

director, agent, or executive thereof, directly or indirectly—

(1) owns, charters, or operates a vessel engaged in the domestic intercoastal or coastwise service; or

(2) owns a pecuniary interest in a person that owns, charters, or operates a vessel in the domestic intercoastal or coastwise service.

(b) **WAIVER.**—A person may apply to the Secretary of Transportation for a waiver of subsection (a). Before deciding on the waiver, the Secretary shall give the applicant and other interested persons an opportunity for a hearing. The Secretary may not grant the waiver if the Secretary finds it would—

(1) result in unfair competition to a person operating exclusively in the domestic intercoastal or coastwise service; or

(2) be prejudicial to the objectives and policy of this subtitle.

(c) **CONTINUOUS OPERATION SINCE 1935.**—The Secretary shall grant an application under subsection (b) without requiring further proof that the public interest and convenience will be served and without further proceedings as to the competition in the route or trade, if the contractor or other person, or a predecessor in interest, was in bona-fide operation as a common carrier by water in the domestic intercoastal or coastwise trade in 1935 over the route or in the trade for which the application is made and has so operated since that time or, if engaged in furnishing seasonal service only, was in bona-fide operation in 1935 during the season ordinarily covered by its operation, except in either event as to interruptions of service over which the applicant or its predecessor in interest had no control.

(d) **DIVERSION INTO INTERCOASTAL OR COASTWISE OPERATIONS.**—If an application under subsection (b) is approved, a person referred to in this section may not divert, directly or indirectly, money, property, or any other thing of value, used in a foreign-trade operation for which a subsidy is paid by the United States Government, into intercoastal or coastwise operations.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1670.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
58101 .....	46 App.:1223(a).	June 29, 1936, ch. 858, title VIII, §805(a), 49 Stat. 2012; Pub. L. 97-31, §12(122), Aug. 6, 1981, 95 Stat. 164; Pub. L. 104-239, §4(b)(1), Oct. 8, 1996, 110 Stat. 3131.

In this chapter, references to the “operating-differential subsidy program” are substituted for references to “part A of subchapter VI of this chapter”, meaning 46 App. U.S.C. 1171-1185a, because part A of subchapter VI contains the operating-differential subsidy program and under 46 App. U.S.C. 1185a that program is being phased out. Consequently, part A is being omitted from the revised title and will instead appear as a note under section 53101, except for 46 App. U.S.C. 1177 and 1177-1 which are restated in chapter 535. References to “chapter 575 of this title” are substituted for references to “subchapter VII of this chapter”, meaning 46 App. U.S.C. 1191-1205, because those sections are restated in chapter 575.

In subsection (b), the words “A person may apply to the Secretary of Transportation for a waiver of subsection (a). Before deciding on the waiver, the Secretary shall give the applicant and other interested persons an opportunity for a hearing.” are substituted for “without the written permission of the Secretary of Transportation. Every person, firm, or corporation having any interest in such application shall be permitted to intervene and the Secretary of Transportation shall give a hearing to the applicant and the intervenors.” for clarity.

In subsection (c), the words “domestic intercoastal or coastwise trade” are substituted for “domestic, intercoastal, or coastwise trade” for consistency in the section.

In subsection (d), the words “and whosoever shall violate this provision shall be guilty of a misdemeanor” are omitted because section 3559 of title 18 provides for the classification of offenses. See the revision notes for section 58109 of the revised title.

**§ 58102. Default on payment or maintenance of reserves**

The Secretary of Transportation may supervise the number and compensation of all officers and employees of a contractor under the operating-differential subsidy program or a charterer under chapter 575 of this title, receiving an operating-differential subsidy, if the contractor or charterer—

(1) is in default on a mortgage, note, purchase contract, or other obligation to the Secretary; or

(2) has not maintained, in a manner satisfactory to the Secretary, all of the reserves provided for in this subtitle.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1671.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
58102 .....	46 App.:1223(b).	June 29, 1936, ch. 858, title VIII, §805(b), 49 Stat. 2012; Pub. L. 97-31, §12(122), Aug. 6, 1981, 95 Stat. 164; Pub. L. 104-239, §4(b)(2), Oct. 8, 1996, 110 Stat. 3131.

The words “contractor under the operating-differential subsidy program or a charterer under chapter 575 of this title, receiving an operating-differential subsidy” are substituted for “contractor under part A of subchapter VI of this chapter or subchapter VII of this chapter receiving an operating-differential subsidy” for the reasons explained under section 58101.

**§ 58103. Employing another person as managing or operating agent**

(a) **PROHIBITION.**—Except with the written consent of the Secretary of Transportation, a contractor holding a contract under the operating-differential subsidy program or under chapter 575 of this title may not—

(1) employ another person as the managing or operating agent of the operator; or

(2) charter a vessel, on which an operating-differential subsidy is to be paid, for operation by another person.

