

SUBCHAPTER B—REGULATIONS AFFECTING MARITIME CARRIERS AND RELATED ACTIVITIES

PART 221—REGULATED TRANSACTIONS INVOLVING DOCUMENTED VESSELS AND OTHER MARITIME INTERESTS

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AUTHORITY: 46 App. U.S.C. 802, 803, 808, 835, 839, 841a, 1114(b), 1195; 46 U.S.C. chs. 301 and 313; 49 U.S.C. 336; 49 CFR 1.66.

SOURCE: 57 FR 23478, June 3, 1992, unless otherwise noted.

Subpart A—Introduction

§ 221.1 Purpose.

(a) This part implements statutory responsibilities of the Secretary of Transportation (the Secretary) with respect to:

(1) The regulation pursuant to 46 App. U.S.C. 808 of transactions involving transfers of:

(i) An interest in or control of Documented Vessels owned by Citizens of the United States (including the Transfer of a Controlling Interest in such owners) to Noncitizens or;

(ii) A Documented Vessel to registry or Operation under Authority of a Foreign Country or for scrapping in a foreign country; and

(2) Transactions involving maritime interests in time of war or national emergency under 46 App. U.S.C. 835.

(b) The responsibilities in paragraph (a) (1) and (2) of this section have been delegated by the Secretary to the Maritime Administrator.

[57 FR 23478, June 3, 1992, as amended at 63 FR 6880, Feb. 11, 1998]

§ 221.3 Definitions.

For the purpose of this part, when used in capitalized form:

(a) *Bowaters Corporation* means a Noncitizen corporation organized under the laws of the United States or of a State that has satisfied the requirements of 46 App. U.S.C. 883-1(a)-(e) and holds a valid Certificate of Compliance issued by the Coast Guard.

(b) *Charter* means any agreement or commitment by which the possession or services of a vessel are secured for a

period of time, or for one or more voyages, whether or not a demise of the vessel.

(c) *Citizen of the United States* means a Person (including receivers, trustees and successors or assignees of such Persons as provided in 46 App. U.S.C. 803), including any Person (stockholder, partner or other entity) who has a Controlling Interest in such Person, any Person whose stock or equity is being relied upon to establish the requisite U.S. citizen ownership, and any parent corporation, partnership or other entity of such Person at all tiers of ownership, who, in both form and substance at each tier of ownership, satisfies the following requirements—

(1) An individual who is a Citizen of the United States, by birth, naturalization or as otherwise authorized by law;

(2) A corporation organized under the laws of the United States or of a State, the Controlling Interest of which is owned by and vested in Citizens of the United States and whose chief executive officer, by whatever title, chairman of the board of directors and all officers authorized to act in the absence or disability of such persons are Citizens of the United States, and no more of its directors than a minority of the number necessary to constitute a quorum are Noncitizens;

(3) A partnership organized under the laws of the United States or of a State, if all general partners are Citizens of the United States and a Controlling Interest in the partnership is owned by Citizens of the United States;

(4) An association organized under the laws of the United States or of a State, whose chief executive officer, by whatever title, chairman of the board of directors (or equivalent committee or body) and all officers authorized to act in their absence or disability are Citizens of the United States, no more than a minority of the number of its directors, or equivalent, necessary to constitute a quorum are Noncitizens, and a Controlling Interest in which is vested in Citizens of the United States;

(5) A joint venture, if it is not determined by the Maritime Administrator to be in effect an association or a partnership, which is organized under the laws of the United States or of a State, if each coventurer is a Citizen of the

United States. If a joint venture is in effect an association, it will be treated as is an association under paragraph(c)(4) of this section, or, if it is in effect a partnership, will be treated as is a partnership under paragraph (c)(3) of this section; or

(6) A Trust described in paragraph (t)(1) of this section.

(d) *Controlling interest* owned by and vested in Citizens of the United States means that—

(1) In the case of a corporation:

(i) Title to a majority of the stock thereof is owned by and vested in Citizens of the United States, free from any trust or fiduciary obligation in favor of any Noncitizen;

(ii) The majority of the voting power in such corporation is vested in Citizens of the United States;

(iii) Through no contract or understanding is it so arranged that the majority of the voting power may be exercised, directly or indirectly, in behalf of any Noncitizen; and

(iv) By no other means whatsoever control of the corporation is conferred upon or permitted to be exercised by any Noncitizen;

(2) In the case of a partnership, all general partners are Citizens of the United States and ownership and control of a majority of the partnership interest, free and clear of any trust or fiduciary obligation in favor of any Noncitizen, is vested in a partner or partners each of whom is a Citizen of the United States;

(3) In the case of an association, a majority of the voting power is vested in Citizens of the United States, free and clear of any trust or fiduciary obligation in favor of any Noncitizen; and

(4) In the case of a joint venture, a majority of the equity is owned by and vested in Citizens of the United States free and clear of any trust or fiduciary obligation in favor of any Noncitizen; but

(5) In the case of a corporation, partnership, association or joint venture owning a vessel which is operated in the coastwise trade, the amount of interest and voting power required to be owned by and vested in Citizens of the United States shall be not less than 75 percent as required by 46 App. U.S.C. 802.

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(e) *Documented vessel* means a vessel documented under chapter 121, title 46, United States Code or a vessel for which an application for such documentation is pending.

(f) *Fishing vessel* means a vessel that commercially engages in the planting, cultivating, catching, taking, or harvesting of fish, shellfish, marine animals, pearls, shells, or marine vegetation or an activity that can reasonably be expected to result in the planting, cultivating, catching, taking, or harvesting of fish, shellfish, marine animals, pearls, shells, or marine vegetation.

(g) *Fish processing vessel* means a vessel that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling.

(h) *Fish tender vessel* means a vessel that commercially supplies, stores, refrigerates, or transports (except in foreign commerce) fish, fish products, or materials directly related to fishing or the preparation of fish to or from a Fishing Vessel, Fish Processing Vessel, or another Fish Tender Vessel or a fish processing facility.

