

ferential subsidy have a higher percentage citizenship requirement. Subsection (c) requires all of the crew and employees of a cargo vessel be United States citizens. Subsection (d) requires at least 90 percent of the entire complement of a passenger vessel be United States citizens. The phrase “including all licensed individuals” emphasizes that all licensed individuals are required to be United States citizens as required by subsection (a) and that they compose part of the 90 percent requirement under this subsection. Further, under subsection (d), the balance of the complement must be individuals who have a declaration of intention to become a United States citizen or evidence of admission to the United States as a permanent resident and may only be employed in the steward’s department of the passenger vessel.

Except for the master, subsection (e) permits a non-United States citizen to fill a vacancy that occurs for any reason on a United States documented vessel during a foreign voyage until the vessel returns to a United States port where a United States citizen replacement can be obtained. The phrase “for any reason” is used merely for emphasis.

Subsection (f) provides for the penalty for violation of this section.

Subsection (g) requires a deck or engineer officer on a vessel that has been granted an operating differential subsidy or is under the control by the Department of Transportation to be, if eligible, a member of the Naval Reserve. This section does not apply to a vessel of the Coast Guard or the Saint Lawrence Seaway Development Corporation.

Subsection (h) permits the President to suspend the requirements of this section during a proclaimed national emergency or the requirement of subsection (a) for United States vessels documented for foreign trade when the needs of commerce require.

#### REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsecs. (i)(1)(C) and (k)(1)(C), is act June 27, 1952, ch. 477, 66 Stat. 163, which is classified principally to chapter 12 (§ 1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

#### AMENDMENTS

2008—Subsec. (k)(3)(C)(iv). Pub. L. 110-181 inserted “and section 252 of the Immigration and Nationality Act (8 U.S.C. 1282)” after “limitations of such section”.

2006—Pub. L. 109-163, § 515(f)(3)(B), substituted “Navy Reserve” for “Naval Reserve” in section catchline.

Subsec. (a). Pub. L. 109-304 substituted “Except as otherwise provided in this title, only” for “Only”.

Subsec. (g). Pub. L. 109-163, § 515(f)(3)(A), substituted “Navy Reserve” for “Naval Reserve”.

Subsec. (j). Pub. L. 109-241 added subsec. (j).

Subsec. (k). Pub. L. 109-364 added subsec. (k).

2004—Subsec. (b)(1)(A). Pub. L. 108-293 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “each unlicensed seaman must be a citizen of the United States or an alien lawfully admitted to the United States for permanent residence; and”.

1996—Subsec. (b)(2)(B). Pub. L. 104-208 substituted “Magnuson-Stevens Fishery” for “Magnuson Fishery”.

Subsec. (b)(3)(A). Pub. L. 104-324, § 727, inserted “as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title” after “1,600 gross tons”.

Subsec. (i)(1)(D). Pub. L. 104-324, § 1123, added subpar. (D).

Subsec. (i)(3). Pub. L. 104-208 substituted “Magnuson-Stevens Fishery” for “Magnuson Fishery”.

1990—Subsec. (i)(3)(C). Pub. L. 101-595, §§ 603(6) and 711, amended subpar. (C) identically, substituting “Nationality” for “Naturalization”.

1988—Subsec. (a). Pub. L. 100-239, § 5(a)(1), inserted “radio officer,” after “chief engineer.”.

Subsec. (b). Pub. L. 100-255 substituted “section,” for “subsection,” in par. (3).

Pub. L. 100-239, § 5(a)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “On each departure of a documented vessel (except a fishing or whaling vessel or yacht) from a port of the United States, 75 percent of the seamen (excluding licensed individuals) must be citizens of the United States. If the Secretary decides, on investigation, that qualified citizen seamen are not available, the Secretary may reduce the percentage.”

Subsecs. (c), (d)(1). Pub. L. 100-239, § 5(b), struck out “from the United States” after “On each departure”.

Subsec. (e). Pub. L. 100-239, § 5(c), inserted “and the radio officer” after “the master” and substituted “until the vessel’s return to a port at which in the most expeditious manner” for “until the vessel’s first return to a United States port at which”.

Subsec. (i). Pub. L. 100-239, § 5(d)(1), added subsec. (i).

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-239, § 5(a)(3), Jan. 11, 1988, 101 Stat. 1780, provided that: “Paragraph (2) of this subsection [amending this section] is effective 30 days after the date of enactment of this Act [Jan. 11, 1988].”

