

notices, bulletins, and other communications to dealers and distributors of that manufacturer, and to purchasers of recreational vessels or associated equipment of that manufacturer, about a defect related to safety in the recreational vessels or associated equipment, and any failure to comply with the regulation or order applicable to the recreational vessels or associated equipment. The Secretary may publish or otherwise disclose to the public information in the notices or other information the Secretary has that the Secretary considers will assist in carrying out this chapter. However, the Secretary may disclose any information that contains or relates to a trade secret only if the Secretary decides that the information is necessary to carry out this chapter.

(f) If, through testing, inspection, investigation, or examination of reports, the Secretary decides that a recreational vessel or associated equipment to which this chapter applies contains a defect related to safety or fails to comply with an applicable regulation prescribed under this chapter and notification under this chapter is appropriate, the Secretary shall notify the recreational vessel manufacturer of the defect or failure. The notice shall contain the findings of the Secretary and shall include a synopsis of the information on which they are based. The manufacturer may then provide the notification required by this chapter to the persons designated in this chapter or dispute the Secretary's decision. If disputed, the Secretary shall provide the manufacturer with an opportunity to present views and establish that there is no such defect or failure. When the Secretary considers it to be in the public interest, the Secretary may publish notice of the proceeding in the Federal Register and provide interested persons, including the National Boating Safety Advisory Council, with an opportunity to comment. If, after presentation by the manufacturer, the Secretary decides that the recreational vessel or associated equipment contains a defect related to safety or fails to comply with an applicable regulation, the Secretary may direct the manufacturer to provide the notifications specified in this chapter.

(g) The Secretary may prescribe regulations to carry out this section, including the establishment of procedures that require dealers and distributors to assist manufacturers in obtaining information required by this section. A regulation prescribed under this subsection does not relieve a manufacturer of any obligation imposed by this section.

(Pub. L. 98-89, Aug. 26, 1983, 97 Stat. 532; Pub. L. 107-295, title IV, § 433, Nov. 25, 2002, 116 Stat. 2129.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
4310	46:1464

Section 4310 imposes certain requirements on a recreational vessel and associated equipment manufacturer to provide notification of a defect or the failure of compliance after a manufacturer discovers the defect or failure. This section spells out the procedure for notification and who shall be notified. It assures the public of notification while protecting the manufacturer

from the potential of damaging and inaccurate disclosures.

AMENDMENTS

2002—Subsec. (c)(1)(A) to (C). Pub. L. 107-295, § 433(2), inserted “by first class mail or” before “by certified mail”.

Subsec. (c)(2)(A), (B). Pub. L. 107-295, § 433(1), substituted “10” for “5”.

§ 4311. Penalties and injunctions

(a) A person willfully operating a recreational vessel in violation of 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)(1) A person violating section 4307(a) of this title is liable to the United States Government for a civil penalty of not more than \$5,000, except that the maximum civil penalty may be not more than \$250,000 for a related series of violations.

(2) If the Secretary decides under section 4310(f) that a recreational vessel or associated equipment contains a defect related to safety or fails to comply with an applicable regulation and directs the manufacturer to provide the notifications specified in this chapter, any person, including a director, officer or executive employee of a corporation, who knowingly and willfully fails to comply with that order, may be fined not more than \$10,000, imprisoned for not more than one year, or both.

(3) When a corporation violates section 4307(a), or fails to comply with the Secretary's decision under section 4310(f), any director, officer, or executive employee of the corporation who knowingly and willfully ordered, or knowingly and willfully authorized, a violation is individually liable to the Government for a penalty under paragraphs (1) or (2) in addition to the corporation. However, the director, officer, or executive employee is not liable individually under this subsection if the director, officer, or executive employee can demonstrate by a preponderance of the evidence that—

(A) the order or authorization was issued on the basis of a decision, in exercising reasonable and prudent judgment, that the defect or the nonconformity with standards and regulations constituting the violation would not cause or constitute a substantial risk of personal injury to the public; and

(B) at the time of the order or authorization, the director, officer, or executive employee advised the Secretary in writing of acting under this subparagraph and subparagraph (A).

(c) A person violating any other provision of this chapter or other regulation prescribed under this chapter is liable to the 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.

(d) When a civil penalty of not more than \$200 has been assessed under this chapter, the Secretary 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.

(e) The district courts of the United States have jurisdiction to restrain a violation of this chapter, or to restrain the sale, offer for sale, introduction or delivery for introduction into interstate commerce, or importation into the United States, of a recreational vessel or associated equipment that the court decides does not conform to safety standards of the Government. A civil action under this subsection shall be brought by filing a petition by the Attorney General for the Government. When practicable, the Secretary shall give notice to a person against whom an action for injunctive relief is contemplated and provide the person with an opportunity to present views and, except for a knowing and willful violation, shall provide the person with a reasonable opportunity to achieve compliance. The failure to give notice and provide the opportunity does not preclude the granting of appropriate relief by the district court.

