

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

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
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

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
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

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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This chapter was originally enacted by Pub.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 “re-built”).	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.

(d) AQUACULTURE WAIVER.—

(1) PERMITTING OF NONQUALIFIED VESSELS TO PERFORM CERTAIN AQUACULTURE SUPPORT OPERATIONS.—Notwithstanding section 12113 and any other law, the Secretary of Transportation may issue a waiver allowing a documented vessel with a registry endorsement or a foreign flag vessel to be used in operations that treat aquaculture fish for or protect aquaculture fish from disease, parasitic infestation, or other threats to their health if the Secretary finds, after publishing a notice in the Federal Register, that a suitable vessel of the United States is not available that could perform those services.

(2) PROHIBITION.—Vessels operating under a waiver issued under this subsection may not engage in any coastwise transportation.

(Pub. L. 109-304, §5, Oct. 6, 2006, 120 Stat. 1492; Pub. L. 111-281, title IX, §901(c)(1), Oct. 15, 2010, 124 Stat. 3008.)

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.

AMENDMENTS

2010—Subsec. (d). Pub. L. 111-281 added subsec. (d).

REGULATIONS

Pub. L. 111-281, title IX, §901(c)(2), Oct. 15, 2010, 124 Stat. 3008, provided that: “The Secretary of the department in which the Coast Guard is operating shall, in accordance with section 553 of title 5, United States Code, and after public notice and comment, promulgate regulations necessary and appropriate to implement this subsection [amending this section]. The Secretary may grant interim permits pending the issuance of such regulations upon receipt of applications containing the required information.”

§ 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

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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 65l 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.

(d) **ACTIVITIES INVOLVING MOBILE OFFSHORE DRILLING UNITS.**—

(1) **IN GENERAL.**—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) **COASTWISE TRADE NOT AUTHORIZED.**—Nothing in paragraph (1) authorizes the employment in the coastwise trade of a vessel that does not meet the requirements of section 12112 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; Pub. L. 110–181, div. C, title XXXV, § 3525(a)(1), (b), Jan. 28, 2008, 122 Stat. 600, 601.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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 650 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.

AMENDMENTS

2008—Pub. L. 110–181, § 3525(b), repealed Pub. L. 109–241, § 310. See 2006 Amendment note below.

Subsec. (d). Pub. L. 110–181, § 3525(a)(1), incorporated the substance of the amendment by Pub. L. 109–241, § 310, into this section by adding subsec. (d). See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109–241, § 310, which directed the amendment of former section 12105 of this title from which this section was derived in part, was repealed by Pub. L. 110–181, § 3525(b). See 2008 Amendment note for subsec. (d) and Historical and Revision notes above.

§ 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

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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, dry-docking, 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; and

(ii) the vessel is not placed under foreign registry after October 21, 1998;

(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 Magnuson-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;

(C) the vessel is either a rebuilt vessel or a replacement vessel under section 208(g) of the American Fisheries Act (title II of division C of Public Law 105-277; 112 Stat. 2681-627) and is eligible for a fishery endorsement under this section; or

(D) the vessel is a fish tender vessel that is not engaged in the harvesting or processing of fish.

(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 and Management Act (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.

(h) **REVOCAION 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; Pub. L. 110-181, div. C, title XXXV, §3529(a)(2), Jan. 28, 2008, 122 Stat. 603; Pub. L. 111-281, title VI, §602(a), Oct. 15, 2010, 124 Stat. 2959.)

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.

¹ See References in Text note below.

(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.

Section 208(g) of the American Fisheries Act, referred to in subsec. (d)(2)(C), is section 208(g) of title II of div. C of Pub. L. 105-277, Oct. 21, 1998, 112 Stat. 2681-627, which is set out in a note under section 1851 of Title 16, Conservation.

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (g), is 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.

AMENDMENTS

2010—Subsec. (d)(2)(A)(i). Pub. L. 111-281, §602(a)(1), inserted “and” at the end.

Subsec. (d)(2)(A)(ii). Pub. L. 111-281, §602(a)(2), struck out “and” at the end.

