

that is under the jurisdiction of the Pacific Fishery Management Council and managed under a fishery management plan issued under that Act. Any fishing vessel operated in fisheries under the jurisdiction of the North Pacific Fishery Management Council and managed under a fishery management plan issued under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), or in the Pacific whiting fishery under the jurisdiction of the Pacific Fishery Management Council and managed under a fishery management plan issued under that Act, and that is replaced by a vessel that is constructed or rebuilt with a loan or loan guarantee provided by the Federal Government may not be used to harvest fish in any fishery under the jurisdiction of any regional fishery management council, other than a fishery under the jurisdiction of the North Pacific Fishery Management Council or the Pacific Fishery Management Council."

[Pub. L. 107-206, title I, §1103, Aug. 2, 2002, 116 Stat. 884, which directed the amendment of title II of division C of Public Law 105-277 by substituting "of more than 750 gross registered tons (as measured under chapter 145 of title 46) or 1,900 gross registered tons as measured under chapter 143 of that title" for "of more than 750 gross registered tons", was executed to section 302(b)(2) of Pub. L. 104-297, set out above, as amended by section 212 of Pub. L. 105-277, to reflect the probable intent of Congress.]

§ 53707. Findings related to obligors and operators

(a) RESPONSIBLE OBLIGOR.—The Secretary or Administrator may not guarantee or make a commitment to guarantee an obligation under this chapter unless the Secretary or Administrator finds that the obligor is responsible and has the ability, experience, financial resources, and other qualifications necessary for the adequate operation and maintenance of each vessel that will serve as security for the guarantee.

(b) OPERATORS OF LINER VESSELS.—The Administrator may not guarantee or make a commitment to guarantee a loan for the construction, reconstruction, or reconditioning of a liner vessel under this chapter unless the Chairman of the Federal Maritime Commission certifies that the operator of the vessel has not been found by the Commission to have committed, within the previous 5 years—

(1) a violation of part A of subtitle IV of this title that involves unjust or unfair discriminatory treatment or undue or unreasonable prejudice or disadvantage with respect to a United States shipper, ocean transportation intermediary, ocean common carrier, or port; or

(2) a violation of part B of subtitle IV of this title.

(c) OPERATORS OF FISHING VESSELS.—The Secretary may not guarantee or make a commitment to guarantee a loan for the construction, reconstruction, or reconditioning of a fishing vessel under this chapter if the operator of the vessel has been—

(1) held liable, or the vessel has been held liable in rem, for a civil penalty under section 308 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858) and the operator has not paid the penalty;

(2) found guilty of an offense under section 309 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1859) and not paid the assessed fine or served the assessed sentence;

(3) held liable for a civil or criminal penalty under section 105 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1375) and not paid the assessed fine or served the assessed sentence; or

(4) held liable for a civil penalty by the Coast Guard under this title or title 33 and not paid the assessed fine.

(d) WAIVERS CONCERNING FINANCIAL CONDITION.—The Secretary or Administrator shall prescribe regulations concerning circumstances under which waivers of, or exceptions to, otherwise applicable regulatory requirements concerning financial condition can be made. The regulations shall require that—

(1) the economic soundness requirements in section 53708(a) of this title are met after the waiver of the financial condition requirement; and

(2) if the Secretary or Administrator considers necessary, the waiver shall provide for the imposition of other requirements on the obligor designed to compensate for any significant increase in risk associated with the obligor's failure to meet regulatory requirements applicable to financial condition.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1607; Pub. L. 109-163, div. C, title XXXV, §3507(a)(1)(D), (b)(3)(B), (C), (c)(1), Jan. 6, 2006, 119 Stat. 3555, 3556; Pub. L. 110-181, div. C, title XXXV, §3522(a)(3), (b), Jan. 28, 2008, 122 Stat. 597, 598.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|---------------------|---|
| 53707(a) | 46 App.:1274(b)(1). | June 29, 1936, ch. 858, title XI, §1104A(b)(1) [§1104A formerly §1104], as added June 23, 1938, ch. 600, §46, 52 Stat. 970; Aug. 4, 1939, ch. 417, §14, 53 Stat. 1187; Sept. 28, 1950, ch. 1093, §4, 64 Stat. 1078; Aug. 15, 1953, ch. 513, §2, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §4, 68 Stat. 1269; Pub. L. 86-123, §§1(3), 2, July 31, 1959, 73 Stat. 269, 271; Pub. L. 86-127, §1(3), (4), July 31, 1959, 73 Stat. 273; Pub. L. 86-518, §1, June 12, 1960, 74 Stat. 216; Pub. L. 86-685, §§2, 3, Sept. 2, 1960, 74 Stat. 733; Pub. L. 90-341, June 15, 1968, 82 Stat. 180; Pub. L. 91-469, §§31, 32, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92-507, §3, Oct. 19, 1972, 86 Stat. 911; Pub. L. 97-31, §12(136), Aug. 6, 1981, 95 Stat. 166; §1104 renumbered as §1104A, Pub. L. 101-380, title IV, §4115(f)(1), Aug. 18, 1990, 104 Stat. 521. |
| 53707(b) | 46 App.:1273a(a). | Pub. L. 105-258, title IV, §401, Oct. 14, 1998, 112 Stat. 1916. |
| 53707(c) | 46 App.:1273a(b). | |
| 53707(d) | 46 App.:1274(d)(4). | June 29, 1936, ch. 858, title XI, §1104A(d)(4), as added Pub. L. 108-136, title XXXV, §3522, Nov. 24, 2003, 117 Stat. 1800. |

AMENDMENTS

2008—Pub. L. 110-181, §3522(b), repealed Pub. L. 109-163, §3507(a)(1)(D), (b)(3)(B), (C), (c)(1). See 2006 Amendment note below.