(i) *Hearing Officer* means an individual designated by the Maritime Administrator to conduct hearings under Subpart E of this part and assess civil penalties.

(j) *Noncitizen* means a Person who is not a Citizen of the United States.

(k) *Operation under the authority of a foreign country* means any agreement, undertaking or device by which a Documented Vessel is voluntarily subjected to any restriction or requirement, actual or contingent, under the laws or regulations of a foreign country or instrumentality thereof concerning use or operation of the vessel that is or may be in derogation of the rights and obligations of the owner, operator or master of the vessel under the laws of the United States, unless such restriction or requirement is of general applicability and uniformly imposed by such country or instrumentality in exercise of its sovereign prerogatives with respect to public health, safety or welfare, or in implementation of accepted principles of international law regarding cabotage or safety of navigation.

(l) *Party* means the Person alleged to have violated the statute or regulations for which a civil penalty may be assessed.

(m) *Person* includes individuals and corporations, partnerships, joint ventures, associations and Trusts existing under or authorized by the laws of the United States or of a State or, unless the context indicates otherwise, or any foreign country.

(n) *Pleasure vessel* means a vessel that has been issued a Certificate of Documentation with a recreational endorsement and is operated only for pleasure pursuant to 46 U.S.C. 12109.

(o) *Settlement* means the process whereby a civil penalty or other disposition of the alleged violation is agreed to by the Hearing Officer and the Party in accordance with § 221.73 of this part.

(p) *State* means a State of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

(q) *Transfer* means the passing of control of or an interest in a Documented Vessel and includes the involuntary conveyance by a foreign judicial or administrative tribunal of any interest in or control of a Documented Vessel owned by a Citizen of the United States to a Noncitizen that is not eligible to own a Documented Vessel.

(r) *Trust* means:

(1) In the case of ownership of a Documented Vessel, a Trust that is domiciled in and existing under the laws of the United States, or of a State, of which the trustee is a Citizen of the United States and a Controlling Interest in the Trust is held for the benefit of Citizens of the United States; or

(s) *United States*, when used in the geographic sense, means the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States; when used in other than the geographic sense, it means the United States Government.

(t) *United States Government* means the Federal Government acting by or

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through any of its departments or agencies.

(u) *Vessel Transfer Officer* means the Maritime Administration's Vessel Transfer and Disposal Officer, whose address is MAR-745.1, Maritime Administration, United States Department of Transportation, Washington, DC 20590, or that person's delegate.

[57 FR 23478, June 3, 1992, as amended at 63 FR 6880, Feb. 11, 1998; 69 FR 34310, June 21, 2004]

§ 221.5 Citizenship declarations.

(a) Pursuant to 46 U.S.C. 31306(a), when an instrument transferring an interest in a Documented Vessel owned by a Citizen of the United States is presented to the United States Government for filing or recording, the Person filing shall submit therewith Maritime Administration Form No. MA-899 so it may be determined if sections 9 or 37 of the Shipping Act of 1916 (46 App. U.S.C. 808 and 837) apply to the transaction. Form No. MA-899 is available from the Coast Guard Documentation Office at the port of record of the vessel or from the Vessel Transfer Officer.

(b) The filing required by paragraph (a) of this section is not required for transactions involving vessel types described in § 221.11(b)(1)(i) through (iv) of this part.

(c) The filing required by paragraph (a) of this section is waived for transactions which are given general approval in this part.

(d) If the transfer of interest is one which requires written approval of the Maritime Administrator, the Person filing shall submit therewith evidence of that approval.

(e) A declaration filed by any Person other than an individual shall be signed by an official authorized by that Person to execute the declaration.

§ 221.7 Applications and fees.

(a) *Applications.* Whenever written approval of the Maritime Administrator is required for transfers to Noncitizens or to foreign registry or Operation Under Authority of a Foreign Country, or pursuant to a Maritime Administration contract or Order, an application on Maritime Administration Form MA-29 or MA-29B giving full particulars of the proposed transaction shall

be filed with the Vessel Transfer Officer.

(b) *Fees.* Applications for written approval of any of the following transactions shall be accompanied by the specified fee:

(1) Transactions requiring approval for:

(i) Sale and delivery by a Citizen of the United States to a Noncitizen, or Transfer to foreign registry or Operation Under Authority of a Foreign Country, of a Documented Vessel, per vessel—	
(A) Of 1,000 gross tons and over	\$325
(B) Of less than 1,000 gross tons	170
(ii) Transfer of any interest in, or control of, a Documented Vessel owned by a Citizen of the United States to a Noncitizen, per vessel	250
(iii) Charter of a Documented Vessel owned by a Citizen of the United States to a Noncitizen, per vessel	250
(iv) Sale or Transfer of an interest in or the control of an interest in an entity that is a Citizen of the United States and owns, or is the direct or indirect parent of an entity that owns, any Documented Vessel, if by such sale or Transfer the Controlling Interest in such entity is vested in, or held for the benefit of, any Noncitizen	325

(2) Transactions requiring written approval pursuant to a Maritime Administration contract or Order:

(i) Transfer of ownership or registry, or, both, of the vessel, per vessel	\$260
(ii) Sale or Transfer of any interest in the owner of the vessel, if by such sale or Transfer the Controlling Interest in the owner is vested in, or held for the benefit of, a Noncitizen, per vessel	235
(iii) Charter of the vessel to a Noncitizen, per vessel	240

(c) *Modification of applications or approvals.* An application for modification of any pending application or prior approval, or of an outstanding Maritime Administration contract or Order, shall be accompanied by the fee established for the original application.

(d) *Reduction or waiver of fees.* The Maritime Administrator, in appropriate circumstances, and upon a written finding, may reduce any fee imposed by paragraph (b) or (c) of this section, or may waive the fee entirely in extenuating circumstances where the interest of the United States Government would be served.

