act or transaction under section 56101 or 56102 of this title, the Secretary of Transportation may do so absolutely or upon conditions the Secretary considers advisable. The Secretary shall state the conditions in the notice of approval.

(b) VIOLATIONS.—A violation of a condition of approval is subject to the same penalties as a violation resulting from an act done without the required approval. The violation occurs at the time the condition is violated.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1654.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
56103	46 App.:839 (1st par.).	Sept. 7, 1916, ch. 451, § 41 (1st par.), as added July 15, 1918, ch. 152, § 4, 40 Stat. 902; Exec. Order No. 6166, June 10, 1933, § 12; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; Pub. L. 97–31, § 12(32), Aug. 6, 1981, 95 Stat. 156.

This section is substituted for the source provision to eliminate unnecessary words.

§ 56104. Penalty for false statements

A person that knowingly makes a false statement of a material fact to the Secretary of Transportation or another officer, employee, or agent of the Department of Transportation, to obtain the Secretary's approval under section 56101 or 56102 of this title, shall be fined under title 18, imprisoned for not more than 5 years, or both.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1654.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
56104	46 App.:839 (last par.).	Sept. 7, 1916, ch. 451, § 41 (last par.), as added July 15, 1918, ch. 152, § 4, 40 Stat. 903; Exec. Order No. 6166, June 10, 1933, § 12; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; Pub. L. 97–31, § 12(32), Aug. 6, 1981, 95 Stat. 156.

The words ''guilty of a misdemeanor'' are omitted, and the words ''fined under title 18'' are substituted for ''subject to a fine of not more than $5000'', because of chapter 227 of title 18.

§ 56105. Forfeiture procedure

(a) IN GENERAL.—A forfeiture under this chapter may be enforced in the same way as a forfeiture under the laws on the collection of duties. However, such a forfeiture may be remitted without seizure of the vessel.

(b) PRIOR CONVICTIONS.—In a proceeding under this chapter to enforce a forfeiture, a prior criminal conviction of a person for a violation of this chapter with respect to the subject matter of the forfeiture is prima facie evidence of the violation against the person convicted.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1654.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
56105(a)	46 App.:836.	Sept. 7, 1916, ch. 451, § 38, as added July 15, 1918, ch. 152, § 4, 40 Stat. 902; Pub. L. 101–225, title III, § 304(b), Dec. 12, 1989, 103 Stat. 1924.
56105(b)	46 App.:837.	Sept. 7, 1916, ch. 451, § 39, as added July 15, 1918, ch. 152, § 4, 40 Stat. 902.

CHAPTER 563—EMERGENCY ACQUISITION OF VESSELS

Sec.
56301. General authority.
56302. Charter terms.
56303. Compensation.
56304. Disputed compensation.
56305. Vessel encumbrances.
56306. Use and transfer of vessels.
56307. Return of vessels.

§ 56301. General authority

During a national emergency declared by Presidential proclamation, or a period for which the President has proclaimed that the security of the national defense makes it advisable, the Secretary of Transportation may requisition or purchase, or requisition or charter the use of, a vessel owned by citizens of the United States, a documented vessel, or a vessel under construction in the United States.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1654.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
56301	46 App.:1242(a) (1st, 2d sentences).	June 29, 1936, ch. 858, title IX, § 902(a) (1st, 2d sentences), 49 Stat. 2015; Pub. L. 97–31, § 12(131), Aug. 6, 1981, 95 Stat. 165; Pub. L. 100–710, title I, § 104(c), Nov. 23, 1988, 102 Stat. 4750.

The words ''or other watercraft'' are omitted because of the definition of ''vessel'' in chapter 1 of the revised title. The words ''The termination of any emergency so declared shall be announced by a further proclamation by the President'' are omitted as superseded by the National Emergencies Act (50 U.S.C. 1601 et seq.).

§ 56302. Charter terms

(a) IN GENERAL.—If a vessel is requisitioned for use but not ownership under this chapter, the Secretary of Transportation, at the time of requisition or as soon thereafter as the situation allows, shall offer the person entitled to possession of the vessel a charter containing—

(1) the terms the Secretary believes should govern the relationship between the United States Government and the person; and

(2) the rate of hire the Secretary considers just compensation for the use of the vessel and the services required under the charter.

(b) REFUSAL TO ACCEPT.—If the person does not accept the charter and rate of hire, the parties shall proceed as provided in section 56304 of this title.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1654.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
56302	46 App.:1242(c) (1st sentence).	June 29, 1936, ch. 858, title IX, § 902(c) (1st sentence); as added Aug. 7, 1939, ch. 555, § 3, 53 Stat. 1255; Pub. L. 97–31, § 12(131), Aug. 6, 1981, 95 Stat. 165.

In subsection (a), the words ''requisitioned for use but not ownership under this chapter'' are substituted for ''taken and used under authority of this section, but the ownership thereof is not required by the United States'' to eliminate unnecessary words. The word ''requisition'' is substituted for ''taking'', and the word ''vessel'' is substituted for ''such property'', for consistency.

Subsection (b) is added because the provisions about disputed compensation, for both charter use and other takings, are consolidated in section 56304 of the revised title to avoid repetition.

§ 56303. Compensation

(a) IN GENERAL.—As soon as practicable, the Secretary of Transportation shall determine and pay just compensation for a vessel requisitioned under this chapter.

(b) FACTORS NOT AFFECTING VALUE.—The value of a vessel may not be considered enhanced by the circumstances requiring its requisition. Consequential damages arising from the requisition may not be paid.

(c) EFFECT OF CONSTRUCTION-DIFFERENTIAL SUBSIDY.—

(1) IF PAID.—If a construction-differential subsidy has been paid for the vessel, the value of the vessel at the time of requisition shall be determined under section 802 of the Merchant Marine Act, 1936.

(2) IF NOT PAID.—If a construction-differential subsidy has not been paid for the vessel, the value of any national defense features previously paid for by the United States Government shall be excluded.

(d) LOSS OR DAMAGE DURING CHARTER.—If a vessel is lost or damaged by a risk assumed by the Government under the charter, but a valuation for the vessel or a means of compensation has not been agreed to, the Secretary shall pay just compensation for the loss or damage, to the extent the person is not reimbursed through insurance.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1655.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
56303(a)	46 App.:1242(a) (3d sentence words before 2d comma), (d) (1st par. words before 2d comma).	June 29, 1936, ch. 858, title IX, § 902(a) (3d, last sentences), (b), (d) (1st par. words before 2d comma), 49 Stat. 2015, 2016; Aug. 7, 1939, ch. 555, § 3, 53 Stat. 1255; Aug. 3, 1956, ch. 929, § 3, 70 Stat. 985; Pub. L. 97–31, § 12(131), Aug. 6, 1981, 95 Stat. 165.
56303(b)	46 App.:1242(a) (3d sentence words after 2d comma, last sentence).	
56303(c)	46 App.:1242(b).	
56303(d)	46 App.:1242(c) (last sentence).	

REFERENCES IN TEXT

Section 802 of the Merchant Marine Act, 1936, referred to in subsec. (c)(1), is section 802 of act June 29, 1936, ch. 858, 49 Stat. 1985, which is set out as a note under section 53101 of this title.

§ 56304. Disputed compensation

If the person entitled to compensation disputes the amount of just compensation determined by the Secretary of Transportation under this chapter, the Secretary shall pay the person, as a tentative advance, 75 percent of the amount determined. The person may bring a civil action

against the United States to recover just compensation. If the tentative advance paid under this section is greater than the amount of the court's judgment, the person shall refund the difference.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1655.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
56304	46 App.:1242(c) (2d sentence), (d) (1st par. words after 2d comma).	June 29, 1936, ch. 858, title IX, § 902(c) (2d sentence), (d) (1st par. words after 2d comma); as added Aug. 7, 1939, ch. 555, § 3, 53 Stat. 1256; Aug. 3, 1956, ch. 929, §§ 2, 3, 70 Stat. 985; Pub. L. 97–31, § 12(131), Aug. 6, 1981, 95 Stat. 165.

This section is substituted for the source provisions to eliminate unnecessary words.

§ 56305. Vessel encumbrances

(a) IN GENERAL.—The existence of an encumbrance on a vessel does not prevent the requisition of the vessel under this chapter.

(b) DEPOSIT IN TREASURY.—

(1) IN GENERAL.—If an encumbrance exists, the Secretary of Transportation may deposit part of the compensation or advance of compensation to be paid under this chapter (but not more than the total amount of all encumbrances) in a fund in the Treasury. The Secretary shall publish notice of the creation of the fund in the Federal Register.

(2) AVAILABILITY OF AMOUNTS DEPOSITED.—Amounts deposited in the fund shall be available to pay the compensation or any of the encumbrances (including encumbrances stipulated to in a court of the United States or a State) existing at the time the vessel was requisitioned.

(c) CIVIL ACTION.—

(1) IN GENERAL.—Within 6 months after publication of notice under subsection (b), the holder of an encumbrance may bring a civil action in admiralty, according to the principles of libels in rem, against the fund.

(2) VENUE.—The action must be brought in the district court of the United States—

(A) from whose custody the vessel was or may be requisitioned; or

(B) in whose district the vessel was located when it was requisitioned.

(3) SERVICE OF PROCESS.—Service of process shall be made on the appropriate United States Attorney, the Attorney General, and the Secretary, in the manner provided by the Federal Rules of Civil Procedure (28 App. U.S.C.). Notice of the action shall be given to all interested persons as ordered by the court.

(4) AS BETWEEN PRIVATE PARTIES.—The action shall proceed and be determined according to the principles of law and the rules of practice applicable in like cases between private parties.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1655.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
56305	46 App.:1242(d) (last par.).	June 29, 1936, ch. 858, title IX, § 902(d) (last par.), as added Mar. 24, 1943, ch. 26, § 3(d), 57 Stat. 49; Pub. L. 97–31, § 12(131), Aug. 6, 1981, 95 Stat. 165.

In this section, the words ''encumbrance'' and ''encumbrances'' are substituted for ''any valid claim by way of mortgage or maritime claim or attachment lien'' and ''any valid claim by way of mortgage or maritime lien or attachment lien'' to eliminate unnecessary words.

In subsection (b)(1), the words ''The Secretary shall publish notice of the creation of the fund in the Federal Register'' are added for clarity, based on language barring a civil action not brought within 6 months after publication of such a notice.

In subsection (c)(1), the words ''Within 6 months after publication of notice under subsection (b)'' are substituted for ''prior to June 30, 1943, or within six months after the first such deposit with the Treasurer and publication of notice thereof in the Federal Register, whichever date is later'' for clarity and to eliminate obsolete language.

Subsection (c)(3) is substituted for ''and such suit shall be commenced in the manner provided by section 742 of this Appendix and service of process shall be made in the manner therein provided by service upon the United States attorney and by mailing by registered mail to the Attorney General and the Secretary of Transportation and due notice shall under order of the court be given to all interested persons'' because the relevant sentences in 46 App. U.S.C. 742 were struck by an amendment in 1996. See generally *Henderson v. United States*, 517 U.S. 654, 116 S. Ct. 1638 (1996).

In subsection (c)(4), the words ''any decree in said suit shall be paid out of the first and all subsequent deposits of compensation'' and ''any decree shall be subject to appeal and revision as now provided in other cases of admiralty and maritime jurisdiction'' are omitted as surplus.

§ 56306. Use and transfer of vessels

(a) IN GENERAL.—The Secretary of Transportation may repair, recondition, reconstruct, operate, or charter for operation, a vessel acquired under this chapter.

(b) TRANSFER TO OTHER AGENCIES.—The Secretary may transfer the possession or control of a vessel acquired under this chapter to another department or agency of the United States Government on terms and conditions approved by the President. The department or agency shall promptly reimburse the Secretary for expenditures for just compensation, purchase price, charter hire, repairs, reconditioning, or reconstruction.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1656.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
56306	46 App.:1242(e).	June 29, 1936, ch. 858, title IX, § 902(e); as added Aug. 7, 1939, ch. 555, § 3, 53 Stat. 1256; Pub. L. 97–31, § 12(131), Aug. 6, 1981, 95 Stat. 165.

In this section, the word ''vessel'' is substituted for ''property'' for consistency in the chapter.

In subsection (b), the words ''Such reimbursements shall be deposited in the construction fund established

by section 1116 of this Appendix'' are omitted as impliedly repealed by 46 App. U.S.C. 1119 as amended in 1967.

§ 56307. Return of vessels

When a vessel requisitioned for use but not ownership is returned to the owner, the Secretary of Transportation shall—

(1) return the vessel in a condition at least as good as when taken, less ordinary wear and tear; or

(2) pay the owner an amount sufficient to recondition the vessel to that condition, less ordinary wear and tear.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1656.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
56307	46 App.:1242(a) (4th sentence).	June 29, 1936, ch. 858, title IX, § 902(a) (4th sentence), 49 Stat. 2015; Pub. L. 97–31, § 12(131), Aug. 6, 1981, 95 Stat. 165.

The words ''requisitioned for use but not ownership'' are substituted for ''taken and used under authority of this section, but the ownership thereof is not required by the United States'' to eliminate unnecessary words.

CHAPTER 565—ESSENTIAL VESSELS AFFECTED BY NEUTRALITY ACT

Sec.
56501. Definition.
56502. Adjusting obligations and arranging maintenance.
56503. Types of adjustments and arrangements.
56504. Changes in adjustments and arrangements.

§ 56501. Definition

In this chapter, the term ''essential vessel'' means a vessel that is—

(1)(A) security for a mortgage indebtedness to the United States Government; or

(B) constructed under this subtitle or required by a contract under this subtitle to be operated on a certain essential foreign trade route; and

(2) necessary in the interests of commerce and national defense to be maintained in condition for prompt use.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1656.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
56501	46 App.:1242a(a).	June 29, 1940, ch. 442, subdiv. (a), 54 Stat. 684.

§ 56502. Adjusting obligations and arranging maintenance

(a) GENERAL AUTHORITY.—On written application, the Secretary of Transportation may adjust obligations and arrange for maintenance of an essential vessel as provided in this chapter if the Secretary determines, after any investigation or proceeding the Secretary considers desirable, that—

(1) the operation of the vessel in the service, route, or line to which it is assigned under this subtitle, or in which it otherwise would be operated, is not—

(A) lawful under the Neutrality Act of 1939 (22 U.S.C. 441 et seq.) or a proclamation issued under that Act; or

(B) compatible with maintaining the availability of the vessel for national defense and commerce;

(2) it is not feasible under existing law to employ the vessel in any other service or operation in foreign or domestic trade (except temporary or emergency operation under section 56503(b)(5) of this title); and

(3) the applicant, because of the restrictions of the Neutrality Act of 1939 (22 U.S.C. 441 et seq.) or the withdrawal of vessels for national defense under paragraph (1), is not earning or will not earn a reasonable return on the capital necessarily employed in its business.

(b) EFFECTIVE PERIOD.—Adjustments and arrangements under subsection (a) shall continue in effect only as long as the circumstances described in subsection (a) continue to exist.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1657.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
56502	46 App.:1242a(b), (e).	June 29, 1940, ch. 442, subdivs. (b), (e), 54 Stat. 684, 686; Pub. L. 97–31, § 12(132), Aug. 6, 1981, 95 Stat. 165.

The text of 46 App. U.S.C. 1242a(b) (1st sentence) is omitted as surplus. The text of 46 App. U.S.C. 1242a(e) is omitted as obsolete.

REFERENCES IN TEXT

The Neutrality Act of 1939, referred to in subsec. (a)(1)(A), (3), is act Nov. 4, 1939, ch. 2, 54 Stat. 4, which is classified generally to subchapter II (§ 441 et seq.) of chapter 9 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 441 of Title 22 and Tables.

§ 56503. Types of adjustments and arrangements

(a) SUSPENSION REQUIREMENTS.—An adjustment or arrangement under this chapter shall include suspension of—

(1) the requirement to operate the vessel in foreign trade under the applicable operating-differential or construction-differential subsidy contract or mortgage or other agreement; and

(2) the right to operating-differential subsidy for the vessel.

(b) DISCRETIONARY ADJUSTMENTS AND ARRANGEMENTS.—To the extent the Secretary of Transportation considers appropriate to carry out the purposes of this subtitle, an adjustment or arrangement under this chapter may include any of the following:

(1) Lay-up of the vessel by the owner or in the custody of the Secretary, with payment or reimbursement by the Secretary of necessary and proper expenses (including reasonable overhead and insurance) or a fixed periodic allowance instead of payment or reimbursement.

(2) Postponement, for not more than the total period of the lay-up, of the maturity

date of each installment of the principal of obligations to the United States Government for the vessel (regardless of whether the maturity date is during a lay-up period), or rearrangement of those maturities.

(3) Postponement or cancellation of interest accruing on the obligations during a lay-up period.

(4) Extension, for not more than the total period of the lay-up, of the 20-year life limitation for the vessel and other limitations and provisions of this subtitle based on a 20-year life.

(5) Provision for temporary or emergency employment of the vessel (instead of lay-up) as may be practicable, with such arrangements for management of the vessel, payment of expenses, and application of the proceeds of the employment, as the Secretary may approve, with any period of operation being included as part of the lay-up period.

(6) Payment to the Secretary, on termination of the arrangements with the applicant, of the applicant's net profits (earned while the arrangements were in effect) in excess of 10 percent a year on the capital necessarily employed in the applicant's business, as reimbursement for obligations postponed or canceled and expenses incurred or paid by the Secretary under this section.

(c) LAID-UP VESSELS.—Under subsection (b)(6), capital of the applicant represented by a vessel of the applicant laid-up or operated under this section shall be included in capital necessarily employed in the applicant's business. The Secretary may require a vessel laid-up or operated under this section to be security for reimbursement.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1657.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
56503	46 App.:1242a(c).	June 29, 1940, ch. 442, subdiv. (c), 54 Stat. 685; Pub. L. 97–31, § 12(132), Aug. 6, 1981, 95 Stat. 165.

§ 56504. Changes in adjustments and arrangements

The Secretary of Transportation may change an adjustment or arrangement made under this chapter as the Secretary considers necessary to carry out this chapter.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1658.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
56504	46 App.:1242a(d).	June 29, 1940, ch. 442, subdiv. (d), 54 Stat. 686; Pub. L. 97–31, § 12(132), Aug. 6, 1981, 95 Stat. 165.

PART F—GOVERNMENT-OWNED MERCHANT VESSELS

CHAPTER 571—GENERAL AUTHORITY

Sec.
57101. Placement of vessels in National Defense Reserve Fleet.
57102. Disposition of vessels not worth preserving.
57103. Sale of obsolete vessels in National Defense Reserve Fleet.
57104. Acquisition of vessels from sale of obsolete vessels.
57105. Acquisition of vessels for essential services, routes, or lines.
57106. Maintenance, improvement, and operation of vessels.
57107. Vessels for other agencies.
57108. Consideration of ballast and equipment in determining selling price.
57109. Operation of vessels purchased, chartered, or leased from Secretary of Transportation.

§ 57101. Placement of vessels in National Defense Reserve Fleet

(a) IN GENERAL.—Any vessel acquired by the Maritime Administration shall be placed in the National Defense Reserve Fleet maintained under section 11 of the Merchant Ship Sales Act of 1946 (50 App. U.S.C. 1744).

(b) REMOVAL FROM FLEET.—A vessel placed in the Fleet under subsection (a) may not be traded out or sold from the Fleet, except as provided in section 57102, 57103, or 57104 or chapter 533, 537, 573, or 575 of this title.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1658.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
57101	46 App.:1160(j).	June 29, 1936, ch. 858, title V, § 510(j), as added Pub. L. 89–254, § 2, Oct. 10, 1965, 79 Stat. 980; Pub. L. 97–31, § 12(91), Aug. 6, 1981, 95 Stat. 161.

In subsection (a), the words ''vessel acquired by the Maritime Administration'' are subtituted for ''vessel heretofore or hereafter acquired under this section, or otherwise acquired by the Maritime Administration of the Department of Transportation under any other authority'' to eliminate unnecessary words.

In subsection (b), the words ''except as provided in section 57102, 57103, or 57104 or chapter 533, 537, 573, or 575 of this title'' are substituted for ''except as provided for in subsections (g) and (i) of this section. This limitation shall not affect the rights of the Secretary of Transportation to dispose of a vessel as provided in other sections of this subchapter or in subchapters VII or XI of this chapter'' because of the restatement.

§ 57102. Disposition of vessels not worth preserving

(a) IN GENERAL.—If the Secretary of Transportation determines that a vessel owned by the Maritime Administration is of insufficient value for commercial or military operation to warrant its further preservation, the Secretary may scrap the vessel or sell the vessel for cash.

(b) SELLING PROCEDURE.—The sale of a vessel under subsection (a) shall be made on the basis of competitive sealed bids, after an appraisal and due advertisement. The purchaser does not have to be a citizen of the United States. The purchaser shall provide a surety bond, with a surety approved by the Secretary, to ensure that the vessel will not be operated in the foreign trade of the United States at any time within 10 years after the sale, in competition with a vessel owned by a citizen of the United States and documented under the laws of the United States.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1658.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
57102	46 App.:1158(a).	June 29, 1936, ch. 858, title V, § 508(a), 49 Stat. 2000; Pub. L. 97–31, § 12(89), Aug. 6, 1981, 95 Stat. 161; Pub. L. 108–136, title XXXV, § 3512(1), Nov. 24, 2003, 117 Stat. 1789.

In subsection (a), the words ''vessel owned by the Maritime Administration'' are substituted for ''vessel transferred to the Maritime Administration of the Department of Transportation by section 1112 of this Appendix, or hereafter acquired'' to eliminate unnecessary words.

In subsection (b), the words ''The sale of a vessel under section (a) shall be made on the basis of competitive sealed bids, after an appraisal and due advertisement. The purchaser does not have to be a citizen of the United States.'' are substituted for ''after appraisement and due advertisement, and upon competitive sealed bids, either to citizens of the United States or to aliens'' for clarity. The words ''provide a surety bond, with a surety approved by the Secretary, to ensure that'' are substituted for ''enter into an undertaking with sureties approved by the Secretary of Transportation that'' for clarity.

§ 57103. Sale of obsolete vessels in National Defense Reserve Fleet

(a) IN GENERAL.—The Secretary of Transportation may convey the right, title, and interest of the United States Government in any vessel of the National Defense Reserve Fleet that has been identified by the Secretary as an obsolete vessel of insufficient value to warrant its further preservation, if the recipient—

(1) is a non-profit organization, a State, or a municipal corporation or political subdivision of a State;

(2) agrees not to use, or allow others to use, the vessel for commercial transportation purposes;

(3) agrees to make the vessel available to the Government whenever the Secretary indicates that it is needed by the Government;

(4) agrees to hold the Government harmless for any claims arising from exposure to asbestos, polychlorinated biphenyls, lead paint, or other hazardous substances after conveyance of the vessel, except for claims arising from use of the vessel by the Government;

(5) has a conveyance plan and a business plan that describes the intended use of the vessel, each of which has been submitted to and approved by the Secretary;

(6) has provided proof, as determined by the Secretary, of resources sufficient to accomplish the transfer, necessary repairs and modifications, and initiation of the intended use of the vessel; and

(7) agrees that when the recipient no longer requires the vessel for use as described in the business plan required under paragraph (5)—

(A) the recipient will, at the discretion of the Secretary, reconvey the vessel to the Government in good condition except for ordinary wear and tear; or

(B) if the Board of Trustees of the recipient has decided to dissolve the recipient according to the laws of the State in which the recipient is incorporated, then—

(i) the recipient shall distribute the vessel, as an asset of the recipient, to a person that has been determined exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)), or to the Federal Government or a State or local government for a public purpose; and

(ii) the vessel shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the recipient is located, for such purposes as the court shall determine, or to such organizations as the court shall determine are organized exclusively for public purposes.

(b) OTHER EQUIPMENT.—At the Secretary's discretion, additional equipment from other obsolete vessels of the Fleet may be conveyed to assist the recipient with maintenance, repairs, or modifications.

(c) ADDITIONAL TERMS.—The Secretary may require any additional terms the Secretary considers appropriate.

(d) DELIVERY OF VESSEL.—If conveyance is made under this section, the vessel shall be delivered to the recipient at a time and place to be determined by the Secretary. The vessel shall be conveyed in an ''as is'' condition.

(e) LIMITATIONS.—If at any time prior to delivery of the vessel to the recipient, the Secretary determines that a different disposition of the vessel would better serve the interests of the Government, the Secretary shall pursue the more favorable disposition of the obsolete vessel and shall not be liable for any damages that may result from an intended recipient's reliance upon a proposed transfer.

(f) REVERSION.—The Secretary shall include in any conveyance under this section terms under which all right, title, and interest conveyed by the Secretary shall revert to the Government if the Secretary determines the vessel has been used other than as described in the business plan required under subsection (a)(5).

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1659.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
57103	46 App.:1158(b).	June 29, 1936, ch. 858, title V, § 508(b), as added Pub. L. 108–136, title XXXV, § 3512(2), Nov. 24, 2003, 117 Stat. 1789.

In subsection (a), before paragraph (1), the words ''Notwithstanding section 1160(j) of this title'' are omitted as unnecessary because section 46 App. U.S.C. 1160(j) is restated in section 57101 of the revised title and that section contains an exception which includes this section. In paragraph (1), the words ''Commonwealth, or possession of the United States'' and ''or the District of Columbia'' are omitted as unnecessary because of the definition of ''State'' in chapter 1 of the revised title.

§ 57104. Acquisition of vessels from sale of obsolete vessels

(a) IN GENERAL.—The Secretary of Transportation may acquire suitable documented vessels with amounts in the Vessel Operations Revolving Fund derived from the sale of obsolete vessels in the National Defense Reserve Fleet.

(b) VALUATION.—The acquired and obsolete vessels shall be valued at their scrap value in domestic or foreign markets as of the date of the acquisition for or sale from the Fleet. However, the value assigned to those vessels shall be determined on the same basis, with consideration given to the fair value of the cost of moving the vessel sold from the Fleet to the place of scrapping.

(c) COSTS INCIDENT TO LAY-UP.—Costs incident to the lay-up of the vessel acquired under this section may be paid from amounts in the Fund.

(d) TRANSFERS TO NON-CITIZENS.—A vessel sold from the Fleet under this section may be scrapped in an approved foreign market without obtaining additional separate approval from the Secretary to transfer the vessel to a person not a citizen of the United States.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1660.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
57104	46 App.:1160(i).	June 29, 1936, ch. 858, title V, § 510(i), as added Pub. L. 86–575, July 5, 1960, 74 Stat. 312; Pub. L. 89–254, § 1, Oct. 10, 1965, 79 Stat. 980; Pub. L. 91–469, § 13, Oct. 21, 1970, 84 Stat. 1022; Pub. L. 93–605, § 1, Jan. 2, 1975, 88 Stat. 1965; Pub. L. 95–177, Nov. 15, 1977, 91 Stat. 1368; Pub. L. 97–31, § 12(91), Aug. 6, 1981, 95 Stat. 161; Pub. L. 101–595, title VII, § 704, Nov. 16, 1990, 104 Stat. 2994.

In subsection (b), the words ''vessel sold from the Fleet'' are substituted for ''traded-out vessel'' for clarity and consistency.

In subsection (d), the words ''without obtaining additional separate approval from the Secretary to transfer the vessel to a person not a citizen of the United States'' are substituted for ''Notwithstanding the provisions of sections 808 and 835 of this Appendix'' for clarity and to avoid the cross references.

§ 57105. Acquisition of vessels for essential services, routes, or lines

(a) IN GENERAL.—The Secretary of Transportation may acquire a vessel, by purchase or otherwise, if—

(1) the Secretary considers the vessel necessary to establish, maintain, improve, or serve as a replacement on an essential service, route, or line in the foreign commerce of the United States, as determined under section 50103 of this title;

(2) the vessel was constructed in the United States; and

(3) the Secretary of the Navy has certified to the Secretary of Transportation that the vessel is suitable for economical and speedy conversion into a naval or military auxiliary or otherwise suitable for use by the United States Government in time of war or national emergency.

