

tion prescribed under this chapter, the owner, charterer, managing operator, agent, master, and individual in charge are each liable to the United States Government for a civil penalty of not more than \$5,000. The vessel also is liable in rem for the penalty.

(Pub. L. 98-89, Aug. 26, 1983, 97 Stat. 529; Pub. L. 100-540, § 3, Oct. 28, 1988, 102 Stat. 2719.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
4106 .....	46:526o

Section 4106 provides a civil penalty of \$100 for a violation of this chapter or a regulation under this chapter. The vessel also is liable in rem.

AMENDMENTS

1988—Pub. L. 100-540 substituted “not more than \$5,000” for “\$100”.

CHAPTER 43—RECREATIONAL VESSELS

- Sec. 4301. Application.
- 4302. Regulations.
- 4303. Inspection and testing.
- 4304. Importation of nonconforming vessels and equipment.
- 4305. Exemptions.
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- 4311. Penalties and injunctions.
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HISTORICAL AND REVISION NOTES

Chapter 43 contains the laws applicable to recreational vessels, which originated primarily with the enactment of the Federal Boat Safety Act of 1971 (Public Law 92-75, 85 Stat. 213). That Act embraced a number of activities, but the portion restated in this chapter deals with the establishment of national construction and performance standards for recreational vessels and their associated equipment, the necessary flexible regulatory authority for inspection and testing, Federal preemption, certain necessary prohibited acts, enforcement authority, investigation and reporting requirements, procedures for repair and defect notification, and attendant penalties and injunctive relief. These laws are a direct response to the dramatic increase in the number of recreational boats and the Congressional recognition of the maritime safety problems that recreational boating has imposed upon our more than 25 million miles of waterways.

AMENDMENTS

2018—Pub. L. 115-282, title V, § 503(b), Dec. 4, 2018, 132 Stat. 4271, added item 4312.

§ 4301. Application

(a) This chapter applies to a recreational vessel and associated equipment carried in the vessel on waters subject to the jurisdiction of the United States (including the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988) and, for a vessel owned in the United States, on the high seas.

(b) Except when expressly otherwise provided, this chapter does not apply to a foreign vessel temporarily operating on waters subject to the jurisdiction of the United States.

(c) Until there is a final judicial decision that they are navigable waters of the United States, the following waters lying entirely in New Hampshire are declared not to be waters subject to the jurisdiction of the United States within the meaning of this section: Lake Winnisquam, Lake Winnepesaukee, parts of the Merrimack River, and their tributary and connecting waters.

(Pub. L. 98-89, Aug. 26, 1983, 97 Stat. 529; Pub. L. 105-383, title III, § 301(b)(4), Nov. 13, 1998, 112 Stat. 3417.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
4301 .....	46:1453

Section 4301 provides that this chapter is applicable to a recreational vessel that operates on waters subject to the jurisdiction of the United States or that is owned in the United States and while operating on the high seas.

It also provides that a foreign recreational vessel that temporarily uses our waters is not subject to the requirements of this chapter. However, if the vessel remains permanently in the United States, it would be subject to the provisions of this chapter.

Section 4301(c) recognizes the ongoing controversy over the navigability of certain waters of New Hampshire. While a recreational vessel operating on these waters need not meet the requirements of this chapter, it would be prohibited from operating on any other waters subject to the jurisdiction of the United States if it does not comply with these requirements.

REFERENCES IN TEXT

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

AMENDMENTS

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

EFFECTIVE DATE

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

§ 4302. Regulations

(a) The Secretary may prescribe regulations—

(1) establishing minimum safety standards for recreational vessels and associated equipment, and establishing procedures and tests required to measure conformance with those standards, with each standard—

(A) meeting the need for recreational vessel safety; and

(B) being stated, insofar as practicable, in terms of performance;

(2) requiring the installation, carrying, or use of associated equipment (including fuel systems, ventilation systems, electrical systems, sound-producing devices, firefighting equipment, lifesaving devices, signaling devices, ground tackle, life- and grab-rails, and navigational equipment) on recreational vessels and classes of recreational vessels subject to this chapter, and prohibiting the installation, carrying, or use of associated equipment

that does not conform with safety standards established under this section; and

(3) requiring or permitting the display of seals, labels, plates, insignia, or other devices for certifying or evidencing compliance with safety regulations and standards of the United States Government for recreational vessels and associated equipment.

(b) Each regulation prescribed under this section shall specify an effective date that is not earlier than 180 days from the date the regulation was published, unless the Secretary finds that there exists a recreational vessel safety hazard so critical as to require an earlier effective date. However, this period may not be more than 24 months for cases involving, in the discretion of the Secretary, major product design, retooling, or major changes in the manufacturing process.

