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