

Administration), by Congress, and (2), more importantly, in the context of the issue at hand, does not deem invalid the regulatory requirement to qualify, that the corporate citizen must be a fully qualified documentation citizen as well as possess one of the two attributes (qualify pursuant to the Bowaters amendment or ownership by U.S. citizens of a minimum of 75 percent at every level in the entire chain of corporate ownership).

The joint comment also contends that 46 CFR 67.19(d) should be revised to "return to the original intent and to permit the correction of technical defects in citizenship." It asserts that the requirement that a U.S. citizen be chairman of the board or hold an equivalent position is such a "technical defect", relying, in part, on an Opinion Memo 16713 of the Coast Guard dated 8 April 1980 ("the G-LMI memo"). Of course, whether to change some 35 years of policy strictly applying the literal terms of the statute in respect of the requirements of the "sold foreign" provision in Section 27 of the Shipping Act of 1916 was, indeed, the purpose of the request for comments that preceded this notice. But the Coast Guard disagreed in 1980 when the G-LMI memo was issued, and it disagrees today, that the law required the Coast Guard to change its policy. Rather, the Coast Guard believes now, just as it did then, that it has the discretion, notwithstanding the conclusions in the G-LMI memo, to apply the law strictly (as it had up to the point of publishing the request for comments on a possible change to that policy). It may be helpful in explaining this position to recount some of the legislative history of the Jones Act and some of the cabotage principles on which that law is based.

Congress entrusted the Coast Guard with the responsibility, under 46 U.S.C. Chapter 121, to administer the vessel documentation laws consistently with the Jones Act, 46 U.S.C. app. 802, 808, and 883 and 46 U.S.C. 12106. The Coast Guard has held this responsibility continuously since 1967. We have historically implemented those laws with due regard to the important cabotage principles embodied in the Jones Act. We have endeavored in the past, as we do now, to carry out those principles as expressed by Congress in the Act itself and its legislative history, as well as in the lease-financing amendment and its legislative history.

We are aware of the Congressional purpose of that Act, as explained on the floor of the House at the time of discussions on who could be a U.S. citizen for purposes of owning and operating a vessel in the U.S. coastwise

trade. That purpose was expressed by Congressman Saunders, as follows:

The amendment [to Section 2 of the Shipping Act] intends to make it impossible for any arrangement to be effected by which such a corporation, partnership or association shall be a citizen of the United States when the real control of same is in the hands of aliens. We have sought to make the language so sweeping and comprehensive that no lawyer, however ingenious, would be able to work out any device under this section to keep the letter, while breaking the spirit of the law. [See 56 Cong. Rec. 8029 (June 19, 1918).]

None of the comments suggests that the Coast Guard lacks authority to amend its rules to adopt a more relaxed interpretation of the term "sold foreign" so as to allow a vessel purchaser to cure the so-called "technical defects" specified in the G-LMI memo, or to overcome those defects by reorganizing. Indeed, the Coast Guard has never doubted that Congress vested it with discretion to adopt a more liberal definition of that term.

Congress has apparently acceded to the Coast Guard's approach of strictly applying the requirements of the statute in interpreting the term "sold foreign". It has, on several occasions, granted limited legislative relief from what it perceived as the harsh results of the Coast Guard's strict interpretation in the case of individual vessels. It is noteworthy, in this regard, that rather than change the legislative scheme generally, or instructing the Coast Guard to adopt a more liberal approach, it has chosen to act only in the cases of individual vessels when it thought relief was warranted. Pub. L. 105-383, Section 403, is one example of such relief. In that law, Congress granted Bowaters coastwise privileges to vessels acquired by a company before it applied for, and was granted, a Bowaters certificate. Congress recognized that the vessels did not qualify under the Coast Guard's strict interpretation. They had not been acquired after the company obtained the necessary Bowaters certificate. Nevertheless, Congress granted Bowaters privileges to the vessels individually; but, significantly, it neither changed the underlying statute nor directed that the Coast Guard cease applying the statute strictly.

The joint comment argues that qualification for Bowaters privileges exists irrespective of the filing of an application together with its attestation that the applicant qualifies. According to the comment, the filing of the application together with its attestation is a mere formality or "technicality"

that is not a necessary pre-requisite to the qualification for Bowaters privileges. The issue is important because, if this view prevailed, a corporation could qualify its existing owned vessels, when it got around to filing the application together with its attestation—not just qualify newly acquired vessels after the application and the issuance of the qualification certificate. After considering all comments, and notwithstanding the G-LMI memo, the Coast Guard believes that the problems of administering a documentation regime that allows persons who are not documentation citizens to "correct" their citizenship defects, and thereby "cure" those defects so as to be able to own and operate coastwise-qualified vessels, could act only on ad hoc, or case-by-case, determinations of what factual patterns would qualify. Such a regime does not lend itself to a statement of objective criteria in advance that would govern all such determinations.

Such a regime would, in turn, inevitably lead to inconsistent results, to an increasingly burdensome and resource intensive-process, and ultimately to an administrative quagmire that would be worse than whatever perceived problems the current strict interpretation presents. Even the comments that support a more "flexible" or liberal policy and advocate revising the rules to incorporate such a policy acknowledge that it would result in corporate citizens' being treated differently in this respect from natural persons. Thus, they admit that a foreign natural person's vessel could never qualify for coastwise privileges, including the limited Bowaters privileges, because of Section 27. If that same person became a naturalized citizen, the vessel, owned by that person while an alien, could never qualify for coastwise privileges (even Bowaters exception privileges), whereas once that alien becomes a naturalized citizen any U.S.-built, coastwise-qualified vessel (s)he acquired after the naturalization would continue to be fully coastwise-qualified.

Termination

After review of all of the comments, the Coast Guard has concluded that it is inappropriate to change its current interpretation of the term "sold foreign" and has decided to terminate this project. The Coast Guard agrees with industry representatives that adopting procedures allowing entities to cure citizenship problems after the sales would contravene the cabotage principles upon which the Jones Act rests, and that owners of affected vessels