

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

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i>  |
|------------------------|---------------------------|--|
| 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.   |

HISTORICAL AND REVISION NOTES—CONTINUED

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i>   |
|------------------------|---------------------------|---|
| 53707(c) .....         | 46 App.:1273a(b).         | 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. |
| 53707(d) .....         | 46 App.:1274(d)(4).       |   |

**Editorial Notes**

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 subsecs. (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

| Revised Section | Source (U.S. Code)     | Source (Statutes at Large)   |
|-----------------|------------------------|--|
| 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; §1104 renumbered as §1104A, Pub. L. 101-380, title IV, §4115(f)(1), Aug. 18, 1990, 104 Stat. 521. |
| 53708(b) .....  | 46 App.:1274(d)(1)(B). |  |
| 53708(c) .....  | 46 App.:1274(d)(2).    |  |
| 53708(d) .....  | 46 App.:1274(f)(2).    | June 29, 1936, ch. 858, title XI, §1104A(f)(2), (3), as added Pub. L. 108-136, title XXXV, §3526(2)(C), Nov. 24, 2003, 117 Stat. 1801.   |
| 53708(e) .....  | 46 App.:1274(f)(3).    |  |

Editorial Notes

AMENDMENTS

2008—Pub. L. 110-181, §3522(b), repealed Pub. L. 109-163, §3507(a)(1)(D), (2)(D), (b)(3)(A), (4). See 2006 Amendment note below.

Subsec. (a). Pub. L. 110-181, §3522(a)(4)(A), (B), incorporated the substance of the amendment by Pub. L. 109-163, §3507(a)(2)(D), (b)(3)(A), into this section by substituting in the heading, “Administrator” for “Secretary of Transportation” and, in introductory provisions, “Administrator may” for “Secretary of Transportation may”, “Administrator finds” for “Secretary finds”, and “Administrator shall” for “Secretary shall”. 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)(4)(C), (D), struck out “of Commerce” after “Secretary” in heading and the first time appearing in introductory provisions.

Subsec. (c). Pub. L. 110-181, §3522(a)(4)(D), struck out “of Commerce” after “Secretary”.

Subsec. (d). Pub. L. 110-181, §3522(a)(4)(E), incorporated the substance of the amendment by Pub. L. 109-163, §3507(a)(1)(D), (b)(4)(A), (C), into this section by inserting “or Administrator” after “The Secretary” and substituting “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.” for “financial structures, or other risk factors identified by the Secretary. Any independent analysis conducted under this subsection shall be performed by a party chosen by the Secretary.” 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. (e). Pub. L. 110-181, §3522(a)(4)(F), incorporated the substance of the amendment by Pub. L. 109-163, §3507(a)(1)(D), (b)(4)(B), into this section by inserting “or Administrator” after “chapter, the Secretary” and substituting “or financial structures” for “financial structures, or other risk factors identified by the Secretary”. 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), (2)(D), (b)(3)(A), (4), which directed the amendment of section 1274(d)(1)(A), (f)(2), (3) 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 subsecs. (a), (d), and (e) and Historical and Revision notes above.

**§ 53709. Amount of obligations**

(a) IN GENERAL.—The principal of an obligation may not be guaranteed in an amount greater than the amount determined by multiplying the percentage applicable under subsection (b) by—

(1) the amount paid by or for the account of the obligor (as determined by the Secretary or Administrator, which determination shall be conclusive) for the construction, reconstruction, or reconditioning of the vessel used as security for the guarantee; or

(2) if the obligor creates an escrow fund under section 53715 of this title, the actual cost of the vessel.

(b) LIMITATIONS ON AMOUNT BORROWED.—

(1) IN GENERAL.—Except as otherwise provided, the principal amount of an obligation guaranteed under this chapter may not exceed 75 percent of the actual cost or depreciated actual cost, as determined by the Secretary or Administrator, of the vessel used as security for the guarantee.