Subsec. (a). Pub. L. 110-181, §3522(a)(3)(A), incorporated the substance of the amendment by Pub. L. 109-163, §3507(a)(1)(D), into this section by inserting "or

Administrator” after “Secretary” in two places. 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.

Subsec. (b). Pub. L. 110-181, §3522(a)(3)(B), incorporated the substance of the amendment by Pub. L. 109-163, §3507(c)(1), into this section by substituting “Administrator” for “Secretary of Transportation”. 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.

Subsec. (c). Pub. L. 110-181, §3522(a)(3)(C), struck out “of Commerce” after “The Secretary” in introductory provisions.

Subsec. (d). Pub. L. 110-181, §3522(a)(3)(A), (D), incorporated the substance of the amendment by Pub. L. 109-163, §3507(b)(3)(B), (C), into this section by inserting “or Administrator” after “Secretary” in introductory provisions and in par. (2) by inserting “if the Secretary or Administrator considers necessary,” before “the waiver” and substituting “any significant increase in” for “the increased”. 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. 109-163, §3507(a)(1)(D), (b)(3)(B), (C), (c)(1), which directed the amendment of sections 1273a(a) and 1274(b)(1), (d)(4)(B) of the former Appendix to this title from which this section was derived in part, was repealed by Pub. L. 110-181, §3522(b). See 2008 Amendment notes for subssecs. (a), (b), and (d) and Historical and Revision notes above.

§ 53708. Findings related to economic soundness

(a) BY ADMINISTRATOR.—The Administrator may not guarantee or make a commitment to guarantee an obligation under this chapter unless the Administrator finds that the property or project for which the obligation will be executed will be economically sound. In making that finding, the Administrator shall consider—

- (1) the need in the particular segment of the maritime industry for new or additional capacity, including any impact on existing equipment for which a guarantee under this chapter is in effect;
- (2) the market potential for employment of the vessel over the life of the guarantee;
- (3) projected revenues and expenses associated with employment of the vessel;
- (4) any charter, contract of affreightment, transportation agreement, or similar agreement or undertaking relevant to the employment of the vessel;
- (5) other relevant criteria; and
- (6) for inland waterways, the need for technical improvements, including increased fuel efficiency or improved safety.

(b) BY SECRETARY.—The Secretary may not guarantee or make a commitment to guarantee an obligation under this chapter unless the Secretary finds, at or prior to the time the commitment is made or the guarantee becomes effective, that—

- (1) the property or project for which the obligation will be executed will be economically sound; and
- (2) for a fishing vessel, the purpose of the financing or refinancing is consistent with—
 - (A) the wise use of the fisheries resources and the development, advancement, management, conservation, and protection of the fisheries resources; or
 - (B) the need for technical improvements, including increased fuel efficiency or improved safety.

(c) USED FISHING VESSELS AND FACILITIES.—The Secretary may not guarantee or make a commitment to guarantee an obligation under this chapter for the purchase of a used fishing vessel or used fishery facility unless the vessel or facility will be—

- (1) reconstructed or reconditioned in the United States and will contribute to the development of the United States fishing industry; or
- (2) used—
 - (A) in the harvesting of fish from an underused fishery; or
 - (B) for a purpose described in the definition of “fishery facility” in section 53701 of this title with respect to an underused fishery.

(d) INDEPENDENT ANALYSIS.—The Secretary or Administrator may make a determination that aspects of an application under this chapter require independent analysis to be conducted by third party experts due to risk factors associated with markets, technology, or financial structures. A third party independent analysis conducted under this subsection shall be performed by a private sector expert in assessing such risk factors who is selected by the Secretary or Administrator.

(e) ADDITIONAL EQUITY BECAUSE OF INCREASED RISKS.—Notwithstanding any other provision of this chapter, the Secretary or Administrator may make a determination that an application under this title requires additional equity because of increased risk factors associated with markets, technology, or financial structures.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1608; Pub. L. 109-163, div. C, title XXXV, §3507(a)(1)(D), (2)(D), (b)(3)(A), (4), Jan. 6, 2006, 119 Stat. 3555, 3556; Pub. L. 110-181, div. C, title XXXV, §3522(a)(4), (b), Jan. 28, 2008, 122 Stat. 597, 598.)

HISTORICAL AND REVISION NOTES

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| 53708(a) | 46 App.:1274(d)(1)(A). | June 29, 1936, ch. 858, title XI, §1104A(d)(1). (2) [§1104A formerly §1104], as added June 23, 1938, ch. 600, §46, 52 Stat. 970; Aug. 4, 1939, ch. 417, §14, 53 Stat. 1187; Sept. 28, 1950, ch. 1093, §4, 64 Stat. 1078; Aug. 15, 1953, ch. 513, §2, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §4, 68 Stat. 1269; Pub. L. 86-123, §1(3), 2, July 31, 1959, 73 Stat. 269, 271; Pub. L. 86-127, §1(3), (4), July 31, 1959, 73 Stat. 273; Pub. L. 86-518, §1, June 12, 1960, 74 Stat. 216; Pub. L. 86-685, §§2, 3, Sept. 2, 1960, 74 Stat. 733; Pub. L. 90-341, June 15, 1968, 82 Stat. 180; Pub. L. 91-469, §§31, 32, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92-507, §3, Oct. 19, 1972, 86 Stat. 910; Pub. L. 96-561, title II, §220(3)(C), Dec. 22, 1980, 94 Stat. 3293; Pub. L. 97-31, §12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 97-35, title XVI, §1606(c), Aug. 13, 1981, 95 Stat. 752; Pub. L. 98-595, §1(6), Oct. 30, 1984, 98 Stat. 3130; §1104A, Pub. L. 101-380, title IV, §4115(f)(1), Aug. 18, 1990, 104 Stat. 521. |