Subsec. (d)(2)(A)(iii). Pub. L. 111-281, §602(a)(3), struck out cl. (iii) which read as follows: “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”.

Subsec. (d)(2)(C), (D). Pub. L. 111-281, §602(a)(4), (5), added subpars. (C) and (D).

2008—Subsec. (g). Pub. L. 110-181 inserted “and” after “Conservation”.

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).	

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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 Secretary 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

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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 liquefied 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 coastwise endorsement as of the date of enactment of this Act, and the Secretary of the Department in which the Coast Guard is operating shall revoke any such certificate if the vessel does not by then meet the requirements of section 12106(e) of title 46, United States Code, as amended by this section.

“(2) REPLACEMENT VESSEL.—For the purposes of this subsection, ‘replacement vessel’ means—

“(A) a temporary replacement vessel for a period of not to exceed 180 days if the vessel described in paragraph (1) is unavailable due to an act of God or a marine casualty; or

“(B) a permanent replacement vessel if—

“(i) the vessel described in paragraph (1) is unavailable for more than 180 days due to an act of God or a marine casualty; or

“(ii) a contract to purchase or construct such replacement vessel is executed not later than December 31, 2004.”

WAIVER OF QUALIFIED PROPRIETARY CARGO REQUIREMENT

Pub. L. 108-293, title VI, § 608(d), Aug. 9, 2004, 118 Stat. 1057, provided that: “The Secretary of Transportation shall waive or reduce the qualified proprietary cargo requirement of section 12106(f)(3)(A)(iii) [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 rea-

sonably 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. Liquefied 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 liquefied natural gas or liquefied 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 re-documented 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

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 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 command 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; Pub. L. 110-181, div. C, title XXXV, §3529(a)(3), Jan. 28, 2008, 122 Stat. 603.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 12131: 46:12110(d).

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-181 substituted "command" for "commmand".

§ 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.

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

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 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. Row 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 ac-

quired 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. 1506.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 12133 shows source codes 46:12103(e) and 46 App.:277, and 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 proceeding 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

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 12134 shows source code 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

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 12135 shows source code 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

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Rows 12136(a)-(c) show various source codes like 46:12111(b), 46:12111(d)(2), etc.

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 sec-

tion 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

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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 qualifica-

tions of vessels to engage in the coastwise trade and the fisheries, the Secretary may require owners, masters, charterers, and mortgagees 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; Pub. L. 110-181, div. C, title XXXV, § 3525(a)(2), (b), Jan. 28, 2008, 122 Stat. 600, 601.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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.

AMENDMENTS

2008—Pub. L. 110-181, § 3525(b), repealed Pub. L. 109-241, § 308. See 2006 Amendment note below.

Subsec. (a). Pub. L. 110-181, § 3525(a)(2), incorporated the substance of the amendment by Pub. L. 109-241, § 308, into this section by substituting “charterers, and mortgagees” for “and charterers”. See 2006 Amendment

note below and section 18(a) of Pub. L. 109-304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109-241, § 308, which directed the amendment of former section 12120 of this title from which subsec. (a) of this section was derived, was repealed by Pub. L. 110-181, § 3525(b). See 2008 Amendment note for subsec. (a) and Historical and Revision notes above.

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

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 12151(a) and 12151(b) refer to 46:12122(a) and 46:12122(b), and 46 App.:14 (last proviso). Row 2: 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.

HISTORICAL AND REVISION NOTES—CONTINUED

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 12151(c) refers to 46 App.:883a (2d, last sentences) and 46:12122(c). Source (Statutes at Large) includes July 14, 1956, ch. 600, §2 (2d, last sentences), 70 Stat. 544; Pub. L. 86-583, §2, July 5, 1960, 74 Stat. 321.

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

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 12152 refers to 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

Table with 2 columns: Revised section, Source section (U.S. Code). Row 1: 12301 refers to 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).

note below and section 18(a) of Pub. L. 109-304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109-241, § 308, which directed the amendment of former section 12120 of this title from which subsec. (a) of this section was derived, was repealed by Pub. L. 110-181, § 3525(b). See 2008 Amendment note for subsec. (a) and Historical and Revision notes above.