(b) PRICE.—The price paid for the vessel shall be based on a fair and reasonable valuation. However, the price may not exceed by more than 5 percent the cost of the vessel to the owner (excluding any construction-differential subsidy and the cost of national defense features paid by the Secretary of Transportation) plus the actual cost previously expended for reconditioning, less depreciation based on a 25-year life for a dry-cargo or passenger vessel and a 20-year life for a tanker or other liquid bulk carrier vessel.

(c) DOCUMENTATION.—A vessel acquired under this section that is not documented under the laws of the United States at the time of acquisition shall be so documented as soon as practicable.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1660.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
57105	46 App.:1125.	June 29, 1936, ch. 858, title II, § 215, as added June 23, 1938, ch. 600, § 4, 52 Stat. 954; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 97–31, § 12(73), Aug. 6, 1981, 95 Stat. 160.
	46 App.:1125 note.	Pub. L. 86–518, § 9, June 12, 1960, 74 Stat. 217.

In subsection (a), the words ''and to pay for the same out of his construction fund'' are omitted as obsolete because the construction fund established under 46 App. U.S.C. 1116 was impliedly abolished by 46 App. U.S.C. 1119, as amended.

In subsection (b), the words ''less depreciation based on a 25-year life for a dry-cargo or passenger vessel and a 20-year life for a tanker or other liquid bulk carrier vessel'' are substituted for ''less depreciation based upon a twenty-five year life expectancy of the vessel'' because of section 9 of Public Law 86–518 (June 12, 1960, 74 Stat. 217), which provided that ''Nothing in any amendment made by this Act [including section 1 substituting 'twenty-five' for 'twenty' in 46 App. U.S.C. 1125] shall operate or be interpreted to change from twenty to twenty-five years the provisions of the Merchant Marine Act, 1936, as amended, relating to the commercial expectancy or period of depreciation of any tanker or other liquid bulk carrier.''

§ 57106. Maintenance, improvement, and operation of vessels

(a) IN GENERAL.—The Secretary of Transportation may maintain, repair, recondition, remodel, and improve vessels owned by the United States Government and in the possession or under the control of the Secretary, to equip them adequately for competition in the foreign trade of the United States. The Secretary may operate such a vessel or charter the vessel on terms and conditions the Secretary considers appropriate to carry out the purposes of this subtitle.

(b) DOCUMENTATION AND RESTRICTIONS ON OPERATION.—A vessel reconditioned, remodeled, or improved under subsection (a) shall be documented under the laws of the United States and remain so documented for at least 5 years after completion of the reconditioning, remodeling, or improvement. During that period, it shall be operated on voyages that are not exclusively coastwise.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1661.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
57106	46 App.:871.	June 5, 1920, ch. 250, § 12, 41 Stat. 993; June 6, 1924, ch. 273, § 2, 43 Stat. 468; Feb. 11, 1927, ch. 104, § 1 (last par. under heading ''United States Shipping Board''), 44 Stat. 1083; Exec. Order No. 6166, § 12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; Pub. L. 97–31, § 12(43), Aug. 6, 1981, 95 Stat. 157.
	46 App.:891b.	May 22, 1928, ch. 675, title II, § 202, 45 Stat. 690; Exec. Order No. 6166, § 12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; Pub. L. 97–31, § 12(51), Aug. 6, 1981, 95 Stat. 157.

This section is substituted for the source provisions to eliminate obsolete and unnecessary provisions.

§ 57107. Vessels for other agencies

(a) IN GENERAL.—The Secretary of Transportation may construct, reconstruct, repair, equip, and outfit, by contract or otherwise, vessels or parts thereof, for any other department or agency of the United States Government to the extent the other department or agency is authorized by law to do so for its own account.

(b) EFFECT ON CONTRACT AUTHORIZATION.—An obligation incurred or expenditure made by the Secretary under this section does not affect any contract authorization of the Secretary, but instead shall be charged against the existing appropriation or contract authorization of the department or agency.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1661.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
57107	46 App.:1125a.	Feb. 6, 1941, ch. 5, § 4, 55 Stat. 6; Pub. L. 97–31, § 12(74), Aug. 6, 1981, 95 Stat. 160.

In subsection (b), the words ''heretofore or hereafter'', ''diminish or otherwise'', and ''and, to the amount of such obligation or expenditure, diminish'' are omitted as unnecessary.

§ 57108. Consideration of ballast and equipment in determining selling price

The Maritime Administration may not sell a vessel until its ballast and equipment have been inventoried and their value considered in determining the selling price of the vessel.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1661.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
57108	46 App.:864b.	June 29, 1949, ch. 281, § 1 (proviso), 63 Stat. 349; Pub. L. 97–31, § 12(36), Aug. 6, 1981, 95 Stat. 156.

§ 57109. Operation of vessels purchased, chartered, or leased from Secretary of Transportation

Unless otherwise authorized by the Secretary of Transportation, a vessel purchased, chartered, or leased from the Secretary may be operated only under a certificate of documentation with a registry or coastwise endorsement. Such a vessel, while employed solely as a merchant vessel, is subject to the laws, regulations, and liabilities governing merchant vessels, whether the United States Government has an interest in the vessel as an owner or holds a mortgage, lien, or other interest.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1661.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
57109	46 App.:808(b).	Sept. 7, 1916, ch. 451, § 9(b), 39 Stat. 730; July 15, 1918, ch. 152, § 3, 40 Stat. 900; restated June 5, 1920, ch. 250, § 18, 41 Stat. 994; Ex. Ord. No. 6166, § 12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; Pub. L. 97–31, § 12(26), Aug. 6, 1981, 95 Stat. 155; Pub. L. 100–710, title I, § 104(b)(2), Nov. 23, 1988, 102 Stat. 4750.

The words ''only under a certificate of documentation with a registry or coastwise endorsement'' are substituted for ''only under such registry or enrollment and license'' for clarity and to use the appropriate current language.

CHAPTER 573—VESSEL TRADE-IN PROGRAM

Sec.
57301. Definitions.
57302. Authority to acquire vessels.
57303. Utility value and tonnage requirements.
57304. Eligible acquisition dates.
57305. Determination of trade-in allowance.
57306. Payment of trade-in allowance.
57307. Recognition of gain for tax purposes.
57308. Use of vessels at least 25 years old.

§ 57301. Definitions

In this chapter:

(1) NEW VESSEL.—The term ''new vessel'' means a vessel—

(A) constructed under this subtitle and acquired within 2 years after the date of completion; or

(B) constructed in a domestic shipyard on private account and not under this subtitle, and documented under the laws of the United States.

(2) OBSOLETE VESSEL.—The term ''obsolete vessel'' means a vessel that—

(A) is of at least 1,350 gross tons;

(B) the Secretary of Transportation believes should, because of its age, obsolescence, or other reasons, be replaced in the public interest; and

(C) has been owned by a citizen of the United States for at least 3 years immediately before its acquisition under this chapter.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1662.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
57301	46 App.:1160(a).	June 29, 1936, ch. 858, title V, § 510(a), as added Aug. 4, 1939, ch. 417, § 7, 53 Stat. 1183; July 17, 1952, ch. 939, § 7, 66 Stat. 762; Pub. L. 85–332, Feb. 20, 1958, 72 Stat. 17; Pub. L. 87–755, Oct. 5, 1962, 76 Stat. 751; Pub. L. 91–469, § 12(a), Oct. 21, 1970, 84 Stat. 1022; Pub. L. 97–31, § 12(91), Aug. 6, 1981, 95 Stat. 161.

In paragraph (1)(A), the words ''or is purchased under section 1204 of this Appendix, as amended, by the person turning in an obsolete vessel under this section'' are omitted because the purchase authority under 46 App. U.S.C. 1204 was impliedly repealed by section 14 of the Merchant Ship Sales Act of 1946 (50 App. U.S.C. 1735 note).

§ 57302. Authority to acquire vessels

To promote the construction of new, safe, and efficient vessels to carry the domestic and foreign waterborne commerce of the United States, the Secretary of Transportation may acquire an obsolete vessel in exchange for an allowance of credit toward the cost of construction or purchase of a new vessel as provided in this chapter.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1662.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
57302	46 App.:1160(b) (1st, last sentences).	June 29, 1936, ch. 858, title V, § 510(b) (1st, last sentences), as added Aug. 4, 1939, ch. 417, § 7, 53 Stat. 1184; Pub. L. 87–401, subdiv. (1), Oct. 5, 1961, 75 Stat. 833; Pub. L. 91–469, § 35(a), Oct. 21, 1970, 84 Stat. 1035; Pub. L. 97–31, § 12(91), Aug. 6, 1981, 95 Stat. 161.

The words ''toward the cost of construction or purchase of a new vessel'' are added for clarity. The text of 46 App. U.S.C. 1160(b) (last sentence) is omitted as obsolete.

§ 57303. Utility value and tonnage requirements

(a) UTILITY VALUE.—The utility value of a new vessel to be acquired under this chapter for operation in the domestic or foreign commerce of the United States may not be substantially less than that of the obsolete vessel acquired in exchange under this chapter.

(b) TONNAGE.—If the Secretary of Transportation finds that the new vessel will have a utility value at least equal to that of the obsolete vessel, the new vessel may be of lesser gross tonnage than the obsolete vessel. However, the gross tonnage of the new vessel must be at least one-third the gross tonnage of the obsolete vessel.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1662.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
57303	46 App.:1160(c).	June 29, 1936, ch. 858, title V, § 510(c), as added Aug. 4, 1939, ch. 417, § 7, 53 Stat. 1184; Pub. L. 97–31, § 12(91), Aug. 6, 1981, 95 Stat. 161.

§ 57304. Eligible acquisition dates

At the option of the owner, the acquisition of an obsolete vessel under this chapter shall occur—

(1) when the owner contracts for the construction or purchase of a new vessel; or

(2) within 5 days of the actual date of delivery of the new vessel to the owner.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1662.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
57304	46 App.:1160(b) (2d sentence).	June 29, 1936, ch. 858, title V, § 510(b) (2d sentence), as added Aug. 4, 1939, ch. 417, § 7, 53 Stat. 1184; Pub. L. 87–401, subdiv. (1), Oct. 5, 1961, 75 Stat. 833; Pub. L. 91–469, § 35(a), Oct. 21, 1970, 84 Stat. 1035; Pub. L. 97–31, § 12(91), Aug. 6, 1981, 95 Stat. 161.

The words ''At the option of the owner'' are substituted for ''if the owner so requests'' for clarity.

§ 57305. Determination of trade-in allowance

(a) IN GENERAL.—The Secretary of Transportation shall determine the trade-in allowance for an obsolete vessel at the time of acquisition of the vessel. The allowance shall be the fair value of the vessel. In determining the value, the Secretary shall consider—

(1) the scrap value of the obsolete vessel in American and foreign markets;

(2) the depreciated value based on a 20-year or 25-year life, whichever applies to the obsolete vessel; and

(3) the market value of the obsolete vessel for operation in world commerce or in the domestic or foreign commerce of the United States.

(b) USE OF OBSOLETE VESSELS.—If acquisition of the obsolete vessel occurs when the owner contracts for the construction of the new vessel, and the owner uses the obsolete vessel during the period of construction of the new vessel, the Secretary shall reduce the trade-in allowance by an amount representing the fair value of that use. The Secretary shall establish the rate for use of the obsolete vessel when the contract for construction of the new vessel is made.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1663.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
57305(a)	46 App.:1160(b) (3d sentence), (d) (1st, 2d sentences).	June 29, 1936, ch. 858, title V, § 510(b) (3d sentence), (d), as added Aug. 4, 1939, ch. 417, § 7, 53 Stat. 1184; July 17, 1952, ch. 939, § 8, 66 Stat. 762; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 87–401, Oct. 5, 1961, 75 Stat. 833; Pub. L. 91–469, § 35(a), Oct. 21, 1970, 84 Stat. 1035; Pub. L. 97–31, § 12(91), Aug. 6, 1981, 95 Stat. 161.
57305(b)	46 App.:1160(d) (3d, last sentences).	

In subsection (a), the words ''fair value'' are substituted for ''fair and reasonable value'' to eliminate unnecessary words. In paragraph (3), the word ''com-

merce'' is substituted for ''trade'' for consistency in the chapter.

In subsection (b), the words ''for the entire period of such use'' are omitted as unnecessary.

§ 57306. Payment of trade-in allowance

(a) ACQUISITION AT TIME OF CONTRACT.—If acquisition of an obsolete vessel under this chapter occurs when the owner contracts for the construction or purchase of the new vessel, the Secretary of Transportation shall apply the trade-in allowance to the purchase price of the new vessel rather than paying it to the owner. If the new vessel is constructed under this subtitle, the Secretary may apply the trade-in allowance to the required cash payments on terms and conditions the Secretary may prescribe. If the new vessel is not constructed under this subtitle, the Secretary shall pay the trade-in allowance to the builder of the vessel for the account of the owner when the Secretary acquires the obsolete vessel.

(b) ACQUISITION AT TIME OF DELIVERY.—If acquisition of the obsolete vessel occurs when the new vessel is delivered to the owner, the Secretary shall deposit the trade-in allowance in the owner's capital construction fund.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1663.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
57306	46 App.:1160(b) (4th–7th sentences).	June 29, 1936, ch. 858, title V, § 510(b) (4th–7th sentences), as added Aug. 4, 1939, ch. 417, § 7, 53 Stat. 1184; Pub. L. 87–401, subdiv. (1), Oct. 5, 1961, 75 Stat. 833; Pub. L. 91–469, §§ 12(b), 35(a), Oct. 21, 1970, 84 Stat. 1022, 1035; Pub. L. 97–31, § 12(91), Aug. 6, 1981, 95 Stat. 161.

In subsection (b), the words ''acquisition of the obsolete vessel occurs'' are substituted for ''title to the obsolete vessel is acquired'' for consistency in the chapter.

§ 57307. Recognition of gain for tax purposes

The owner of an obsolete vessel does not recognize a gain under the Federal income tax laws when the vessel is transferred to the Secretary of Transportation in exchange for a trade-in allowance under this chapter. The basis of the new vessel acquired with the allowance is the same as the basis of the obsolete vessel—

(1) increased by the difference between the cost of the new vessel and the trade-in allowance of the obsolete vessel; and

(2) decreased by the amount of loss recognized on the transfer.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1663.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
57307	46 App.:1160(e).	June 29, 1936, ch. 858, title V, § 510(e), as added Aug. 4, 1939, ch. 417, § 7, 53 Stat. 1184; Pub. L. 97–31, § 12(91), Aug. 6, 1981, 95 Stat. 161.

The words ''for gain or loss upon a sale or exchange and for depreciation under the applicable Federal income-tax laws'' and ''or vessels exchanged for credit upon the acquisition of such new vessel'' are omitted as unnecessary. In paragraph (1), the words ''the difference between the cost of the new vessel and the trade-in allowance of the obsolete vessel'' are substituted for ''the amount of the cost of such vessel (other than the cost represented by such obsolete vessel or vessels)'' for clarity.

§ 57308. Use of vessels at least 25 years old

An obsolete vessel acquired under this chapter that is or becomes at least 25 years old may not be used for commercial operation. However, the vessel may be used—

(1) during a period in which vessels may be requisitioned under chapter 563 of this title; or

(2) except as otherwise provided in this subtitle, on trade routes serving only the foreign trade of the United States.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1664.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
57308	46 App.:1160(g).	June 29, 1936, ch. 858, title V, § 510(g), as added Aug. 4, 1939, ch. 417, § 7, 53 Stat. 1185; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 97–31, § 12(91), Aug. 6, 1981, 95 Stat. 161.

The words ''and vessels presently in the Secretary's laid-up fleet which are or become twenty-five years old or more'' and ''or any such vessel in the laid-up fleet'' are omitted as obsolete. In paragraph (2), the words ''for the employment of the Secretary's vessels in steamship lines'' are omitted as unnecessary.

CHAPTER 575—CONSTRUCTION, CHARTER, AND SALE OF VESSELS

SUBCHAPTER I—GENERAL

Sec.
57501. Completion of long-range program.
57502. Construction, reconditioning, and remodeling of vessels.
57503. Competitive bidding.
57504. Charter or sale of vessels acquired by Department of Transportation.
57505. Employment of vessels on foreign trade routes.
57506. Minimum selling price of vessels.

SUBCHAPTER II—CHARTERS

57511. Demise charters.
57512. Competitive bidding.
57513. Minimum bid.
57514. Qualifications of bidders.
57515. Awarding of charters.
57516. Operating-differential subsidies.
57517. Recovery of excess profits.
57518. Performance bond.
57519. Insurance.
57520. Vessel maintenance.
57521. Termination of charter during national emergency.

SUBCHAPTER III—MISCELLANEOUS

57531. Construction and charter of vessels for unsuccessful routes.
57532. Operation of experimental vessels.

SUBCHAPTER I—GENERAL

§ 57501. Completion of long-range program

Whenever the Secretary of Transportation determines that the objectives and policies de-

clared in sections 50101 and 50102 of this title cannot be fully realized within a reasonable time under titles V and VI of the Merchant Marine Act, 1936, and the President approves the determination, the Secretary, in accordance with this chapter, shall complete the long-range program described in section 50102 of this title.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1664.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
57501	46 App.:1191.	June 29, 1936, ch. 858, title VII, § 701, 49 Stat. 2008; Pub. L. 97–31, § 12(103), Aug. 6, 1981, 95 Stat. 162.

The words ''find and'', ''finding and'', ''in whole or in part'', and ''previously adopted'' are omitted as unnecessary. The word ''shall'' is substituted for ''is authorized and directed to'' to eliminate unnecessary words.

REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in text, is act June 29, 1936, ch. 858, 49 Stat. 1985. Titles V and VI of the Act enacted provisions set out as notes under section 53101 of this title. For complete classification of this Act to the Code, see Short Title of 1936 Amendment note set out under section 101 of this title and Tables.

§ 57502. Construction, reconditioning, and remodeling of vessels

(a) IN GENERAL.—The Secretary of Transportation may have new vessels constructed, and have old vessels reconditioned or remodeled, as the Secretary determines necessary to carry out the objectives of this subtitle.

(b) PLACE OF WORK.—Construction, reconditioning, and remodeling of vessels under subsection (a) shall take place in shipyards in the continental United States (including Alaska and Hawaii). However, if satisfactory contracts cannot be obtained from private shipbuilders, the Secretary may have the work done in navy yards.

(c) APPLICABILITY OF CONSTRUCTION-DIFFERENTIAL SUBSIDY PROVISIONS.—Contracts for the construction, reconstruction, or reconditioning of a vessel by a private shipbuilder under this chapter are subject to the provisions of title V of the Merchant Marine Act, 1936, applicable to a contract with a private shipbuilder for the construction of a vessel under title V of that Act.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1664.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
57502(a), (b)	46 App.:1192.	June 29, 1936, ch. 858, title VII, § 702, 49 Stat. 2008; Pub. L. 85–191, Aug. 28, 1957, 71 Stat. 471; Pub. L. 86–624, § 35(c), July 12, 1960, 74 Stat. 421; Pub. L. 97–31, § 12(104), Aug. 6, 1981, 95 Stat. 162.
57502(c)	46 App.:1193(b).	June 29, 1936, ch. 858, title VII, § 703(b), 49 Stat. 2008.

In subsection (b), the words ''for such new construction or reconstruction, in accordance with the provisions of this chapter'' are omitted as unnecessary.

REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in subsec. (c), is act June 29, 1936, ch. 858, 49 Stat. 1985. Title V of the Act enacted provisions set out as notes under section 53101 of this title. For complete classification of this Act to the Code, see Short Title of 1936 Amendment note set out under section 101 of this title and Tables.

§ 57503. Competitive bidding

(a) ADVERTISEMENT AND BIDDING.—The Secretary of Transportation may make a contract with a private shipbuilder for the construction of a new vessel, or for the reconstruction or reconditioning of an existing vessel, only after due advertisement and upon sealed competitive bids.

(b) OPENING OF BIDS.—Bids required under this section shall be opened at the time and place stated in the advertisement for bids. All interested persons, including representatives of the press, shall be permitted to attend. The results of the bidding shall be publicly announced.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1665.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
57503(a)	46 App.:1193(a).	June 29, 1936, ch. 858, title VII, § 703(a), (c) (related to construction, reconstruction, or reconditioning), 49 Stat. 2008; Pub. L. 97–31, § 12(105), Aug. 6, 1981, 95 Stat. 163.
57503(b)	46 App.:1193(c) (related to construction, reconstruction, or reconditioning).	

In subsection (b), the words ''Bids required under this section'' are substituted for ''All bids required by the Secretary of Transportation for the construction, reconstruction, or reconditioning of vessels'' to eliminate unnecessary words. The word ''hour'' is omitted as covered by ''time''.

§ 57504. Charter or sale of vessels acquired by Department of Transportation

Vessels transferred to or otherwise acquired by the Department of Transportation in any manner may be chartered or sold by the Secretary of Transportation as provided in this chapter.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1665.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
57504	46 App.:1194.	June 29, 1936, ch. 858, title VII, § 704, 49 Stat. 2008; Apr. 1, 1937, ch. 64, 50 Stat. 57; Pub. L. 97–31, § 12(106), Aug. 6, 1981, 95 Stat. 163.

§ 57505. Employment of vessels on foreign trade routes

(a) IN GENERAL.—The Secretary of Transportation shall arrange for the employment of the Department of Transportation's vessels in steamship lines on such trade routes, exclusively serving the foreign trade of the United States, as the Secretary determines are essential for the development and maintenance of the commerce of the United States and the national

defense. However, the Secretary shall first determine that those routes are not being adequately served by existing steamship lines privately owned and operated by citizens of the United States and documented under the laws of the United States.

(b) POLICY TO ENCOURAGE PRIVATE OPERATION.—The Secretary shall have a policy of encouraging private operation of each essential steamship line now owned by the United States Government by—

(1) selling the line to a citizen of the United States; or

(2) demising the Secretary's vessels on bareboat charter to citizens of the United States who agree to maintain the line in the manner provided in this chapter.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1665.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
57505(a)	46 App.:1195 (1st sentence).	June 29, 1936, ch. 858, title VII, § 705 (1st, 2d sentences), 49 Stat. 2009; Pub. L. 97–31, § 12(107), Aug. 6, 1981, 95 Stat. 163.
57505(b)	46 App.:1195 (2d sentence).	

In subsection (a), the words ''As soon as practicable after June 29, 1936, and continuing thereafter'' are omitted as obsolete. The words ''However, the Secretary shall first determine that those routes are not being adequately served'' are substituted for ''*Provided*, That such needs are not being adequately served'' for clarity and because provisos are disfavored in modern drafting.

In subsection (b)(1), the words ''in the manner provided in section 7 of the Merchant Marine Act, 1920 [46 App. U.S.C. 866], and in strict accordance with the provisions of section 5 of said Act'' are omitted because section 5 of that Act was repealed in 1988, and section 7 is being repealed as obsolete by this bill without being restated.

§ 57506. Minimum selling price of vessels

(a) IN GENERAL.—A vessel constructed under this subtitle or the Merchant Marine Act, 1936, may not be sold by the Secretary of Transportation for less than the price specified in this section.

(b) OPERATION IN FOREIGN TRADE.—If the vessel is to be operated in foreign trade, the minimum price is the estimated foreign construction cost (exclusive of national defense features) determined as of the date the construction contract is executed, less depreciation under subsection (d).

(c) OPERATION IN DOMESTIC TRADE.—If the vessel is to be operated in domestic trade, the minimum price is the cost of construction in the United States (exclusive of national defense features), less depreciation under subsection (d).

(d) DEPRECIATION.—Depreciation under subsections (b) and (c) shall be based on—

(1) a 25-year life for dry-cargo and passenger vessels; and

(2) a 20-year life for tankers and other bulk liquid carrier vessels.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1665.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
57506	46 App.:1195 (last sentence).	June 29, 1936, ch. 858, title VII, § 705 (last sentence), as added Aug. 4, 1939, ch. 417, § 11(a), 53 Stat. 1185; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 97–31, § 12(107), Aug. 6, 1981, 95 Stat. 163.
	46 App.:1125 note.	Pub. L. 86–518, § 9, June 12, 1960, 74 Stat. 217.

Subsection (d) is substituted for ''less depreciation based on a twenty-five year life'' because of section 9 of Public Law 86–518 (June 12, 1960, 74 Stat. 217), which provided that ''Nothing in any amendment made by this Act [including section 1 substituting 'twenty-five' for 'twenty' in 46 App. U.S.C. 1195] shall operate or be interpreted to change from twenty to twenty-five years the provisions of the Merchant Marine Act, 1936, as amended, relating to the commercial expectancy or period of depreciation of any tanker or other liquid bulk carrier.''

REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in subsec. (a), is act June 29, 1936, ch. 858, 49 Stat. 1985, which enacted provisions set out as notes under section 53101 of this title. For complete classification of this Act to the Code, see Short Title of 1936 Amendment note set out under section 101 of this title and Tables.

SUBCHAPTER II—CHARTERS

§ 57511. Demise charters

A charter by the Secretary of Transportation under this chapter shall demise the vessel to the charterer subject to all usual conditions contained in a bareboat charter. The charter shall be for a term the Secretary considers to be in the best interest of the United States Government and the merchant marine.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1666.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
57511	46 App.:1201.	June 29, 1936, ch. 858, title VII, § 711, 49 Stat. 2010; Pub. L. 97–31, § 12(113), Aug. 6, 1981, 95 Stat. 163.

The words ''for a term the Secretary considers to be'' are substituted for ''until January 1, 1940, shall be for terms of three years or less as the Secretary of Transportation may decide: *Provided*, That after January 1, 1940, charters may be executed by the Secretary of Transportation for such terms as the experience gained by the Secretary of Transportation shall indicate are'' to eliminate unnecessary and obsolete words.

§ 57512. Competitive bidding

(a) IN GENERAL.—The Secretary of Transportation may charter a vessel of the Department of Transportation to a private operator only on the basis of competitive sealed bidding. The bids must be submitted in strict compliance with the terms and conditions of a public advertisement soliciting the bids.

(b) ADVERTISEMENT FOR BIDS.—An advertisement for bids shall state—

(1) the number, type, and tonnage of the vessels being offered for bareboat charter for operation as a steamship line on a designated trade route;

(2) the minimum number of sailings required;

(3) the length of time of the charter;

(4) the right of the Secretary to reject all bids; and

(5) other information the Secretary considers necessary for the information of prospective bidders.

(c) OPENING OF BIDS.—Bids required under this section shall be opened at the time and place stated in the advertisement for bids. All interested persons, including representatives of the press, shall be permitted to attend. The results of the bidding shall be publicly announced.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1666.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
57512(a)	46 App.:1196(a) (1st sentence).	June 29, 1936, ch. 858, title VII, § 706(a), (b) (1st sentence related to announcement), 49 Stat. 2009; Pub. L. 97–31, § 12(108), Aug. 6, 1981, 95 Stat. 163.
57512(b)	46 App.:1196(a) (last sentence), (b) (1st sentence related to announcement).	
57512(c)	46 App.:1193(c) (related to chartering).	June 29, 1936, ch. 858, title VII, § 703(c) (related to chartering), 49 Stat. 2008; Pub. L. 97–31, § 12(105), Aug. 6, 1981, 95 Stat. 163.

Subsection (b)(4) is substituted for ''announce in his advertisements for bids that the Secretary of Transportation reserves the right to, reject any and all bids submitted'' in 46 App. U.S.C. 1196(b) to improve the organization.

In subsection (c), the words ''Bids required under this section'' are substituted for ''All bids required by the Secretary of Transportation . . . and for the chartering of the Secretary's vessels hereinafter provided for'' to eliminate unnecessary words. The word ''hour'' is omitted as covered by ''time''.

§ 57513. Minimum bid

The Secretary of Transportation shall reject any bid for the charter under this subchapter of a vessel constructed under this subtitle or the Merchant Marine Act, 1936, if the charter hire offered is lower than the minimum charter hire would be if the vessel were chartered under section 57531 of this title.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1666.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
57513	46 App.:1196(b) (last sentence).	June 29, 1936, ch. 858, title VII, § 706(b) (last sentence), as added Aug. 4, 1939, ch. 417, § 11(b), 53 Stat. 1186; Pub. L. 97–31, § 12(108), Aug. 6, 1981, 95 Stat. 163.

REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in text, is act June 29, 1936, ch. 858, 49 Stat. 1985, which enacted provisions set out as notes under section 53101 of this title. For complete classification of this Act to the Code, see Short Title of 1936 Amendment note set out under section 101 of this title and Tables.

§ 57514. Qualifications of bidders

(a) CONSIDERATIONS.—In deciding whether to award a charter to a bidder, the Secretary of Transportation shall consider—

(1) the bidder's financial resources, credit standing, and practical experience in operating vessels; and

(2) other factors a prudent business person would consider in entering into a transaction involving a large capital investment.

(b) DISQUALIFICATIONS.—The Secretary may not charter a vessel to a person appearing to lack sufficient capital, credit, and experience to operate the vessel successfully over the period covered by the charter.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1666.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
57514	46 App.:1203.	June 29, 1936, ch. 858, title VII, § 713, 49 Stat. 2010; Pub. L. 97–31, § 12(115), Aug. 6, 1981, 95 Stat. 164.

§ 57515. Awarding of charters

(a) IN GENERAL.—The Secretary of Transportation shall award the charter to the bidder proposing to pay the highest monthly charter hire. However, the Secretary may reject the highest or most advantageous or any other bid if the Secretary considers the charter hire offered too low or determines that the bidder lacks the qualifications required by section 57514 of this title.

(b) HIGHEST BID REJECTED.—If the Secretary rejects the highest bid, the Secretary may—

(1) award the charter to the next highest bidder; or

(2) reject all bids and either readvertise the line or operate the line until conditions appear more favorable to reoffer the line for private charter.

(c) REASON FOR REJECTION.—On request of a bidder, the reason for rejection shall be stated in writing to the bidder.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1667.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
57515	46 App.:1196(b) (1st sentence related to authority). 46 App.:1197.	June 29, 1936, ch. 858, title VII, §§ 706(b) (1st sentence related to authority), 707, 49 Stat. 2009; Pub. L. 97–31, § 12(108), (109), Aug. 6, 1981, 95 Stat. 163.

In subsection (a), the words ''if the Secretary considers the charter hire offered too low'' are substituted for ''if, in the Secretary's discretion, the charter hire offered is deemed too low'' to eliminate unnecessary words. The words ''lacks the qualifications required by section 57514 of this title'' are substituted for ''lacks sufficient capital, credit, or experience to operate successfully the line'' to avoid repeating the qualifications in more than one place.

§ 57516. Operating-differential subsidies

If the Secretary of Transportation considers it necessary, the Secretary may make a contract

with a charterer of a vessel owned by the Secretary for payment of an operating-differential subsidy, on the same terms and conditions, and subject to the same limitations and restrictions, as otherwise provided with respect to payment of operating-differential subsidies to operators of privately-owned vessels.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1667.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
57516	46 App.:1198.	June 29, 1936, ch. 858, title VII, § 708, 49 Stat. 2009; June 23, 1938, ch. 600, § 31, 52 Stat. 962; Pub. L. 97–31, § 12(110), Aug. 6, 1981, 95 Stat. 163.

§ 57517. Recovery of excess profits

(a) IN GENERAL.—A charter under this chapter shall provide that if, at the end of a calendar year subsequent to the execution of the charter, the cumulative net voyage profit (after payment of the charter hire reserved in the charter and payment of the charterer's fair and reasonable overhead expenses applicable to operation of the chartered vessel) exceeds 10 percent a year of the charterer's capital necessarily employed in the business of the chartered vessel, the charterer shall pay to the Secretary of Transportation, as additional charter hire, half the cumulative net voyage profit in excess of 10 percent a year. However, any cumulative net voyage profit accounted for under this subsection is not to be included in the calculation of cumulative net voyage profit in any subsequent year.

(b) TERMS TO BE DEFINED AND USED.—The Secretary shall define the terms ''net voyage profit'', ''fair and reasonable overhead expenses'', and ''capital necessarily employed'' for this section. Each advertisement for bids and each charter shall contain these definitions, stating the formula for determining each of these three amounts.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1667.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
57517	46 App.:1199.	June 29, 1936, ch. 858, title VII, § 709, 49 Stat. 2010; Pub. L. 97–31, § 12(111), Aug. 6, 1981, 95 Stat. 163.

§ 57518. Performance bond

The Secretary of Transportation shall require a charterer of a vessel of the Secretary to deposit with the Secretary an undertaking, with approved sureties, in such amount as the Secretary may require as security for the faithful performance of the terms of the charter, including indemnity against liens on the chartered vessel.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1667.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
57518	46 App.:1200.	June 29, 1936, ch. 858, title VII, § 710, 49 Stat. 2010; Pub. L. 97–31, § 12(112), Aug. 6, 1981, 95 Stat. 163.

§ 57519. Insurance

A charter under this chapter shall require the charterer to carry, at the charterer's expense, insurance on the chartered vessel covering all marine and port risks, protection and indemnity risks, and all other hazards and liabilities, adequate to cover damages claimed against and losses sustained by the chartered vessel arising during the term of the charter. The insurance shall be in such form, in such amount, and with such companies as the Secretary of Transportation may require. In accordance with law, any of the insurance risks may be underwritten by the Secretary.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1667.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
57519	46 App.:1202(a).	June 29, 1936, ch. 858, title VII, § 712(a), 49 Stat. 2010; Aug. 7, 1939, ch. 555, § 1, 53 Stat. 1254; Pub. L. 97–31, § 12(114), Aug. 6, 1981, 95 Stat. 163.

§ 57520. Vessel maintenance

(a) IN GENERAL.—A charter under this chapter shall require the charterer, at the charterer's expense, to—

(1) keep the chartered vessel in good repair and efficient operating condition; and

(2) make any repairs required by the Secretary of Transportation.

(b) INSPECTION.—The charter shall provide that the Secretary has the right to inspect the vessel at any time to ascertain its condition.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1668.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
57520	46 App.:1202(b), (c).	June 29, 1936, ch. 858, title VII, § 712(b), (c), 49 Stat. 2010; Aug. 7, 1939, ch. 555, § 1, 53 Stat. 1254; Pub. L. 97–31, § 12(114), Aug. 6, 1981, 95 Stat. 163.

§ 57521. Termination of charter during national emergency

A charter under this chapter shall provide that during a national emergency proclaimed by the President or a period for which the President has proclaimed that the security of the national defense makes it advisable, the Secretary of Transportation may terminate the charter without cost to the United States Government on such notice to the charterer as the President determines.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1668.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
57521	46 App.:1202(d).	June 29, 1936, ch. 858, title VII, §712(d), 49 Stat. 2010; Aug. 7, 1939, ch. 555, §1, 53 Stat. 1254; Pub. L. 97–31, §12(114), Aug. 6, 1981, 95 Stat. 163.

SUBCHAPTER III—MISCELLANEOUS

§ 57531. Construction and charter of vessels for unsuccessful routes

(a) IN GENERAL.—If the Secretary of Transportation finds that a trade route determined to be essential under section 50103 of this title cannot be successfully developed and maintained and the Secretary's replacement program cannot be achieved under private operation of the trade route by a citizen of the United States with vessels documented under chapter 121 of this title, without further aid by the United States Government in addition to the financial aid authorized under titles V and VI of the Merchant Marine Act, 1936, the Secretary, without advertisement or competition, may—

(1) have constructed, in private shipyards or in navy yards, vessels of the types necessary for the trade route; and

(2) demise charter those new vessels to the operator of vessels of the United States established on the trade route.

(b) AMOUNT OF CHARTER HIRE.—

(1) IN GENERAL.—The annual charter hire under subsection (a) shall be at least 4 percent of the price (referred to in this section as the ''foreign cost'') at which the vessel would be sold if constructed under title V of the Merchant Marine Act, 1936, plus—

(A) a percentage of the depreciated foreign cost computed annually determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the Government with remaining periods to maturity comparable to the term of the charter, adjusted to the nearest one-eighth percent; and

(B) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs.

(2) DEPRECIATION.—Depreciation under paragraph (1)(A) shall be based on—

(A) a 25-year life for dry-cargo and passenger vessels; and

(B) a 20-year life for tankers and other bulk liquid carrier vessels.

(c) OPTION TO PURCHASE.—The charter may contain an option to the charterer to purchase the vessels from the Secretary of Transportation within 5 years after delivery under the charter, on the same terms and conditions as provided in title V of the Merchant Marine Act, 1936, for the purchase of new vessels from the Secretary. However—

(1) the purchase price shall be the foreign cost less depreciation to the date of purchase based on the useful life specified in subsection (b)(2);

(2) the required cash payment payable at the time of the purchase shall be 25 percent of the purchase price;

(3) the charter may provide that any part of the charter hire paid in excess of the minimum charter hire provided for in this section may be credited against the cash payment payable at the time of the purchase;

(4) the balance of the purchase price shall be paid within the remaining years of useful life (as specified in subsection (b)(2)) after the date of delivery of the vessel under the charter and in approximately equal annual installments, except that the first installment, which shall be payable on the next ensuing anniversary date of the delivery under the charter, shall be a proportionate part of the annual installment; and

(5) interest shall be payable on the unpaid balances from the date of purchase, at a rate not less than—

(A) a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the Government with remaining periods to maturity comparable to the average maturities of the loans, adjusted to the nearest one-eighth percent; plus

(B) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs.

(d) OPERATION OF VESSEL.—

(1) PERMISSIBLE VOYAGES.—The charter shall provide for operation of the vessel exclusively—

(A) in foreign trade;

(B) on a round-the-world voyage;

(C) on a round voyage from the west coast of the United States to a European port that includes an intercoastal port of the United States;

(D) on a round voyage from the Atlantic coast of the United States to the Orient that includes an intercoastal port of the United States; or

(E) on a voyage in foreign trade on which the vessel may stop at Hawaii or an island territory or possession of the United States.

(2) DOMESTIC TRADE.—The charter shall provide if the vessel is operated in domestic trade on any of the services specified in paragraph (1), the charterer will pay annually to the Secretary of Transportation that proportion of 1/25 of the difference between the domestic and foreign cost of the vessel as the gross revenue derived from the domestic trade bears to the gross revenue derived from the entire voyages completed during the preceding year.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1668.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
57531	46 App.:1204.	June 29, 1936, ch. 858, title VII, §714, 49 Stat. 2011; June 23, 1938, ch. 600, §32, 52 Stat. 962; Aug. 4, 1939, ch. 417, §12, 53 Stat. 1186; Pub. L. 86–3, §18(b)(3), Mar. 18, 1959, 73 Stat. 12; Pub. L. 86–518, §5, June 12, 1960, 74 Stat. 216; Pub. L. 91–469, §22, Oct. 21, 1970, 84 Stat. 1032; Pub. L. 97–31, §12(116), Aug. 6, 1981, 95 Stat. 164.

In subsection (a)(2), the words ''demise charter'' are substituted for ''demise . . . or bare-boat charter'' to eliminate unnecessary words. The words ''operator of vessels of the United States'' are substituted for ''American-flag operator'' for consistency in the revised title.

Subsection (b)(2) is substituted for ''Upon the basis of a twenty-five year life of the vessel'' because of section 9 of Public Law 86–518 (June 12, 1960, 74 Stat. 217), which provided that ''Nothing in any amendment made by this Act [including section 5 substituting 'twenty-five' for 'twenty' in 46 App. U.S.C. 1204] shall operate or be interpreted to change from twenty to twenty-five years the provisions of the Merchant Marine Act, 1936, as amended, relating to the commercial expectancy or period of depreciation of any tanker or other liquid bulk carrier.''

In subsection (c), in paragraphs (1) and (4), references to the useful life specified in subsection (b)(2) are substituted for references to the twenty-five year useful life for the reason stated in explaining subsection (b)(2).

REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in subsecs. (a), (b)(1), (c), is act June 29, 1936, ch. 858, 49 Stat. 1985. Titles V and VI of the Act enacted provisions set out as notes under section 53101 of this title. For complete classification of this Act to the Code, see Short Title of 1936 Amendment note set out under section 101 of this title and Tables.

§ 57532. Operation of experimental vessels

(a) DEFINITION.—In this section, the term ''experimental vessel'' means a vessel owned by the United States Government (including a vessel in the National Defense Reserve Fleet) that has been constructed, reconditioned, or remodeled for experimental or testing purposes.

(b) AUTHORITY TO OPERATE.—The Secretary of Transportation, for the purpose of practical development, trial, and testing, may operate an experimental vessel under a bareboat charter or general agency agreement in the foreign or domestic trade of the United States or for use for the account of a department or agency of the Government, without regard to other provisions of this subtitle and other laws related to chartering and general agency operations. Not more than 10 vessels may be operated and tested under this section in any one year.

(c) TERMS OF OPERATION.—Operation of a vessel under this section shall be on terms the Secretary considers appropriate to carry out the purposes of this subtitle. A bareboat charter under this section shall be at reasonable rates and include restrictions the Secretary considers appropriate to protect the public interest, including provisions for recapture of profits under section 57517 of this title. A charter or general agency agreement under this section shall be reviewed annually to determine whether conditions exist to justify continuance of the charter or agreement.

(d) RIGHTS OF SEAMEN.—A seaman engaged in vessel operations of the Secretary under this section and employed through a general agent in connection with a charter or agreement under this section is entitled to all the rights and remedies provided in sections 1(a) and (c), 3(c), and 4 of the Act of March 24, 1943 (50 App. U.S.C. 1291(a), (c), 1293(c), 1294).

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1670.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
57532	46 App.:1205.	June 29, 1936, ch. 858, title VII, §715, as added July 11, 1956, ch. 574, 70 Stat. 531; Pub. L. 97–31, §12(117), Aug. 6, 1981, 95 Stat. 164.

Subsection (d) is substituted for ''Those provisions of law prescribed or incorporated under section 1241a of this Appendix, which relate to vessel operating activities of the Secretary of Transportation and to employment of seamen through general agents, shall be applicable in connection with charters and agreements entered into under this section'' for clarity.

PART G—RESTRICTIONS AND PENALTIES

CHAPTER 581—RESTRICTIONS AND PENALTIES

Sec.
58101. Operating in domestic intercoastal or coastwise service.
58102. Default on payment or maintenance of reserves.
58103. Employing another person as managing or operating agent.
58104. Willful violation constitutes breach of contract or charter.
58105. Preferences for cargo in which charterer has interest.
58106. Concerted discriminatory activities.
58107. Discrimination at ports by water common carriers.
58108. Charges for transportation subject to subtitle IV of title 49.
58109. Penalties.

§ 58101. Operating in domestic intercoastal or coastwise service

(a) PROHIBITION.—A subsidy may not be awarded or paid to a contractor under the operating-differential subsidy program, and a vessel may not be chartered to a person under chapter 575 of this title, if the contractor or charterer, or a holding company, subsidiary, affiliate, or associate of the contractor or charterer, or an officer, director, agent, or executive thereof, directly or indirectly—

(1) owns, charters, or operates a vessel engaged in the domestic intercoastal or coastwise service; or

(2) owns a pecuniary interest in a person that owns, charters, or operates a vessel in the domestic intercoastal or coastwise service.

(b) WAIVER.—A person may apply to the Secretary of Transportation for a waiver of subsection (a). Before deciding on the waiver, the Secretary shall give the applicant and other interested persons an opportunity for a hearing.

The Secretary may not grant the waiver if the Secretary finds it would—

(1) result in unfair competition to a person operating exclusively in the domestic intercoastal or coastwise service; or

(2) be prejudicial to the objectives and policy of this subtitle.

(c) CONTINUOUS OPERATION SINCE 1935.—The Secretary shall grant an application under subsection (b) without requiring further proof that the public interest and convenience will be served and without further proceedings as to the competition in the route or trade, if the contractor or other person, or a predecessor in interest, was in bona-fide operation as a common carrier by water in the domestic intercoastal or coastwise trade in 1935 over the route or in the trade for which the application is made and has so operated since that time or, if engaged in furnishing seasonal service only, was in bona-fide operation in 1935 during the season ordinarily covered by its operation, except in either event as to interruptions of service over which the applicant or its predecessor in interest had no control.

(d) DIVERSION INTO INTERCOASTAL OR COASTWISE OPERATIONS.—If an application under subsection (b) is approved, a person referred to in this section may not divert, directly or indirectly, money, property, or any other thing of value, used in a foreign-trade operation for which a subsidy is paid by the United States Government, into intercoastal or coastwise operations.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1670.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
58101	46 App.:1223(a).	June 29, 1936, ch. 858, title VIII, § 805(a), 49 Stat. 2012; Pub. L. 97–31, § 12(122), Aug. 6, 1981, 95 Stat. 164; Pub. L. 104–239, § 4(b)(1), Oct. 8, 1996, 110 Stat. 3131.

In this chapter, references to the ''operating-differential subsidy program'' are substituted for references to ''part A of subchapter VI of this chapter'', meaning 46 App. U.S.C. 1171–1185a, because part A of subchapter VI contains the operating-differential subsidy program and under 46 App. U.S.C. 1185a that program is being phased out. Consequently, part A is being omitted from the revised title and will instead appear as a note under section 53101, except for 46 App. U.S.C. 1177 and 1177–*l* which are restated in chapter 535. References to ''chapter 575 of this title'' are substituted for references to ''subchapter VII of this chapter'', meaning 46 App. U.S.C. 1191–1205, because those sections are restated in chapter 575.

In subsection (b), the words ''A person may apply to the Secretary of Transportation for a waiver of subsection (a). Before deciding on the waiver, the Secretary shall give the applicant and other interested persons an opportunity for a hearing.'' are substituted for ''without the written permission of the Secretary of Transportation. Every person, firm, or corporation having any interest in such application shall be permitted to intervene and the Secretary of Transportation shall give a hearing to the applicant and the intervenors.'' for clarity.

In subsection (c), the words ''domestic intercoastal or coastwise trade'' are substituted for ''domestic, intercoastal, or coastwise trade'' for consistency in the section.

In subsection (d), the words ''and whosoever shall violate this provision shall be guilty of a misdemeanor'' are omitted because section 3559 of title 18 provides for the classification of offenses. See the revision notes for section 58109 of the revised title.

§ 58102. Default on payment or maintenance of reserves

The Secretary of Transportation may supervise the number and compensation of all officers and employees of a contractor under the operating-differential subsidy program or a charterer under chapter 575 of this title, receiving an operating-differential subsidy, if the contractor or charterer—

(1) is in default on a mortgage, note, purchase contract, or other obligation to the Secretary; or

(2) has not maintained, in a manner satisfactory to the Secretary, all of the reserves provided for in this subtitle.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1671.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
58102	46 App.:1223(b).	June 29, 1936, ch. 858, title VIII, § 805(b), 49 Stat. 2012; Pub. L. 97–31, § 12(122), Aug. 6, 1981, 95 Stat. 164; Pub. L. 104–239, § 4(b)(2), Oct. 8, 1996, 110 Stat. 3131.

The words ''contractor under the operating-differential subsidy program or a charterer under chapter 575 of this title, receiving an operating-differential subsidy'' are substituted for ''contractor under part A of subchapter VI of this chapter or subchapter VII of this chapter receiving an operating-differential subsidy'' for the reasons explained under section 58101.

§ 58103. Employing another person as managing or operating agent

(a) PROHIBITION.—Except with the written consent of the Secretary of Transportation, a contractor holding a contract under the operating-differential subsidy program or under chapter 575 of this title may not—

(1) employ another person as the managing or operating agent of the operator; or

(2) charter a vessel, on which an operating-differential subsidy is to be paid, for operation by another person.

(b) APPLICABILITY OF PROVISIONS TO CHARTERER.—If a charter prohibited by this section is made, the person operating the chartered vessel is subject to all the provisions of this subtitle and the operating-differential subsidy program, including limitations of profits and salaries.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1671.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
58103	46 App.:1223(d).	June 29, 1936, ch. 858, title VIII, § 805(d), 49 Stat. 2013; June 23, 1938, ch. 600, §§ 36, 37, 52 Stat. 963; Pub. L. 91–603, § 4(e), Dec. 31, 1970, 84 Stat. 1675; Pub. L. 97–31, § 12(122), Aug. 6, 1981, 95 Stat. 164; Pub. L. 104–239, § 4(b)(2), Oct. 8, 1996, 110 Stat. 3131.

In subsection (a), the words ''contractor holding a contract under the operating-differential subsidy program or under chapter 575 of this title'' are substituted for ''contractor holding a contract authorized under part A of subchapter VI or VII of this chapter'' for the reasons explained under section 58101.

§ 58104. Willful violation constitutes breach of contract or charter

A willful violation of any provision of sections 58101–58103 of this title constitutes a breach of the contract or charter. On determining that a violation has occurred, the Secretary of Transportation may declare the contract or charter rescinded.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1672.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
58104	46 App.:1223(f).	June 29, 1936, ch. 858, title VIII, § 805(f), 49 Stat. 2014; Pub. L. 97–31, § 12(122), Aug. 6, 1981, 95 Stat. 164.

The words ''in force under this chapter'' and ''forthwith'' are omitted as unnecessary. The words ''and any person willfully violating the provisions of this section shall be guilty of a misdemeanor'' are omitted because section 3559 of title 18 provides for the classification of offenses. See the revision notes for section 58109 of the revised title.

§ 58105. Preferences for cargo in which charterer has interest

A contractor receiving an operating-differential subsidy, or a charterer under chapter 575 of this title, may not unjustly discriminate in any manner so as to give preference, directly or indirectly, to cargo in which the contractor or charterer has a direct or indirect ownership, purchase, or vending interest.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1672.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
58105	46 App.:1226.	June 29, 1936, ch. 858, title VIII, § 808, 49 Stat. 2015.

The words ''and whosoever shall violate this provision shall be guilty of a misdemeanor'' are omitted because section 3559 of title 18 provides for the classification of offenses. See the revision notes for section 58109 of the revised title.

§ 58106. Concerted discriminatory activities

(a) PROHIBITION.—A contractor receiving an operating-differential subsidy, or a charterer under chapter 575 of this title, may not continue as a party to or conform to an agreement with another carrier by water, or engage in a practice in concert with another carrier by water, that is unjustly discriminatory or unfair to any other citizen of the United States operating a common carrier by water employing only vessels documented under the laws of the United States on an established trade route from and to a United States port.

(b) GOVERNMENT PAYMENT PROHIBITED.—No payment or subsidy of any kind may be paid, directly or indirectly, out of funds of the United States Government to a contractor or charterer that has violated subsection (a).

(c) CIVIL ACTION.—A person whose business or property is injured by a violation of subsection (a) may bring a civil action in the district court of the United States for the district in which the defendant resides, is found, or has an agent. If the person prevails, the person shall be awarded—

(1) 3 times the damages; and

(2) costs, including reasonable attorney fees.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1672.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
58106	46 App.:1227.	June 29, 1936, ch. 858, title VIII, § 810, 49 Stat. 2015.

In subsection (b), the words ''United States Government'' are substituted for ''United States or any agency of the United States'' for consistency and to eliminate unnecessary words.

In subsection (c), the words ''bring a civil action'' are substituted for ''sue'' for consistency in the revised title. The words ''without respect to the amount in controversy'' are omitted because section 1331 of title 28 no longer contains a requirement of any particular amount in controversy for jurisdiction of civil actions arising under the laws of the United States. The words ''If the person prevails'' are added for clarity.

§ 58107. Discrimination at ports by water common carriers

(a) PROHIBITION.—A common carrier by water may not, directly or indirectly, through an agreement, conference, association, understanding, or otherwise, prevent or attempt to prevent any other common carrier by water from serving any port described in subsection (b) at the same rates the first carrier charges at the nearest port already regularly served by it.

(b) PORTS.—A port referred to in subsection (a) is one that is—

(1) designed for the accommodation of ocean-going vessels;

(2) located on an improvement project authorized by law or by a Federal agency; and

(3) located within the continental limits of the United States.

(c) OTHER AUTHORITY NOT LIMITED.—This section does not limit the authority otherwise vested in the Secretary of Transportation and the Federal Maritime Commission.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1672.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
58107	46 App.:1115.	June 29, 1936, ch. 858, title II, § 205, 49 Stat. 1987; Pub. L. 97–31, § 12(62), Aug. 6, 1981, 95 Stat. 159.

§ 58108. Charges for transportation subject to subtitle IV of title 49

(a) PROHIBITION.—A carrier may not charge, collect, or receive for transportation subject to subtitle IV of title 49 of persons or property, under any joint rate, fare, or charge, or under any export, import, or other proportional rate,

fare, or charge, that is based in whole or in part on the fact that the persons or property affected are to be transported to, or have been transported from, a port in a territory or possession of the United States or in a foreign country, by a carrier by water in foreign commerce, any lower rate, fare, or charge than the carrier charges, collects, or receives for the transportation of persons or similar property for the same distance, in the same direction, and over the same route, in commerce wholly within the United States, unless the vessel used for the transportation is or was at the time of the transportation documented under the laws of the United States.

(b) SUSPENSION OF PROHIBITION.—Whenever the Secretary of Transportation believes that adequate shipping facilities to or from any port in a territory or possession of the United States or a foreign country are not being provided by vessels documented under the laws of the United States, the Secretary shall certify this fact to the Surface Transportation Board. On receiving the certification, the Board may by order suspend the operation of subsection (a) with respect to the rates, fares, and charges for the transportation by rail of persons and property transported from or to be transported to those ports, for such time and under such terms and conditions as the Secretary may specify in the order or in any supplemental order.

(c) TERMINATION OF SUSPENSION.—Whenever the Secretary believes that adequate shipping facilities are being provided to those ports by vessels documented under the laws of the United States, and certifies that fact to the Board, the Board may order the termination of the suspension.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1673.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
58108	46 App.:884.	June 5, 1920, ch. 250, § 28, 41 Stat. 999; Ex. Ord. No. 6166, § 12, eff. June 10, 1933; June 29, 1936, ch. 858, §§ 204, 904, 49 Stat. 1987, 2016; Pub. L. 97–31, § 12(50), Aug. 6, 1981, 95 Stat. 157; Pub. L. 104–88, title III, § 321(3), Dec. 29, 1995, 109 Stat. 950.

The words ''territory or possession'' are substituted for ''possession or dependency'' for consistency in the revised title.

§ 58109. Penalties

(a) INDIVIDUALS.—An individual convicted of violating section 58101(d), 58103, or 58105 of this title shall be fined under title 18, imprisoned for at least one year but not more than 5 years, or both.

(b) ORGANIZATIONS.—An organization convicted of committing an act prohibited by this subtitle shall be fined under title 18.

(c) INELIGIBILITY TO RECEIVE BENEFITS.—An individual or organization convicted of violating a section referred to in subsection (a) is ineligible, at the discretion of the Secretary of Transportation, to receive any benefit under the construction-differential subsidy or operating-differential subsidy programs, or a charter under chapter 575 of this title, for 5 years after the conviction.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1673.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
58109	46 App.:1228 (1st, 2d pars.).	June 29, 1936, ch. 858, title VIII, § 806(b), (c), 49 Stat. 2014; Pub. L. 97–31, § 12(125), Aug. 6, 1981, 95 Stat. 164.

In subsection (a), the word ''individual'' is substituted for ''natural person'' for consistency in the revised title. The words ''convicted of violating section 58101(d), 58103, or 58105 of this title'' are substituted for ''found guilty of any act or acts declared in this chapter to constitute a misdemeanor'' because the sections referred to restate the provisions which declare certain acts to be misdemeanors and because the restatement of those provisions does not use the word ''misdemeanor''. The words ''in any district court of the United States'' are omitted as unnecessary. The words ''shall be fined under title 18, imprisoned for at least one year but not more than five years, or both'' are substituted for ''shall be punished by a fine of not more than $10,000, or by imprisonment for not less than one year or more than five years, or by both fine and imprisonment'' because of chapter 227 of title 18. See 18 U.S.C. 3559 (which classifies offenses based on the maximum term of imprisonment) and 3571 (which establishes fines based on those classifications).

In subsection (b), the word ''organization'' is substituted for ''corporation'' to reflect the probable intent that the penalty should apply to other organizations in addition to corporations. The words ''convicted of committing an act prohibited by this subtitle'' are substituted for ''found guilty of any act or acts declared in this chapter to be unlawful'' for clarity and consistency. The words ''shall be fined under title 18'' are substituted for ''shall be punished by a fine of not more than $25,000'' for consistency with subsection (a).