(f) A person is not subject to a penalty under this chapter if the person—

(1) establishes that the person did not have reason to know, in exercising reasonable care, that a recreational vessel or associated equipment does not conform with the applicable safety standards of the Government or that the person was not advised by the Secretary or the manufacturer of that vessel, equipment or component that the vessel, equipment or component contains a defect which creates a substantial risk of personal injury to the public; or

(2) holds a certificate issued by the manufacturer of that recreational vessel or associated equipment to the effect that the recreational vessel or associated equipment conforms to all applicable recreational vessel safety standards of the Government, unless the person knows or reasonably should have known that the recreational vessel or associated equipment does not so conform.

(g) Compliance with this chapter or standards, regulations, or orders prescribed under this chapter does not relieve a person from liability at common law or under State law.

(Pub. L. 98-89, Aug. 26, 1983, 97 Stat. 534; Pub. L. 98-557, §8(b), (c), Oct. 30, 1984, 98 Stat. 2862; Pub. L. 101-650, title III, §321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 108-293, title IV, §406, Aug. 9, 2004, 118 Stat. 1043; Pub. L. 109-241, title IX, §901(e), July 11, 2006, 120 Stat. 564.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
4311(a)	46:1483
4311(b)	46:1484(a)
4311(c)	46:1484(b)
4311(d)	46:1484(d)
4311(e)	46:1485
4311(f)	46:1461(b)
4311(g)	46:1489

Section 4311 provides penalties for violating any of the provisions of this chapter or a regulation prescribed under this chapter. For a willful violation the penalty is a criminal fine; all other penalties are civil in nature.

A person violating any of the prohibited acts specified in section 4307(a)(1) is subject to a maximum civil penalty that can go as high as a \$100,000 for a related series of violations. However, the section provides for

no liability for good faith reliance on certifications of compliance by others within the chain of responsibility and for defects that are not within an individual's responsibility or control.

This section also contains an alternate procedure for the collection of a civil penalty of not more than \$200 through a U.S. magistrate in lieu of the civil penalty procedures of the Coast Guard. It also directs the district courts of the United States to restrain the sale, offer for sale, introduction or delivery for introduction into interstate commerce, or importation of a recreational vessel or associated equipment that does not conform to applicable safety standards. Finally, compliance with this chapter or standards, regulations, or orders does not relieve a person from liability at common law or under State law.

AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109-241 inserted a space after “4307(a)”.

2004—Subsec. (b). Pub. L. 108-293 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “A person violating section 4307(a)(1) of this title is liable to the United States Government for a civil penalty of not more than \$2,000, except that the maximum civil penalty may be not more than \$100,000 for a related series of violations. When a corporation violates section 4307(a)(1), any director, officer, or executive employee of the corporation who knowingly and willfully ordered, or knowingly and willfully authorized, a violation is individually liable to the Government for the penalty, in addition to the corporation. However, the director, officer, or executive employee is not liable individually under this subsection if the director, officer, or executive employee can demonstrate by a preponderance of the evidence that—

“(1) the order or authorization was issued on the basis of a decision, in exercising reasonable and prudent judgment, that the defect or the nonconformity with standards and regulations constituting the violation would not cause or constitute a substantial risk of personal injury to the public; and

“(2) at the time of the order or authorization, the director, officer, or executive employee advised the Secretary in writing of acting under this clause and clause (1) of this subsection.”

1984—Subsec. (b)(1). Pub. L. 98-557, §8(b), inserted “defect or the” before “nonconformity”.

Subsec. (f)(1). Pub. L. 98-557, §8(c), inserted provisions relating to advice by the Secretary or manufacturer of the vessel, equipment or component respecting defects creating substantial risk of personal injury to the public.

CHANGE OF NAME

“United States magistrate judge” substituted for “United States magistrate” in subsec. (d) 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 45—UNINSPECTED COMMERCIAL FISHING INDUSTRY VESSELS

Sec.	
4501.	Application.
4502.	Safety standards.
4503.	Fishing, fish tender, and fish processing vessel certification.
4504.	Prohibited acts.
4505.	Termination of unsafe operations.
4506.	Exemptions.
4507.	Penalties.
4508.	Commercial Fishing Safety Advisory Committee.

AMENDMENTS

2010—Pub. L. 111-281, title VI, §604(c)(4), (e)(2), Oct. 15, 2010, 124 Stat. 2965, 2966, substituted “Fishing, fish ten-