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.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
	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

Table with 2 columns: Revised section, Source section (U.S. Code). Row 12302 points to 46:1467.

Section 12302 provides for a standard numbering system for undocumented vessels and for approval of State numbering systems by the Secretary. It also requires that a State, when implementing its numbering system, adopt any relevant terms required by the Secretary. In States without approved numbering systems, the Federal Government issues the numbers. This section also provides for the operation of a vessel in a State other than the one in which it was numbered.

§ 12303. Exemption from numbering requirements

(a) When the Secretary is the authority issuing a number under this chapter, the Secretary may exempt a vessel or class of vessels from the numbering requirements of this chapter under conditions the Secretary may prescribe.

(b) When a State is the issuing authority, it may exempt from the numbering requirements of this chapter a vessel or class of vessels exempted under subsection (a) of this section or otherwise as permitted by the Secretary.

(Pub. L. 98-89, Aug. 26, 1983, 97 Stat. 591.)

HISTORICAL AND REVISION NOTES

Table with 2 columns: Revised section, Source section (U.S. Code). Row 12303 points to 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 pocket-sized, 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

Table with 2 columns: Revised section, Source section (U.S. Code). Row 12304 points to 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

Table with 2 columns: Revised section, Source section (U.S. Code). Row 12305 points to 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

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
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 non-residents 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

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
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 non-residents 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

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
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 Sec-

retary 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

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
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—

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
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 non-residents 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

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
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 non-residents 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

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
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 Sec-

retary 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

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
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 informa-

tion 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 identifica-

tion 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 pur-

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 necessities.
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;
- (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; and
- (7) “Secretary” means the Secretary of the Department of Homeland Security, unless otherwise noted.

(Pub. L. 100-710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4739; Pub. L. 111-281, title IX, § 913(a)(2)-(4), Oct. 15, 2010, 124 Stat. 3017.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
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 necessities” 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.

AMENDMENTS

2010—Par. (7). Pub. L. 111-281 added par. (7).

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 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; Pub. L. 111-281, title IX, § 913(a)(1), Oct. 15, 2010, 124 Stat. 3017.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
31302(1)	46:927 (1st sentence)
31302(2)	46:927 (2d sentence)

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
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.

AMENDMENTS

2010—Pub. L. 111-281 struck out “of Transportation” after “Secretary” in introductory provisions.

§ 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

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
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

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
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 non-discretionary 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

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
31305	46:974

Section 31305 provides for the waiver of lien rights by the mortgagee or a person performing or supplying necessities. 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, 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; Pub. L. 111-281, title IX, §913(a)(1), Oct. 15, 2010, 124 Stat. 3017.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
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

2010—Subsec. (a). Pub. L. 111-281 struck out “of Transportation” after “provided by the Secretary”.

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

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
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

The Secretary of Commerce or Transportation, as a mortgagee under this chapter, 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; Pub. L. 111-281, title IX, §913(b), Oct. 15, 2010, 124 Stat. 3017.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
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

2010—Pub. L. 111-281 substituted “The Secretary of Commerce or Transportation, as a mortgagee under this chapter,” for “When the Secretary of Commerce or Transportation is a mortgagee under this chapter, the Secretary”.

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

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
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 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; Pub. L. 111-281, title IX, §913(a)(1), Oct. 15, 2010, 124 Stat. 3017.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
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

2010—Subsec. (a)(1). Pub. L. 111-281 struck out “of Transportation” after “Secretary” in introductory provisions.

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 state¹ 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

¹ So in original. Probably should be capitalized.

(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 syndicate or eligible to be a preferred mortgagee under subsection (a)(4), subparagraphs (A)–(E) of this section, the Secretary must determine that the issuance, assignment, transfer, or trust arrangement does not result in an impermissible transfer of control of the vessel to a person not eligible to own a vessel with a fishery endorsement under section 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 sec-

tion 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 financing 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 capac-

ity 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

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
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

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
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 satisfactory to the court, the person entitled to the notice has not been found in the United States.