In subsection (c), the words ''An individual or organization convicted of violating a section referred to in subsection (a)'' are substituted for ''any person or corporation convicted of a misdemeanor under the provisions of this chapter'' for consistency in the section. Reference to the Federal Maritime Commission is omitted because the Commission does not administer any of the provisions referred to.

Subtitle VI—Clearance, Tonnage Taxes, and Duties

Chapter Sec.
601. Arrival and Departure Requirements 60101
603. Tonnage Taxes and Light Money 60301
605. Discriminating Duties and Reciprocal Privileges 60501

PRIOR PROVISIONS

A prior subtitle VI, consisting of chapter 701, was redesignated subtitle VII of this title by Pub. L. 109–241, title IX, § 901(k)(1), July 11, 2006, 120 Stat. 564. An identical amendment was made by Pub. L. 109–304, § 9(a), Oct. 6, 2006, 120 Stat. 1674.

CHAPTER 601—ARRIVAL AND DEPARTURE REQUIREMENTS

Sec.
60101. Boarding arriving vessels before inspection.
60102. Production of certificate on entry.
60103. Oath of ownership on entry.
60104. Depositing certificates of documentation with consular officers.

Sec.
60105. Clearance of vessels.
60106. State inspection laws.
60107. Payment of fees on departing vessel.
60108. Duty to transport tendered cargo.
60109. Duty to transport money and securities of the United States Government.

§ 60101. Boarding arriving vessels before inspection

(a) REGULATIONS.—The Secretary of Homeland Security shall prescribe and enforce regulations on the boarding of a vessel arriving at a port of the United States before the vessel has been inspected and secured.

(b) CRIMINAL PENALTY.—A person violating a regulation prescribed under this section shall be fined under title 18, imprisoned for not more than 6 months, or both.

(c) RELATIONSHIP TO OTHER LAW.—This section shall be construed as supplementary to section 2279 of title 18.

(Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1674.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60101	46 App.:163.	Mar. 31, 1900, ch. 120, §§ 1–3, 31 Stat. 58.

In subsection (a), the Secretary of Homeland Security is substituted for the Commissioner of Customs because the functions of the Customs Service and of the Secretary of the Treasury relating thereto were transferred to the Secretary of Homeland Security by section 403(1) of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2178). The functions of the Commissioner of Customs previously were vested in the Secretary of the Treasury under section 321(c) of title 31. For prior related transfers of functions, see the transfer of functions note under 46 App. U.S.C. 163. The word ''shall'' is substituted for ''is authorized and directed to'' for consistency in the revised title and to eliminate unnecessary words. The word ''port'' is substituted for ''seaports'' for consistency in the revised title. The word ''secured'' is substituted for ''placed in security'' to eliminate unnecessary words. The words ''from time to time'', ''properly'', and ''and for that purpose to employ any of the officers of the United States Customs Service'' are omitted as unnecessary.

In subsection (b), the words ''fined under title 18, imprisoned for not more than 6 months, or both'' are substituted for ''subject to a penalty of not more than $100 or imprisonment not to exceed six months, or both'' because of chapter 227 of title 18. The words ''in the discretion of the court'' are omitted as unnecessary.

In subsection (c), the words ''section 2279 of title 18'' are substituted for ''section forty-six hundred and six of the Revised Statutes'' in the Act of Mar. 31, 1900, because R.S. § 4606 (formerly classified to 46 U.S.C. 708 (1946 ed.)) was replaced by 18 U.S.C. 2279 in the codification of title 18 by the Act of June 25, 1948 (ch. 645, 62 Stat. 683). The words ''section 9 of act August 2, 1882 (22 Stat. 189)'' are omitted because that law was repealed by section 4(b) of Public Law 98–89 (Aug. 26, 1983, 97 Stat. 600).

§ 60102. Production of certificate on entry

On entry of a vessel documented under chapter 121 of this title, the master or other individual in charge of the vessel shall produce the certificate of documentation to the customs officer at the place where the vessel is entered. If the certificate is not produced, the vessel is not entitled to the privileges of a documented vessel.

(Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1674.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60102	46 App.:57.	R.S. § 4184.

The words ''vessel documented under chapter 121 of this title'' are substituted for ''vessel, recorded in pursuance of title 48 of the Revised Statutes'', and the words ''certificate of documentation'' are substituted for ''certificate of such record'', for consistency with chapter 121 of title 46. The words ''in charge'' are substituted for ''having the command or charge'' to eliminate unnecessary words. The words ''customs officer'' are substituted for ''collector of the district'' because the office of collector of customs was abolished by Reorganization Plan No. 1 of 1965. For additional requirements relating to entry of vessels, see 19 U.S.C. 1434.

§ 60103. Oath of ownership on entry

(a) REQUIRED STATEMENT.—On entry of a vessel of the United States from a foreign port, the individual designated under subsection (b) shall state under oath that—

(1) the vessel's certificate of documentation contains the names of all the owners of the vessel; or

(2) part of the ownership has been transferred since the certificate was issued and, to the best of the individual's knowledge and belief, the vessel is still owned only by citizens of the United States.

(b) PERSON TO MAKE STATEMENT.—The statement under subsection (a) shall be made by—

(1) an owner if one resides at the port of entry; or

(2) the master if an owner does not reside at the port of entry.

(c) CONSEQUENCE OF NOT MAKING STATEMENT.—If the appropriate individual does not make the statement required by this section, the vessel is not entitled to the privileges of a vessel of the United States.

(Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1674.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60103	46 App.:42.	R.S. § 4173.

In subsection (a), the words ''certificate of documentation'' and ''certificate'' are substituted for ''register'' for consistency with chapter 121 of the revised title. In paragraph (2), the words ''sold or'' are omitted as unnecessary. The words ''owned only by citizens of the United States'' are substituted for ''no foreign subject or citizen has . . . any share, by way of trust, confidence, or otherwise'' for consistency in the revised title and to eliminate unnecessary words.

§ 60104. Depositing certificates of documentation with consular officers

(a) REQUIREMENT OF MASTER.—When a vessel owned by citizens of the United States, on a voyage from a port in the United States, arrives at a foreign port, the master of the vessel shall deposit the vessel's certificate of documentation with a consular officer at the foreign port if there is a consular officer at that port.

(b) RETURN OF CERTIFICATE.—When the master produces a clearance from the appropriate offi-

cer of the foreign port, the consular officer shall return the certificate of documentation to the master if the master has complied with the provisions of law related to the discharge of seamen in a foreign country and the payment of fees of consular officers.

(c) CIVIL PENALTY AND COLLECTION.—The master of a vessel failing to deposit the certificate of documentation as required by subsection (a) is liable to the United States Government for a civil penalty of $500. The consular officer shall bring an action to recover the penalty in any court of competent jurisdiction. The action shall be brought in the name of the consular officer for the benefit of the United States.

(Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1675.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60104	46 App.:354.	R.S. § 4309; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.
	46 App.:355.	R.S. § 4310; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.

In this section, the words ''certificate of documentation'' are substituted for ''register'' and ''papers'' for consistency with chapter 121 of title 46. The words ''sea-letter, and Mediterranean passport'' in R.S. § 4309 are omitted because the use of those documents was discontinued by Presidential proclamation on April 10, 1815. The words ''consular officer'' are substituted for ''consul or vice consul'' for consistency with 22 U.S.C. 4205. The words ''commercial agent, or vice commercial agent'' in R.S. §§ 4309 and 4310 are omitted because of the abolition of the grade of commercial agent by the Act of Apr. 5, 1906 (ch. 1366, 34 Stat. 99).

In subsection (b), the words ''or commander'' are omitted as unnecessary and for consistency in the section.

In subsection (c), the word ''failing'' is substituted for ''refuses or neglects'' to eliminate unnecessary words. The words ''liable to the United States Government for a civil penalty'' are substituted for ''liable to a penalty'' for clarity and for consistency in the revised title.

§ 60105. Clearance of vessels

(a) VESSELS OF THE UNITED STATES.—Except as otherwise provided by law, a vessel of the United States shall obtain clearance from the Secretary of Homeland Security before proceeding from a port or place in the United States—

(1) for a foreign port or place;

(2) for another port or place in the United States if the vessel has on board foreign merchandise for which entry has not been made; or

(3) outside the territorial sea to visit a hovering vessel or to receive merchandise while outside the territorial sea.

(b) OTHER VESSELS.—Except as otherwise provided by law, a vessel that is not a vessel of the United States shall obtain clearance from the Secretary before proceeding from a port or place in the United States—

(1) for a foreign port or place;

(2) for another port or place in the United States; or

(3) outside the territorial sea to visit a hovering vessel or to receive or deliver merchandise while outside the territorial sea.

(c) REGULATIONS.—The Secretary may by regulation—

(1) prescribe the manner in which clearance under this section is to be obtained, including the documents, data, or information which shall be submitted or transmitted, pursuant to an authorized data interchange system, to obtain the clearance;

(2) permit clearance to be obtained before all requirements for clearance are complied with, but only if the owner or operator of the vessel files a bond in an amount set by the Secretary conditioned on the compliance by the owner or operator with all specified requirements for clearance within a time period (not exceeding 4 business days) established by the Secretary; and

(3) permit clearance to be obtained at a place other than a designated port of entry, under conditions the Secretary may prescribe.

(Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1675.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60105	46 App.:91.	R.S. § 4197; Aug. 5, 1935, ch. 438, title II, § 209, 49 Stat. 526; June 16, 1938, ch. 476, § 1, 52 Stat. 758; Sept. 1, 1954, ch. 1213, title V, § 501(a), 68 Stat. 1140; Pub. L. 103–182, title VI, § 686(b), Dec. 8, 1993, 107 Stat. 2221; Pub. L. 106–476, title I, § 1452(a)(3), Nov. 9, 2000, 114 Stat. 2167.

The Secretary of Homeland Security is substituted for the Customs Service and for the Secretary of the Treasury because the functions of the Customs Service and of the Secretary of the Treasury relating thereto were transferred to the Secretary of Homeland Security by section 403(1) of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2178).

§ 60106. State inspection laws

When State law requires a certificate of inspection for goods carried on a vessel, a vessel transporting the goods may not be cleared until the certificate is produced.

(Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1676.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60106	46 App.:97.	R.S. § 4202.

This section is substituted for the source provision to eliminate unnecessary words.

§ 60107. Payment of fees on departing vessel

A departing vessel may be cleared only when all legal fees that have accrued on the vessel are paid and proof of payment is presented to the individual granting the clearance.

(Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1676.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60107	46 App.:100.	R.S. § 4206.

This section is substituted for the source provision to eliminate unnecessary words.

§ 60108. Duty to transport tendered cargo

Clearance may be refused to a vessel or vehicle transporting cargo destined for a domestic or foreign port when the owner, master, or other individual in charge refuses to accept cargo tendered in good condition, with proper charges, for the same or an intermediate port by a citizen of the United States. This section does not apply if the vessel or vehicle is already fully loaded (giving appropriate consideration to its proper loading) or is not adaptable to transport the tendered cargo.

(Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1676.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60108	46 App.:834.	Sept. 7, 1916, ch. 451, § 36, 39 Stat. 738.

Only the word ''cargo'' is used, instead of ''merchandise'', ''freight'', and ''cargo'', for consistency in the section.

§ 60109. Duty to transport money and securities of the United States Government

Before being given clearance, a vessel owned by a citizen of the United States and bound on a voyage from a port in the United States to another port in the United States or in a foreign country, or on a voyage from a port in a foreign country to a port in the United States, shall receive on board any bullion, coin, notes, bonds, or other securities of the United States Government that an agency, consular officer, or other agent of the Government offers. The vessel shall transport the items securely and deliver them promptly to the proper authorities or consignees on arriving at the port of destination. Compensation shall be paid for services provided under this section that is equal to compensation paid to other carriers in the ordinary transaction of business.

(Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1676.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60109	46 App.:98.	R.S. § 4204; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.

This section is substituted for the source provision to eliminate unnecessary words.

CHAPTER 603—TONNAGE TAXES AND LIGHT MONEY

Sec.
60301. Regular tonnage taxes.
60302. Special tonnage taxes.
60303. Light money.
60304. Presidential suspension of tonnage taxes and light money.
60305. Vessels in distress.
60306. Vessels not engaged in trade.
60307. Vessels engaged in coastwise trade or the fisheries.
60308. Vessels engaged in Great Lakes trade.
60309. Passenger vessels making trips between ports of the United States and foreign ports.
60310. Vessels making daily trips on interior waters.
60311. Hospital vessels in time of war.
60312. Rights under treaties preserved.

§ 60301. Regular tonnage taxes

(a) LOWER RATE.—A tax is imposed at the rate of 2 cents per ton (but not more than a total of 10 cents per ton per year) at each entry in a port of the United States of—

(1) a vessel entering from a foreign port or place in North America, Central America, the West Indies Islands, the Bahama Islands, the Bermuda Islands, or the coast of South America bordering the Caribbean Sea; or

(2) a vessel returning to the same port or place in the United States from which it departed, and not entering the United States from another port or place, except—

(A) a vessel of the United States;

(B) a recreational vessel (as defined in section 2101 of this title); or

(C) a barge.

(b) HIGHER RATE.—A tax is imposed at the rate of 6 cents per ton (but not more than a total of 30 cents per ton per year) on a vessel at each entry in a port of the United States from a foreign port or place not named in subsection (a)(1).

(c) EXCEPTION FOR VESSELS ENTERING OTHER THAN BY SEA.—Subsection (a) does not apply to a vessel entering other than by sea from a foreign port or place at which tonnage, lighthouse, or other equivalent taxes are not imposed on vessels of the United States.

(Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1677; Pub. L. 109–171, title IV, § 4001, Feb. 8, 2006, 120 Stat. 27.)

AMENDMENTS NOT SHOWN IN TEXT

This section was derived from sections 121 (2d sentence) and 132 of the former Appendix to this title, which were amended by Pub. L. 109–171, title IV, § 4001, Feb. 8, 2006, 120 Stat. 27. For applicability of those amendments to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. The second sentence of section 121 of the former Appendix to this title, as amended, read as follows:

''A tonnage duty of 4.5 cents per ton, not to exceed in the aggregate 22.5 cents per ton in any one year, for fiscal years 2006 through 2010, and 2 cents per ton, not to exceed in the aggregate 10 cents per ton in any one year, for each fiscal year thereafter is imposed at each entry on all vessels which shall be entered in any port of the United States from any foreign port or place in North America, Central America, the West India Islands, the Bahama Islands, the Bermuda Islands, or the coast of South America bordering on the Caribbean Sea, or Newfoundland, and on all vessels (except vessels of the United States, recreational vessels, and barges, as those terms are defined in section 2101 of title 46) that depart a United States port or place and return to the same port or place without being entered in the United States from another port or place; and a duty of 13.5 cents per ton, not to exceed 67.5 cents per ton per annum, for fiscal years 2006 through 2010, and 6 cents per ton, not to exceed 30 cents per ton per annum, for each fiscal year thereafter is imposed at each entry on all vessels which shall be entered in any port of the United States from any other foreign port.''

Section 132 of the former Appendix to this title, as amended, read as follows:

''Vessels entering otherwise than by sea from a foreign port at which tonnage or lighthouse dues or other equivalent tax or taxes are not imposed on vessels of the United States shall be exempt from the tonnage duty of 4.5 cents per ton, not to exceed in the aggregate 22.5 cents per ton in any one year, for fiscal years 2006 through 2010, and 2 cents per ton, not to exceed in the aggregate 10 cents per ton in any one year, for each fiscal year thereafter, prescribed by section 121 of this Appendix.''

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60301(a)	46 App.:121 (2d sentence words before semicolon).	Aug. 5, 1909, ch. 6, §36 (1st sentence), 36 Stat. 111; Pub. L. 101–508, title X, §10402(a), Nov. 5, 1990, 104 Stat. 1388–398; Pub. L. 103–66, title IX, §9001(a)(1), (2), (c)(1), Aug. 10, 1993, 107 Stat. 402; Pub. L. 105–33, title IX, §9201(a), Aug. 5, 1997, 111 Stat. 671.
60301(b)	46 App.:121 (2d sentence words after semicolon).	
60301(c)	46 App.:132.	Mar. 8, 1910, ch. 86, 36 Stat. 234; Pub. L. 101–508, title X, §10402(b), Nov. 5, 1990, 104 Stat. 1388–399; Pub. L. 103–66, title IX, §9001(b), Aug. 10, 1993, 107 Stat. 402; Pub. L. 105–33, title IX, §9201(b), Aug. 5, 1997, 111 Stat. 671.

In this section, the tax rates for fiscal years 1991 through 2002 are omitted as obsolete.

In subsection (a)(1), the words ''West Indies Islands'' are substituted for ''West India Islands'' to conform to current geographic terminology. The word ''Newfoundland'' is omitted because Newfoundland is now part of Canada.

In subsection (a)(2), the reference to the definitions in section 2101 is confined to ''recreational vessel'' because the definitions of ''vessel of the United States'' and ''barge'' are being moved to chapter 1 of the revised title and being made applicable title-wide.

§ 60302. Special tonnage taxes

(a) ENTRY FROM FOREIGN PORT OR PLACE.—Regardless of whether a tax is imposed under section 60301 of this title, a tax is imposed on a vessel at each entry in a port of the United States from a foreign port or place at the following rates:

(1) 30 cents per ton on a vessel built in the United States but owned in any part by a subject of a foreign country.

(2) 50 cents per ton on other vessels not of the United States.

(3) 50 cents per ton on a vessel of the United States having an officer who is not a citizen of the United States.

(4) $2 per ton on a foreign vessel entering from a foreign port or place at which vessels of the United States are not ordinarily allowed to enter and trade.

(b) VESSELS NOT OF THE UNITED STATES TRANSPORTING PROPERTY BETWEEN DISTRICTS.—Regardless of whether a tax is imposed under section 60301 of this title, a tax of 50 cents per ton is imposed on a vessel not of the United States at each entry in one customs district from another district when transporting goods loaded in one district to be delivered in another district.

(c) EXCEPTION FOR VESSELS BECOMING DOCUMENTED.—The tax of 50 cents per ton under this section does not apply to a vessel that—

(1) is owned only by citizens of the United States; and

(2) after entering a port of the United States, becomes documented as a vessel of the United States before leaving that port.

(Pub. L. 109–304, §9(b), Oct. 6, 2006, 120 Stat. 1677.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60302(a)	46 App.:121 (1st sentence, 5th sentence words before semicolon, last sentence words after semicolon).	R.S. §4219 (1st, 2d sentences, 4th sentence words before semicolon, last sentence words before 1st semicolon and after last semicolon); Feb. 27, 1877, ch. 69, §1, 19 Stat. 250.
60302(b)	46 App.:121 (4th sentence words before proviso).	
60302(c)	46 App.:121 (4th sentence proviso).	Mar. 4, 1915, ch. 171, §1, 38 Stat. 1193.

In subsections (a) and (b), the words ''Regardless of whether a tax is imposed under section 60301 of this title'' are added for clarity. See 19 C.F.R. §4.20(c) (2003).

In subsection (a)(1), the word ''owned'' is substituted for ''belonging'' for consistency in the revised title.

In subsection (a)(3), the words ''vessel of the United States'' are substituted for ''vessel'' for clarity.

In subsection (c), the words ''The tax of 50 cents per ton'' are substituted for ''no such duty'' in 46 App. U.S.C. 121 to conform more closely to the language in section 1 of the Act of March 4, 1915 (ch. 171, 38 Stat. 1193). The word ''documented'' is substituted for ''registered'' for consistency in the revised title.

The words ''In addition to the tonnage-duty above imposed, there shall be paid a tax, at the rate of thirty cents per ton, on vessels which shall be entered at any custom-house within the United States from any foreign port or place'' in R.S. §4219 were omitted from the original codification of R.S. §4219 in 46 U.S.C. 121 (1926 edition, 44 Stat. 1467). A codification note which first appeared in the 1958 edition of the United States Code for 46 U.S.C. 121 says that the words apparently were omitted as superseded and repealed by section 14 of the Act of June 26, 1884 (ch. 121, 23 Stat. 57), as amended by section 11 of the Act of June 19, 1886 (ch. 421, 24 Stat. 81), and section 1 of the Act of April 4, 1888 (ch. 61, 25 Stat. 80).

§ 60303. Light money

(a) IMPOSITION OF TAX.—A tax of 50 cents per ton, to be called ''light money'', is imposed on a vessel not of the United States at each entry in a port of the United States. This tax shall be imposed and collected under the same regulations that apply to tonnage taxes.

(b) EXCEPTION FOR VESSELS OWNED BY CITIZENS.—

(1) IN GENERAL.—Subsection (a) does not apply to a vessel owned only by citizens of the United States if—

(A) the vessel is carrying a regular document issued by a customhouse of the United States proving the vessel to be owned only by citizens of the United States; and

(B) on entry of the vessel from a foreign port, the individual designated under paragraph (2) states under oath that—

(i) the document contains the names of all the owners of the vessel; or

(ii) part of the ownership has been transferred since the document was issued and, to the best of that individual's knowledge and belief, the vessel is still owned only by citizens of the United States.

(2) PERSON TO MAKE STATEMENT.—The statement under paragraph (1)(B) shall be made by—

(A) an owner if one resides at the port of entry; or

(B) the master if an owner does not reside at the port of entry.

(c) EXCEPTION FOR VESSELS BECOMING DOCUMENTED.—Subsection (a) section does not apply to a vessel that—

(1) is owned only by citizens of the United States; and

(2) after entering a port of the United States, becomes documented as a vessel of the United States before leaving that port.

(Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1678.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60303(a)	46 App.:128 (words before proviso).	R.S. § 4225.
60303(b)	46 App.:129.	R.S. § 4226.
60303(c)	46 App.:128 (proviso).	Mar. 4, 1915, ch. 171, § 1, 38 Stat. 1193.

In subsection (a), the word ''tax'' is substituted for ''duty'', and the word ''imposed'' is substituted for ''levied and collected'', for consistency in the chapter. The words ''in the same manner'' are omitted as unnecessary.

In subsection (b)(1), before subparagraph (A), the words ''does not apply to'' are substituted for ''shall not be deemed to operate upon'' to eliminate unnecessary words. The word ''unregistered'' is omitted as unnecessary. The word ''only'' is added for clarity and for consistency in the revised title. In subparagraph (A), the words ''owned only by citizens of the United States'' are substituted for ''American property'' for consistency. In subparagraph (B)(ii), the words ''sold or'' are omitted as unnecessary. The words ''owned only by citizens of the United States'' are substituted for ''no foreign subject or citizen has . . . any share, by way of trust, confidence, or otherwise'' to eliminate unnecessary words.

In subsection (b)(2), subparagraph (A) is substituted for ''if the same shall be at the port at which the owner or any of the part owners reside'', and subparagraph (B) is substituted for ''If the owner or any part owner does not reside at the port or place at which such vessel shall enter, then the master shall make oath to the like effect'', to eliminate unnecessary words.

§ 60304. Presidential suspension of tonnage taxes and light money

If the President is satisfied that the government of a foreign country does not impose discriminating or countervailing duties to the disadvantage of the United States, the President shall suspend the imposition of special tonnage taxes and light money under sections 60302 and 60303 of this title on vessels of that country.

(Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1678.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60304	46 App.:121 (5th sentence words after semicolon).	R.S. § 4219 (4th sentence words after semicolon); Feb. 27, 1877, ch. 69, § 1, 19 Stat. 250.

The words ''If the President is satisfied . . . the President shall suspend the imposition'' are substituted for ''none of the duties . . . shall be levied . . . if the President of the United States shall be satisfied'', the words ''does not impose'' are substituted for ''have been abolished'', and the words ''special tonnage taxes and light money'' are substituted for ''duties on tonnage above mentioned'', for clarity.

§ 60305. Vessels in distress

A vessel is exempt from tonnage taxes and light money when it enters because it is in distress.

(Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1678.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60305	46 App.:121 (3d sentence related to distress).	Aug. 5, 1909, ch. 6, § 36 (2d sentence related to distress), 36 Stat. 111; Pub. L. 101–508, title X, § 10402(a), Nov. 5, 1990, 104 Stat. 1388–398; Pub. L. 103–66, title IX, § 9001(a)(3), (c)(1), Aug. 10, 1993, 107 Stat. 402.

The words ''and light money'' are added for clarity and consistency. See 19 C.F.R. § 4.21 (2003).

§ 60306. Vessels not engaged in trade

A vessel is exempt from tonnage taxes and light money when not engaged in trade.

(Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1678.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60306	46 App.:121 (3d sentence related to trade).	Aug. 5, 1909, ch. 6, § 36 (2d sentence related to trade), 36 Stat. 111; Pub. L. 101–508, title X, § 10402(a), Nov. 5, 1990, 104 Stat. 1388–398; Pub. L. 103–66, title IX, § 9001(a)(3), (c)(1), Aug. 10, 1993, 107 Stat. 402.

The words ''and light money'' are added for clarity and consistency. See 19 C.F.R. § 4.21 (2003).

§ 60307. Vessels engaged in coastwise trade or the fisheries

A vessel with a registry endorsement or a coastwise endorsement, trading from one port in the United States to another port in the United States or employed in the bank, whale, or other fisheries, is exempt from tonnage taxes and light money.

(Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1678.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60307	46 App.:122.	R.S. § 4220.

The words ''with a registry endorsement or a coastwise endorsement'' are substituted for ''if such vessel be licensed, registered, or enrolled'' for consistency with chapter 121 of the revised title. The words ''belonging to any citizen of the United States'' are omitted as unnecessary because, under chapter 121 as amended by this bill, ownership by a citizen of the United States is a requirement for documentation. The words ''and light money'' are added for clarity and consistency. See 19 C.F.R. § 4.21 (2003).

§ 60308. Vessels engaged in Great Lakes trade

A documented vessel with a registry endorsement, engaged in foreign trade on the Great

Lakes or their tributary or connecting waters in trade with Canada, does not become subject to tonnage taxes or light money because of that trade.

(Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1679.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60308	46 App.:123.	R.S. § 2793; Sept. 25, 1941, ch. 423, 55 Stat. 733; Pub. L. 103–182, title VI, § 686(a)(1), Dec. 8, 1993, 107 Stat. 2220; Pub. L. 104–324, title XI, § 1115(b)(4), Oct. 19, 1996, 110 Stat. 3972.

The words ''or light money'' are added for clarity and consistency. See 19 C.F.R. § 4.21 (2003).

The statutory source for this section, R.S. § 2793, is amended by section 13(a) of this bill. See the explanation in this report for that amendment.

§ 60309. Passenger vessels making trips between ports of the United States and foreign ports

A passenger vessel making at least 3 trips per week between a port of the United States and a foreign port is exempt from tonnage taxes and light money.

(Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1679.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60309	46 App.:124.	R.S. § 2792; May 28, 1908, ch. 212, § 1, 35 Stat. 424.

The words ''at least 3 trips per week'' are substituted for ''triweekly or oftener'' for clarity. The words ''and light money'' are added for clarity and consistency. See 19 C.F.R. § 4.21 (2003). The words ''while such service triweekly or oftener is maintained'' are omitted as unnecessary.

§ 60310. Vessels making daily trips on interior waters

A vessel making regular daily trips between a port of the United States and a port of Canada only on interior waters not navigable to the ocean is exempt from tonnage taxes and light money, except on its first clearing each year.

(Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1679.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60310	46 App.:125.	R.S. § 4221.

The words ''is exempt from tonnage taxes'' are substituted for ''no tonnage fees shall be charged'' for consistency in the revised chapter. The words ''and light money'' are added for clarity and consistency. See 19 C.F.R. § 4.21 (2003). The words ''by the officers of the United States'' are omitted as unnecessary.

§ 60311. Hospital vessels in time of war

In time of war, a hospital vessel is exempt from tonnage taxes, light money, and pilotage charges in the ports of the United States if the vessel is one for which the conditions of the international convention for the exemption of hospital ships from taxation in time of war, concluded at The Hague on December 21, 1904, are satisfied. The President by proclamation shall name the vessels for which the conditions are satisfied and state when the exemption begins and ends.

(Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1679.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60311	46 App.:133. 46 App.:134.	Mar. 24, 1908, ch. 96, 35 Stat. 46.

