(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 subdivision of a State may not establish, continue in effect, or enforce a law or regulation establishing a recreational vessel or associated equipment performance or other safety standard or imposing a requirement for associated equipment (except insofar as the State or political subdivision may, in the absence of the Secretary's disapproval, regulate the carrying or use of marine safety articles to meet uniquely hazardous conditions or circumstances within the State) that is not identical to a regulation prescribed under section 4302 of this title.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 531.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
4306	46:1459 46:1460

Section 4306 establishes the Federal preemption of recreational boating standards and requirements. A State or a political subdivision may not establish, continue, or enforce a law or regulation establishing a performance or other safety standard that is not identical to a Federal standard. The Secretary may grant an exemption to a State when the State requirement is one that is needed to meet uniquely hazardous conditions or circumstances within a State. This is to provide 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 espe-