Pub. L. 100-239, 5(d)(2), Jan. 11, 1988, 101 Stat. 1781, provided that: “This subsection [amending this section] is effective 360 days after the day of the enactment of this Act [Jan. 11, 1988].”

#### TRANSFER OF FUNCTIONS

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.

#### APPLICATION OF SECTION TO FISHING VESSELS IN CALIFORNIA

Pub. L. 101-595, title III, § 317, Nov. 16, 1990, 104 Stat. 2988, as amended by Pub. L. 104-324, title III, § 301(d)(2)(B), Oct. 19, 1996, 110 Stat. 3916, provided that:

“(a) DEFINITION.—For purposes of the application of sections 8103(a), 12102, 12110, 12111, and 12122(b) of title 46, United States Code, to a fishing vessel operating in waters subject to the jurisdiction of the United States off the coast of the State of California, the term ‘citizen of the United States’ includes an alien lawfully admitted to the United States for permanent residence.

“(b) TERMINATION.—This section shall terminate on October 1, 2000.”

#### § 8104. Watches

(a) An owner, charterer, managing operator, master, individual in charge, or other person having authority may permit an officer to take charge of the deck watch on a vessel when leaving or immediately after leaving port only if the officer has been off duty for at least 6 hours within the 12 hours immediately before the time of leaving.

(b) On an oceangoing or coastwise vessel of not more than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title (except a fishing, fish processing, or

fish tender vessel), a licensed individual may not be required to work more than 9 of 24 hours when in port, including the date of arrival, or more than 12 of 24 hours at sea, except in an emergency when life or property are endangered.

(c) On a towing vessel (except a towing vessel operated only for fishing, fish processing, fish tender, or engaged in salvage operations) operating on the Great Lakes, harbors of the Great Lakes, and connecting or tributary waters between Gary, Indiana, Duluth, Minnesota, Niagara Falls, New York, and Ogdensburg, New York, a licensed individual or seaman in the deck or engine department may not be required to work more than 8 hours in one day or permitted to work more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period, except in an emergency when life or property are endangered.

(d) On a merchant vessel of more than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title (except a vessel only operating on rivers, harbors, lakes (except the Great Lakes), bays, sounds, bayous, and canals, a fishing, fish tender, or whaling vessel, a fish processing vessel of not more than 5,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title, yacht, or vessel engaged in salvage operations), the licensed individuals, sailors, coal passers, firemen, oilers, and water tenders shall be divided, when at sea, into at least 3 watches, and shall be kept on duty successively to perform ordinary work incident to the operation and management of the vessel. The requirement of this subsection applies to radio officers only when at least 3 radio officers are employed. A licensed individual or seaman in the deck or engine department may not be required to work more than 8 hours in one day.

(e) On a vessel designated by subsection (d) of this section—

(1) a seaman may not be—

(A) engaged to work alternately in the deck and engine departments; or

(B) required to work in the engine department if engaged for deck department duty or required to work in the deck department if engaged for engine department duty;

(2) a seaman may not be required to do unnecessary work on Sundays, New Year's Day, July 4th, Labor Day, Thanksgiving Day, or Christmas Day, when the vessel is in a safe harbor, but this clause does not prevent dispatch of a vessel on a voyage; and

(3) when the vessel is in a safe harbor, 8 hours (including anchor watch) is a day's work.

(f) Subsections (d) and (e) of this section do not limit the authority of the master or other officer or the obedience of the seamen when, in the judgment of the master or other officer, any part of the crew is needed for—

(1) maneuvering, shifting the berth of, mooring, or unmooring, the vessel;

(2) performing work necessary for the safety of the vessel, or the vessel's passengers, crew, or cargo;

(3) saving life on board another vessel in jeopardy; or

(4) performing fire, lifeboat, or other drills in port or at sea.

(g)(1) On a towing vessel, an offshore supply vessel, or a barge to which this section applies, that is engaged on a voyage of less than 600 miles, the licensed individuals and crewmembers (except the coal passers, firemen, oilers, and water tenders) may be divided, when at sea, into at least 2 watches.

(2) Paragraph (1) applies to an offshore supply vessel of at least 6,000 gross tons as measured under section 14302 of this title if the individuals engaged on the vessel are in compliance with hours of service requirements (including recording and recordkeeping of that service) as prescribed by the Secretary.