(c) In prescribing regulations under this section, the Secretary shall, among other things—

(1) consider the need for and the extent to which the regulations will contribute to recreational vessel safety;

(2) consider relevant available recreational vessel safety standards, statistics, and data, including public and private research, development, testing, and evaluation;

(3) not compel substantial alteration of a recreational vessel or item of associated equipment that is in existence, or the construction or manufacture of which is begun before the effective date of the regulation, but subject to that limitation may require compliance or performance, to avoid a substantial risk of personal injury to the public, that the Secretary considers appropriate in relation to the degree of hazard that the compliance will correct; and

(4) consult with the National Boating Safety Advisory Committee established under section 15105 of this title about the considerations referred to in clauses (1)–(3) of this subsection.

(d) Section 8903 of this title does not apply to a vessel being operated for bona fide dealer demonstrations provided without fee to business invitees. However, if on the basis of substantial evidence, the Secretary decides under this section that requiring vessels so operated to be under the control of licensed individuals is necessary for boating safety, then the Secretary may prescribe regulations requiring the licensing of individuals controlling these vessels in the same manner as provided in chapter 89 of this title for individuals in control of vessels carrying passengers for hire.

(e)(1) Under this section, a model year for recreational vessels and associated equipment shall, except as provided in paragraph (2)—

(A) begin on June 1 of a year and end on July 31 of the following year; and

(B) be designated by the year in which it ends.

(2) Upon the request of a recreational vessel manufacturer to which this chapter applies, the Secretary may alter a model year for a model of recreational vessel of the manufacturer and associated equipment, by no more than 6 months from the model year described in paragraph (1). (Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 530; Pub. L. 114–120, title III, §303(a), Feb. 8, 2016, 130 Stat. 53;

Pub. L. 115–282, title VI, §601(c)(4)(B)(i), Dec. 4, 2018, 132 Stat. 4290.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
4302 .....	46:1454
	46:1455
	46:1456
	46:1464(g)
	46:1488

Section 4302 authorizes the Secretary to prescribe regulations to carry out the provisions of this chapter. In lieu of establishing specific statutory safety requirements, subsection (a) provides flexible regulatory authority to establish uniform standards for the design, construction, materials, and performance of the boats themselves and all associated equipment. It also provides for the display of seals and other devices for certifying or evidencing compliance with applicable safety regulations or standards.

Section 4302(b) requires a regulation prescribed under this section to have an effective date that is not earlier than 180 days from publication. However, in those instances where a safety hazard may be critical an earlier effective date is authorized.

Section 4302(c) requires the Secretary to consider certain objectives in developing regulatory controls and regulations or standards and that there must be an effective consultation process.

Section 4302(d) exempts dealer demonstration boats from the requirement of having to be named by a licensed individual when demonstrating boats to prospective purchasers or other business invitees when no fees are charged. The Secretary may require that boats so used be under control of a licensed individual.

AMENDMENTS

2018—Subsec. (c)(4). Pub. L. 115–282 substituted “Committee established under section 15105 of this title” for “Council established under section 13110 of this title”.

2016—Subsec. (e). Pub. L. 114–120 added subsec. (e).

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–120, title III, §303(b), Feb. 8, 2016, 130 Stat. 53, provided that: “This section [amending this section] shall only apply with respect to recreational vessels and associated equipment constructed or manufactured, respectively, on or after the date of enactment of this Act [Feb. 8, 2016].”

EQUIPMENT REQUIREMENTS; EXEMPTION FROM THROWABLE PERSONAL FLOTATION DEVICES REQUIREMENT

Pub. L. 115–282, title VIII, §827, Dec. 4, 2018, 132 Stat. 4314, provided that: “Not later than one year after the date of enactment of this Act [Dec. 4, 2018], the Secretary of the department in which the Coast Guard is operating shall—

“(1) prescribe regulations in part 160 of title 46, Code of Federal Regulations, that treat a marine throw bag, as that term is commonly used in the commercial whitewater rafting industry, as a type of lifesaving equipment; and

“(2) revise section 175.17 of title 33, Code of Federal Regulations, to exempt rafts that are 16 feet or more overall in length from the requirement to carry an additional throwable personal flotation device when such a marine throw bag is onboard and accessible.”

VISUAL DISTRESS SIGNALS AND ALTERNATIVE USE

Pub. L. 115–282, title VIII, §828, Dec. 4, 2018, 132 Stat. 4314, provided that:

“(a) IN GENERAL.—The Secretary of the department in which the Coast Guard is operating shall develop a performance standard for the alternative use and possession of visual distress alerting and locating signals as mandated by carriage requirements for recreational boats in subpart C of part 175 of title 33, Code of Federal Regulations.

“(b) REGULATIONS.—Not later than 180 days after the performance standard for alternative use and possession of visual distress alerting and locating signals is finalized, the Secretary shall revise part 175 of title 33, Code of Federal Regulations, to allow for carriage of such alternative signal devices.”

LARGE RECREATIONAL VESSEL REGULATIONS

Pub. L. 115-232, div. C, title XXXV, §3529(a), Aug. 13, 2018, 132 Stat. 2318, provided that:

“(a) IN GENERAL.—

“(1) ISSUANCE.—The Secretary of the department in which the Coast Guard is operating shall issue large recreational vessel regulations applicable to any recreational vessel (as defined in section 2101 of title 46, United States Code) over 300 gross tons as measured under section 14502 of such title, or an alternate tonnage measured under section 14302 of such title as prescribed by the Secretary under section 14104 of such title, that does not carry any cargo or passengers for hire.