[57 FR 23478, June 3, 1992, as amended at 63 FR 6880, Feb. 11, 1998]

Subpart B—Transfers to Noncitizens or to Registry or Operation Under Authority of a Foreign Country

§ 221.11 Required approvals.

(a) Except as provided in section 12106(e) of title 46, United States Code, a Person may not, without the approval of the Maritime Administrator:

(1) Sell, lease, charter, deliver, or in any manner Transfer to a Noncitizen, or agree (unless such agreement by its terms requires approval of the Maritime Administrator in order to effect such transfer), to sell, lease, charter, deliver, or in any manner Transfer to a Noncitizen, any interest in or control of a Documented Vessel owned by a Citizen of the United States or a vessel the last documentation of which was under the laws of the United States except as provided in this part; or

(2) Place any Documented Vessel, or any vessel the last documentation of which was under the laws of the United States, under foreign registry or operate that vessel under the authority of a foreign country, except as provided in this part.

(b)(1) The approvals required by paragraph (a)(1) of this section are not required for the following Documented Vessel types if the vessel has been operated exclusively and with *bona fides* for one or more of the following uses, under a Certificate of Documentation with an appropriate endorsement and no other, since initial documentation or renewal of its documentation following construction, conversion, or transfer from foreign registry, or, if it has not yet so operated, if the vessel has been designed and built and will be operated for one or more of the following uses:

- (i) A Fishing vessel;
- (ii) A Fish processing vessel;
- (iii) A Fish tender vessel; and
- (iv) A Pleasure vessel.

(2) A vessel of a type specified in paragraphs (b)(1)(i) through (iii) of this section will not be ineligible for the approval granted by this paragraph by reason of also holding or having held a Certificate of Documentation with a coastwise or registry endorsement, so long as any trading under that authority has been only incidental to the ves-

sel's principal employment in the fisheries and directly related thereto.

[57 FR 23478, June 3, 1992, as amended at 63 FR 6880, Feb. 11, 1998]

§ 221.13 General approval.

(a) *Transactions other than transfer of registry or operation under authority of a foreign country.* (1) The Maritime Administrator hereby grants the approval required by 46 App. U.S.C. 808(c)(1) for the sale, lease, Charter, delivery, or any other manner of Transfer to a Noncitizen of an interest in or control of a Documented Vessel owned by a Citizen of the United States or a vessel the last documentation of which was under the laws of the United States except:

(i) As limited by paragraph (b) of this section for transfers to Bowaters Corporations;

(ii) As limited by § 221.15(d) of this part for sales for scrapping;

(iii) Bareboat or demise Charters of vessels operating in the coastwise trade.

A Documented Vessel shall remain documented following any transaction approved by this paragraph (a)(1). Other approvals may be required by statutes other than 46 App. U.S.C. 808(c)(1) and/or by contract for certain vessels.

(2) The approvals granted by paragraph (a)(1) of this section shall not apply to any such Transfer proposed to be made during any period when the United States is at war or during any national emergency, the existence of which has invoked the provisions of section 37 of the Shipping Act, 1916, as amended (46 App. U.S.C. 835), or to any such Transfer proposed to be made to a citizen of any country when such transfer would be contrary to the foreign policy of the United States as declared by an executive department of the United States.

(3) An information copy of any sales agreement, bareboat or demise Charter entered into pursuant to this approval shall be submitted to the Vessel Transfer Officer not later than thirty days following a request by that official.

(4) Except for Charters to Noncitizens of documented bulk cargo vessels engaged in carrying bulk raw and processed agricultural commodities from the United States to ports in the geographic area formerly known as the

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Union of Soviet Socialist Republics, or to other permissible ports of discharge for transshipment to the geographic area formerly known as the Union of Soviet Socialist Republics, pursuant to an operating-differential subsidy agreement that is consistent with the requirements of 46 CFR parts 252 and 294, this approval excludes and does not apply to Transfers to a Person who is subject, directly or indirectly, to control of an entity within any country listed by the Department of Commerce in 15 CFR part 740, Supplement 1, Country Group E, unless such transferee is an individual who has been lawfully admitted into, and resides in, the United States, or to Charters for the carriage of cargoes of any kind to or from, or for commercial operation while within the waters of (as distinct from passage through), any of these countries. This list of countries is subject to change from time to time. Information concerning current restrictions may be obtained from the Vessel Transfer Officer.

(b) *Bowaters corporations.* (1) For documented Vessels other than those operating in the coastwise trade, the approvals granted in paragraph (a) of this section shall apply to Bowaters Corporations.

(2) The Maritime Administrator hereby grants approval for the time charter of a Documented Vessel of any tonnage by a Citizen of the United States to a Bowaters Corporation for operation in the coastwise trade, subject to the following conditions:

(i) If non-self-propelled or, if self-propelled and less than 500 gross tons, no such vessel shall engage in the fisheries or in the transportation of merchandise or passengers for hire between points in the United States embraced within the coastwise laws except as a service for a parent or subsidiary corporation; and

(ii) If non-self-propelled or, if self-propelled and less than 500 gross tons, no such vessel may be subchartered or subleased from any such Bowaters Corporation except:

(A) At prevailing rates;

(B) For use otherwise than in the domestic noncontiguous trades;

(C) To a common or contract carrier subject to part 3 of the Interstate Com-

merce Act, as amended, which otherwise qualifies as a Citizen of the United States and which is not connected, directly or indirectly, by way of ownership or control with such corporation.

[57 FR 23478, June 3, 1992, as amended at 63 FR 6880, Feb. 11, 1998; 69 FR 54248, Sept. 8, 2004]

§ 221.15 Approval for transfer of registry or operation under authority of a foreign country or for scrapping in a foreign country.

In no case will approval be granted to place under foreign registry or to operate under the authority of a foreign country a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel that has had its fishery endorsement revoked pursuant to Appendix D of Public Law 106-554, 114 Stat 2763. Subject to this exclusion, approval requests will be considered as set forth in this section.