(h) On a vessel to which section 8904 of this title applies, an individual licensed to operate a towing vessel may not work for more than 12 hours in a consecutive 24-hour period except in an emergency.

(i) A person violating subsection (a) or (b) of this section is liable to the United States Government for a civil penalty of \$10,000.

(j) The owner, charterer, or managing operator of a vessel on which a violation of subsection (c), (d), (e), or (h) of this section occurs is liable to the Government for a civil penalty of \$10,000. The seaman is entitled to discharge from the vessel and receipt of wages earned.

(k) On a fish processing vessel subject to inspection under part B of this subtitle, the licensed individuals and deck crew shall be divided, when at sea, into at least 3 watches.

(l) Except as provided in subsection (k) of this section, on a fish processing vessel, the licensed individuals and deck crew shall be divided, when at sea, into at least 2 watches if the vessel—

(1) entered into service before January 1, 1988, and is more than 1,600 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title; or

(2) entered into service after December 31, 1987, and has more than 16 individuals on board primarily employed in the preparation of fish or fish products.

(m) This section does not apply to a fish processing vessel—

(1) entered into service before January 1, 1988, and not more than 1,600 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title; or

(2) entered into service after December 31, 1987, and having not more than 16 individuals on board primarily employed in the preparation of fish or fish products.

(n) On a tanker, a licensed individual or seaman may not be permitted to work more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period, except in an emergency or a drill. In this subsection, "work" in-

cludes any administrative duties associated with the vessel whether performed on board the vessel or onshore.

(o)(1) Except as provided in paragraph (2) of this subsection, on a fish tender vessel of not more than 500 gross tons as measured under section 14502 of this title, or less than 500 gross tons as measured under section 14502 of this title, or is less than 2,500 gross tons as measured under section 14302 of this title engaged in the Aleutian trade, the licensed individuals and crewmembers shall be divided, when at sea, into at least 3 watches.

(2) On a fish tender vessel of not more than 500 gross tons as measured under section 14502 of this title, or less than 500 gross tons as measured under section 14502 of this title, or is less than 2,500 gross tons as measured under section 14302 of this title engaged in the Aleutian trade, the licensed individuals and crewmembers shall be divided, when at sea, into at least 2 watches, if the vessel—

(A) before September 8, 1990, operated in that trade; or

(B)(i) before September 8, 1990, was purchased to be used in that trade; and

(ii) before June 1, 1992, entered into service in that trade.

(p) The Secretary may prescribe the watchstanding and work hours requirements for an oil spill response vessel.

(Pub. L. 98-89, Aug. 26, 1983, 97 Stat. 549; Pub. L. 98-364, title IV, §402(11), July 17, 1984, 98 Stat. 448; Pub. L. 98-557, §33(c), Oct. 30, 1984, 98 Stat. 2876; Pub. L. 99-307, §1(12), May 19, 1986, 100 Stat. 445; Pub. L. 101-380, title IV, §§4114(b), 4302(f), Aug. 18, 1990, 104 Stat. 517, 538; Pub. L. 101-595, title VI, §602(e)(1), Nov. 16, 1990, 104 Stat. 2991; Pub. L. 102-587, title V, §5212, Nov. 4, 1992, 106 Stat. 5077; Pub. L. 103-206, title III, §322(a), Dec. 20, 1993, 107 Stat. 2428; Pub. L. 104-324, title VII, §728, title XI, §§1104(c), 1114, Oct. 19, 1996, 110 Stat. 3939, 3967, 3971; Pub. L. 109-241, title III, §311(b), July 11, 2006, 120 Stat. 530; Pub. L. 111-281, title VI, §617(d), title IX, §903(a)(1), Oct. 15, 2010, 124 Stat. 2973, 3010.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
8104 .....	46:235 46:405(b) 46:673

Section 8104 prescribes certain working hours and conditions under which working hours are set. The Committee intends that these sections be interpreted in a manner consistent with one another.

Subsection (a) permits an individual to take charge of the deck watch on leaving port and immediately thereafter only if the individual has been off duty for 6 of the 12 hours immediately prior to departure.

Subsection (b) prohibits a licensed individual from being required to work more than 9 of 24 hours in port or more than 12 of 24 hours at sea on an oceangoing or coastwise vessel of not more than 100 gross tons, except in an emergency.

