

Poamoho Section of the site from the NPL. The Kunia Section will remain on the NPL and is not the subject of this partial deletion. A Record of Decision (ROD) describing the selected cleanup plan for the Kunia Section was signed on September 25, 2003.

In a letter dated June 19, 2003, the State of Hawaii through its Department of Health, concurred with EPA's decision to delete the Poamoho Section of the site.

Dated: October 16, 2003.

Debra Jordan,

Acting Regional Administrator, Region 9.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 67 and 68

[USCG 2001-10048]

Vessel Documentation: "Sold Foreign"

AGENCY: Coast Guard, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Coast Guard withdraws the proposed rule published on September 12, 2001, in which we sought comments on our interpretation of the term "sold foreign," which may disqualify certain vessels whose ownership has become "foreign" in technical ways from eligibility for coastwise trade. While some affected parties claimed that this interpretation imposes a harsh penalty for slight, often unintended involvement, others feel that it just preserves the privilege of coastwise trade for the domestic fleet.

DATES: The proposed rule is withdrawn as of October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Willis, Director, National Vessel Documentation Center, telephone 304-271-2506.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 2001, we published a request for comments notice in the *Federal Register* (66 FR 47431), inviting comments on how to interpret the term "sold foreign". We received ten comments. After review of these comments, we decided not to take any further action.

Discussion of Comments

The request for comments posed several specific questions:

1. Should the Coast Guard issue a formal letter-ruling addressing the proposed reorganization of a business entity before the entity undertakes the reorganization?

2. a. If a qualified owner sells a vessel to an owner unqualified because foreign, should the unqualified owner be able to cure the defect through its own reorganization?

b. Should the Coast Guard count as accomplishing a "sale" the reorganization of an owner that, until the reorganization, qualified to document vessels in accordance with 46 U.S.C. 12102? If so, should the owner be able to cure the defect through a second reorganization?

c. If a business entity can reorganize to satisfy 46 U.S.C. 12102, so as to avoid a permanent loss of the privilege of coastwise trade, should a vessel sold to a natural person other than a citizen be able to regain the privilege upon the naturalization of that person?

3. Should there be a time by which the reorganization posited in paragraph 2.a, the second reorganization posited in paragraph 2.b, or the naturalization posited in paragraph 2.c must either start or finish?

We received six comments from maritime-industry associations representing a large number of U.S. owners and operators, three comments from vessel owners, and one joint comment from two law firms. All six associations opposed any change in the Coast Guard's current rule. They also opposed allowing reorganizations to cure defects after the fact, pointing out that affected vessel owners may seek legislative redress in a process that allows a public venue to evaluate the appropriate action to take. Two of the vessel owners, both eligible to own and operate coastwise-qualified vessels, affirmed their support for the associations; the third, which qualifies to document vessels, though not for purposes of coastwise trade, proposed an unrestricted right of cure when there is no accompanying transfer of flag.

The joint comment from the two law firms opposes the current Coast Guard interpretation and petitions for rulemaking. The Coast Guard notes, however, that that comment in part mischaracterizes its rules. For example, the comment states that these rules permanently bar a vessel from coastwise privileges if sold to an owner that is not "both a U.S. citizen and a person permitted to document vessels pursuant to 46 CFR 68." In fact, the rules provide for loss of coastwise privileges under two circumstances: (1) the vessel is being sold to a person who is not a U.S. citizen eligible for full coastwise

privileges (or, if the more limited coastwise privileges for a vessel operating under the Bowaters amendment or as an oil spill response vessel, to a person who is not qualified under the applicable statutes); or (2) the vessel is being sold to a person not permitted to document vessels pursuant to 46 U.S.C. 12102, and 46 CFR part 68. However, permanent loss of coastwise privileges results only if the vessel is sold to a person not eligible to document vessels. The comment also states that these rules fail to include vessels financed under 46 U.S.C. 12106(e) as vessels which would not be deemed sold foreign. Because vessels financed under 46 U.S.C. 12106(e) must be owned by persons eligible to document vessels under 46 U.S.C. 12102, the Coast Guard does not understand the comment.

The joint comment also petitions for a rulemaking on the grounds that 46 CFR 67.19(d) directly contradicts the plain language of the Bowaters amendment in 46 U.S.C. app. 883-1, creating a limited privilege to engage in coastwise trade. The Coast Guard disagrees that 46 CFR 67.19(d) contradicts the Bowaters privilege. The comment in this regard appears to assume that 46 CFR 67.19(d) requires U.S. "citizenship" (by which it apparently means that the vessel must also be fully coastwise-qualified) and that it be qualified pursuant to the Bowaters amendment. However, this is not true. The Coast Guard holds that the vessel must (1) be eligible for documentation, that is, the corporation owning it must be qualified as a U.S. documentation citizen pursuant to 46 U.S.C. 12102, as implemented by 46 CFR 67.39(a), and (2) either meet the requirements of the Bowaters amendment pursuant to a certificate's so stating and having been filed with the Coast Guard pursuant to 46 CFR 67.39(d) (in which case it will qualify for a Bowaters coastwise endorsement), or meet the requirements specified in 46 CFR Subpart 68.05 (in which case it will qualify for a limited coastwise endorsement to engage in oil-spill cleanup and training). By confusing these two separate and distinct requirements, this comment has misstated the Coast Guard's position. It cites *Conoco v. Skinner*, 970 F.2d 1206 (DC Cir. 1992), in support of its position. However, a close reading of that case reveals that it does not support that position. Rather, the case (1) upholds the Coast Guard rules at issue as reasonable exercises of discretion committed to agencies (here, the Coast Guard and the Maritime