(a) *Vessels of under 1,000 gross tons.* (1) The Maritime Administrator hereby grants approval for the Transfer to foreign registry and flag or Operation Under the Authority of a Foreign Country or for scrapping in a foreign country of Documented Vessels or vessels the last documentation of which was under the laws of the United States and which are of under 1,000 gross tons if at the time of such Transfer there are no liens or encumbrances recorded against the vessel in the U.S. Coast Guard Documentation Office at its last U.S. port of record.

(2) This approval shall not apply if the vessel is to be placed under the registry, or operated under the authority of, or scrapped in any country listed in § 221.13(a)(4) of this part.

(3) This approval shall not apply to any such Transfer proposed to be made during any period when the United States is at war or during any national emergency, the existence of which has invoked the provisions of section 37 of the Shipping Act, 1916, as amended (46 App. U.S.C. 835), or to any such Transfer proposed to be made to a citizen of any country when such transfer would be contrary to the foreign policy of the United States as declared by an executive department of the United States.

(b) *Vessels of 1,000 gross tons or more.* (1) Applications for approval of Transfer to foreign registry and flag or Operation Under the Authority of a Foreign Country or for scrapping in a foreign country of Documented Vessels or vessels the last documentation of which was under the laws of the United States and which are of 1,000 gross tons or more will be evaluated in light of—

(i) The type, size speed, general condition, and age of the vessel;

(ii) The acceptability of the owner, proposed transferee and the country of registry or the country under the authority of which the vessel is to be operated; and

(iii) The need to retain the vessel under U.S. documentation, ownership or control for purposes of national defense, maintenance of an adequate merchant marine, foreign policy considerations or the national interest.

(2) If the application is found to be acceptable under the criteria of this paragraph, approval will be granted. For vessels of under 3,000 gross tons, in the absence of unusual circumstances, no conditions will be imposed on the transfer. For vessels of 3,000 gross tons and above, approval will be granted upon acceptance by the owner of the terms and conditions referred to in paragraph (c) or (d) of this section, as applicable. Additional terms deemed appropriate by the Maritime Administrator may be imposed. The terms and conditions shall be contained in an Approval Notice and Agreement (“Contract”) executed prior to issuance of the Transfer Order. Unless otherwise specified, the terms and conditions shall remain in effect for the period of the remaining economic life of the vessel or for the duration of a national emergency proclaimed by the President prior or subsequent to such Transfer, whichever period is longer. The economic life of a vessel for purposes of this regulation is deemed to be twenty (20) years for tankers and other liquid bulk carriers and twenty-five (25) years for other vessel types. This period is to be calculated from the date the vessel was originally accepted for delivery from the shipbuilder, but may be extended for such additional period of time as may be determined by the Maritime Administrator if the vessel has

been substantially rebuilt or modified in a manner that warrants such extension.

(c) *Foreign transfer other than for scrapping.* If the foreign Transfer of a vessel referred to in paragraph (b) of this section is other than for the purpose of scrapping the vessel and other than a Transfer to the government of an acceptable foreign country, and in the absence of unusual circumstances as determined by the Maritime Administrator (for example a Transfer to an entity controlled by the government of an acceptable foreign country), the following conditions will be imposed on the transferee:

(1) *Ownership.* (i) Without the prior written approval of the Maritime Administrator, there shall be no further Transfer of ownership, change in the registry or Operation of such vessel Under the Authority of a Foreign Country; provided, however, that, if the Transfer of ownership is to a Citizen of the United States or other entity qualified under 46 U.S.C. 12102(a) to document a vessel and the vessel is thereafter documented under U.S. law, no prior written approval shall be required but the transferee shall notify the Vessel Transfer Officer in writing of such change in the ownership and the U.S. documentation within thirty (30) days after such change in ownership and documentation.

(ii) The restrictions contained in paragraph (c)(1)(i) of this section shall not be applicable to a change in ownership resulting from the death of the vessel owner, so long as notification of any such Transfer of ownership occurring by reason of death shall be filed with the Vessel Transfer Officer within 60 days from the date of such Transfer identifying with particularity the name, legal capacity, citizenship, current domicile or address of, or other method of direct communication with, the transferee(s).

(2) *Requisition.* The vessel shall, if requested by the United States, be sold or Chartered to the United States on the same terms and conditions upon which a vessel owned by a Citizen of the United States or documented under U.S. law could be requisitioned for purchase or Charter pursuant to section 902 of the Merchant Marine Act, 1936,

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as amended (46 App. U.S.C. 1242). If the vessel is under the flag of a country that is a member of the North Atlantic Treaty Organization (NATO), the Maritime Administrator will consider this condition satisfied if the owner furnishes satisfactory evidence that the vessel is already in noncommercial service under the direction of the government of a NATO country.

(3) *Trade.* Without the prior written approval of the Maritime Administrator, the vessel shall not carry cargoes of any kind to or from, or be operated commercially while within the waters of (as distinct from passage through), a country referred to in § 221.13(a)(4) of this part, nor shall there be any Charter or other Transfer of an interest in the vessel, other than to a Citizen of the United States, for carriage of cargoes of any kind to or from, or for commercial operation while within the waters of (as distinct from passage through), any such country.