“(2) SCOPE AND CONTENT OF REGULATIONS.—The regulations issued under this subsection—

“(A) subject to subparagraph (B), shall be comparable to the code set forth in Merchant Shipping Notice 1851(M) (commonly referred to as the ‘Large Commercial Yacht Code (LY3)’), as published by the Maritime and Coastguard Agency of the United Kingdom on August 20, 2013, or an equivalent code, regulation, or standard that is acceptable to the Secretary; and

“(B) shall require that, as part of the review of an application for documentation of a vessel that is subject to the regulations, the owner shall disclose to the Coast Guard—

“(i) the identification and place of residence of such owner; and

“(ii) if the owner is an entity described in paragraph (2), (3), or (4) of section 12103(b) of title 46, United States Code, the beneficial owners of such entity.

“(3) DEADLINE.—The Secretary shall issue regulations required by paragraph (1) by not later than one year after the date of the enactment of this Act [Aug. 13, 2018].

“(4) INTERIM COMPLIANCE.—Until the effective date of regulations issued under paragraph (1), a recreational vessel described in paragraph (1) shall not be subject to inspection under section 3301(7) of title 46, United States Code, if the Secretary determines, as part of the review of the application for documentation submitted for the vessel by the owner of the vessel and other materials as considered necessary by the Secretary, that the vessel complies with the code set forth in Merchant Shipping Notice 1851(M) (commonly referred to as the ‘Large Commercial Yacht Code (LY3)’), as published by the Maritime and Coastguard Agency of the United Kingdom on August 20, 2013, or an equivalent code, regulation, or standard that is acceptable to the Secretary.

“(5) DEFINITIONS.—

“(A) BENEFICIAL OWNER.—In this subsection the term ‘beneficial owner’—

“(i) means, with respect to an entity, each natural person who, directly or indirectly—

“(I) exercises control over the entity through ownership interests, voting rights, agreements, or otherwise; or

“(II) has an interest in or receives substantial economic benefits from the assets of the entity; and

“(ii) does not include, with respect to an entity—

“(I) a minor child;

“(II) a person acting as a nominee, intermediary, custodian, or agent on behalf of another person;

“(III) a person acting solely as an employee of the entity and whose control over or economic benefits from the entity derives solely from the employment status of the person;

“(IV) a person whose only interest in the entity is through a right of inheritance, unless the person otherwise meets the definition of ‘beneficial owner’ under this subparagraph; and

“(V) a creditor of the entity, unless the creditor otherwise meets the requirements of ‘beneficial owner’ under this subparagraph.

“(B) OWNER.—In this subsection, other than in subparagraph (A) of this paragraph, the term ‘owner’ means the person who is the eligible owner of the vessel for purposes of section 12103(b) of title 46, United States Code.”

AVAILABILITY AND USE OF EPIRBs FOR RECREATIONAL VESSELS

Pub. L. 105-383, title III, §309, Nov. 13, 1998, 112 Stat. 3422, provided that: “The Secretary of Transportation, through the Coast Guard and in consultation with the National Transportation Safety Board and recreational boating organizations, shall, within 24 months of the date of the enactment of this Act [Nov. 13, 1998], assess and report to Congress on the use of emergency position indicating beacons (EPIRBs) and similar devices by operators of recreational vessels on the Intracoastal Waterway and operators of recreational vessels beyond the Boundary Line. The assessment shall at a minimum—

“(1) evaluate the current availability and use of EPIRBs and similar devices by the operators of recreational vessels and the actual and potential contribution of such devices to recreational boating safety; and

“(2) provide recommendations on policies and programs to encourage the availability and use of EPIRBs [sic] and similar devices by the operators of recreational vessels.”

§ 4303. Inspection and testing

(a) Subject to regulations, supervision, and reviews that the Secretary may prescribe, the Secretary may delegate to a person, private or public agency, or organization, or to an officer or employee under the supervision of that person or agency, any work, business, or function related to the testing, inspection, and examination necessary for compliance enforcement and for the development of data to enable the Secretary to prescribe regulations under section 4302 of this title.

(b) The Secretary may—

(1) conduct research, testing, and development necessary to carry out this chapter, including the procurement by negotiation or otherwise of experimental and other recreational vessels or associated equipment for research and testing purposes; and

(2) subsequently sell those vessels.

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

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
4303 .....	46:1457

Section 4303 authorizes the Secretary to delegate to certain persons or agencies or organizations any work, business, or function related to the testing, inspection, and examination necessary for compliance enforcement. The Secretary may also conduct research, testing, and development necessary to carry out this chapter, including procurement of vessels and equipment and their subsequent sale. The Committee wishes to make clear that the Secretary may sell anything that was purchased to test.