The words ''and possessions thereof'' are omitted as unnecessary because of the definition of ''United States'' in chapter 1 of the revised title.

§ 60312. Rights under treaties preserved

This chapter and chapter 605 of this title do not affect a right or privilege of a foreign country relating to tonnage taxes or other duties on vessels under a law or treaty of the United States.

(Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1679.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60312	46 App.:121 (last sentence words before semicolon). 46 App.:135.	R.S. § 4219 (last sentence words between 1st and last semicolons); Feb. 27, 1877, ch. 69, § 1, 19 Stat. 250. R.S. § 4227.

The words ''This chapter and chapter 605 of this title'' are substituted for ''title 48 of the Revised Statutes'' in 46 App. U.S.C. 135 because the provisions of title 48 of the Revised Statutes which are still alive and relate to tonnage or other duties on vessels are restated in these two chapters. Although these two chapters restate other provisions which are not from title 48 of the Revised Statutes, expansion of the reference to include those provisions is done for consistency.

CHAPTER 605—DISCRIMINATING DUTIES AND RECIPROCAL PRIVILEGES

Sec.
60501. Vessels allowed to import.
60502. Discriminating duty on goods imported in foreign vessels or from contiguous countries.
60503. Reciprocal suspension of discriminating duties.
60504. Reciprocal privileges for recreational vessels.
60505. Retaliatory suspension of commercial privileges.
60506. Retaliation against British dominions of North America.
60507. Suspension of free passage through Saint Marys Falls Canal.

§ 60501. Vessels allowed to import

(a) IN GENERAL.—Except as otherwise provided by treaty, goods may be imported into the United States from a foreign port or place only in—

(1) a vessel of the United States; or

(2) a foreign vessel owned only by citizens or subjects of the country—

(A) in which the goods are grown, produced, or manufactured; or

(B) from which the goods can only be, or most usually are, first shipped for transportation.

(b) EXCEPTION FOR VESSELS OF COUNTRIES NOT MAINTAINING SIMILAR RESTRICTIONS.—Subsection (a) does not apply to a vessel of a foreign country that does not maintain a similar restriction against United States documented vessels.

(c) EXCEPTION FOR VESSELS BECOMING DOCUMENTED.—Subsection (a) does not apply to a vessel that—

(1) is owned only by citizens of the United States; and

(2) after entering a port of the United States, becomes documented as a vessel of the United States before leaving that port.

(d) SEIZURE AND FORFEITURE.—If goods are imported in violation of this section, the goods and the vessel in which they are imported, along with its equipment and other cargo, may be seized by and forfeited to the United States Government.

(Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1679.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60501(a)	19:130 (1st sentence).	Oct. 3, 1913, ch. 16, § IV(J)(2), (3), 38 Stat. 196; Mar. 15, 1915, ch. 171, § 1, 38 Stat. 1193; Pub. L. 103–182, title VI, § 689(a)(2), Dec. 8, 1993, 107 Stat. 2222.
60501(b)	19:131 (words before ''nor'').	
60501(c)	19:131 (words beginning with ''nor'').	
60501(d)	19:130 (last sentence related to 19:130).	

In this section, the word ''goods'' is substituted for ''goods, wares, or merchandise'' to eliminate unnecessary words.

In subsection (a)(2), before subparagraph (A), the words ''owned only by'' are substituted for ''truly and wholly belong to'' for consistency in the revised title.

In subsection (b), the words ''or goods, wares, or merchandise imported in vessels'' are omitted as unnecessary because of the wording of subsection (a) of the revised section. The word ''restriction'' is substituted for ''regulation'' as being more appropriate.

Subsection (d) is substituted for ''All goods, wares, or merchandise imported contrary to this section or section 128 of this title, and the vessel wherein the same shall be imported, together with her cargo, tackle, apparel, and furniture, shall be forfeited to the United States; and such goods, wares, or merchandise, ship, or vessel, and cargo shall be liable to be seized, prosecuted, and condemned in like manner, and under the same regulations, restrictions, and provisions as have been heretofore established for the recovery, collection, distribution, and remission of forfeitures to the United States by the several revenue laws'' to eliminate unnecessary words.

§ 60502. Discriminating duty on goods imported in foreign vessels or from contiguous countries

(a) IMPOSITION OF DUTY.—A discriminating duty of 10 percent ad valorem (in addition to other duties imposed by law) is imposed on goods—

(1) imported in a vessel not of the United States unless the vessel—

(A) is entitled by law or treaty to enter the ports of the United States on payment of the same duties as are payable on goods imported in a vessel of the United States; or

(B)(i) is owned only by citizens of the United States; and

(ii) after entering a port of the United States, becomes documented as a vessel of the United States before leaving that port; or

(2) produced or manufactured in a foreign country not contiguous to the United States and imported from a country contiguous to the United States, unless imported in the usual course of strictly retail trade.

(b) SEIZURE AND FORFEITURE.—If goods are imported without payment of the duty required by this section, the goods and the vessel in which they are imported may be seized by, and forfeited to, the United States Government.

(Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1680.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60502(a)	19:128.	Oct. 3, 1913, ch. 16, § IV(J)(1), 38 Stat. 196; Mar. 15, 1915, ch. 171, § 1, 38 Stat. 1193; Pub. L. 103–182, title VI, § 689(a)(1), Dec. 8, 1993, 107 Stat. 2222.
	46 App.:146.	
60502(b)	19:130 (last sentence related to 19:128).	Oct. 3, 1913, ch. 16, § IV(J)(2), 38 Stat. 196.

In this section, the word ''goods'' is substituted for ''goods, wares, or merchandise'' to eliminate unnecessary words.

In subsection (a)(1), subparagraphs (A) and (B) are substituted for ''but this discriminating duty shall not apply to goods, wares, or merchandise which shall be imported in vessels not of the United States entitled at the time of such importation by treaty or convention or Act of Congress to be entered in the ports of the United States on payment of the same duties as shall then be payable on goods, wares, and merchandise imported in vessels of the United States, nor to goods, wares, and merchandise imported in a vessel owned by citizens of the United States but not a vessel of the United States if such vessel after entering an American port shall, before leaving the same, be documented under chapter 121 of title 46'' to eliminate unnecessary words.

Subsection (a)(2) is substituted for ''or which being the production or manufacture of any foreign country not contiguous to the United States, shall come into the United States from such contiguous country'' and ''but this discriminating duty shall not apply . . . nor to such products or manufactures as shall be imported from such contiguous countries in the usual course of strictly retail trade'' to eliminate unnecessary words.

Subsection (b) is substituted for the source provision for consistency with section 60501(d) and to eliminate unnecessary words. See note for section 60501(d) in this report.

§ 60503. Reciprocal suspension of discriminating duties

(a) GENERAL AUTHORITY.—On receiving satisfactory proof from the government of a foreign country that it has suspended, in any part, the imposition of discriminating duties for any class of vessels owned by citizens of the United States or goods imported in those vessels, the President may proclaim a reciprocal suspension of discriminating duties for the same class of vessels owned by citizens of that country or goods imported in those vessels.

(b) EFFECTIVE AND EXPIRATION DATES.—A suspension under this section takes effect retroactively from the date the President received

the proof from the foreign government, and expires when that government stops granting the reciprocal suspension.

(Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1680.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60503	46 App.:141.	R.S. § 4228; July 24, 1897, ch. 13, 30 Stat. 214.

In this section, the word ''goods'' is substituted for ''produce, manufactures, or merchandise'', ''merchandise'', and ''cargoes'' for consistency in the chapter. Other changes are made to eliminate unnecessary words.

§ 60504. Reciprocal privileges for recreational vessels

When the President is satisfied that yachts owned by residents of the United States and used only for pleasure are allowed to arrive at, depart from, and cruise in the waters of a foreign port without entering, clearing, or paying any duties or fees (including cruising license fees), the Secretary of Homeland Security may allow yachts from that foreign port used only for pleasure to arrive at and depart from the ports of the United States and to cruise in the waters of the United States without paying any duties or fees. However, the Secretary may require foreign yachts to obtain a license to cruise in the waters of the United States. The license shall be in the form prescribed by the Secretary and contain limitations about length of time, direction, place of cruising and action, and other matters the Secretary considers appropriate. The license shall be issued without cost to the yacht.

(Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1680.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60503	46 App.:104.	May 28, 1908, ch. 212, § 5, 35 Stat. 425; Aug. 5, 1909, ch. 6, § 37 (3d par.), 36 Stat. 112; June 26, 1948, ch. 673, 62 Stat. 1051.

The Secretary of Homeland Security is substituted for the Commissioner of Customs because the functions of the Customs Service and of the Secretary of the Treasury relating thereto were transferred to the Secretary of Homeland Security by section 403(1) of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2178). The functions of the Commissioner of Customs previously were vested in the Secretary of the Treasury under section 321(c) of title 31. For prior related transfers of functions, see the transfer of functions note under 46 App. U.S.C. 104.

§ 60505. Retaliatory suspension of commercial privileges

(a) GENERAL AUTHORITY.—The President may proclaim a suspension of commercial privileges to vessels of a foreign country when—

(1) vessels of that country have been given the same commercial privileges in the ports and waters of the United States given to vessels of the United States (except the privilege of engaging in coastwise commerce); and

(2) vessels of the United States are denied commercial privileges in the ports or waters of that country given to vessels of that country.

(b) APPLICATION.—A suspension under this section shall apply to the same commercial privileges denied to vessels of the United States in the ports or waters of the foreign country, and to the same class of vessels of that country as the class of vessels of the United States denied the privileges.

(c) EFFECTIVE DATE.—The President shall designate the effective date of the suspension in the proclamation.

(d) PENALTIES.—

(1) SEIZURE AND FORFEITURE.—If the master, officer, or agent of a vessel of a foreign country does an act for the vessel in the ports or waters of the United States in violation of a proclamation issued under this section, the vessel and the goods on the vessel may be seized by, and forfeited to, the United States Government.

(2) FINE OR IMPRISONMENT.—A person opposing an official of the Government enforcing this section shall be fined under title 18, imprisoned for not more than 2 years, or both.

(Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1681.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60505	46 App.:142.	June 19, 1886, ch. 421, § 17, 24 Stat. 82.

In this section, the words ''vessels of the United States'' are used instead of both ''vessels of the United States'' and ''American vessels'' for consistency in the section. The words ''vessels of a foreign country'' and ''vessels of that country'' are substituted for ''foreign country whose vessels'', ''national vessels'', ''vessels of such foreign country'', and similar references, for consistency. The words ''ports and waters'' and ''ports or waters'' are substituted for ''ports'', ''harbors, ports, or waters'', and ''ports, harbors, or waters'' for consistency.

In subsection (a), before paragraph (1), the words ''on receiving satisfactory information of the continuance of such discriminations against any vessels of the United States'' are omitted as unnecessary. In paragraph (1), the words ''given the same commercial privileges'' are substitued for ''placed on the same footing'' for clarity and for consistency in the section.

Subsection (b) is substituted for ''excluding . . . from the exercise of such commercial privileges in the ports of the United States as are denied to American vessels in the ports of such foreign country, all vessels of such foreign country of a similar character to the vessels of the United States thus discriminated against'' for clarity and to eliminate unnecessary words.

Subsection (c) is substituted for ''on and after such time as he may indicate'' for clarity.

Subsection (d)(1) is substituted for ''and on and after the date named in such proclamation for it to take effect, if the master, officer, or agent of any vessel of such foreign country excluded by said proclamation from the exercise of any commercial privileges shall do any act prohibited by said proclamation in the ports, harbors, or waters of the United States for or on account of such vessel, such vessel, and its rigging, tackle, furniture, and boats, and all the goods on board, shall be liable to seizure and to forfeiture to the United States'' for consistency in the revised title and to eliminate unnecessary words.

Subsection (d)(2) is substituted for ''any person opposing any officer of the United States in the enforce-

ment of this section, or aiding and abetting any other person in such opposition, shall forfeit $800, and shall be guilty of a misdemeanor, and, upon conviction, shall be liable to imprisonment for a term not exceeding two years'' because of chapter 227 of title 18.

§ 60506. Retaliation against British dominions of North America

(a) GENERAL AUTHORITY.—The President by proclamation may prohibit vessels of the British dominions of North America, their masters and crews, and products of or coming from those dominions, from entering waters, ports, or places of the United States when the President is satisfied that—

(1) fishermen or fishing vessels of the United States in waters, ports, or places of the British dominions of North America are being or recently have been—

(A) denied rights provided by law or treaty;

(B) subjected to unreasonable restrictions in the exercise of those rights; or

(C) otherwise harassed;

(2) fishermen or fishing vessels of the United States, having a permit under the laws of the United States to dock or trade at a port or place in the British dominions of North America, are being or recently have been—

(A) denied the privilege of entering the port or place in the same manner and under the same regulations applicable to trading vessels of the most-favored-nation;

(B) prevented from buying supplies allowed to be sold to trading vessels of the most-favored-nation; or

(C) otherwise harassed; or

(3) other vessels of the United States or their masters or crews in waters, ports, or places of the British dominions of North America are being or recently have been—

(A) denied privileges given to vessels of the most-favored-nation or their masters or crews; or

(B) otherwise harassed.

(b) COVERAGE AND EXCEPTIONS.—The President may apply a proclamation under this section to any of the subjects named, and may include exceptions for vessels in distress or need of supplies. The President may change, revoke, and renew the proclamation.

(c) PENALTIES.—A person violating a proclamation issued under this section shall be fined under title 18, imprisoned for not more than 2 years, or both. A vessel or goods found in waters, ports, or places of the United States in violation of the proclamation may be seized by, and forfeited to, the United States Government.

(Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1681.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60506	46 App.:143.	Mar. 3, 1887, ch. 339, 24 Stat. 475.

In this section, the words ''fishermen or fishing vessels of the United States'' are substituted for ''American fishing vessels or American fishermen'' for consistency in the revised title. The words ''are or recently have been denied'' are substituted for ''are or then lately have been denied or abridged'' to eliminate unnecessary words.

In subsection (a), the words before paragraph (1) are substituted for ''Whenever the President of the United States shall be satisfied . . . then, and in either or all of such cases, it shall be lawful, and it shall be the duty of the President of the United States, in his discretion, by proclamation to that effect, to deny vessels, their masters and crews, of the British dominions of North America, any entrance into the waters, ports, or places of or within the United States . . . whether such vessel shall have come directly from said dominions on such destined voyage or by way of some port or place in such destined voyage elsewhere; and also to deny entry into any port or place of the United States of fresh fish or salt fish or any other product of said dominions, or other goods coming from said dominions to the United States'' to eliminate unnecessary words.

In subsection (a)(1)(B), the words ''regulations, or requirements'' are omitted as unnecessary.

In subsection (a)(1)(C), the words ''otherwise harassed'' are substituted for ''unjustly vexed or harassed in the enjoyment of such rights, . . . or otherwise unjustly vexed or harassed'' to eliminate unnecessary words.

In subsection (a)(2), before subparagraph (A), the word ''dock'' is substituted for ''touch'' for clarity. In subparagraph (C), the words ''otherwise harassed'' are substituted for ''unjustly vexed or harassed, in respect thereof, or otherwise be unjustly vexed or harassed therein'' to eliminate unnecessary words.

In subsection (a)(3)(B), the words ''otherwise harassed'' are substituted for ''unjustly vexed or harassed in respect of the same, or unjustly vexed or harassed therein'' to eliminate unnecessary words.

Subsection (b) is substituted for ''(with such exceptions in regard to vessels in distress, stress of weather, or needing supplies as to the President shall seem proper)'' and ''The President may, in his discretion, apply such proclamation to any part or to all of the foregoing named subjects, and may revoke, qualify, limit, and renew such proclamation from time to time as he may deem necessary to the full and just execution of the purposes of this section'' to eliminate unnecessary words.

Subsection (c) is substituted for ''Every violation of any such proclamation, or any part thereof, is declared illegal, and all vessels and goods so coming or being within the waters, ports, or places of the United States contrary to such proclamation shall be forfeited to the United States; and such forfeiture shall be enforced and proceeded upon in the same manner and with the same effect as in the case of vessels or goods whose importation or coming to or being in the waters or ports of the United States contrary to law may be enforced and proceeded upon. Every person who shall violate any of the provisions of this section, or such proclamation of the President made in pursuance hereof, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment for a term not exceeding two years, or by both said punishments, in the discretion of the court.'' for consistency in the revised title and with chapter 227 of title 18 and to eliminate unnecessary words.

§ 60507. Suspension of free passage through Saint Marys Falls Canal

(a) PURPOSE.—The purpose of this section is to secure reciprocal advantages for the citizens, ports, and vessels of the United States.

(b) GENERAL AUTHORITY.—When the President is satisfied that vessels of the United States, or passengers or cargo being transported to a port of the United States, are prohibited from passing through a canal or lock connected with the navigation of the Saint Lawrence River, the Great Lakes, or their connecting waterways, or

burdened in that passage by tolls or other means that are unreasonable in view of the free passage through the Saint Marys Falls Canal allowed to vessels of all countries, the President by proclamation may suspend the right of free passage through the Saint Marys Falls Canal for vessels owned by subjects of the country imposing the prohibition, tolls, or other burdens and for passengers and cargo being transported to the ports of that country, even when carried in vessels of the United States. The suspension shall apply to the extent and for the time the President considers appropriate.

(c) IMPOSITION OF TOLL.—

(1) IN GENERAL.—During a suspension under this section, the President shall impose a toll of not more than $2 per ton on cargo and not more than $5 on each passenger.

(2) EXCEPTIONS.—Notwithstanding paragraph (1), a toll may not be imposed on passengers or cargo landed at Ogdensburg, New York, or any port west of Ogdensburg and south of a line drawn from the northern boundary of New York through the Saint Lawrence River, the Great Lakes, and their connecting channels to the northern boundary of Minnesota.

(d) COLLECTION OF TOLL.—

(1) IN GENERAL.—A toll imposed under this section shall be collected under regulations prescribed by the Secretary of Homeland Security. The Secretary may require the master of a vessel to provide a sworn statement of the amount and kind of cargo, the number of passengers, and the destination of the passengers and cargo.

(2) PROOF OF LANDING.—When applicable, the Secretary also may require satisfactory proof that the passengers and cargo were landed at a port described in subsection (c)(2). Until that proof is provided, the Secretary may assume the passengers and cargo were not landed at such a port, and the amount of a toll that otherwise would be imposed is a lien enforceable against the vessel when found in the waters of the United States.

(Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1682.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
60507(a)	46 App.:144 (1st par. words before 3d comma).	July 26, 1892, ch. 248, 27 Stat. 267.
60507(b)	46 App.:144 (1st par. words after 3d comma).	
60507(c)	46 App.:144 (last par.).	
60507(d)	46 App.:145.	

In this section, the word ''cargo'' is substituted for ''cargo'', ''cargoes'', ''portions or cargoes'', ''freight'', and ''freight of whatever kind or description'' for consistency and to eliminate unnecessary words.

Subsection (a) is substituted for ''With a view of securing reciprocal advantages for the citizens, ports, and vessels of the United States'' to improve the organization of the section.

In subsection (b), the words ''and so often as'' are omitted as unnecessary. The word ''burdened'' is substituted for ''made difficult or burdensome'', the word ''unreasonable'' is substituted for ''reciprocally unjust and unreasonable'', the words ''the President by proclamation may suspend'' are substituted for ''he shall have the power, and it shall be his duty, to suspend by proclamation to that effect'', the words ''even when carried in vessels of the United States'' are substituted for ''whether carried in vessels of the United States or of other nations'', and the words ''The suspension shall apply to the extent and for the time the President considers appropriate'' are substituted for ''for such time and to such extent (including absolute prohibition) as he shall deem just'', to eliminate unnecessary words.

In subsection (c)(1), the words ''the President shall impose a toll of'' are substituted for ''tolls shall be levied, collected, and paid as follows, to wit: . . . as shall be from time to time determined by the President'' for clarity and to eliminate unnecessary words.

In subsection (c)(2), the word ''landed'' is substituted for ''carried to and landed'' to eliminate unnecessary words.

In subsection (d), the Secretary of Homeland Security is substituted for the Commissioner of Customs because the functions of the Customs Service and of the Secretary of the Treasury relating thereto were transferred to the Secretary of Homeland Security by section 403(1) of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2178). The functions of the Commissioner of Customs previously were vested in the Secretary of the Treasury under section 321(c) of title 31. For prior related transfers of functions, see the transfer of functions note under 46 App. U.S.C. 145.

In subsection (d)(2), the words ''a port described in subsection (c)(2) of this section'' are substituted for ''some port or place within the limits above named'' for clarity.

Subtitle VII—Security and Drug Enforcement

Chapter		Sec.
701.	**Port Security**	**70101**
703.	**Maritime Security**	**70301**
705.	**Maritime Drug Law Enforcement** ...	**70501**

AMENDMENTS

2006—Pub. L. 109–304, § 10(1), Oct. 6, 2006, 120 Stat. 1683, amended analysis generally, substituting ''Security and Drug Enforcement'' for ''Miscellaneous'' in subtitle heading and adding items 703 and 705.

Pub. L. 109–304, § 9(a), Oct. 6, 2006, 120 Stat. 1674, which directed redesignation of subtitle VI of this title as subtitle VII, could not be executed because of prior amendment by Pub. L. 109–241, § 901(k)(1). See below.

Pub. L. 109–241, title IX, § 901(k)(1), July 11, 2006, 120 Stat. 564, redesignated subtitle VI of this title as subtitle VII.

CHAPTER 701—PORT SECURITY

Sec.
70101. Definitions.
70102. United States facility and vessel vulnerability assessments.
70103. Maritime transportation security plans.
70104. Transportation security incident response.
70105. Transportation security cards.
70106. Maritime safety and security teams.
70107. Grants.
70107A. Interagency operational centers for port security[1]
70108. Foreign port assessment.
70109. Notifying foreign authorities.
70110. Actions and assistance for foreign ports and United States territories.
70111. Enhanced crewmember identification.
70112. Maritime security advisory committees.[2]
70113. Maritime intelligence.
70114. Automatic identification systems.

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

[2] So in original. Does not conform to section catchline.

Sec.
70115. Long-range vessel tracking system.
70116. Secure systems of transportation.
70117. Firearms, arrests, and seizure of property.
70118. Enforcement by State and local officers.
70119. Civil penalty.
70120. In rem liability for civil penalties and certain costs.
70121. Withholding of clearance.

AMENDMENTS

2006—Pub. L. 109–347, title I, § 108(d), title II, § 233(d), Oct. 13, 2006, 120 Stat. 1893, 1918, added item 70107A and substituted ''Actions and assistance for foreign ports and United States territories'' for ''Actions when foreign ports not maintaining effective antiterrorism measures'' in item 70110.

Pub. L. 109–304, § 15(33)(E), Oct. 6, 2006, 120 Stat. 1705, which directed the substitution of items 70117 to 70121 for items 70117 to 70119, was executed by making the substitution for items 70117 ''Civil penalty'', 70118 ''Enforcement'', 70117 ''In rem liability for civil penalties and certain costs'', 70118 ''Enforcement by injunction or withholding of clearance'', and 70119 ''Civil penalty'' to reflect the probable intent of Congress.

Pub. L. 109–241, § 901(*l*)(5), July 11, 2006, 120 Stat. 565, which directed amendment of analysis by striking items 70117 through the second 70119 and inserting items 70117 ''Firearms, arrests, and seizure of property'', 70118 ''Enforcement by State and local officers'', 70119 ''Civil penalty'', 70120 ''In rem liability for civil penalties and certain costs'', and 70121 ''Withholding of clearance'', could not be executed because only one item 70119 appeared.

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. In this paragraph, the term ''economic disruption'' does not include a work stoppage or other employee-related action not related to terrorism and resulting from an employee-employer dispute.

(Added Pub. L. 107–295, title I, § 102(a), Nov. 25, 2002, 116 Stat. 2068; amended Pub. L. 109–347, title I, § 124, Oct. 13, 2006, 120 Stat. 1900.)

AMENDMENTS

2006—Par. (6). Pub. L. 109–347 inserted at end ''In this paragraph, the term 'economic disruption' does not include a work stoppage or other employee-related action not related to terrorism and resulting from an employee-employer dispute.''

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 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) [now 46 U.S.C. 70302], 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;

(F) include a salvage response plan—

(i) to identify salvage equipment capable of restoring operational trade capacity; and

(ii) to ensure that the waterways are cleared and the flow of commerce through United States ports is reestablished as efficiently and quickly as possible after a maritime transportation security incident; and

(G) 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, including access by persons engaged in the surface transportation of intermodal containers in or out of a port 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) provide a strategy and timeline for conducting training and periodic unannounced drills;

(G) be updated at least every 5 years;

(H) be resubmitted for approval of each change to the vessel or facility that may sub-

stantially affect the security of the vessel or facility; and

(I) in the case of a security plan for a facility, be resubmitted for approval of each change in the ownership or operator of the facility that may substantially affect the security of the 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) subject to the availability of appropriations, verify the effectiveness of each such facility security plan periodically, but not less than 2 times per year, at least 1 of which shall be an inspection of the facility that is conducted without notice to the facility.

(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.

(8)(A) The Secretary shall require that the qualified individual having full authority to implement security actions for a facility described in paragraph (2) shall be a citizen of the United States.

(B) The Secretary may waive the requirement of subparagraph (A) with respect to an individual if the Secretary determines that it is appropriate to do so based on a complete background check of the individual and a review of all terrorist watch lists to ensure that the individual is not identified on any such terrorist watch list.

(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; Pub. L. 109–347, title I, §§ 101–103, 113(c), Oct. 13, 2006, 120 Stat. 1887, 1888, 1896.)

AMENDMENTS

2006—Subsec. (b)(2)(F), (G). Pub. L. 109–347, § 101, added subpar. (F) and redesignated former subpar. (F) as (G).

Subsec. (c)(3)(C)(ii). Pub. L. 109–347, § 102(1)(A), substituted ''facility, including access by persons engaged in the surface transportation of intermodal containers in or out of a port facility'' for ''facility''.

Subsec. (c)(3)(F), (G). Pub. L. 109–347, § 113(c), added subpar. (F) and redesignated former subpar. (F) as (G). Former subpar. (G) redesignated (H).

Subsec. (c)(3)(H). Pub. L. 109–347, § 113(c)(1), redesignated subpar. (G) as (H). Former subpar. (H) redesignated (I).

Pub. L. 109–347, § 102(1)(B)–(D), added subpar. (H).

Subsec. (c)(3)(I). Pub. L. 109–347, § 113(c)(1), redesignated subpar. (H) as (I).

Subsec. (c)(4)(D). Pub. L. 109–347, § 103, amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''review each plan periodically thereafter.''

Subsec. (c)(8). Pub. L. 109–347, § 102(2), added par. (8).

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.

RISK ASSESSMENT TOOL

Pub. L. 109–347, title I, § 111, Oct. 13, 2006, 120 Stat. 1894, provided that: ''In updating Area Maritime Security Plans required under section 70103(b)(2)(F) [now section 70103(b)(2)(G)] of title 46, United States Code, and in applying for grants under section 70107 of such title, the Secretary of the Department in which the Coast Guard is operating shall make available, and Area Maritime Security Committees may use a risk assessment tool that uses standardized risk criteria, such as the Maritime Security Risk Assessment Tool used by the Coast Guard.''

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 Administrator of the Federal Emergency Management Agency for inclusion in the Administrator'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 Administrator 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; amended Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' and ''Administrator's'' substituted for ''Director of the Federal Emergency Management Agency'' and ''Director's'', respectively, on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

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 former section 313(1) and sections 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;

(F) other individuals engaged in port security activities as determined by the Secretary; and

(G) other individuals as determined appropriate by the Secretary including individuals employed at a port not otherwise covered by this subsection.

(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 subparagraph (A), (B), or (D)[1] 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

[1] So in original. Probably should be followed by ''of''.

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) DENIAL OF WAIVER REVIEW.—

(A) IN GENERAL.—The Secretary shall establish a review process before an administrative law judge for individuals denied a waiver under paragraph (2).

(B) SCOPE OF REVIEW.—In conducting a review under the process established pursuant to subparagraph (A), the administrative law judge shall be governed by the standards of section 706 of title 5. The substantial evidence standard in section 706(2)(E) of title 5 shall apply whether or not there has been an agency hearing. The judge shall review all facts on the record of the agency.