(4) *Default.* In the event of default under any or all of the conditions set forth in paragraphs (c) (1), (2) or (3) of this section, the owner shall pay to the Maritime Administration, without prejudice to any other rights that the United States may have, as liquidated damages and not as a penalty, the sum of not less than \$25,000 or more than \$1,000,000, as specified in the contract, and the vessel shall be subject to the penalties imposed by 46 App. U.S.C. 808 and 839. Pursuant to 46 App. U.S.C. 836, the Maritime Administrator may remit forfeiture of the vessel upon such conditions as may be required under the circumstances of the particular case, including the payment of a sum in lieu of forfeiture, and execution of a new agreement containing substantially the same conditions set forth above and such others as the Maritime Administrator may deem appropriate and which will be applicable to the vessel for the remaining period of the original agreement. In order to secure the payment of any such sums of money as may be required as a result of default, the transferee shall contractually agree, in form and substance approved by the Chief Counsel of the Maritime Administration, to comply with the above conditions and to provide a United States commercial surety bond

or other surety acceptable to the Maritime Administrator for an amount not less than \$25,000 and not more than \$1,000,000, depending upon the type, size and condition of the vessel. "Other surety" may be any one of the following:

(i) An irrevocable letter of credit, which is acceptable to the Maritime Administrator, issued or guaranteed by a Citizen of the United States or by a federally insured depository institution;

(ii) A pledge of United States Government securities;

(iii) The written guarantee of a friendly government of which the transferee is a national;

(iv) A written guarantee or bond by a United States corporation found by the Maritime Administrator to be financially qualified to service the undertaking to pay the stipulated amount;

(v) If the transferee is controlled in any manner by one or more Citizens of the United States, a contractual agreement in form and substance acceptable to the Chief Counsel of the Maritime Administration by the transferee and the Citizens of the United States with authority to exercise such control, if found by the Maritime Administrator to be financially qualified, jointly and severally to pay the stipulated amount, such agreement to be secured by the written guarantee of the transferee and each of the Citizens of the United States or other form of guarantee as may be required by the Maritime Administrator; or

(vi) Any other surety acceptable to the Maritime Administrator and approved as to form and substance by the Chief Counsel of the Maritime Administration.

(d) *Foreign transfer for scrapping.* If the transfer of control, whether or not there is a transfer of registry, of a vessel referred to in paragraph (b) of this section is for the purpose of scrapping the vessel abroad, the following conditions will be imposed on the transferee:

(1) The vessel or any interest therein shall not be subsequently sold to any Person without the prior written approval of the Maritime Administrator, nor shall it be used for the carriage of cargo or passengers of any kind whatsoever.

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(2) Within a period of 18 months from the date of approval of the sale, the hull of the vessel shall be completely scrapped, dismantled, dismembered, or destroyed in such manner and to such extent as to prevent the further use thereof, or any part thereof, as a ship, barge, or any other means of transportation.

(3) The scrap resulting from the demolition of the hull of the vessel, the engines, machinery, and major items of equipment shall not be sold to, or utilized by, any citizen or instrumentality of a country referred to in § 221.13(a)(4) of the part, nor may such scrap be exported to these countries. The engines, machinery and major items of equipment shall not be exported to destinations within the United States.

(4) In the event of default under any or all of the conditions set forth in paragraphs (d) (1), (2) or (3) of this section, the transferee shall pay to the Maritime Administration, without prejudice to any other rights that the United States may have, as liquidated damages and not as a penalty, the sum of not less than \$25,000 or more than \$1,000,000, as specified in the contract, depending upon the size, type and condition of the vessel. This payment shall be secured by a surety company bond or other surety satisfactory to the Maritime Administrator. "Other surety" may be one of those set out in paragraph (c)(4) (i) through (vi) of this section.

(5) There shall be filed with the Vessel Transfer Officer a certificate or other evidence satisfactory to the Chief Counsel of the Maritime Administration, duly attested and authenticated by a United States Consul, that the scrapping of the vessel (hull only) and disposal or utilization of the resultant scrap and the engines, machinery and major items of equipment have been accomplished in accord with paragraphs (d) (2) and (3) of this section.

(e) *Resident agent for service.* (1) Any proposed foreign transferee shall, prior to the issuance and delivery of the Transfer Order covering the vessel or vessels to be transferred, designate and appoint a resident agent in the United States to receive and accept service of process or other notice in any action or proceeding instituted by the United

States relating to any claim arising out of the approved transaction.

(2) The resident agent designated and appointed by the foreign transferee shall be subject to approval by the Maritime Administrator. To be acceptable, the resident agent must maintain a permanent place of business in the United States and shall be a banking or lending institution, a ship-owner or ship-operating corporation or other business entity that is satisfactory to the Maritime Administrator.

(3) Appointment and designation of the resident agent shall not be terminated, revoked, amended or altered without the prior written approval of the Maritime Administrator.

(4) The foreign transferee shall file with the Vessel Transfer Officer a written copy of the appointment of the resident agent, which copy shall be fully endorsed by the resident agent stating that it accepts the appointment, that it will act thereunder and that it will notify the Vessel Transfer Officer in writing in the event it becomes disqualified from so acting by reason of any legal restrictions. Service of process or notice upon any officer, agent or employee of the resident agent at its permanent place of business shall constitute effective service on, or notice to, the foreign transferee.

(f) *Administrative provisions.* (1) The subsequent Transfer of ownership or registry of vessels that have been Transferred to foreign ownership or registry or both, or to Operation Under the Authority of a Foreign Country, that remain subject to Maritime Administration contractual control as set forth above, will be subject to substantially the same Maritime Administration policy considerations that governed the original Transfer, including such changes or modifications that have subsequently been made and continued in effect. Approval of these subsequent Transfers will be subject to the same terms and conditions governing the foreign Transfer at the time of the previous Transfer, as modified (if applicable).

(2) The authorization for all approved transactions, either by virtue of 46 App. U.S.C. 808, 835 and 839 or the Maritime Administration's Contract with

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the vessel owner, will be by notification in the form of a Transfer Order upon receipt of the executed Contract, the required bond or other surety, and other supporting documentation required by the Contract.

(3) In order that the Maritime Administration's records may be maintained on a current basis, the transferor and transferee of the vessel are required to notify the Vessel Transfer Officer of the date and place where the approved transaction was completed, and the name of the vessel, if changed. This information relating to the completion of the transaction and any change in name shall be furnished as soon as possible, but not later than 10 days after the same has occurred.