(3) Failure to give notice required by this subsection does not affect the jurisdiction of the court in which the civil action is brought. However, unless notice is not required under paragraph (2) of this subsection, the party required to give notice is liable to the person not notified for damages in the amount of that person's interest in the vessel terminated by the action brought under subsection (b)(1) of this section. A civil action may be brought to recover the amount of the terminated interest. The district courts have original jurisdiction of the action, regardless of the amount in controversy or the citizenship of the parties. If the plaintiff prevails, the court may award costs and attorney fees to the plaintiff.

(e) In a civil action brought under subsection (b)(1) of this section—

(1) the court may appoint a receiver and authorize the receiver to operate the mortgaged vessel and shall retain in rem jurisdiction over the vessel even if the receiver operates the vessel outside the district in which the court is located; and

(2) when directed by the court, a United States marshal may take possession of a mortgaged vessel even if the vessel is in the possession or under the control of a person claiming a possessory common law lien.

(f)(1) Before title to the documented vessel or vessel for which an application for documentation is filed under chapter 121 is transferred by an extrajudicial remedy, the person exercising the remedy shall give notice of the proposed transfer to the Secretary, to the mortgagee of any mortgage on the vessel filed in substantial compliance with section 31321 of this title before notice of the proposed transfer is given to the Secretary, and to any person that recorded an unexpired notice of a claim of an undischarged lien on the vessel under section 31343(a) or (d) of

this title before notice of the proposed transfer is given to the Secretary.

(2) Failure to give notice as required by this subsection shall not affect the transfer of title to a vessel. However, the rights of any holder of a maritime lien or a preferred mortgage on the vessel shall not be affected by a transfer of title by an extrajudicial remedy exercised under this section, regardless of whether notice is required by this subsection or given.

(3) The Secretary shall prescribe regulations establishing the time and manner for providing notice under this subsection.

(Pub. L. 100-710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4745; Pub. L. 101-225, title III, § 303(4), Dec. 12, 1989, 103 Stat. 1923; Pub. L. 104-324, title XI, § 1124(a), (b), Oct. 19, 1996, 110 Stat. 3980; Pub. L. 105-383, title IV, § 401(c)(5)-(7), Nov. 13, 1998, 112 Stat. 3425; Pub. L. 107-295, title II, § 205(b), Nov. 25, 2002, 116 Stat. 2096; Pub. L. 109-304, § 15(30), Oct. 6, 2006, 120 Stat. 1704; Pub. L. 110-181, div. C, title XXXV, § 3529(b)(1)(B), Jan. 28, 2008, 122 Stat. 603.)

HISTORICAL AND REVISION NOTES

Revised section	Source section (U.S. Code)
31325(a)	46:951 (1st sentence)
31325(b)(1)	46:951 (2d sentence)
31325(b)(2)	46:954(a)
31325(b)(3)	New
31325(c)	46:951 (3d sentence)
31325(d)	46:951 (4th to 6th sentences)
31325(e)	46:952 (1st, 2d sentences)

Section 31325 provides for the enforcement of a preferred mortgage lien.

Section 31325(a) makes a "preferred mortgage" a lien on the vessel in the amount of the mortgage indebtedness secured by the vessel outstanding at foreclosure. This subsection makes no substantive change to law.

Section 31325(b) provides that, on default of any term, the mortgagee may enforce the preferred mortgage lien in a civil action *in rem*, or *in personam* in admiralty against the mortgagor, comaker, or guarantor for the amount of the outstanding indebtedness secured by the vessel or any deficiency in paying off that indebtedness. This subsection makes a substantive change to law by allowing a nonadmiralty civil action to be brought against the mortgagor, comaker, or guarantor for the amount of the outstanding indebtedness secured by the vessel or any deficiency in paying off that indebtedness. This change allows an action to be brought even when the vessel is outside U.S. jurisdiction. This section will also allow the action to be brought against the comaker or guarantor of the mortgage.