Subsection (c) prescribes a maximum 8-hour day for licensed individuals and seamen on towing vessels operating on the Great Lakes and certain connecting or tributary waters.

Subsection (d) requires certain members of the complement of certain merchant vessels of more than 100 gross tons to be divided into at least 3 successive

watches when at sea. This requirement applies to radio officers only when at least 3 radio officers are employed. Subsection (d) also prescribes a maximum 8-hour work day for licensed individuals and seamen on these vessels.

For the Great Lakes towing vessels and merchant vessels in subsections (c) and (d), subsection (e) requires that seamen be hired only for work in either the deck or the engine department. When in a safe harbor, seamen may be required to do only necessary work on Sundays and certain holidays, unless the vessel is getting underway on a voyage. Further, when in a safe harbor, this subsection restates the maximum 8-hour work day which applies even for anchor watch.

Subsection (f) states that the limitations in subsections (d) and (e) do not apply if the master or other officer decides the crew is needed for certain routine, safety, or rescue activities.

Subsection (g) provides that for a towing vessel (except a Great Lakes towing vessel under subsection (c)), offshore supply vessel, or barge on a voyage of less than 600 miles, the licensed officers and certain crewmembers may be divided into not less than two watches when at sea.

Subsection (h) provides that the licensed operator for a towing vessel at least 26 feet long may not be required to work more than 12 of 24 hours, except in an emergency.

Subsections (i) and (j) prescribe penalties for violations of the provisions of this section and, in certain instances, entitles the seaman to discharge and payment of wages.

AMENDMENTS

2010—Subsec. (g). Pub. L. 111-281, §617(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (o). Pub. L. 111-281, §903(a)(1), made technical amendment to directory language of Pub. L. 109-241, §311(b). See 2006 Amendment note below.

2006—Subsec. (o). Pub. L. 109-241, as amended by Pub. L. 111-281, §903(a)(1), substituted “or less than 500 gross tons as measured under section 14502 of this title, or is less than 2,500 gross tons as measured under section 14302 of this title” for “or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title” in pars. (1) and (2).

1996—Subsec. (b). Pub. L. 104-324, §728(1), inserted “as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title” after “100 gross tons”.

Subsec. (c). Pub. L. 104-324, §1114(a), struck out “or permitted” after “required” and inserted “or permitted to work more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period” after “day”.

Subsec. (d). Pub. L. 104-324, §728(2), inserted “as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title” after “100 gross tons” and after “5,000 gross tons”.

Subsec. (e). Pub. L. 104-324, §1114(b), substituted “subsection (d)” for “subsections (c) and (d)” in introductory provisions.

Subsec. (g). Pub. L. 104-324, §1114(c), struck out “(except a vessel to which subsection (c) of this section applies)” after “On a towing vessel”.

Subsec. (l)(1). Pub. L. 104-324, §728(3), inserted “as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title” after “1,600 gross tons”.

Subsec. (m)(1). Pub. L. 104-324, §728(4), inserted “as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title” after “1,600 gross tons”.

Subsec. (o)(1). Pub. L. 104-324, §728(5), inserted “as measured under section 14502 of this title, or an alter-

nate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title” after “500 gross tons”.

Subsec. (o)(2). Pub. L. 104-324, § 728(6), inserted “as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title” after “500 gross tons”.

Subsec. (p). Pub. L. 104-324, § 1104(c), amended subsec. (p) generally. Prior to amendment, subsec. (p) read as follows: “On a vessel used only to respond to a discharge of oil or a hazardous substance, the licensed individuals and crewmembers may be divided into at least two watches when the vessel is engaged in an operation less than 12 hours in duration.”

1993—Subsec. (g). Pub. L. 103-206, § 322(a)(1), struck out “a vessel used only to respond to a discharge of oil or a hazardous substance,” after “an offshore supply vessel.”

Subsec. (p). Pub. L. 103-206, § 322(a)(2), added subsec. (p).

1992—Subsec. (g). Pub. L. 102-587, § 5212(1), inserted “a vessel used only to respond to a discharge of oil or a hazardous substance,” after “an offshore supply vessel.”

Subsecs. (n), (o). Pub. L. 102-587, § 5212(2), redesignated subsec. (n), relating to fish tender vessels of not more than 500 gross tons engaged in Aleutian trade, as (o).