[57 FR 23478, June 3, 1992, as amended at 63 FR 6881, Feb. 11, 1998; 66 FR 55596, Nov. 2, 2001]

§ 221.17 Sale of a documented vessel by order of a district court.

(a) A Documented Vessel may be sold by order of a district court only to a Person eligible to own a Documented Vessel or to a mortgagee of the vessel. Unless waived by the Maritime Administrator, a Person purchasing the vessel pursuant to court order or from a mortgagee not eligible to document a vessel who purchased the vessel pursuant to a court order must document the vessel under chapter 121 of title 46, United States Code.

(b) A Person purchasing the vessel, pursuant to court order or from a mortgagee not eligible to document a vessel who purchased the vessel pursuant to a court order, and wishing to obtain waiver of the documentation requirement must submit a request including the reason therefor to the Vessel Transfer Officer.

(c)(1) A mortgagee not eligible to own a Documented Vessel shall not operate, or cause operation of, the vessel in commerce. Except as provided in paragraph (c)(2) of this section, the vessel may not be operated for any purpose without the prior written approval of the Maritime Administrator.

(2) The Maritime Administrator hereby grants approval for a mortgagee not eligible to own a Documented Vessel to operate the vessel to the extent necessary for the immediate safety of the

vessel or for repairs, drydocking or berthing changes, but only under the command of a Citizen of the United States.

[57 FR 23478, June 3, 1992, as amended at 63 FR 6881, Feb. 11, 1998]

§ 221.19 Possession or sale of vessels by mortgagees or trustees other than pursuant to court order.

(a) A mortgagee or a trustee of a preferred mortgage on a Documented Vessel that is not eligible to own a Documented Vessel does not require the express approval of the Maritime Administrator to take possession of the vessel in the event of default by the mortgagor other than by foreclosure pursuant to 46 U.S.C. 31329, if provided for in the mortgage or a related financing document, but in such event the vessel may not be operated, or caused to be operated, in commerce. The vessel may not, except as provided in paragraph (b) of this section, be operated for any other purpose unless approved in writing by the Maritime Administrator, nor may the vessel be sold to a Noncitizen without the approval of the Maritime Administrator.

(b) The Maritime Administrator hereby grants approval for such mortgagee or trustee to operate the vessel to the extent necessary for the immediate safety of the vessel, for its direct return to the United States or for its movement within the United States, or for repairs, drydocking or berthing changes, but only under the command of a Citizen of the United States.

(c) A Noncitizen mortgagee that has brought a civil action *in rem* for enforcement of a preferred mortgage lien on a citizen-owned Documented Vessel pursuant to 46 U.S.C. 31325(b)(1) may petition the court pursuant to 46 U.S.C. 31325(e)(1) for appointment of a receiver and, if the receiver is Person eligible to own a Documented Vessel, to authorize the receiver to operate the mortgaged vessel on such terms and conditions as the court deems appropriate. If the receiver is not a Citizen of the United States, the vessel may not be operated in coastwise trade without prior written approval of the Maritime Administrator.

[57 FR 23478, June 3, 1992, as amended at 63 FR 6881, Feb. 11, 1998]

Subpart C [Reserved]

Subpart D—Transactions Involving Maritime Interests in Time of War or National Emergency Under 46 App. U.S.C. 835 [Reserved]

Subpart E—Civil Penalties

§ 221.61 Purpose.

This subpart describes procedures for the administration of civil penalties that the Maritime Administration may assess under 46 U.S.C. 31309 and 31330, and section 9(d) of the Shipping Act, 1916, as amended (46 App. U.S.C. 808(d)), pursuant to 49 U.S.C. 336.

NOTE: Pursuant to 46 U.S.C. 31309, a general penalty of not more than \$12,000 may be assessed for each violation of chapter 313 or 46 U.S.C. subtitle III administered by the Maritime Administration, and the regulations in this part that are promulgated thereunder, except that a person violating 46 U.S.C. 31328 or 31329 and the regulations promulgated thereunder is liable for a civil penalty of not more than \$30,000 for each violation. A person that charters, sells, transfers or mortgages a vessel, or an interest therein, in violation of 46 App. U.S.C. 808 is liable for a civil penalty of not more than \$12,000 for each violation. These penalty amounts are in accordance with Pub. L. 101-410, amended by Pub. L. 104-134. Criminal penalties may also apply to violations of these statutes.

[68 FR 33406, June 4, 2003]

§ 221.63 Investigation.

(a) When the Vessel Transfer Office obtains information that a Person may have violated a statute or regulation for which a civil penalty may be assessed under this subpart, that Officer may investigate the matter and decide whether there is sufficient evidence to establish a *prima facie* case that a violation occurred.

(b) If that Officer decides there is a *prima facie* case, then that Officer may enter into a stipulation with the Party in accordance with § 221.67 of this subpart, or may refer the matter directly to a Hearing Officer for procedures in accordance with § 221.73 to 221.89 of this subpart.

§ 221.65 Criteria for determining penalty.

In determining any penalties assessed, the Vessel Transfer Officer under § 221.67 and the Hearing Officer under §§ 221.73 to 221.89 of this part shall take into account the nature, circumstances, extent and gravity of the violation committed and, with respect to the Party, the degree of culpability, any history of prior offenses, ability to pay and other matters that justice requires.

§ 221.67 Stipulation procedure.

(a) When the Vessel Transfer Office decides to proceed under this section, that Office shall notify the Party in writing by registered or certified mail—

- (1) Of the alleged violation and the applicable statute and regulations;
- (2) Of the maximum penalty that may be assessed for each violation;
- (3) Of a summary of the evidence supporting the violation;
- (4) Of the penalty that the Vessel Transfer Officer will accept in settlement of the violation;
- (5) Of the right to examine all the material in the case file and have a copy of all written documents provided upon request;
- (6) That by accepting the penalty, the Party waives the right to have the matter considered by a Hearing Officer in accordance with §§ 221.73 to 221.89 of this subpart, and that if the Party elects to have the matter considered by a Hearing Officer, the Hearing Officer may assess a penalty less than, equal to, or greater than that stipulated in settlement if the Hearing Officer finds that a violation occurred; and
- (7) That a violation will be kept on record and may be used by the Maritime Administration in aggravation of an assessment of a penalty for a subsequent violation by that Party.

