

**AGENDA**  
**MARINE FINANCING COMMITTEE**  
**AND ITS SUBCOMMITTEES**

May 3, 2006

at

Holland & Knight  
195 Broadway  
24<sup>th</sup> Floor  
New York, New York

**8:30 A.M. – 9:30 A.M.**

**JOINT SUBCOMMITTEE ON MARITIME LIENS AND MORTGAGES**

(A joint subcommittee with the Practice and Procedure Committee, and the successor joint subcommittee to the Joint Subcommittee on Vessel Foreclosures and Insolvency)

**Edward J. Powers**  
**Chair**

1. Pending Congressional reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act, and its affect on fishing industry vessel financing – citizenship of lenders.

Stephen B. Johnson  
Chair,  
Fisheries Committee

This issue will also be on the agenda at the meeting of the Fisheries Committee on Thursday, May 4.

2. Filing on vessels under 49 U.S.C. §11301 - Time for a USCG Alternative? Discussion of the law and practice with regard to vessel leasing transactions on vessels subject to the recording statute administered by the U.S. Surface Transportation Board. A memorandum on this topic from Robert S. Fisher is attached.

3. *Aqua Stoli v. Gardner Smith*, 2005 A.M.C. 2216 (S.D.N.Y. Sept. 6, 2005) - Rule B attachment must not only meet all technical requirements set forth under the rule, but the plaintiff must also show that the attachment is not being used as a tactical device designated to harass the adversary in an ongoing litigation; defendant may still rebut plaintiff by showing that the hardship of the attachment outweighs any benefit to the plaintiff.

**9:30 A.M. – 11:00 A.M.**

**YACHT FINANCING SUBCOMMITTEE**

**Mark J. Buhler**  
**Chair**

1. Fair Debt Collection Practices Act. A few years ago the Marine Financing and Practice and Procedure Committees proposed an amendment to the FDCPA to provide that the arrest of a yacht when it is in a location different from residence of the borrower or the location where the loan contract was signed will not violate the venue provisions of Act. The proposal made no headway in Congress. Should we try again?
2. Open discussion of recent topics.

**11:00 A.M - 12:30 P.M.**

**COAST GUARD DOCUMENTATION, U.S. CITIZENSHIP, AND RELATED MATTERS**

**Thomas . Whalen**  
**Chair**

1. Latest Coast Guard leasing regulations. The current Notice of Proposed Rulemaking and the current form of the statute and the commentary on that from the House Conference Report are attached.
2. Meeting Coast Guard citizenship tests in the case of public companies (presentation by Mark Lowe, Esq., Hill, Betts & Nash).
3. Filing of long-term demise charters and “synthetic leases” with the NVDC. A draft statute proposed by Francis X. Nolan is attached.
4. Filings with the NVDC in electronic form.
5. Status report on current situation as to any filing backlogs at the NVDC.

**2:00 P.M. – 4:00 P.M.**

**MARINE FINANCING COMMITTEE**

**Bruce A. King**  
**Chair**

1. Subcommittee reports.
2. Continuing Legal Education Program

**INSURANCE IN MARINE FINANCING TRANSACTIONS**

Presentations:

*Additional Insureds and Marine Finance*

Edward F. LeBreton  
New Orleans

*Mortgagee's Interest Insurance*

Lars Gustafson  
Marsh  
New York

An application for approval for 1.0 hours of education credit in New York is pending

Minutes of the last meeting of the Committee are attached.

NOTE: Members and guests are invited to a no-host get together afterwards at the bar at Brasserie Les Halles, a half block away across Broadway at 15 John Street.

# MEMO

To: Edward J. Powers, Esq.,  
Chair, Sub-Committee on Maritime Liens etc.

From: Robert S. Fisher, Esq.

CC: Bruce King, Esq.,  
Chair, Marine Finance Committee  
Thomas J. Whalen, Esq.,  
Chair, Sub-Committee on USCG Affairs

Date: March 30, 2006

Re: Filing on Vessels under 49 U.S.C. §11301 - Time for a  
U.S.C.G. Alternative?

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Dear Ed:

I am pleased that you are placing on the calendar for the May MLA meeting of the Subcommittee on Maritime Liens and Mortgages and Insolvency the issue of whether 46 U.S.C. Chapter §313 should be amended to provide for the filing with the National Vessel Documentation Center of long-term demise charters, many of which are referred to as "synthetic leases."

Recent discussion of the issue on the Equipment Leasing Association chat room triggered by burgeoning interest in new vessel financing of articulated tugs and barges prompted me to review 49 U.S.C. §11301, a section typically devoted to the perfection of security interests in locomotives, railcars and rolling stock in general. What seems to have escaped the scrutiny of many maritime attorneys is that this section (copy attached) also lists vessels to the extent that a federal filing option does not exist under Chapter 313. For an undocumented vessel, e.g. non-self-propelled barge operating on inland waterways, §11301 could be the proper (perhaps required) place to file a security agreement, not just a synthetic lease. Note the statute says "shall file."