Section 31325(c) provides for original and exclusive jurisdiction by a district court, to the exclusion of the courts of a State for civil actions brought *in rem*. It also provides for original jurisdiction for civil actions brought *in personam* in admiralty and civil actions brought under subsection (b)(3). This subsection makes a substantive change to law by broadening the jurisdiction to courts in the territories, as defined in section 31301, as well as giving original jurisdiction to the district courts in nonadmiralty civil actions brought to enforce the preferred mortgage lien.

Subsection (d) provides that actual notice of a civil action *in rem* to enforce a maritime lien must be given in a manner directed by the court to the master, individual in charge of the vessel, to any person that recorded a notice of a claim of an undischarged lien, and, for the first time, to the mortgagee of a mortgage filed with the Secretary. This notice is not required if, after a search is made that is satisfactory to the court, the person entitled to notice is not found in the United States. Failure to give notice does not affect the court's jurisdiction. However, the mortgagor is still lia-

ble 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

2008—Subsec. (b)(3)(B). Pub. L. 110-181 amended Pub. L. 109-304, § 15(30). See 2006 Amendment note below.

2006—Subsec. (b)(3)(B). Pub. L. 109-304, § 15(30), as amended by Pub. L. 110-181, substituted "section 56101 or 56102 of this title" for "section 9 or 37 of the Shipping Act, 1916 (46 App. U.S.C. 808, 835)".

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 2008 AMENDMENT

Amendment by Pub. L. 110-181 effective as if included in the enactment of Pub. L. 109-304, see section

3529(b)(2) of Pub. L. 110-181, set out as a note under section 3205 of this title.

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 necessities 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

Table with 2 columns: Revised section, Source section (U.S. Code). Rows include 31326(a), 31326(b)(1), and 31326(b)(2) with their corresponding source sections.

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 necessities 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

Table with 2 columns: Revised section, Source section (U.S. Code). Row includes 31327 with source section 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 of Transportation.

(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; Pub. L. 111-281, title IX, §913(c), Oct. 15, 2010, 124 Stat. 3017.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
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

2010—Subsec. (d). Pub. L. 111-281 substituted "Secretary of Transportation" for "Secretary".

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; or

(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.

(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; or

(C) files with the Secretary a mortgage made not in good faith.

(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; Pub. L. 111-281, title IX, §913(a)(1), (d), Oct. 15, 2010, 124 Stat. 3017.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
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 sec-

tions 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

2010—Subsec. (a)(1)(B). Pub. L. 111-281, §913(d)(1)(A), inserted "or" after semicolon.

Subsec. (a)(1)(C). Pub. L. 111-281, §913(d)(1)(B), substituted "Secretary." for "Secretary; or".

Pub. L. 111-281, §913(a)(1), struck out "of Transportation" after "Secretary".

Subsec. (a)(1)(D). Pub. L. 111-281, §913(d)(1)(C), struck out subpar. (D) which read as follows: "with intent to defraud, does not comply with section 31321(h) of this title."

Subsec. (a)(2)(B) to (D). Pub. L. 111-281, §913(d)(2), inserted "or" at end of subpar. (B), substituted "faith." for "faith; or" at end of subpar. (C), and struck out subpar. (D) which read as follows: "does not comply with section 31321(h) of this title."

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 necessities

(a) The following persons are presumed to have authority to procure necessities 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 necessities 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

Table with 2 columns: Revised section, Source section (U.S. Code). Rows: 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 necessities 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 necessities. This subsection makes no substantive change to law.

AMENDMENTS

1989—Subsec. (a)(3). Pub. L. 101-225 substituted "management" for "management".

§ 31342. Establishing maritime liens

(a) Except as provided in subsection (b) of this section, a person providing necessities 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

Table with 2 columns: Revised section, Source section (U.S. Code). Row: 31342 46:971

Section 31342 provides that any authorized person providing necessities 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 necessities to a vessel on the order of the owner" for "A person providing necessities 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 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 no-

tice 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; Pub. L. 111-281, title IX, §913(a)(1), Oct. 15, 2010, 124 Stat. 3017.)

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

2010—Subsec. (a). Pub. L. 111-281 struck out “of Transportation” after “Secretary” in introductory provisions.

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.

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PART A—OCEAN SHIPPING

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