(b) Upon receipt of the notification specified in paragraph (a) of this section, a Party may within 30 days—

- (1) Agree to the stipulated penalty in the manner specified in the notification; or
- (2) Notify in writing the Vessel Transfer Officer that the Party elects to have the matter considered by a Hearing Officer in accordance with the

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procedure specified in §§221.73 through 221.89 of this subpart.

(c) If, within 30 days of receipt of the notification specified in paragraph (a) of this section, the Party neither agrees to the penalty nor elects the informal hearing procedure, the Party will be deemed to have waived its right to the informal hearing procedure and the penalty will be considered accepted. If a monetary penalty is assessed, it is due and payable to the United States, and the Maritime Administration may initiate appropriate action to collect the penalty.

§ 221.69 Hearing Officer.

(a) The Hearing Officer shall have no responsibility, direct or supervisory, for the investigation of cases referred for the assessment of civil penalties.

(b) The Hearing Officer shall decide each case on the basis of the evidence before him or her, and must have no prior connection with the case. The Hearing Officer is solely responsible for the decision in each case referred to him or her.

(c) The Hearing Officer is authorized to administer oaths and issue subpoenas necessary to the conduct of a hearing, to the extent provided by law.

§ 221.71 Hearing Officer referral.

If, pursuant to §221.67(b)(2) of this subpart, a Party elects to have the matter referred to a Hearing Officer, the Vessel Transfer Officer may—

(a) Decide not to proceed with penalty action, close the case, and notify the Party in writing that the case has been closed; or

(b) Refer the matter to a Hearing Officer with the case file and a record of any prior violations by the Party.

§ 221.73 Initial Hearing Officer consideration.

(a) When a case is received for action, the Hearing Officer shall examine the material submitted. If the Hearing Officer determines that there is insufficient evidence to proceed, or that there is any other reason which would make penalty action inappropriate, the Hearing Officer shall return the case to the Vessel Transfer Officer with a written statement of the reason. The Vessel Transfer Officer may close the case or

investigate the matter further. If additional evidence supporting a violation is discovered, the Vessel Transfer Officer may resubmit the matter to the Hearing Officer.

(b) If the Hearing Officer determines that there is reason to believe that a violation has been committed, the Hearing Officer notifies the Party in writing by registered or certified mail of—

(1) The alleged violation and the applicable statute and regulations;

(2) The maximum penalty that may be assessed for each violation;

(3) The general nature of the procedure for assessing and collecting the penalty;

(4) The amount of the penalty that appears to be appropriate, based on the material then available to the Hearing Officer;

(5) The right to examine all the material in the case file and have a copy of all written documents provided upon requests; and

(6) The right to request a hearing.

(c) If at any time it appears that the addition of another Party to the proceedings is necessary or desirable, the Hearing Officer will provide the additional Party and the Party alleged to be in violation with notice as described above.

(d) At any time during a proceeding, before the Hearing Officer issues a decision under §221.89, the Hearing Officer and the Party may agree to a Settlement of the case.

§ 221.75 Response by party.

(a) Within 30 days after receipt of notice from the Hearing Officer, the Party, or counsel for the Party, may—

(1) Pay the amount specified in the notice as being appropriate;

(2) In writing request a hearing, specifying the issues in dispute; or

(3) Submit written evidence or arguments in lieu of a hearing.

(b) The right to a hearing is waived if the Party does not submit a request to the Hearing Officer within 30 days after receipt of notice from the Hearing Officer, unless additional time has been granted by the Hearing Officer.

(c) The Hearing Officer has discretion as to the venue and scheduling of a hearing. The hearing will normally be

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held at the office of the Hearing Officer. A request for a change of location of a hearing or transfer to another Hearing Officer must be in writing and state the reasons why the requested action is necessary or desirable. Action on the request is at the discretion of the Hearing Officer.

(d) A Party who has requested a hearing may amend the specification of the issues in dispute at any time up to 10 days before the scheduled date of the hearing. Issues raised later than 10 days before the scheduled hearing may be presented only at the discretion of the Hearing Officer.

§ 221.77 Disclosure of evidence.

The Party shall, upon request, be provided a free copy of all the evidence in the case file, except material that would disclose or lead to the disclosure of the identity of a confidential informant and any other information properly exempt from disclosure.

§ 221.79 Request for confidential treatment.

(a) In addition to information treated as confidential under § 221.77 of this subpart, a request for confidential treatment of a document or portion thereof may be made by the Person supplying the information on the basis that the information is—

(1) Confidential financial information, trade secrets, or other material exempt from disclosure by the Freedom of Information Act (5 U.S.C. 552);

(2) Required to be held in confidence by 18 U.S.C. 1905; or

(3) Otherwise exempt by law from disclosure.

(b) The Person desiring confidential treatment must submit the request to the Hearing Officer in writing and the reasons justifying nondisclosure. The Hearing Officer shall forward any request for confidential treatment to the appropriate official of the Maritime Administration for a determination hereon. Failure to make a timely request may result in a document being considered as nonconfidential and subject to release.

(c) Confidential material shall not be considered by the Hearing Officer in reaching a decision unless—

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(1) It has been furnished by a Party; or

(2) It has been furnished pursuant to a subpoena.

§ 221.81 Counsel.

A Party has the right to be represented at all stages of the proceeding by counsel. After receiving notification that a Party is represented by counsel, the Hearing Officer will direct all further communications to that counsel.

§ 221.83 Witnesses.