(C) CLASSIFIED EVIDENCE.—The Secretary, in consultation with the National Intelligence Director, shall issue regulations to establish procedures by which the Secretary, as part of a review conducted under this paragraph, may provide to the individual adversely affected by the determination an unclassified summary of classified evidence upon which the denial of a waiver by the Secretary was based.

(D) REVIEW OF CLASSIFIED EVIDENCE BY ADMINISTRATIVE LAW JUDGE.—

(i) REVIEW.—As part of a review conducted under this section, if the decision of the Secretary was based on classified information (as defined in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.)), such information may be submitted by the Secretary to the reviewing administrative law judge, pursuant to appropriate security procedures, and shall be reviewed by the administrative law judge ex parte and in camera.

(ii) SECURITY CLEARANCES.—Pursuant to existing procedures and requirements, the Secretary, in coordination (as necessary) with the heads of other affected departments or agencies, shall ensure that administrative law judges reviewing negative waiver decisions of the Secretary under this paragraph possess security clearances appropriate for such review.

(iii) UNCLASSIFIED SUMMARIES OF CLASSIFIED EVIDENCE.—As part of a review conducted under this paragraph and upon the request of the individual adversely affected by the decision of the Secretary not to grant a waiver, the Secretary shall provide to the individual and reviewing administrative law judge, consistent with the procedures established under clause (i), an unclassified summary of any classified information upon which the decision of the Secretary was based.

(E) NEW EVIDENCE.—The Secretary shall establish a process under which an individual may submit a new request for a waiver, notwithstanding confirmation by the administrative law judge of the Secretary's initial denial of the waiver, if the request is supported by substantial evidence that was not available to the Secretary at the time the initial waiver request was denied.

(4) 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.

(5) 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)).

(g) APPLICATIONS FOR MERCHANT MARINERS' DOCUMENTS.—The Assistant Secretary of Homeland Security for the Transportation Security Administration and the Commandant of the Coast Guard shall concurrently process an application from an individual for merchant mariner's documents under chapter 73 of title 46, United States Code, and an application from that individual for a transportation security card under this section.

(h) FEES.—The Secretary shall ensure that the fees charged each individual applying for a

transportation security card under this section who has passed a background check under section 5103a(d) of title 49, United States Code, and who has a current hazardous materials endorsement in accordance with section 1572 of title 49, Code of Federal Regulations, and each individual with a current merchant mariners' document who has passed a criminal background check under section 7302(d)—

(1) are for costs associated with the issuance, production, and management of the transportation security card, as determined by the Secretary; and

(2) do not include costs associated with performing a background check for that individual, except for any incremental costs in the event that the scope of such background checks diverge.

(i) IMPLEMENTATION SCHEDULE.—In implementing the transportation security card program under this section, the Secretary shall—

(1) establish a priority for each United States port based on risk, including vulnerabilities assessed under section 70102; and

(2) implement the program, based upon such risk and other factors as determined by the Secretary, at all facilities regulated under this chapter at—

(A) the 10 United States ports that the Secretary designates top priority not later than July 1, 2007;

(B) the 40 United States ports that are next in order of priority to the ports described in subparagraph (A) not later than January 1, 2008; and

(C) all other United States ports not later than January 1, 2009.

(j) TRANSPORTATION SECURITY CARD PROCESSING DEADLINE.—Not later than January 1, 2009, the Secretary shall process and issue or deny each application for a transportation security card under this section for individuals with current and valid merchant mariners' documents on the date of the enactment of the SAFE Port Act.

(k) DEPLOYMENT OF TRANSPORTATION SECURITY CARD READERS.—

(1) PILOT PROGRAM.—

(A) IN GENERAL.—The Secretary shall conduct a pilot program to test the business processes, technology, and operational impacts required to deploy transportation security card readers at secure areas of the marine transportation system.

(B) GEOGRAPHIC LOCATIONS.—The pilot program shall take place at not fewer than 5 distinct geographic locations, to include vessels and facilities in a variety of environmental settings.

(C) COMMENCEMENT.—The pilot program shall commence not later than 180 days after the date of the enactment of the SAFE Port Act.

(2) CORRELATION WITH TRANSPORTATION SECURITY CARDS.—

(A) IN GENERAL.—The pilot program described in paragraph (1) shall be conducted concurrently with the issuance of the transportation security cards described in subsection (b) to ensure card and card reader interoperability.

(B) FEE.—An individual charged a fee for a transportation security card issued under this section may not be charged an additional fee if the Secretary determines different transportation security cards are needed based on the results of the pilot program described in paragraph (1) or for other reasons related to the technology requirements for the transportation security card program.

(3) REGULATIONS.—Not later than 2 years after the commencement of the pilot program under paragraph (1)(C), the Secretary, after a notice and comment period that includes at least 1 public hearing, shall promulgate final regulations that require the deployment of transportation security card readers that are consistent with the findings of the pilot program and build upon the regulations prescribed under subsection (a).

(4) REPORT.—Not later than 120 days before the promulgation of regulations under paragraph (3), the Secretary shall submit a comprehensive report to the appropriate congressional committees (as defined in section 2(1) of SAFE Port Act) that includes—

(A) the findings of the pilot program with respect to technical and operational impacts of implementing a transportation security card reader system;

(B) any actions that may be necessary to ensure that all vessels and facilities to which this section applies are able to comply with such regulations; and

(C) an analysis of the viability of equipment under the extreme weather conditions of the marine environment.

(*l*) PROGRESS REPORTS.—Not later than 6 months after the date of the enactment of the SAFE Port Act, and every 6 months thereafter until the requirements under this section are fully implemented, the Secretary shall submit a report on progress being made in implementing such requirements to the appropriate congressional committees (as defined in section 2(1) of the SAFE Port Act).

(m) LIMITATION.—The Secretary may not require the placement of an electronic reader for transportation security cards on a vessel unless—

(1) the vessel has more individuals on the crew that are required to have a transportation security card than the number the Secretary determines, by regulation issued under subsection (k)(3), warrants such a reader; or

(2) the Secretary determines that the vessel is at risk of a severe transportation security incident.

(Added Pub. L. 107–295, title I, § 102(a), Nov. 25, 2002, 116 Stat. 2073; amended Pub. L. 109–241, title III, § 309, July 11, 2006, 120 Stat. 528; Pub. L. 109–347, title I, § 104(a), (b), Oct. 13, 2006, 120 Stat. 1888, 1890.)

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, 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.

The Classified Information Procedures Act, referred to in subsec. (c)(3)(D)(i), is Pub. L. 96–456, Oct. 15, 1980, 94 Stat. 2025, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

The date of the enactment of the SAFE Port Act, referred to in subsecs. (j), (k)(1)(C), (*l*), is the date of enactment of Pub. L. 109–347, which was approved Oct. 13, 2006.

Section 2(1) of the SAFE Port Act, referred to in subsecs. (k)(4), (*l*), is classified to section 901(1) of Title 6, Domestic Security.

AMENDMENTS

2006—Subsec. (b)(2)(G). Pub. L. 109–347, § 104(b)(1), added subpar. (G).

Subsec. (c)(2). Pub. L. 109–347, § 104(b)(2), inserted ''subparagraph (A), (B), or (D)'' before ''paragraph (1)''.

Subsec. (c)(3) to (5). Pub. L. 109–241 added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Subsecs. (g) to (m). Pub. L. 109–347, § 104(a), added subsecs. (g) to (m).

DEADLINE FOR SECTION 70105 REGULATIONS

Pub. L. 109–347, title I, § 104(c), Oct. 13, 2006, 120 Stat. 1891, provided that: ''Not later than January 1, 2007, the Secretary [of Homeland Security] shall promulgate final regulations implementing the requirements for issuing transportation security cards under section 70105 of title 46, United States Code. The regulations shall include a background check process to enable newly hired workers to begin working unless the Secretary makes an initial determination that the worker poses a security risk. Such process shall include a check against the consolidated and integrated terrorist watch list maintained by the Federal Government.''

PROHIBITION OF ISSUANCE OF TRANSPORTATION SECURITY CARDS TO PERSONS CONVICTED OF CERTAIN FELONIES

Pub. L. 109–347, title I, § 106, Oct. 13, 2006, 120 Stat. 1891, provided that: ''The Secretary [of Homeland Security], in issuing a final rule pursuant to section 70105 of title 46, United States Code, shall provide for the disqualification of individuals who have been found guilty or have been found not guilty by reason of insanity of a felony, involving—

''(1) treason, or conspiracy to commit treason;

''(2) espionage, or conspiracy to commit espionage;

''(3) sedition, or conspiracy to commit sedition; or

''(4) a crime listed in chapter 113B of title 18, United States Code, a comparable State law, or conspiracy to commit such crime.''

§ 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 any other missions of the Coast Guard 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; amended Pub. L. 109–241, title III, § 305, July 11, 2006, 120 Stat. 528.)

AMENDMENTS

2006—Subsec. (b)(8). Pub. L. 109–241 substituted ''any other missions of the Coast Guard'' for ''other security missions''.

§ 70107. Grants

(a) IN GENERAL.—The Secretary shall establish a grant program for the allocation of funds based on risk 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, energy, and strategic defense concerns based upon the most current risk assessments available.

(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. Grants awarded under this section may not be used to construct buildings or other physical facilities, except those which are constructed under terms and conditions consistent with the requirements under section 611(j)(8) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121(j)(8)[1]), including those facilities in

[1] So in original. Probably should be ''5196(j)(8)''.

support of this paragraph, and specifically approved by the Secretary. Costs eligible for funding under this paragraph may not exceed the greater of—

(A) $1,000,000 per project; or

(B) such greater amount as may be approved by the Secretary, which may not exceed 10 percent of the total amount of the grant.

(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.

(5) The cost of conducting exercises or training for prevention and detection of, preparedness for, response to, or recovery from terrorist attacks.

(6) The cost of establishing or enhancing mechanisms for sharing terrorism threat information and ensuring that the mechanisms are interoperable with Federal, State, and local agencies.

(7) The cost of equipment (including software) required to receive, transmit, handle, and store classified information.

(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) MULTIPLE-YEAR PROJECTS.—

(1) LETTERS OF INTENT.—The Secretary may execute letters of intent to commit funding to such authorities, operators, and agencies.

(2) LIMITATION.—Not more than 20 percent of the grant funds awarded under this subsection in any fiscal year may be awarded for projects that span multiple years.

(f) CONSISTENCY WITH PLANS.—The Secretary shall ensure that each grant awarded under subsection (e)—

(1) is used to supplement and support, in a consistent and coordinated manner, the applicable Area Maritime Transportation Security Plan; and

(2) is coordinated with any applicable State or Urban Area Homeland Security Plan.

(g) APPLICATIONS.—Any entity subject to an Area Maritime Transportation Security Plan may submit an application for a grant under this section, at such time, in such form, and containing such information and assurances as the Secretary may require.

(h) REPORTS.—Not later than 180 days after the date of the enactment of the SAFE Port Act, the Secretary, acting through the Commandant of the Coast Guard, shall submit a report to Congress, in a secure format, describing the methodology used to allocate port security grant funds on the basis of risk.

(i) ADMINISTRATION.—

(1) IN GENERAL.—The Secretary 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.

(j) 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.

(k) 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.

(*l*) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $400,000,000 for each of the fiscal years 2007 through 2011 to carry out this section.

(m) 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[2] 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; Pub. L. 109–347, title I, § 112, Oct. 13, 2006, 120 Stat. 1894.)

REFERENCES IN TEXT

The date of the enactment of the SAFE Port Act, referred to in subsec. (h), is the date of enactment of Pub. L. 109–347, which was approved Oct. 13, 2006.

The date of enactment of this Act, referred to in subsec. (k)(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. (k)(1)(B)(iii), probably means the Maritime Transportation Security Act of 2002, which enacted this subtitle, see note below.

The Maritime Transportation Security Act of 2002, referred to in subsec. (k)(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

2006—Subsec. (a). Pub. L. 109–347, § 112(a), (e), substituted "for the allocation of funds based on risk" for "for making a fair and equitable allocation of funds" and "national economic, energy, and strategic defense concerns based upon the most current risk assessments available" for "national economic and strategic defense concerns".

Subsec. (b)(2). Pub. L. 109–347, § 112(b)(1), inserted at end "Grants awarded under this section may not be used to construct buildings or other physical facilities, except those which are constructed under terms and conditions consistent with the requirements under section 611(j)(8) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121(j)(8)), including those facilities in support of this paragraph, and specifically approved by the Secretary. Costs eligible for funding under this paragraph may not exceed the greater of—" and subpars. (A) and (B).

Subsec. (b)(5) to (7). Pub. L. 109–347, § 112(b)(2), added pars. (5) to (7).

Subsecs. (e) to (i). Pub. L. 109–347, § 112(c)(1), added subsecs. (e) to (h). Former subsecs. (e) to (i) redesignated (i) to (m), respectively.

Subsec. (i)(1). Pub. L. 109–347, § 112(c)(2), substituted "Secretary shall require" for "program shall require".

Subsecs. (j), (k). Pub. L. 109–347, § 112(c)(1), redesignated subsecs. (f) and (g) as (j) and (k), respectively.

[2] So in original. Probably should be "the applicant".

Subsec. (*l*). Pub. L. 109–347, § 112(d), amended subsec. (*l*) generally. Prior to amendment, subsec. (*l*) read as follows: ''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).''

Pub. L. 109–347, § 112(c)(1), redesignated subsec. (h) as (*l*).

Subsec. (m). Pub. L. 109–347, § 112(c)(1), redesignated subsec. (i) as (m).

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.

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.

§ 70107A. Interagency operational centers for port security

(a) IN GENERAL.—The Secretary shall establish interagency operational centers for port security at all high-priority ports not later than 3 years after the date of the enactment of the SAFE Port Act.

(b) CHARACTERISTICS.—The interagency operational centers established under this section shall—

(1) utilize, as appropriate, the compositional and operational characteristics of existing centers, including—

(A) the pilot project interagency operational centers for port security in Miami, Florida; Norfolk/Hampton Roads, Virginia; Charleston, South Carolina; and San Diego, California; and

(B) the virtual operation center of the Port of New York and New Jersey;

(2) be organized to fit the security needs, requirements, and resources of the individual port area at which each is operating;

(3) in addition to the Coast Guard, provide, as the Secretary determines appropriate, for participation by representatives of the United States Customs and Border Protection, the United States Immigration and Customs Enforcement, the Transportation Security Administration, the Department of Justice, the Department of Defense, and other Federal agencies, State and local law enforcement or port security personnel, members of the Area Maritime Security Committee, and other public and private sector stakeholders adversely affected by a transportation security incident or transportation disruption; and

(4) be incorporated in the implementation and administration of—

(A) maritime transportation security plans developed under section 70103;

(B) maritime intelligence activities under section 70113 and information sharing activities consistent with section 1016 of the National Security Intelligence Reform Act of 2004 (6 U.S.C. 485) and the Homeland Security Information Sharing Act (6 U.S.C. 481 et seq.);

(C) short- and long-range vessel tracking under sections 70114 and 70115;

(D) protocols under section 201(b)(10) of the SAFE Port Act;

(E) the transportation security incident response plans required by section 70104; and

(F) other activities, as determined by the Secretary.

(c) SECURITY CLEARANCES.—The Secretary shall sponsor and expedite individuals participating in interagency operational centers in gaining or maintaining their security clearances. Through the Captain of the Port, the Secretary may identify key individuals who should participate. The port or other entities may appeal to the Captain of the Port for sponsorship.

(d) SECURITY INCIDENTS.—During a transportation security incident on or adjacent to waters subject to the jurisdiction of the United States, the Coast Guard Captain of the Port designated by the Commandant of the Coast Guard in a maritime security command center described in subsection (a) shall act as the incident commander, unless otherwise directed by the President.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect the normal command and control procedures for operational entities in the Department, unless so directed by the Secretary.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $60,000,000 for

each of the fiscal years 2007 through 2012 to carry out this section.

(Added Pub. L. 109–347, title I, § 108(a), Oct. 13, 2006, 120 Stat. 1892.)

REFERENCES IN TEXT

The date of the enactment of the SAFE Port Act, referred to in subsec. (a), is the date of enactment of Pub. L. 109–347, which was approved Oct. 13, 2006.

The Homeland Security Information Sharing Act, referred to in subsec. (b)(4)(B), is subtitle I of title VIII of Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2252, which is classified principally to part I (§ 481 et seq.) of subchapter VIII of chapter 1 of Title 6, Domestic Security. For complete classification of this Act to the Code, see section 481 of Title 6 and Tables.

Section 201(b)(10) of the SAFE Port Act, referred to in subsec. (b)(4)(D), is classified to section 941(b)(10) of Title 6, Domestic Security.

REPORT REQUIREMENT

Pub. L. 109–347, title I, § 108(b), Oct. 13, 2006, 120 Stat. 1893, provided that: ''Nothing in this section [enacting this section] or the amendments made by this section relieves the Commandant of the Coast Guard from complying with the requirements of section 807 of the Coast Guard and Maritime Transportation Act of 2004 (Public Law 108–293; 118 Stat. 1082). The Commandant shall utilize the information developed in making the report required by that section in carrying out the requirements of this section.''

§ 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.

(d) PERIODIC REASSESSMENT.—The Secretary, acting through the Commandant of the Coast Guard, shall reassess the effectiveness of antiterrorism measures maintained at ports as described under subsection (a) and of procedures described in subsection (b) not less than once every 3 years.

(Added Pub. L. 107–295, title I, § 102(a), Nov. 25, 2002, 116 Stat. 2079; amended Pub. L. 109–347, title II, § 234, Oct. 13, 2006, 120 Stat. 1918.)

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–347 added subsec. (d).

§ 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 and assistance for foreign ports and United States territories

(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.

(e) ASSISTANCE FOR FOREIGN PORTS AND UNITED STATES TERRITORIES.—

(1) IN GENERAL.—The Secretary, in consultation with the Secretary of Transportation, the Secretary of State, and the Secretary of Energy, shall identify assistance programs that could facilitate implementation of port security antiterrorism measures in foreign countries and territories of the United States. The Secretary shall establish a program to utilize the programs that are capable of implementing port security antiterrorism measures at ports in foreign countries and territories of the United States that the Secretary finds to lack effective antiterrorism measures.

(2) Caribbean basin

The Secretary, in coordination with the Secretary of State and in consultation with the Organization of American States and the Commandant of the Coast Guard, shall place particular emphasis on utilizing programs to facilitate the implementation of port security antiterrorism measures at the ports located in the Caribbean Basin, as such ports pose unique security and safety threats to the United States due to—

(A) the strategic location of such ports between South America and the United States;

(B) the relative openness of such ports; and

(C) the significant number of shipments of narcotics to the United States that are moved through such ports.

(Added Pub. L. 107–295, title I, § 102(a), Nov. 25, 2002, 116 Stat. 2080; amended Pub. L. 109–347, title II, § 233(b), Oct. 13, 2006, 120 Stat. 1917.)

AMENDMENTS

2006—Pub. L. 109–347, § 233(b)(1), substituted ''Actions and assistance for foreign ports and United States territories'' for ''Actions when foreign ports not maintaining effective antiterrorism measures'' in section catchline.

Subsec. (e). Pub. L. 109–347, § 233(b)(2), added subsec. (e).

§ 70111. Enhanced crewmember identification

(a) REQUIREMENT.—Not later than 1 year after the date of enactment of the SAFE Port Act, 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.—Not later than 1 year after the date of enactment of the SAFE Port Act, 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; amended Pub. L. 109–347, title I, § 110, Oct. 13, 2006, 120 Stat. 1893.)

REFERENCES IN TEXT

The date of enactment of the SAFE Port Act, referred to in subsecs. (a) and (b), is the date of enactment of Pub. L. 109–347, which was approved Oct. 13, 2006.

AMENDMENTS

2006—Subsecs. (a), (b). Pub. L. 109–347 substituted ''Not later than 1 year after the date of enactment of the SAFE Port Act, the'' for ''The''.

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 system 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; Pub. L. 109–241, title IX, § 901(m), July 11, 2006, 120 Stat. 565.)

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

2006—Subsec. (b)(5). Pub. L. 109–241 realigned margins.
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 [now also 115] of title 46, United States Code.''

§ 70115. Long-range vessel tracking system

Not later than April 1, 2007, 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; Pub. L. 109–347, title I, § 107(a), Oct. 13, 2006, 120 Stat. 1891.)

AMENDMENTS

2006—Pub. L. 109–347, in first sentence, substituted ''Not later than April 1, 2007, the Secretary'' for ''The Secretary''.

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''.

REGULATIONS

Pub. L. 109–347, title I, § 107(b), Oct. 13, 2006, 120 Stat. 1891, provided that: ''The Secretary [of Homeland Security] may issue regulations to establish a voluntary long-range automated vessel tracking system for vessels described in section 70115 of title 46, United States Code, during the period before regulations are issued under such section.''

LONG-RANGE VESSEL TRACKING SYSTEM

Pub. L. 109–241, title IV, § 404, July 11, 2006, 120 Stat. 535, provided that:

''(a) PILOT PROJECT.—The Secretary of the department in which the Coast Guard is operating, acting through the Commandant of the Coast Guard, shall conduct a 3-year pilot program for long-range tracking of up to 2,000 vessels using satellite systems with a nonprofit maritime organization that has a demonstrated capability of operating a variety of satellite communications systems providing data to vessel tracking software and hardware that provides long-range vessel information to the Coast Guard to aid maritime security and response to maritime emergencies.

''(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary $4,000,000 for each of fiscal years 2006, 2007, and 2008 to carry out subsection (a).''

§ 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. 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.

(Added Pub. L. 108–293, title VIII, § 801(a), Aug. 9, 2004, 118 Stat. 1078, § 70118; renumbered § 70117, Pub. L. 109–241, title IX, § 901(*l*)(1), July 11, 2006, 120 Stat. 565; Pub. L. 109–304, § 15(33)(A), Oct. 6, 2006, 120 Stat. 1705.)

PRIOR PROVISIONS

A prior section 70117 was renumbered section 70120 of this title.

Another prior section 70117 was renumbered section 70119 of this title.

AMENDMENTS

2006—Pub. L. 109–304 directed renumbering identical to that made by Pub. L. 109–241. See below.

Pub. L. 109–241 renumbered section 70118 of this title, as added by Pub. L. 108–293, § 801(a), as this section.

§ 70118. 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; renumbered § 70118, Pub. L. 109–241, title IX, § 901(*l*)(1), July 11, 2006, 120 Stat. 565; Pub. L. 109–304, § 15(33)(A), Oct. 6, 2006, 120 Stat. 1705.)

PRIOR PROVISIONS

A prior section 70118 was renumbered section 70117 of this title.

Another prior section 70118 was renumbered section 70121 of this title.

AMENDMENTS

2006—Pub. L. 109–304 directed renumbering identical to that made by Pub. L. 109–241. See below.

Pub. L. 109–241 renumbered section 70119 of this title, as added by Pub. L. 108–293, § 801(a), as this section.

§ 70119. Civil penalty

(a) IN GENERAL.—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 day during which the violation continues.

(b) CONTINUING VIOLATIONS.—The maximum amount of a civil penalty for a violation under this section shall not exceed $50,000.

(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; amended Pub. L. 109–241, title III, § 306(a), July 11, 2006, 120 Stat. 528.)

CODIFICATION

Another section 70119 was renumbered section 70118 of this title.

AMENDMENTS

2006—Pub. L. 109–241 designated existing provisions as subsec. (a), inserted heading, substituted ''day during which the violation continues'' for ''violation'', and added subsec. (b).

§ 70120. 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 70119 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, § 70117; renumbered § 70120 and amended Pub. L. 109–241, title IX, § 901(*l*)(2), (3), July 11, 2006, 120 Stat. 565; Pub. L. 109–304, § 15(33)(B), (C), Oct. 6, 2006, 120 Stat. 1705.)

AMENDMENTS

2006—Pub. L. 109–304, § 15(33)(B), directed renumbering identical to that made by Pub. L. 109–241, § 901(*l*)(2). See below.

Pub. L. 109–241, § 901(*l*)(2), renumbered section 70117 of this title, as added by Pub. L. 108–293, § 802(a)(2), as this section.

Subsec. (a). Pub. L. 109–304, § 15(33)(C), directed amendment identical to that made by Pub. L. 109–241, § 901(*l*)(3). See below.

Pub. L. 109–241, § 901(*l*)(3), substituted ''section 70119'' for ''section 70120''.

§ 70121. 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, 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 70119, the Secretary may, with respect to such vessel, refuse or revoke any clearance required by section 60105 of this title.

(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, § 70118; renumbered § 70121 and amended Pub. L. 109–241, title IX, § 901(*l*)(2), (4), July 11, 2006, 120 Stat. 565; Pub. L. 109–304, § 15(33)(B), (D), Oct. 6, 2006, 120 Stat. 1705.)

AMENDMENTS

2006—Pub. L. 109–304, § 15(33)(B), directed renumbering identical to that made by Pub. L. 109–241, § 901(*l*)(2). See below.

Pub. L. 109–241, § 901(*l*)(2), renumbered section 70118 of this title, as added by Pub. L. 108–293, § 802(a)(2), as this section.

Subsec. (a). Pub. L. 109–304, § 15(33)(D)(ii), substituted ''section 60105 of this title'' for ''section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91)''.

Pub. L. 109–304, § 15(33)(D)(i), directed amendment identical to that made by Pub. L. 109–241, § 901(*l*)(4). See below.

Pub. L. 109–241, § 901(*l*)(4), substituted ''section 70119'' for ''section 70120''.

CHAPTER 703—MARITIME SECURITY

Sec.
70301. Definitions.
70302. International measures for seaport and vessel security.
70303. Security standards at foreign ports.
70304. Travel advisories on security at foreign ports.
70305. Suspension of passenger services.
70306. Report on terrorist threats.

§ 70301. Definitions

In this chapter:

(1) COMMON CARRIER.—The term ''common carrier'' has the meaning given that term in section 40102 of this title.

(2) PASSENGER VESSEL.—The term ''passenger vessel'' has the meaning given that term in section 2101 of this title.

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

(Pub. L. 109–304, § 10(2), Oct. 6, 2006, 120 Stat. 1683.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
70301	46 App.:1807.	Pub. L. 99–399, title IX, § 911, Aug. 27, 1986, 100 Stat. 892.

In paragraph (2), the term ''vessel of the United States'' is omitted because the definition of that term in 46 U.S.C. 2101 is being moved to chapter 1 of the revised title and will apply generally throughout the title.

In paragraph (3), the definition of ''Secretary'' is new. The functions of the Secretary of Transportation under this chapter were carried out by the Coast Guard, and its functions have been transferred to the Department of Homeland Security (except when operating as a service in the Navy) by section 888 of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2249).

§ 70302. International measures for seaport and vessel security

Congress encourages the President to continue to seek agreement on international seaport and vessel security through the International Maritime Organization. In developing an agreement, each member country of the International Maritime Organization should consult with appropriate private sector interests in that country. The agreement would establish seaport and vessel security measures and could include—

(1) seaport screening of cargo and baggage similar to that done at airports;

(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; and

(5) other appropriate measures to prevent unlawful acts against passengers and crews on vessels.

(Pub. L. 109–304, § 10(2), Oct. 6, 2006, 120 Stat. 1683.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
70302	46 App.:1801.	Pub. L. 99–399, title IX, § 902, Aug. 27, 1986, 100 Stat. 889.

The word ''vessel'' is substituted for ''shipboard'' for consistency in the revised title. The words ''and commends him on his efforts to date'' are omitted as unnecessary.

§ 70303. Security standards at foreign ports

(a) GENERAL REQUIREMENTS.—The Secretary shall develop and implement a plan to assess the effectiveness of the security measures maintained at foreign ports that the Secretary, in consultation with the Secretary of State, determines pose a high risk of acts of terrorism against passenger vessels. In carrying out this subsection, the Secretary shall consult with the Secretary of State about the terrorist threat that exists in each country and poses a high risk of acts of terrorism against passenger vessels.