(2) CERTAIN APPROVED VESSELS.—The principal amount may not exceed 87.5 percent of the actual cost or depreciated actual cost if—

(A) the size and speed of the vessel are approved by the Secretary or Administrator;

(B) the vessel is or would have been eligible for mortgage aid for construction under section 509 of the Merchant Marine Act, 1936, or would have been eligible except that the vessel was built with a construction-differential subsidy and the subsidy has been repaid; and

(C) the vessel is of a type described in that section for which the minimum down payment required by that section is 12.5 percent of the cost of the vessel.

(3) FISHING VESSELS AND FISHERY FACILITIES.—For a fishing vessel or fishery facility, the principal amount may not exceed 80 percent of the actual cost or depreciated actual cost. However, debt for the vessel or facility may not be placed through the Federal Financing Bank.

(4) OTEC.—For an ocean thermal energy conversion facility or plantship constructed without a construction-differential subsidy, the principal amount may not exceed 87.5 percent of the actual cost or depreciated actual cost of the facility or plantship.

(c) SECURITY INVOLVING MULTIPLE VESSELS.—The principal amount of an obligation having

more than one vessel as security for the guarantee may not exceed the sum of the principal amounts allowable for all the vessels.

(d) PROHIBITION ON UNIFORM PERCENTAGE LIMITATIONS.—The Secretary or Administrator may not establish a percentage under any provision of subsection (b) that is to be applied uniformly to all guarantees or commitments to guarantee made under that provision.

(e) PROHIBITION ON MINIMUM PRINCIPAL AMOUNT.—The Secretary may not establish, as a condition of eligibility for a guarantee under this chapter, a minimum principal amount for an obligation covering the reconstruction or reconditioning of a fishing vessel or fishery facility. For purposes of this chapter, the reconstruction or reconditioning of a fishing vessel or fishery facility does not include the routine minor repair or maintenance of the vessel or facility.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1609; Pub. L. 109-163, div. C, title XXXV, §3507(a)(1)(C), (D), Jan. 6, 2006, 119 Stat. 3555; Pub. L. 110-181, div. C, title XXXV, §3522(a)(10)(B), (b), Jan. 28, 2008, 122 Stat. 598; Pub. L. 116-92, div. C, title XXXV, §3506(f), Dec. 20, 2019, 133 Stat. 1972.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code)  | Source (Statutes at Large)   |
|-----------------|---------------------|--|
| 53709(a) .....  | 46 App.:1273(c).    | June 29, 1936, ch. 858, title XI, §1103(c), as added June 23, 1938, ch. 600, §46, 52 Stat. 969; Aug. 15, 1953, ch. 513, §1, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §3, 68 Stat. 1268; June 25, 1956, ch. 438, 70 Stat. 332; Aug. 7, 1956, ch. 1026, §1(a), (c), (d), 70 Stat. 1087; Pub. L. 91-469, §30, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92-507, §3, Oct. 19, 1972, 86 Stat. 910; Pub. L. 97-31, §12(136), Aug. 6, 1981, 95 Stat. 166.  |
| 53709(b) .....  | 46 App.:1274(b)(2). | June 29, 1936, ch. 858, title XI, §1104A(b)(2), (last 2 sentences), (c)(1) (last sentence) [§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. 95-257, Apr. 7, 1978, 92 Stat. 194; Pub. L. 96-320, title II, §202(c), Aug. 3, 1980, 94 Stat. 992; Pub. L. 96-561, title II, §220(3)(B), Dec. 22, 1980, 94 Stat. 3293; Pub. L. 97-31, §12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 99-509, title V, §5003, Oct. 21, 1986, 100 Stat. 1912; §1104 renumbered as §1104A, Pub. L. 101-380, title IV, §4115(f)(1), Aug. 18, 1990, 104 Stat. 521; Pub. L. 103-160, div. A, title XIII, §1356(3)(B), (C), Nov. 30, 1993, 107 Stat. 1813; Pub. L. 104-297, title III, §302(a)(5), Oct. 11, 1996, 110 Stat. 3615. |