(b) **APPLICABILITY OF PROVISIONS TO CHARTERER.**—If a charter prohibited by this section is made, the person operating the chartered vessel is subject to all the provisions of this subtitle and the operating-differential subsidy program, including limitations of profits and salaries.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1671.)

## HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
58103 .....	46 App.:1223(d).	June 29, 1936, ch. 858, title VIII, §805(d), 49 Stat. 2013; June 23, 1938, ch. 600, §§36, 37, 52 Stat. 963; Pub. L. 91-603, §4(e), Dec. 31, 1970, 84 Stat. 1675; Pub. L. 97-31, §12(122), Aug. 6, 1981, 95 Stat. 164; Pub. L. 104-239, §4(b)(2), Oct. 8, 1996, 110 Stat. 3131.

In subsection (a), the words “contractor holding a contract under the operating-differential subsidy program or under chapter 575 of this title” are substituted for “contractor holding a contract authorized under part A of subchapter VI or VII of this chapter” for the reasons explained under section 58101.

#### § 58104. Willful violation constitutes breach of contract or charter

A willful violation of any provision of sections 58101-58103 of this title constitutes a breach of the contract or charter. On determining that a violation has occurred, the Secretary of Transportation may declare the contract or charter rescinded.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1672.)

## HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
58104 .....	46 App.:1223(f).	June 29, 1936, ch. 858, title VIII, §805(f), 49 Stat. 2014; Pub. L. 97-31, §12(122), Aug. 6, 1981, 95 Stat. 164.

The words “in force under this chapter” and “forthwith” are omitted as unnecessary. The words “and any person willfully violating the provisions of this section shall be guilty of a misdemeanor” are omitted because section 3559 of title 18 provides for the classification of offenses. See the revision notes for section 58109 of the revised title.

#### § 58105. Preferences for cargo in which charterer has interest

A contractor receiving an operating-differential subsidy, or a charterer under chapter 575 of this title, may not unjustly discriminate in any manner so as to give preference, directly or indirectly, to cargo in which the contractor or charterer has a direct or indirect ownership, purchase, or vending interest.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1672.)

## HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
58105 .....	46 App.:1226.	June 29, 1936, ch. 858, title VIII, §808, 49 Stat. 2015.

The words “and whosoever shall violate this provision shall be guilty of a misdemeanor” are omitted because section 3559 of title 18 provides for the classification of offenses. See the revision notes for section 58109 of the revised title.

#### § 58106. Concerted discriminatory activities

(a) PROHIBITION.—A contractor receiving an operating-differential subsidy, or a charterer

under chapter 575 of this title, may not continue as a party to or conform to an agreement with another carrier by water, or engage in a practice in concert with another carrier by water, that is unjustly discriminatory or unfair to any other citizen of the United States operating a common carrier by water employing only vessels documented under the laws of the United States on an established trade route from and to a United States port.

(b) GOVERNMENT PAYMENT PROHIBITED.—No payment or subsidy of any kind may be paid, directly or indirectly, out of funds of the United States Government to a contractor or charterer that has violated subsection (a).

(c) CIVIL ACTION.—A person whose business or property is injured by a violation of subsection (a) may bring a civil action in the district court of the United States for the district in which the defendant resides, is found, or has an agent. If the person prevails, the person shall be awarded—

- (1) 3 times the damages; and
- (2) costs, including reasonable attorney fees.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1672.)

## HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
58106 .....	46 App.:1227.	June 29, 1936, ch. 858, title VIII, §810, 49 Stat. 2015.

In subsection (b), the words “United States Government” are substituted for “United States or any agency of the United States” for consistency and to eliminate unnecessary words.

In subsection (c), the words “bring a civil action” are substituted for “sue” for consistency in the revised title. The words “without respect to the amount in controversy” are omitted because section 1331 of title 28 no longer contains a requirement of any particular amount in controversy for jurisdiction of civil actions arising under the laws of the United States. The words “If the person prevails” are added for clarity.

#### § 58107. Discrimination at ports by water common carriers

(a) PROHIBITION.—A common carrier by water may not, directly or indirectly, through an agreement, conference, association, understanding, or otherwise, prevent or attempt to prevent any other common carrier by water from serving any port described in subsection (b) at the same rates the first carrier charges at the nearest port already regularly served by it.

(b) PORTS.—A port referred to in subsection (a) is one that is—

- (1) designed for the accommodation of ocean-going vessels;
- (2) located on an improvement project authorized by law or by a Federal agency; and
- (3) located within the continental limits of the United States.

(c) OTHER AUTHORITY NOT LIMITED.—This section does not limit the authority otherwise vested in the Secretary of Transportation and the Federal Maritime Commission.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1672.)