(b) NOTICE AND RECOMMENDATIONS TO OTHER COUNTRIES.—If the Secretary, after implementing the plan under subsection (a), determines that a port does not maintain and administer effective security measures, the Secretary of State (after being informed by the Secretary) shall—

(1) notify the appropriate government authorities of the country in which the port is located of the determination; and

(2) recommend steps necessary to bring the security measures at that port up to the standard used by the Secretary in making the assessment under subsection (a).

(c) ANTITERRORISM ASSISTANCE.—The President is encouraged to provide antiterrorism assistance related to maritime security under chapter 8 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2349aa et seq.) to foreign countries, especially for a port that the Secretary determines under subsection (b) does not maintain and administer effective security measures.

(Pub. L. 109–304, § 10(2), Oct. 6, 2006, 120 Stat. 1684.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
70303	46 App.:1803.	Pub. L. 99–399, title IX, § 907(a), (b), (d), (e), Aug. 27, 1986, 100 Stat. 891.

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (c), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424. Chapter 8 of part II of the Act is classified generally to part VIII (§ 2349aa et seq.) of subchapter II of chapter 32 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables.

§ 70304. Travel advisories on security at foreign ports

(a) GENERAL REQUIREMENTS.—On being notified by the Secretary that the Secretary has determined that a condition exists that threatens the safety or security of passengers, passenger vessels, or crew traveling to or from a foreign port that the Secretary has determined under section 70303(b) of this title does not maintain and administer effective security measures, the Secretary of State immediately shall issue a travel advisory for that port. The Secretary of State shall take the necessary steps to widely publicize the travel advisory.

(b) LIFTING ADVISORIES.—A travel advisory issued under subsection (a) may be lifted only if the Secretary, in consultation with the Secretary of State, has determined that effective security measures are maintained and administered at the port.

(c) NOTICE TO CONGRESS.—The Secretary of State shall notify Congress immediately of any change in the status of a travel advisory issued under this section.

(Pub. L. 109–304, § 10(2), Oct. 6, 2006, 120 Stat. 1684.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
70304	46 App.:1804.	Pub. L. 99–399, title IX, § 908, Aug. 27, 1986, 100 Stat. 891; Pub. L. 105–277, div. G, title XXII, § 2224(b), Oct. 21, 1998, 112 Stat. 2681–819.

In subsection (b), the words ''with respect to which the Secretary of Transportation had made the determination described in section 1803(d) of this Appendix'' are omitted as unnecessary.

§ 70305. Suspension of passenger services

(a) GENERAL AUTHORITY.—Whenever the President determines that a foreign nation permits the use of territory under its jurisdiction as a base of operations or training for, or as a sanctuary for, or in any way arms, aids, or abets, a terrorist or terrorist group that knowingly uses the illegal seizure of passenger vessels or the threat thereof as an instrument of policy, the President may suspend the right of any passenger vessel common carrier to operate to or from, and the right of any passenger vessel of the United States to use, a port in that foreign nation for passenger service. The suspension may be without notice or hearing and for as long as the President determines is necessary to ensure the security of passenger vessels against unlawful seizure.

(b) PROHIBITION.—A passenger vessel common carrier, or a passenger vessel of the United States, may not operate in violation of a suspension under this section.

(c) PENALTIES.—

(1) DENIAL OF ENTRY.—If a person operates a vessel in violation of this section, the Secretary may deny the vessels of that person entry to ports of the United States.

(2) CIVIL PENALTY.—A person violating this section is liable to the United States Government for a civil penalty of not more than $50,000. Each day a vessel uses a prohibited port is a separate violation.

(Pub. L. 109–304, § 10(2), Oct. 6, 2006, 120 Stat. 1684.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
70305	46 App.:1805.	Pub. L. 99–399, title IX, § 909, Aug. 27, 1986, 100 Stat. 892.

§ 70306. Report on terrorist threats

(a) CONTENT.—Not later than February 28 of each year, the Secretary shall submit a report to Congress on the threat from acts of terrorism to United States ports and vessels operating from those ports. The Secretary shall include a description of activities undertaken under title I of the Maritime Transportation Security Act of 2002 (Public Law 107–295, 116 Stat. 2066) and an analysis of the effect of those activities on port security against acts of terrorism.

(b) SUBMISSION.—The report shall be submitted to the Committee on International Relations and the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Foreign Relations and the Committee on Commerce, Science, and Transportation of the Senate. Any classified information in the report shall be submitted separately as an addendum.

(Pub. L. 109–304, § 10(2), Oct. 6, 2006, 120 Stat. 1685; Pub. L. 109–241, title IX, § 901(q), July 11, 2006, 120 Stat. 566.)

AMENDMENT NOT SHOWN IN TEXT

Subsection (a) of this section was derived from section 1802 of the former Appendix to this title, which was amended by Pub. L. 109–241, title IX, § 901(q), July 11, 2006, 120 Stat. 566. For applicability of that amendment to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Section 1802 of the former Appendix to this title was amended by striking ''Not later than February 28, 1987, and annually thereafter, the Secretary of Transportation shall report'' and inserting ''The Secretary of the department in which the Coast Guard is operating shall report annually''.

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
70306(a)	46 App.:1802.	Pub. L. 99–399, title IX, §§ 905, 913, Aug. 27, 1986, 100 Stat. 890, 892; Pub. L. 107–295, title I, § 110(a), title IV, § 408(c)(3), Nov. 25, 2002, 116 Stat. 2091, 2117.
70306(b)	46 App.:1809.	

In subsection (a), the words ''February 28 of each year'' are substituted for ''February 28, 1987, and annually thereafter'' in 46 App. U.S.C. 1802 to eliminate obsolete language. The words ''Beginning with the first report submitted under this section after the date of enactment of the Maritime Transportation Security Act of 2002'' are omitted as obsolete.

In subsection (b), the words ''To the extent practicable, the reports required under sections 903, 905, and 907 [46 App. U.S.C. 1801 note, 1802, 1803] shall be consolidated into a single document before being submitted to the Congress'' in 46 App. U.S.C. 1809(a) are omitted as unnecessary and obsolete because sections 903 and 907 are being omitted from the revised title and repealed as obsolete. The words ''Committee on International Relations'' are substituted for ''Committee on Foreign Affairs'' to reflect changes in committee structure made by the 104th Congress.

REFERENCES IN TEXT

The Maritime Transportation Security Act of 2002, referred to in subsec. (a), is Pub. L. 107–295, Nov. 25, 2002, 116 Stat. 2064. Title I of the Act enacted subtitle VI (now subtitle VII) of this title, amended section 1802 of the former Appendix to this title, sections 661 and 724 of Title 14, Coast Guard, section 1431a of Title 19, Customs Duties, sections 1226, 1501 to 1504, 1507, and 1520 of Title 33, Navigation and Navigable Waters, and sections 192 and 195 of Title 50, War and National Defense, enacted provisions set out as notes under sections 70101, 70103, 70104, 70111, 70114, and 70116 of this title and sections 1226 and 1504 of Title 33, amended provisions set out as a note under section 2071 of Title 19, and repealed provisions set out as a note under section 2071 of Title 19. For complete classification of title I to the Code, see Tables.

CHAPTER 705—MARITIME DRUG LAW ENFORCEMENT

Sec.
70501. Findings and declarations.

Sec.
70502. Definitions.
70503. Manufacture, distribution, or possession of controlled substances on vessels.
70504. Jurisdiction and venue.
70505. Failure to comply with international law as a defense.
70506. Penalties.
70507. Forfeitures.

§ 70501. Findings and declarations

Congress finds and declares that trafficking in controlled substances aboard vessels is a serious international problem, is universally condemned, and presents a specific threat to the security and societal well-being of the United States.

(Pub. L. 109–304, § 10(2), Oct. 6, 2006, 120 Stat. 1685.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
70501	46 App.:1902.	Pub. L. 96–350, § 2, Sept. 15, 1980, 94 Stat. 1160; Pub. L. 99–307, § 7, May 19, 1986, 100 Stat. 447; Pub. L. 99–570, title III, § 3202, Oct. 27, 1986, 100 Stat. 3207–95; Pub. L. 99–640, § 17, Nov. 10, 1986, 100 Stat. 3552.

§ 70502. Definitions

(a) APPLICATION OF OTHER DEFINITIONS.—The definitions in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) apply to this chapter.

(b) VESSEL OF THE UNITED STATES.—In this chapter, the term ''vessel of the United States'' means—

(1) a vessel documented under chapter 121 of this title or numbered as provided in chapter 123 of this title;

(2) a vessel owned in any part by an individual who is a citizen of the United States, the United States Government, the government of a State or political subdivision of a State, or a corporation incorporated under the laws of the United States or of a State, unless—

(A) the vessel has been granted the nationality of a foreign nation under article 5 of the 1958 Convention on the High Seas; and

(B) a claim of nationality or registry for the vessel is made by the master or individual in charge at the time of the enforcement action by an officer or employee of the United States who is authorized to enforce applicable provisions of United States law; and

(3) a vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was sold to a person not a citizen of the United States, placed under foreign registry, or operated under the authority of a foreign nation, whether or not the vessel has been granted the nationality of a foreign nation.

(c) VESSEL SUBJECT TO THE JURISDICTION OF THE UNITED STATES.—

(1) IN GENERAL.—In this chapter, the term ''vessel subject to the jurisdiction of the United States'' includes—

(A) a vessel without nationality;

(B) a vessel assimilated to a vessel without nationality under paragraph (2) of article 6 of the 1958 Convention on the High Seas;

(C) a vessel registered in a foreign nation if that nation has consented or waived objection to the enforcement of United States law by the United States;

(D) a vessel in the customs waters of the United States;

(E) a vessel in the territorial waters of a foreign nation if the nation consents to the enforcement of United States law by the United States; and

(F) a vessel in the contiguous zone of the United States, as defined in Presidential Proclamation 7219 of September 2, 1999 (43 U.S.C. 1331 note), that—

(i) is entering the United States;

(ii) has departed the United States; or

(iii) is a hovering vessel as defined in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401).

(2) CONSENT OR WAIVER OF OBJECTION.—Consent or waiver of objection by a foreign nation to the enforcement of United States law by the United States under paragraph (1)(C) or (E)—

(A) may be obtained by radio, telephone, or similar oral or electronic means; and

(B) is proved conclusively by certification of the Secretary of State or the Secretary's designee.

(d) VESSEL WITHOUT NATIONALITY.—

(1) IN GENERAL.—In this chapter, the term ''vessel without nationality'' includes—

(A) a vessel aboard which the master or individual in charge makes a claim of registry that is denied by the nation whose registry is claimed;

(B) a vessel aboard which the master or individual in charge fails, on request of an officer of the United States authorized to enforce applicable provisions of United States law, to make a claim of nationality or registry for that vessel; and

(C) a vessel aboard which the master or individual in charge makes a claim of registry and for which the claimed nation of registry does not affirmatively and unequivocally assert that the vessel is of its nationality.

(2) VERIFICATION OR DENIAL.—A claim of registry under paragraph (1)(A) or (C) may be verified or denied by radio, telephone, or similar oral or electronic means. The denial of such a claim is proved conclusively by certification of the Secretary of State or the Secretary's designee.

(e) CLAIM OF NATIONALITY OR REGISTRY.—A claim of nationality or registry under this section includes only—

(1) possession on board the vessel and production of documents evidencing the vessel's nationality as provided in article 5 of the 1958 Convention on the High Seas;

(2) flying its nation's ensign or flag; or

(3) a verbal claim of nationality or registry by the master or individual in charge of the vessel.

(Pub. L. 109–304, § 10(2), Oct. 6, 2006, 120 Stat. 1685; Pub. L. 109–241, title III, § 303, July 11, 2006, 120 Stat. 527.)

AMENDMENT NOT SHOWN IN TEXT

Subsection (d) of this section was derived from section 1903(c)(2) of the former Appendix to this title, which was amended by Pub. L. 109–241, title III, § 303, July 11, 2006, 120 Stat. 527. For applicability of that amendment to this section, see section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title. Section 1903(c)(2) of the former Appendix to this title was amended by striking the last two sentences and inserting the following: ''The response of a foreign nation to a claim of registry under subparagraph (A) or (C) [now subpar. (A) or (C) of par. (1) of subsec. (d) of this section] may be made by radio, telephone, or similar oral or electronic means, and is conclusively proved by certification of the Secretary of State or the Secretary's designee.''

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
70502(a)	46 App.:1903(i).	Pub. L. 96–350, § 3(b), (c), (i), Sept. 15, 1980, 94 Stat. 1160; Pub. L. 99–570, title III, § 3202, Oct. 27, 1986, 100 Stat. 3207–95, 3207–97; Pub. L. 99–640, § 17, Nov. 10, 1986, 100 Stat. 3552, 3554; Pub. L. 100–690, title VII, § 7402(b), Nov. 18, 1988, 102 Stat. 4483; Pub. L. 104–324, § 1138(a)(1)–(3), (b), Oct. 19, 1996, 110 Stat. 3988, 3989; Pub. L. 107–295, title IV, § 418(a), Nov. 25, 2002, 116 Stat. 2123.
70502(b)	46 App.:1903(b).	
70502(c)	46 App.:1903(c)(1).	
70502(d)	46 App.:1903(c)(2).	
70502(e)	46 App.:1903(c)(3).	

In subsection (b)(2), before subparagraph (A), the words ''individual who is a citizen of the United States'' are substituted for ''a citizen or national of the United States'' because of the definition of ''citizen of the United States'' in chapter 1 of the revised title. The words ''or a territory, commonwealth, or possession of the United States'' and ''the District of Columbia, or any territory, commonwealth, or possession of the United States'' are omitted as unnecessary because of the definition of ''State'' in chapter 1 of the revised title.

In subsection (b)(3), the words ''placed under foreign registry, or operated under the authority of a foreign nation'' are substituted for ''placed under foreign registry or foreign flag'' because of the definition of ''foreign vessel'' in chapter 1 of the revised title.

In subsection (d)(1)(B), the word ''authorized'' is substituted for ''empowered'' for consistency with subsection (b)(2)(B).

§ 70503. Manufacture, distribution, or possession of controlled substances on vessels

(a) PROHIBITIONS.—An individual may not knowingly or intentionally manufacture or distribute, or possess with intent to manufacture or distribute, a controlled substance on board—

(1) a vessel of the United States or a vessel subject to the jurisdiction of the United States; or

(2) any vessel if the individual is a citizen of the United States or a resident alien of the United States.

(b) EXTENSION BEYOND TERRITORIAL JURISDICTION.—Subsection (a) applies even though the act is committed outside the territorial jurisdiction of the United States.

(c) NONAPPLICATION.—

(1) IN GENERAL.—Subject to paragraph (2), subsection (a) does not apply to—

(A) a common or contract carrier or an employee of the carrier who possesses or distributes a controlled substance in the lawful and usual course of the carrier's business; or

(B) a public vessel of the United States or an individual on board the vessel who possesses or distributes a controlled substance in the lawful course of the individual's duties.

(2) ENTERED IN MANIFEST.—Paragraph (1) applies only if the controlled substance is part of the cargo entered in the vessel's manifest and is intended to be imported lawfully into the country of destination for scientific, medical, or other lawful purposes.

(d) BURDEN OF PROOF.—The United States Government is not required to negative a defense provided by subsection (c) in a complaint, information, indictment, or other pleading or in a trial or other proceeding. The burden of going forward with the evidence supporting the defense is on the person claiming its benefit.

(Pub. L. 109–304, § 10(2), Oct. 6, 2006, 120 Stat. 1687.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
70503(a)	46 App.:1903(a).	Pub. L. 96–350, § 3(a), (e), (h), Sept. 15, 1980, 94 Stat. 1160; Pub. L. 99–570, title III, § 3202, Oct. 27, 1986, 100 Stat. 3207–95, 3207–96, 3207–97; Pub. L. 99–640, § 17, Nov. 10, 1986, 100 Stat. 3552, 3554; Pub. L. 100–690, title VII, § 7402(a), Nov. 18, 1988, 102 Stat. 4483.
70503(b)	46 App.:1903(h).	
70503(c)	46 App.:1903(e) (1st sentence).	
70503(d)	46 App.:1903(e) (last sentence).	

In subsection (a), before paragraph (1), the words ''may not'' are substituted for ''It is unlawful for'' for consistency in the revised title and to eliminate unnecessary words.

In subsection (b), the words ''applies to'' are substituted for ''is intended to reach'' for clarity and to eliminate unnecessary words.

§ 70504. Jurisdiction and venue

(a) JURISDICTION.—Jurisdiction of the United States with respect to a vessel subject to this chapter is not an element of an offense. Jurisdictional issues arising under this chapter are preliminary questions of law to be determined solely by the trial judge.

(b) VENUE.—A person violating section 70503 of this title shall be tried in the district court of the United States for—

(1) the district at which the person enters the United States; or

(2) the District of Columbia.

(Pub. L. 109–304, § 10(2), Oct. 6, 2006, 120 Stat. 1688.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
70504	46 App.:1903(f).	Pub. L. 96–350, §3(f), Sept. 15, 1980, 94 Stat. 1160; Pub. L. 99–570, title III, §3202, Oct. 27, 1986, 100 Stat. 3207–97; Pub. L. 99–640, §17, Nov. 10, 1986, 100 Stat. 3554; Pub. L. 104–324, §1138(a)(5), Oct. 19, 1996, 110 Stat. 3989.

§ 70505. Failure to comply with international law as a defense

A person charged with violating section 70503 of this title does not have standing to raise a claim of failure to comply with international law as a basis for a defense. A claim of failure to comply with international law in the enforcement of this chapter may be made only by a foreign nation. A failure to comply with international law does not divest a court of jurisdiction and is not a defense to a proceeding under this chapter.

(Pub. L. 109–304, §10(2), Oct. 6, 2006, 120 Stat. 1688.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
70505	46 App.:1903(d).	Pub. L. 96–350, §3(d), Sept. 15, 1980, 94 Stat. 1160; Pub. L. 99–570, title III, §3202, Oct. 27, 1986, 100 Stat. 3207–96; Pub. L. 99–640, §17, Nov. 10, 1986, 100 Stat. 3553; Pub. L. 104–324, §1138(a)(4), Oct. 19, 1996, 110 Stat. 3989.

§ 70506. Penalties

(a) VIOLATIONS.—A person violating section 70503 of this title shall be punished as provided in section 1010 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 960). However, if the offense is a second or subsequent offense as provided in section 1012(b) of that Act (21 U.S.C. 962(b)), the person shall be punished as provided in section 1012 of that Act (21 U.S.C. 962).

(b) ATTEMPTS AND CONSPIRACIES.—A person attempting or conspiring to violate section 70503 of this title is subject to the same penalties as provided for violating section 70503.

(Pub. L. 109–304, §10(2), Oct. 6, 2006, 120 Stat. 1688.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
70506(a)	46 App.:1903(g).	Pub. L. 96–350, §3(g), (j), Sept. 15, 1980, 94 Stat. 1160; Pub. L. 99–570, title III, §3202, Oct. 27, 1986, 100 Stat. 3207–97; Pub. L. 99–640, §17, Nov. 10, 1986, 100 Stat. 3554; Pub. L. 101–647, title XII, §1203, Nov. 29, 1990, 104 Stat. 4830.
70506(b)	46 App.:1903(j).	

In subsection (b), the words ''the commission of which was the object of the attempt or conspiracy'' are omitted as unnecessary.

§ 70507. Forfeitures

(a) IN GENERAL.—Property described in section 511(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(a)) that is used or intended for use to commit, or to facilitate the commission of, an offense under section 70503 of this title may be seized and forfeited in the same manner that similar property may be seized and forfeited under section 511 of that Act (21 U.S.C. 881).

(b) PRIMA FACIE EVIDENCE OF VIOLATION.—Practices commonly recognized as smuggling tactics may provide prima facie evidence of intent to use a vessel to commit, or to facilitate the commission of, an offense under section 70503 of this title, and may support seizure and forfeiture of the vessel, even in the absence of controlled substances aboard the vessel. The following indicia, among others, may be considered, in the totality of the circumstances, to be prima facie evidence that a vessel is intended to be used to commit, or to facilitate the commission of, such an offense:

(1) The construction or adaptation of the vessel in a manner that facilitates smuggling, including—

(A) the configuration of the vessel to ride low in the water or present a low hull profile to avoid being detected visually or by radar;

(B) the presence of any compartment or equipment that is built or fitted out for smuggling, not including items such as a safe or lock-box reasonably used for the storage of personal valuables;

(C) the presence of an auxiliary tank not installed in accordance with applicable law or installed in such a manner as to enhance the vessel's smuggling capability;

(D) the presence of engines that are excessively over-powered in relation to the design and size of the vessel;

(E) the presence of materials used to reduce or alter the heat or radar signature of the vessel and avoid detection;

(F) the presence of a camouflaging paint scheme, or of materials used to camouflage the vessel, to avoid detection; or

(G) the display of false vessel registration numbers, false indicia of vessel nationality, false vessel name, or false vessel homeport.

(2) The presence or absence of equipment, personnel, or cargo inconsistent with the type or declared purpose of the vessel.

(3) The presence of excessive fuel, lube oil, food, water, or spare parts, inconsistent with legitimate vessel operation, inconsistent with the construction or equipment of the vessel, or inconsistent with the character of the vessel's stated purpose.

(4) The operation of the vessel without lights during times lights are required to be displayed under applicable law or regulation and in a manner of navigation consistent with smuggling tactics used to avoid detection by law enforcement authorities.

(5) The failure of the vessel to stop or respond or heave to when hailed by government authority, especially where the vessel conducts evasive maneuvering when hailed.

(6) The declaration to government authority of apparently false information about the ves-

sel, crew, or voyage or the failure to identify the vessel by name or country of registration when requested to do so by government authority.

(7) The presence of controlled substance residue on the vessel, on an item aboard the vessel, or on an individual aboard the vessel, of a quantity or other nature that reasonably indicates manufacturing or distribution activity.

(8) The use of petroleum products or other substances on the vessel to foil the detection of controlled substance residue.

(9) The presence of a controlled substance in the water in the vicinity of the vessel, where given the currents, weather conditions, and course and speed of the vessel, the quantity or other nature is such that it reasonably indicates manufacturing or distribution activity.

(Pub. L. 109–304, § 10(2), Oct. 6, 2006, 120 Stat. 1688.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
70507	46 App.:1904.	Pub. L. 96–350, § 4, Sept. 15, 1980, 94 Stat. 1160; Pub. L. 99–570, title III, § 3202, Oct. 27, 1986, 100 Stat. 3207–97; Pub. L. 99–640, § 17, Nov. 10, 1986, 100 Stat. 3554; Pub. L. 107–295, title IV, § 418(b), Nov. 25, 2002, 116 Stat. 2123.

Subtitle VIII—Miscellaneous

Chapter		Sec.
801.	**Wrecks and Salvage**	**80101**
803.	**Ice and Derelicts**	**80301**
805.	**Safe Containers for International Cargo**	**80501**

CHAPTER 801—WRECKS AND SALVAGE

Sec.
80101. Vessel stranded on foreign coast.
80102. License to salvage on Florida coast.
80103. Property on Florida coast to be taken to port of entry.
80104. Salvaging operations by foreign vessels.
80105. Canadian vessels aiding vessels in United States waters.
80106. International agreement on derelicts.
80107. Salvors of life to share in remuneration.

§ 80101. Vessel stranded on foreign coast

(a) DUTIES OF CONSULAR OFFICER.—When a vessel of the United States is stranded on a coast of a foreign country, the consular officer in that country shall take proper measures, to the extent the laws of that country allow, to—

(1) save and secure the vessel and property on the vessel; and

(2) prepare an inventory of the property that is saved.

(b) DELIVERY TO OWNER.—After deducting the expenses, the consular officer shall deliver the property, with an inventory, to the owner of the property.

(c) LIMITATION ON TAKING POSSESSION.—A consular officer may not take possession of property under this section when the owner, master, or consignee is present or able to take possession of the property.

(Pub. L. 109–304, § 11, Oct. 6, 2006, 120 Stat. 1690.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
80101	46 App.:721.	R.S. § 4238.

In this section, the words ''consular officer'' are substituted for ''Consuls and vice consuls'' and ''consul or vice consul'' for consistency in the revised title.

Subsection (a)(1) is substituted for ''as well for the purpose of saving the vessels, their cargoes and appurtenances, as for storing and securing the effects and merchandise saved'' to eliminate unnecessary words.

§ 80102. License to salvage on Florida coast

(a) LICENSING REQUIREMENTS.—To be regularly employed in the business of salvaging on the coast of Florida, a vessel and its master each must have a license issued by a judge of the district court of the United States for a judicial district of Florida.

(b) JUDICIAL FINDINGS.—Before issuing a license under this section, the judge must be satisfied, when the license is for—

(1) a vessel, that the vessel is seaworthy and properly equipped for the business of saving property shipwrecked and in distress; or

(2) a master, that the master is trustworthy and innocent of any fraud or misconduct related to property shipwrecked or saved on the coast.

(Pub. L. 109–304, § 11, Oct. 6, 2006, 120 Stat. 1690.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
80102	46 App.:724.	R.S. § 4241.

In subsection (a), the words ''the district court of the United States for a judicial district of Florida'' are substituted for ''the district court for the district of Florida'' because Florida now has more than one judicial district.

In subsection (b)(1), the words ''properly equipped'' are substituted for ''properly and sufficiently fitted and equipped'' to eliminate unnecessary words.

§ 80103. Property on Florida coast to be taken to port of entry

(a) IN GENERAL.—Property taken from a wreck, the sea, or a key or shoal, on the coast of Florida and within the jurisdiction of the United States, shall be brought to a port of entry of the United States.

(b) SEIZURE AND FORFEITURE.—A vessel transporting property described in subsection (a) to a foreign port may be seized by, and forfeited to, the United States Government. A forfeiture under this subsection accrues half to the informer and half to the Government.

(Pub. L. 109–304, § 11, Oct. 6, 2006, 120 Stat. 1690.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
80103	46 App.:722. 46 App.:723.	R.S. § 4239. R.S. § 4240.

In subsection (a), the words ''of any description whatsoever'' are omitted as unnecessary.

In subsection (b), the words ''transporting property described in subsection (a) of this section'' are substituted for ''which shall be engaged or employed in carrying or transporting any property whatsoever, taken from any wreck, from the sea, or from any of the keys or shoals, within the jurisdiction of the United States, on the coast of Florida'' to eliminate unnecessary words. The words ''may be seized by, and forfeited to, the United States Government'' are substituted for ''shall . . . be forfeited'' for consistency in the revised title. The words ''together with her tackle, apparel, and furniture'' are omitted as unnecessary. The words ''accrues half to the informer and half to the Government'' are substituted for ''one moiety to the informer and the other to the United States'' to use more commonly understood language.

§ 80104. Salvaging operations by foreign vessels

(a) PROHIBITION.—Except as provided in this section or section 80105 of this title, a foreign vessel may not, under penalty of forfeiture, engage in salvaging operations on the Atlantic or Pacific coast of the United States, in any portion of the Great Lakes or their connecting or tributary waters, including any portion of the Saint Lawrence River through which the international boundary line extends, or in territorial waters of the United States on the Gulf of Mexico.

(b) WHEN SUITABLE VESSEL NOT AVAILABLE.—The Secretary of Homeland Security may authorize a foreign vessel to engage in salvaging operations in a particular locality if, on investigation, the Secretary is satisfied that there is not available in that locality a suitable vessel that is—

(1) owned only by citizens of the United States (including a Bowaters corporation under section 12118 of this title); and

(2) documented under chapter 121 of this title or numbered under chapter 123 of this title.

(c) OPERATIONS AUTHORIZED BY TREATY.—This section does not prohibit or restrict assistance to vessels or salvaging operations authorized by treaty, including—

(1) article II of the Treaty between the United States and Great Britain concerning reciprocal rights for United States and Canada in the conveyance of prisoners and wrecking and salvage, signed at Washington, May 18, 1908 (35 Stat. 2036); or

(2) the Treaty between the United States of America and Mexico to facilitate assistance to and salvage of vessels in territorial waters, signed at Mexico City, June 13, 1935 (49 Stat. 3359).