1990—Subsecs. (i), (j). Pub. L. 101-380, § 4302(f), substituted “\$10,000” for “\$100” in subsec. (i) and for “\$500” in subsec. (j).

Subsec. (n). Pub. L. 101-595 added subsec. (n) relating to fish tender vessels of not more than 500 gross tons engaged in Aleutian trade.

Pub. L. 101-380, § 4114(b), added subsec. (n) relating to tankers.

1986—Subsec. (k). Pub. L. 99-307 substituted “watches” for “watchers”.

1984—Subsec. (b). Pub. L. 98-364, § 402(11)(A), substituted “100 gross tons (except a fishing, fish processing, or fish tender vessel)” for “100 gross tons”.

Subsec. (c). Pub. L. 98-364, § 402(11)(B), substituted “fishing, fish processing, fish tender,” for “fishing”.

Subsec. (d). Pub. L. 98-364, § 402(11)(C), substituted “a fishing, fish tender, or whaling vessel, a fish processing vessel of not more than 5,000 gross tons” for “a fishing or whaling vessel”.

Subsec. (k). Pub. L. 98-557 substituted “shall” for “may”.

Pub. L. 98-364, § 402(11)(D), added subsec. (k).

Subsec. (l). Pub. L. 98-557 substituted “shall” for “may” in provisions preceding par. (1).

Pub. L. 98-364, § 402(11)(D), added subsec. (l).

Subsec. (m). Pub. L. 98-364, § 402(11)(D), added subsec. (m).

#### EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-281, title IX, § 903(a), Oct. 15, 2010, 124 Stat. 3010, provided that the amendment by section 903(a)(1) is effective with enactment of Pub. L. 109-241.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-380 applicable to incidents occurring after Aug. 18, 1990, see section 1020 of Pub. L. 101-380, set out as an Effective Date note under section 2701 of Title 33, Navigation and Navigable Waters.

### § 8105. Fishing vessel exemption

Notwithstanding any other provision of law, neither the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, nor any amendment to such convention, shall apply to a fishing vessel, including a fishing vessel used as a fish tender vessel.

(Added Pub. L. 104-324, title XI, § 1146(a), Oct. 19, 1996, 110 Stat. 3992.)

#### PRIOR PROVISIONS

A prior section 8105, Pub. L. 98-89, Aug. 26, 1983, 97 Stat. 550, authorized Secretary to prescribe regulations to carry out this part prior to repeal by Pub. L. 101-595, title VI, § 603(7)(A), Nov. 16, 1990, 104 Stat. 2993.

### § 8106. Riding gangs

(a) IN GENERAL.—The owner or managing operator of a freight vessel of the United States on voyages covered by the International Convention for Safety of Life at Sea, 1974 (32 UST 47m) shall—

(1) ensure that—

(A) subject to subsection (d), each riding gang member on the vessel—

(i) is a United States citizen or an alien lawfully admitted to the United States for permanent residence; or

(ii) possesses a United States non-immigrant visa for individuals desiring to enter the United States temporarily for business, employment-related and personal identifying information, and any other documentation required by the Secretary;

(B) all required documentation for such member is kept on the vessel and available for inspection by the Secretary; and

(C) each riding gang member is identified on the vessel’s crew list;

(2) ensure that—

(A) the owner or managing operator attests in a certificate that the background of each riding gang member has been examined and found to be free of any credible information indicating a material risk to the security of the vessel, the vessel’s cargo, the ports the vessel visits, or other individuals onboard the vessel;

(B) the background check consisted of a search of all information reasonably available to the owner or managing operator in the riding gang member’s country of citizenship and any other country in which the riding gang member works, receives employment referrals, or resides;

(C) the certificate required under subparagraph (A) is kept on the vessel and available for inspection by the Secretary; and

(D) the information derived from any such background check is made available to the Secretary upon request;

(3) ensure that each riding gang member, while on board the vessel, is subject to the same random chemical testing and reporting regimes as crew members;

(4) ensure that each such riding gang member receives basic safety familiarization and basic safety training approved by the Coast Guard as satisfying the requirements for such training under the International Convention of Training, Certification, and Watchkeeping for Seafarers, 1978;

(5) prevent from boarding the vessel, or cause the removal from the vessel at the first available port, and disqualify from future service on board any other vessel owned or operated by that owner or operator, any riding gang member—

(A) who has been convicted in any jurisdiction of an offense described in paragraph (2) or (3) of section 7703;