A Party may present the testimony of any witness either through a personal appearance or through a written statement. The Party may request the assistance of the Hearing Officer in obtaining the personal appearance of a witness. The request must be in writing and state the reasons why a written statement would be inadequate, the issue or issues to which the testimony would be relevant, and the substance of the expected testimony. If the Hearing Officer determines that the personal appearance of the witness may materially aid in the decision on the case, the Hearing Officer will seek to obtain the witness' appearance. The Hearing Officer may move the hearing to the witness' location, accept a written statement, or accept a stipulation in lieu of testimony.

§ 221.85 Hearing procedures.

(a) The Hearing Officer shall conduct a fair and impartial proceeding in which the Party is given a full opportunity to be heard. At the opening of a hearing, the Hearing Officer shall advise the Party of the nature of the proceedings and of the alleged violation.

(b) The material in the case file pertinent to the issues to be determined by the Hearing Officer shall first be presented. The Party may examine, respond to and rebut this material. The Party may offer any facts, statements, explanations, documents, sworn or unsworn testimony, or other exculpatory items that bear on the issues, or which may be relevant to the size of an appropriate penalty. The Hearing Officer may require the authentication of any written exhibit or statement.

(c) At the close of the Party's presentation of evidence, the Hearing Officer

may allow the introduction of rebuttal evidence. The Hearing Officer may allow the Party to respond to rebuttal evidence submitted.

(d) In receiving evidence, the Hearing Officer shall not be bound by the strict rules of evidence. In evaluating the evidence presented, the Hearing Officer shall give due consideration to the reliability and relevance of each item of evidence.

(e) After the evidence in the case has been presented, the Party may present argument on the issues in the case. The party may also request an opportunity to submit a written statement for consideration by the Hearing Officer. The Hearing Officer shall allow a reasonable time for submission of the statement and shall specify the date by which it must be received. If the statement is not received within the specified time, the Hearing Officer may render a decision in the case without consideration of the statement.

§ 221.87 Records.

(a) A verbatim transcript of a hearing will not normally be prepared. The Hearing Officer will prepare notes on material and points raised by the Party in sufficient detail to permit a full and fair review of the case.

(b) A Party may, at its own expense, cause a verbatim transcript to be made, in which event the Party shall submit, without charge, two copies to the Hearing Officer within 30 days of the close of the hearing.

§ 221.89 Hearing Officer's decision.

(a) The Hearing Officer shall issue a written decision. Any decision to assess a penalty shall be based on substantial evidence in the record, and shall state the basis for the decision.

(b) If the Hearing Officer finds that there is not substantial evidence in the record establishing the alleged violation, the Hearing Officer shall dismiss the case. A dismissal is without prejudice to the Vessel Transfer Officer's right to refile the case if additional evidence is obtained. A dismissal following a rehearing is final and with prejudice.

(c) The Hearing Officer shall notify the Party in writing, by certified or registered mail, of the decision and, if

adverse, shall advise the Party of the right to an administrative appeal to the Maritime Administrator or an individual designated by the Administrator from that decision.

(d) If an appeal is not filed within the prescribed time, the decision of the Hearing Officer constitutes final agency action in the case.

§ 221.91 Appeals.

(a) Any appeal from the decision of the Hearing Officer must be submitted in writing by the Party to the Hearing Officer within 30 days from the date of receipt of the Hearing Officer's decision.

(b) The only issues that will be considered on appeal are those issues specified in the appeal which were raised before the Hearing Officer and jurisdictional questions.

(c) There is no right to oral argument on an appeal.

(d) The Maritime Administrator or an individual designated by the Administrator will issue a written decision on the appeal, and may affirm, reverse, or modify the decision, or remand the case for new or additional proceedings. In the absence of a remand, the decision on appeal is final agency action.

(e) The Maritime Administrator or an individual designated by the Administrator shall notify the Party in writing, by certified or registered mail, of the decision on appeal and, if adverse, shall advise the Party of the right of appeal to the courts.

§ 221.93 Collection of civil penalties.

Within 30 days after receipt of the Hearing Officer's decision, or a decision on appeal, the Party must submit payment of any assessed penalty in the manner specified in the decision letter. Failure to make timely payment will result in the institution of appropriate action to collect the penalty.

Subpart F—Other Transfers Involving Documented Vessels [Reserved]

Subpart G—Savings Provisions

§ 221.111 Status of prior transactions—controlling dates.

(a) The Maritime Administrator hereby grants approval for any transaction occurring on or after January 1, 1989 and prior to July 3, 1991 that was lawful under 46 CFR part 221, revised as of October 1, 1989.

(b) The Maritime Administrator hereby grants approval for any transaction occurring on or after July 3, 1991 and prior to June 3, 1992 that was lawful under 46 CFR part 221, revised as of October 1, 1991.

(c) Any transaction approved by the Maritime Administrator prior to January 1, 1989, or any transaction that did not require such approval prior to that date, shall continue to be lawful.

PART 232—UNIFORM FINANCIAL REPORTING REQUIREMENTS

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AUTHORITY: Section 204(b), Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114(b)); 49 CFR 1.66.

SOURCE: 48 FR 30122, June 30, 1983, unless otherwise noted.

§ 232.1 Purpose and applicability.

(a) *Purpose.* The purpose of this regulation is to establish uniform reporting requirements for the preparation of financial reports and submissions of information to the Maritime Administration. The Maritime Administration will, as necessary, issue clarifying instructions to those subject to these reporting requirements to assist in their interpretation and application. The uniform reporting requirements consist of:

(1) A chart of accounts defined in this regulation.

(2) Standard financial report formats, set forth in Form MA-172 (Revised).

(b) *Applicability.* This regulation is application to all participants in financial assistant programs administered by the Maritime Administration, U.S. Department of Transportation, that are required to file periodic financial reports with that agency.

[48 FR 30122, June 30, 1983, as amended at 58 FR 62043, Nov. 24, 1993]