(Pub. L. 109–304, § 11, Oct. 6, 2006, 120 Stat. 1691.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
80104(a)	46 App.:316(d) (words before proviso).	R.S. § 4370(d), (e); June 11, 1940, ch. 324, 54 Stat. 305.
80104(b)	46 App.:316(d) (proviso).	
80104(c)	46 App.:316(e).	

In subsection (a), the words ''authorized by a treaty'' are omitted because they are restated in subsection (c).

In subsection (b), before paragraph (1), the Secretary of Homeland Security is substituted for the Commissioner of Customs because the functions of the Customs Service and of the Secretary of the Treasury relating thereto were transferred to the Secretary of Homeland Security by section 403(1) of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2178). The functions of the Commissioner of Customs previously were vested in the Secretary of the Treasury under section 321(c) of title 31. For prior related transfers of functions, see the transfer of functions note under 46 App. U.S.C. 316. The words ''and no penalty shall be incurred for such authorized use'' are omitted as unnecessary.

In subsection (b)(1), the words ''(including a Bowaters corporation under section 12118 of this title)'' are added because the source for section 12118 (46 App. U.S.C. 883–1) provides that a corporation meeting the requirements of that section is also a citizen of the United States under 46 App. U.S.C. 316, restated in part in this section.

Subsection (b)(2) is substituted for ''documented under the laws of the United States or numbered pursuant to the Act of June 7, 1918, as amended (46 U.S.C. 288)'' to refer to the current provisions on documentation and numbering.

In subsection (c), the words ''authorized by treaty, including'' are added because the words ''authorized by a treaty'' are omitted from subsection (a).

§ 80105. Canadian vessels aiding vessels in United States waters

(a) IN GENERAL.—Canadian vessels and wrecking equipment may give aid to Canadian or other vessels and property wrecked, disabled, or in distress in the waters of the United States contiguous to Canada, including—

(1) the canal and improvement of the waters between Lake Erie and Lake Huron; and

(2) the Saint Marys River and canal.

(b) RECIPROCITY.—This section does not apply after the President proclaims that privileges reciprocal to those under subsection (a) have been withdrawn or rendered inoperative by the Government of Canada.

(Pub. L. 109–304, § 11, Oct. 6, 2006, 120 Stat. 1691.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
80105	46 App.:725.	June 19, 1878, ch. 324, 20 Stat. 175; May 24, 1890, ch. 292, 26 Stat. 120; Mar. 3, 1893, ch. 211, § 1 (last par. under heading ''Department of State''), 27 Stat. 683.

In subsection (a), before paragraph (1), the word ''equipment'' is substituted for ''appurtenance'' to use more commonly understood language. The words ''and assistance'' are omitted as unnecessary.

Subsection (b) is substituted for ''this section shall cease to be in force and effect from and after the date of the proclamation of the President of the United States to the effect that said reciprocol privilege has been withdrawn, revoked, or rendered inoperative by the said Government of the Dominion of Canada'' to eliminate unnecessary words.

§ 80106. International agreement on derelicts

The President may make an international agreement with other governments interested in the navigation of the North Atlantic Ocean, providing for the reporting, marking, and removal of dangerous wrecks, derelicts, and other menaces to navigation outside the coast waters of the countries bordering the North Atlantic Ocean.

(Pub. L. 109–304, § 11, Oct. 6, 2006, 120 Stat. 1691.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
80106	46 App.:726.	Oct. 31, 1893, No. 13, 28 Stat. 13.

§ 80107. Salvors of life to share in remuneration

(a) ENTITLEMENT OF SALVORS.—A salvor of human life, who gave aid following an accident giving rise to salvage, is entitled to a fair share of the payment awarded to the salvor for salvaging the vessel or other property or preventing or minimizing damage to the environment.

(b) COMMON OWNERSHIP OF VESSELS.—The right to remuneration for aid or salvage services is not affected by common ownership of the vessels giving and receiving the aid or salvage services.

(c) TIME LIMIT ON BRINGING ACTIONS.—A civil action to recover remuneration for giving aid or salvage services must be brought within 2 years after the date the aid or salvage services were given, unless the court in which the action is brought is satisfied that during that 2-year period there had not been a reasonable opportunity to seize the aided or salvaged vessel within the jurisdiction of the court or within the territorial waters of the country of the plaintiff's residence or principal place of business.

(d) NONAPPLICATION.—This section does not apply to a vessel of war or a vessel owned by the United States Government appropriated only to a public service.

(Pub. L. 109–304, § 11, Oct. 6, 2006, 120 Stat. 1691.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
80107(a)	46 App.:729.	Aug. 1, 1912, ch. 268, §§ 1, 3–5, 37 Stat. 242; Pub. L. 102–241, § 40, Dec. 19, 1991, 105 Stat. 2225.
80107(b)	46 App.:727.	
80107(c)	46 App.:730.	
80107(d)	46 App.:731.	

In subsection (c), the words ''civil action'' are substituted for ''suit'', the words ''must be brought within 2 years after'' are substituted for ''shall not be maintainable if brought later than two years from'', and the word ''seize'' is substituted for ''arresting'', for consistency in the revised title. The words ''of the plaintiff's residence or principal place of business'' are substituted for ''in which the libelant resides or has his principal place of business'' for consistency and to eliminate unnecessary words.

In subsectoin [sic] (d), the reference to section 2304 of title 46 is omitted because of the amendment to section 2304 in section 14(8) of the bill.

CHAPTER 803—ICE AND DERELICTS

Sec.
80301. International agreements.
80302. Patrol services.
80303. Speed of vessel in ice region.

§ 80301. International agreements

(a) GENERAL AUTHORITY.—The President may make agreements with interested maritime countries to—

(1) maintain in the North Atlantic Ocean a service of ice patrol, of study and observation of ice and current conditions, and of assistance to vessels and their crews requiring assistance within the limits of the patrol;

(2) maintain a service of study and observation of ice and current conditions in the waters affecting the set and drift of ice in the North Atlantic Ocean; and

(3) take all practicable steps to ensure the destruction or removal of derelicts in the northern part of the Atlantic Ocean, east of the line drawn from Cape Sable to a point in latitude 34 degrees north, longitude 70 degrees west, if the destruction or removal is necessary.

(b) PAYMENT BETWEEN COUNTRIES.—The President may include in an agreement under subsection (a) a provision for—

(1) payment to the United States Government by other countries for their proportionate share of the expense of maintaining the services; or

(2) contribution by the Government for its proportionate share if the agreement provides for another country to maintain the services.

(Pub. L. 109–304, § 11, Oct. 6, 2006, 120 Stat. 1692.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
80301	46 App.:738.	June 25, 1936, ch. 807, § 1, 49 Stat. 1922.

§ 80302. Patrol services

(a) GENERAL REQUIREMENTS.—Unless the agreements made under section 80301 of this title provide otherwise, an ice patrol shall be maintained during the entire ice season in guarding the southeastern, southern, and southwestern limits of the region of icebergs in the vicinity of the Grand Banks of Newfoundland. The patrol shall inform trans-Atlantic and other passing vessels by radio and other available means of the ice conditions and the extent of the dangerous region. During the ice season, there shall be maintained a service of study of ice and current conditions, a service of providing assistance to vessels and crews requiring assistance, and a service of removing and destroying derelicts. Any of these services may be maintained during the remainder of the year as may be advisable.

(b) WARNINGS TO VESSELS.—An ice patrol vessel shall warn any vessel known to be approaching a dangerous area and recommend safe routes.

(c) RECORDING AND REPORTING INCIDENTS.—

(1) RECORDING.—An ice patrol vessel shall record the name of a vessel and the facts of the case when the patrol observes or knows that the vessel—

(A) is on other than a regular recognized or advertised route crossing the North Atlantic Ocean;

(B) has crossed the fishing banks of Newfoundland north of latitude 43 degrees north during the fishing season; or

(C) has passed through regions known or believed to be endangered by ice when proceeding to and from ports of North America.

(2) REPORTING.—The name of the vessel and all pertinent information about the incident

shall be reported to the government of the country to which the vessel belongs if that government requests.

(d) ADMINISTRATION.—The Commandant of the Coast Guard, under the direction of the Secretary of the department in which the Coast Guard is operating, shall carry out the services provided for in this section and shall assign necessary vessels, material, and personnel of the Coast Guard. On request of such Secretary, the head of an agency may detail personnel, lend or contribute material or equipment, or otherwise assist in carrying out the services provided for in this section.

(e) ANNUAL REPORT.—The Commandant shall publish an annual report of the activities of the services provided for in this section. A copy of the report shall be provided to each interested foreign government and to each agency assisting in the work.

(Pub. L. 109–304, § 11, Oct. 6, 2006, 120 Stat. 1692.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
80302	46 App.:738a.	June 25, 1936, ch. 807, § 2, 49 Stat. 1922; Pub. L. 89–670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938.

In subsection (d), the words ''Secretary of the department in which the Coast Guard is operating'' are substituted for ''Secretary of Transportation'' because of the transfer of the Coast Guard to the Department of Homeland Security (except when operating as a service in the Navy) by section 888 of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2249). See also sections 1 and 3 of title 14, as amended by section 1704(a) of such Act (116 Stat. 2314).

§ 80303. Speed of vessel in ice region

(a) REQUIREMENT.—The master of a vessel of the United States, when ice is reported on or near the vessel's course, shall proceed at a moderate speed or change the course of the vessel to go well clear of the danger zone.

(b) CIVIL PENALTY.—A master violating this section is liable to the United States Government for a civil penalty of not more than $500.

(Pub. L. 109–304, § 11, Oct. 6, 2006, 120 Stat. 1693.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
80303	46 App.:738c.	June 25, 1936, ch. 807, § 4, 49 Stat. 1923.

In subsection (b), the words ''liable to the United States Government for a civil penalty'' are substituted for ''liable to a fine'' for clarity and for consistency in the revised title. The words ''for each offense'' are omitted as unnecessary.

CHAPTER 805—SAFE CONTAINERS FOR INTERNATIONAL CARGO

Sec.
80501. Definitions.
80502. Application of Convention.
80503. General authority of the Secretary.
80504. Approval and examination.
80505. Enforcement.
80506. Delegation of authority.
80507. Employee protection.
80508. Amendments to Convention.
80509. Civil penalty.

§ 80501. Definitions

In this chapter:

(1) CONTAINER.—The term ''container'' has the meaning given that term in the Convention.

(2) CONVENTION.—The term ''Convention'' means the International Convention for Safe Containers, and its annexes, done at Geneva, Switzerland, December 2, 1972.

(3) INTERNATIONAL TRANSPORT.—The term ''international transport'' means the transportation of a container between—

(A) a place in a foreign country and a place in the jurisdiction of the United States; or

(B) two places outside the United States by United States carriers.

(4) OWNER.—The term ''owner'' includes the lessee or bailee of a container if a written lease or bailment provides for the lessee or bailee to exercise the owner's responsibility for maintaining and examining the container.

(5) SAFETY APPROVAL PLATE.—The term ''safety approval plate'' has the meaning given that term in annex I of the Convention.

(Pub. L. 109–304, § 11, Oct. 6, 2006, 120 Stat. 1694.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
80501	46 App.:1501.	Pub. L. 95–208, § 2, Dec. 13, 1977, 91 Stat. 1475.

In the definition of ''international transport'', subparagraphs (A) and (B) are substituted for 46 App. U.S.C. 1501(d)(1)–(3) to eliminate unnecessary words.

In the definition of ''owner'', the words ''includes the lessee or bailee of a container if a written lease or bailment provides for the lessee or bailee to exercise the owner's responsibility for maintaining and examining the container'' are substituted for ''means a person who owns a container, or, if a written lease or bailment provides for the lessee or bailee to exercise the owner's responsibility for maintaining and examining the container, the lessee or bailee of a container, to the extent such agreement so provides'' to eliminate unnecessary words.

The definition of ''Secretary'' is omitted because a complete reference to the appropriate Secretary is used the first time the Secretary is named in each section. Throughout this chapter, the phrase ''Secretary of the department in which the Coast Guard is operating'' is substituted for ''Secretary of Transportation'' because the Coast Guard has been transferred to the Department of Homeland Security (except when operating as a service in the Navy) by section 888 of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2249).

The definition of ''United States'' is omitted because ''United States'' is defined in chapter 1 of the revised title. The definitions of ''new container'' and ''existing container'' are omitted as obsolete.

§ 80502. Application of Convention

The Convention applies to an owner of a container used in international transport if the owner is domiciled or has its principal office in the United States.

(Pub. L. 109–304, § 11, Oct. 6, 2006, 120 Stat. 1694.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
80502	46 App.:1502(a) (related to application of Convention).	Pub. L. 95–208, § 3(a) (related to application of Convention), Dec. 13, 1977, 91 Stat. 1476.

This section restates the applicability criteria of 46 App.:1502(a)(1) and (2) to improve the organization of the chapter.

§ 80503. General authority of the Secretary

(a) IN GENERAL.—The Secretary of the department in which the Coast Guard is operating shall carry out the Convention and this chapter in the United States.

(b) REGULATIONS.—The Secretary shall prescribe regulations to carry out this chapter. The regulations shall—

(1) establish procedures for testing, inspecting, and initially approving containers and designs for containers, including procedures for attaching, invalidating, and removing safety approval plates for containers;

(2) establish procedures to be followed by the owners of containers for the periodic examination of containers as provided in the Convention; and

(3) provide a method for developing, collecting, and disseminating information about container safety and the international transport of containers.

(c) SAFETY APPROVAL PLATES.—If the owner of a container without a safety approval plate establishes that the container satisfies the standards of the Convention, the Secretary may authorize a safety approval plate to be attached to the container.

(d) SCHEDULE OF FEES.—The Secretary may prescribe a schedule of fees for services performed by the Secretary, or by a person delegated authority under section 80506 of this title, for the testing, inspection, and initial approval of containers and container designs.

(e) ENCOURAGING INTERMODAL TRANSPORT.—To the maximum extent possible, the Secretary shall encourage the development and use of intermodal transport, using containers built to facilitate economical, safe, and expeditious handling of containerized cargo without intermediate reloading when it is being transported over land, air, and sea areas.

(Pub. L. 109–304, § 11, Oct. 6, 2006, 120 Stat. 1694.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
80503(a)	46 App.:1503(a).	Pub. L. 95–208, § 4(a), (b), (c)(1), (3), (e), Dec. 13, 1977, 91 Stat. 1476, 1477.
80503(b)	46 App.:1503(b).	
80503(c)	46 App.:1503(c)(1).	
80503(d)	46 App.:1503(c)(3).	
80503(e)	46 App.:1503(e).	

In subsection (a), the words ''On and after the date the instrument of ratification is deposited by the United States in accordance with the provisions of article VII of the Convention,'' and ''and, unless an earlier date is specifically provided,'' are omitted as obsolete.

In subsection (b), before paragraph (1), the words ''as soon as practicable after December 13, 1977'' are omitted as obsolete. The word ''prescribe'' is substituted for ''promulgate, and from time to time, amend'' for consistency in the revised title and with other titles of the United States Code and to eliminate unnecessary words. The words ''he deems necessary for such enforcement'' and ''among other things'' are omitted as unnecessary. In paragraph (1), the words ''existing'' and ''new'' are omitted as obsolete.

In subsections (c) and (d), the words ''At any time after December 13, 1977'' are omitted as obsolete.

§ 80504. Approval and examination

(a) DOMICILE AND PRINCIPAL OFFICE IN UNITED STATES.—A container owner domiciled and having its principal office in the United States shall have the container—

(1) approved initially under procedures prescribed by the Secretary of the department in which the Coast Guard is operating or by the government of another country that is a party to the Convention; and

(2) examined periodically as provided in the Convention under procedures prescribed by the Secretary.

(b) DOMICILE OR PRINCIPAL OFFICE IN UNITED STATES.—A container owner domiciled or having its principal office in the United States shall have the container—

(1) approved initially under procedures prescribed by the Secretary or by the government of another country that is a party to the Convention; and

(2) examined periodically as provided in the Convention, under procedures prescribed by the government of the country in which the owner is domiciled or has its principal office, as long as that country is a party to the Convention.

(c) NEITHER DOMICILE NOR PRINCIPAL OFFICE IN UNITED STATES.—A container owner neither domiciled nor having its principal office in the United States or another country that is a party to the Convention may submit a container for initial approval and periodic examination under procedures prescribed by the Secretary.

(Pub. L. 109–304, § 11, Oct. 6, 2006, 120 Stat. 1695.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
80504.	46 App.:1502(a) (related to approval and examination).	Pub. L. 95–208, § 3(a) (related to approval and examination), Dec. 13, 1977, 91 Stat. 1476.

In this section, the words ''Beginning on the date the instrument of ratification is deposited by the United States in accordance with the provisions of article VII of the Convention, for new containers, and beginning on September 6, 1982, for existing containers'' are omitted as obsolete.

In subsections (a)(1) and (b)(1), the words ''government of another country that is a party to the Convention'' are substituted for ''administration of another contracting party to the Convention'' for clarity.

In subsection (c), the word ''initial'' is added for consistency in the section.

§ 80505. Enforcement

(a) IN GENERAL.—To enforce the Convention, this chapter, and regulations prescribed under this chapter, the Secretary of the department in which the Coast Guard is operating may—

(1) examine, or require to be examined, containers in international transport;

(2) approve designs for containers;

(3) inspect and test containers being manufactured;

(4) issue a detention order removing or excluding a container from service until the container owner satisfies the Secretary that the container meets the standards of the Convention, if the container—

(A) does not have a safety approval plate attached to it; or

(B) has a safety approval plate attached but there is significant evidence that the container is in a condition that creates an obvious risk to safety;

(5) take other appropriate action, including issuing necessary orders, to remove a container from service or restrict its use if the container is not in compliance with the Convention, this chapter, or regulations prescribed under this chapter, but does not present an obvious risk to safety; and

(6) allow a container found to be unsafe or without a safety approval plate to be moved to another location for repair or other disposition, under restrictions consistent with the intent of the Convention.

(b) PAYMENT OF EXPENSES.—

(1) EXAMINATION.—The owner of a container involved in an action by the Secretary under this section related to an examination of the container shall pay or reimburse the Secretary for the expenses arising from that action, except for the costs of routine examinations of the container or a safety approval plate.

(2) TESTING, INSPECTION, AND INITIAL APPROVAL.—The owner of a container submitted to the procedure established by the Secretary for testing, inspection, and initial approval, and the manufacturer of a container that submits a design to the procedure established by the Secretary for testing, inspection, and initial approval, shall pay or reimburse the Secretary for the expenses arising from the testing, inspection, or approval.

(3) CREDIT TO APPROPRIATION.—Amounts received by the Secretary as reimbursement shall be credited to the appropriation for operating expenses of the Coast Guard.

(c) PRESUMPTION BASED ON SAFETY APPROVAL PLATE.—A container bearing a safety approval plate authorized by a country that is a party to the Convention is presumed to be in a safe condition unless there is significant evidence that the container is in a condition that creates an obvious risk to safety.

(d) NOTICE OF ORDERS.—

(1) IN GENERAL.—When the Secretary issues a detention or other order under this section, the Secretary promptly shall notify in writing—

(A) the owner of the container;

(B) the owner's agent; or

(C) if the identity of the owner is not apparent from the container or shipping documents, the custodian.

(2) INFORMATION TO INCLUDE.—The notification shall identify the container involved, give the location of the container, and describe the condition or situation giving rise to the order.

(e) DURATION OF ORDERS.—An order issued by the Secretary under this section remains in effect until—

(1) the Secretary declares the container to be in compliance with the standards of the Convention; or

(2) the container is removed permanently from service.

(f) NOTICE OF DEFECTIVE CONTAINER TO COUNTRY ISSUING SAFETY APPROVAL PLATE.—If the Secretary has reason to believe that a container bearing a safety approval plate issued by another country was defective at the time of approval, the Secretary shall notify that country.

(Pub. L. 109–304, § 11, Oct. 6, 2006, 120 Stat. 1695.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
80505	46 App.:1504.	Pub. L. 95–208, § 5, Dec. 13, 1977, 91 Stat. 1477; Pub. L. 97–249, § 1(2), Sept. 8, 1982, 96 Stat. 708.

In subsection (a), before paragraph (1), the words ''On and after the date the instrument of ratification is deposited by the United States in accordance with the provisions of article VII of the Convention'' are omitted as obsolete. The words ''and regulations prescribed under this chapter'' are added for clarity. In paragraph (1), the words ''new . . . and existing containers which are subject to this chapter'' are omitted as obsolete. Paragraphs (2) and (3) are substituted for ''test, inspect, and approve designs for new containers and new containers being manufactured'' to eliminate unnecessary words. In paragraph (4), before subparagraph (A), the words ''is subject to this chapter'' are omitted as unnecessary. In subparagraph (A), the word ''valid'' is omitted as unnecessary. In paragraph (5), the words ''or regulations prescribed under this chapter'' are added for consistency. In paragraph (6), the word ''valid'' is omitted as unnecessary.

In subsection (b)(3), the words ''appropriation for the operating expenses of the Coast Guard'' are substituted for ''appropriations bearing the cost thereof'' for clarity.

In subsection (d)(2), the word ''reasonably'' is omitted as unnecessary.

In subsection (e), the words ''which first occurs'' are omitted as unnecessary. In paragraph (1), the words ''the Secretary declares'' are substituted for ''is declared by the Secretary, or under regulations promulgated by the Secretary'' to eliminate unnecessary words.

§ 80506. Delegation of authority

(a) IN GENERAL.—The Secretary of the department in which the Coast Guard is operating may delegate to any person, including a public or private agency or nonprofit organization, authority to grant initial approval for containers and designs and to attach safety approval plates.

(b) REGULATIONS.—Before making a delegation under this section, the Secretary shall prescribe regulations establishing—

(1) criteria to be followed in selecting a person to whom authority is to be delegated;

(2) a detailed description of the duties and powers to be carried out by the person to whom authority is delegated, including the records the person shall keep; and

(3) the review the Secretary will conduct to decide whether the person is carrying out the delegated duties and powers properly.

(c) INSPECTION OF RECORDS.—A person delegated authority under this section shall make available to the Secretary for inspection, on request, records the person is required to keep.

(d) PENALTIES AND ORDERS.—A person delegated authority under this section may not—

(1) assess or collect, or attempt to assess or collect, a penalty for violation of the Convention, this chapter, or an order issued by the Secretary under this chapter; or

(2) issue or attempt to issue a detention or other order.

(e) PUBLICATION.—The Secretary shall publish in the Federal Register or other appropriate publication—

(1) the name and address of each person to whom authority is delegated;

(2) the duties and powers delegated; and

(3) the period of the delegation.

(f) REVOCATION.—The Secretary may revoke a delegation of authority under this section at any time.

(Pub. L. 109–304, § 11, Oct. 6, 2006, 120 Stat. 1696.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
80506	46 App.:1503(c)(2), (d).	Pub. L. 95–208, § 4(c)(2), (d), Dec. 13, 1977, 91 Stat. 1477.

Subsections (a) and (f) are substituted for 46 App. U.S.C. 1503(c)(2) and (d) (1st sentence) to improve the organization of the section.

In subsection (b)(1), the words ''person to whom authority is to be delegated'' are substituted for ''person, public or private agency, or nonprofit organization as a recipient of delegated functions under such subsection'' to eliminate unnecessary words.

Subsection (b)(2) is substituted for ''the manner in which such recipient shall carry out such delegated functions, including the records such recipient must keep, and a detailed description of the exact functions such recipient may exercise'' to eliminate unnecessary words.

Subsections (c)–(e) are substituted for 46 App. U.S.C. 1503(d) (last par.) to improve the organization of the section and to eliminate unnecessary words.

§ 80507. Employee protection

(a) PROHIBITION.—A person may not discharge or discriminate against an employee because the employee has reported the existence of an unsafe container or a violation of this chapter or a regulation prescribed under this chapter.

(b) COMPLAINTS.—An employee alleging to have been discharged or discriminated against in violation of subsection (a) may file a complaint with the Secretary of Labor. The complaint must be filed within 60 days after the violation.

(c) ENFORCEMENT.—The Secretary of Labor may investigate the complaint. If the Secretary of Labor finds there has been a violation, the Secretary of Labor may bring a civil action in an appropriate district court of the United States. The court has jurisdiction to restrain violations of subsection (a) and order appropriate relief, including reinstatement of the employee to the employee's former position with back pay.

(d) NOTICE TO COMPLAINANT.—Within 30 days after receiving a complaint under this section, the Secretary of Labor shall notify the complainant of the intended action on the complaint.

(Pub. L. 109–304, § 11, Oct. 6, 2006, 120 Stat. 1697.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
80507	46 App.:1506.	Pub. L. 95–208, § 7, Dec. 13, 1977, 91 Stat. 1479.

In subsection (a), the words ''in any manner'' and ''to the Secretary or his agents'' are omitted as unnecessary. The words ''or a regulation prescribed under this chapter'' are added for consistency.

§ 80508. Amendments to Convention

(a) PROPOSALS BY UNITED STATES.—The Secretary of State, with the concurrence of the Secretary of the department in which the Coast Guard is operating, may propose amendments to the Convention or request a conference for amending the Convention as provided in article IX of the Convention.

(b) PROPOSALS BY OTHER COUNTRIES.—An amendment communicated to the United States under article IX(2) of the Convention may be accepted for the United States by the President, with the advice and consent of the Senate. The President may declare that the United States does not accept an amendment.

(c) AMENDMENTS TO ANNEXES.—

(1) IN GENERAL.—The Secretary of State, with the concurrence of the Secretary of the department in which the Coast Guard is operating—

(A) may propose amendments to the annexes to the Convention;

(B) may propose a conference for amending annexes to the Convention; and

(C) shall consider and act on amendments to the annexes to the Convention adopted by the Maritime Safety Committee of the International Maritime Organization and communicated to the United States under article X(2) of the Convention.

(2) ACTION FOLLOWING APPROVAL OR OBJECTION.—If a proposed amendment to an annex is approved by the United States, the amendment shall enter into force as provided in article X of the Convention. If a proposed amendment is objected to, the Secretary of State promptly shall communicate the objection as provided in article X(3) of the Convention.

(d) APPOINTMENT OF ARBITRATOR.—The Secretary of State, with the concurrence of the Secretary of the department in which the Coast Guard is operating, shall appoint an arbitrator when one is required to resolve a dispute within the meaning of article XIII of the Convention.

(Pub. L. 109–304, § 11, Oct. 6, 2006, 120 Stat. 1697.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
80508	46 App.:1507.	Pub. L. 95–208, § 8, Dec. 13, 1977, 91 Stat. 1479.

§ 80509. Civil penalty

(a) IN GENERAL.—An owner, agent, or custodian who has been notified of an order issued under section 80505 of this title and fails to take reasonable and prompt action to prevent or stop a container subject to the order from being moved in violation of the order is liable to the United States Government for a civil penalty of not more than $5,000 for each container moved. Each day the container remains in service while the order is in effect is a separate violation.

(b) ASSESSMENT AND COLLECTION.—

(1) IN GENERAL.—After notice and an opportunity for a hearing, the Secretary of the department in which the Coast Guard is operating shall assess and collect any penalty under this section.

(2) FACTORS TO CONSIDER.—In determining the amount of the penalty, the Secretary shall consider the gravity of the violation, the hazards involved, and the record of the person charged with respect to violations of the Convention, this chapter, or regulations prescribed under this chapter.

(3) REMISSION, MITIGATION, OR COMPROMISE.—The Secretary may remit, mitigate, or compromise a penalty under this section.

(4) ENFORCEMENT.—If a person fails to pay a penalty under this section, the Secretary shall refer the matter to the Attorney General for collection in an appropriate district court of the United States.

(Pub. L. 109–304, § 11, Oct. 6, 2006, 120 Stat. 1698.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
80509	46 App.:1505.	Pub. L. 95–208, § 6, Dec. 13, 1977, 91 Stat. 1478.

In subsection (a), the words ''On and after the date the instrument of ratification is deposited by the United States in accordance with the provisions of article VII of the Convention'' are omitted as obsolete. The words ''liable to the United States Government for a civil penalty'' are substituted for ''subject to a civil penalty'' for consistency in the revised title.

In subsection (b)(2), the words ''In determining the amount of'' are substituted for ''In assessing, remitting, mitigating, or compromising'' to eliminate unnecessary words.