The main condition for a §11301 vessel filing, which is made with the Surface Transportation Board, successor to the Interstate Commerce Commission is that the vessel be engaged in interstate commerce. That term differs from the maritime "coastwise trade" or "foreign trade" concepts, distinctions we may wish to explore. Some rolling stock cases have held that the activity can be merely related to interstate commerce and one case even held that "built for interstate commerce" was

enough to satisfy the statute. Application of these concepts to vessels would be interesting.

The existence of §11301 may call into question the propriety of relying on UCC filing where NVDC filing is not available, either because the vessel is not and is not required to be documented or where, as with a "synthetic lease," there is no NVDC filing.

On balance, it has occurred to some of us that allowing Surface Transportation Board filing for a "synthetic lease" when filing of a preferred mortgage or other maritime lien against the vessel is with the NVDC makes no sense - especially since notice of an STB filing does not appear on the USCG abstract. Consequently, I urge that the MLA consider whether the most efficient solution would be to have filing of all "synthetic leases" of U.S. documented vessels at the NVDC for documented vessels and allow filings to continue at the STB for undocumented vessels in a trade related to commerce. I'm not sure about "built for interstate commerce."

The Equipment Leasing Association plans to take up this issue at its Spring meeting in San Francisco to be held about the same time as ours. I am hoping ELA will send a representative to our meeting but that may not happen. I have been in touch with the head of the ELA Legal Committee and we are scheduled to speak when he returns. I think we should look to the ELA for support but that the MLA should definitely vet this problem with all of its maritime ramifications and try to establish a position. I believe Coast Guard would try to work with us if we can present a unified approach.

So as to maintain some momentum for change, I would ask that MLA members review §11301 before our Spring meeting, discuss it with clients and come prepared to have some preliminary discussion. I expect that the Coast Guard Subcommittee likewise would want to consider this issue and that Bruce King might be able to appoint an *ad hoc* committee to work on it following preliminary discussions.

Cordially yours,

Robert S. Fisher, Esq.  
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Potential Questions:

- (1) Definition of "synthetic lease"?
- (2) Limit filing to "interstate commerce" or use NVDC filing to expand "synthetic lease" filing to foreign trade?
- (3) Filing against undocumented barges or the lessee's interest in barge leases with STB?

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IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Register, FDA is publishing a notice announcing the availability of the draft guidance document entitled "Class II Special Controls Guidance Document: Bone Sonometers." The notice contains an analysis of the paperwork burden for the draft guidance.

### XIII. Comments

Interested persons may submit to the Division of Dockets Management (see ADDRESSES) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m. Monday through Friday.

### XIV. References

The following references have been placed on display in the Division of Dockets Management (see ADDRESSES) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday:

1. Bauer, D. C., et al., "Broadband Ultrasound Attenuation Predicts Fractures Strongly and Independently of Densitometry in Older Women," *Archives of Internal Medicine*, 157, pp. 629-634, 1997.
2. Hans, D., et al., "Ultrasonographic Heel Measurements to Predict Hip Fracture in Elderly Women: The EPIDOS Prospective Study," *Lancet*, 348, pp. 511-514, 1996.
3. Miller, P. D., et al., "Prediction of Fracture Risk in Postmenopausal White Women With Peripheral Bone Densitometry: Evidence From the National Osteoporosis Risk Assessment," *Journal of Bone and Mineral Research*, 17, pp. 2222-2230, 2002.

### List of Subjects in 21 CFR Part 892

Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 892 be amended as follows:

### PART 892—RADIOLOGY DEVICES

1. The authority citation for 21 CFR part 892 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Add section 892.1180 to subpart B to read as follows:

#### § 892.1180 Bone sonometer.

(a) *Identification.* A bone sonometer is a device that transmits ultrasound energy into the human body to measure acoustic properties of bone that indicate overall bone health and fracture risk.

The primary components of the device are a voltage generator, a transmitting transducer, a receiving transducer, and hardware and software for reception and processing of the received ultrasonic signal.

(b) *Classification.* Class II (special controls). The special control for this device is FDA's "Class II Special Controls Guidance Document: Bone Sonometers." See § 892.1(e) of this chapter for the availability of this guidance document.

Dated: January 17, 2006.

**Linda S. Kahan,**

*Deputy Director, Center for Devices and Radiological Health.*

[FR Doc. E6-2076 Filed 2-14-06; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 46 CFR Parts 67 and 68

[USCG-2005-20258]

RIN 1625-AA95

#### Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend its regulations for documenting lease-financed vessels that have a "coastwise endorsement" (i.e., vessels used in trade and passenger service within the U.S. or between U.S. ports and those used in dredging and towing in U.S. waters). The vessels affected by this proposal are owned by foreign-owned or controlled U.S. companies, where there is a "demise charter" to a U.S. citizen (i.e., an agreement for the charterer to assume responsibility for operating, crewing, and maintaining the vessel as if the charterer owned it).

**DATES:** Comments and related material must reach the Docket Management Facility on or before May 16, 2006. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before May 16, 2006.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG-2005-20258 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web Site: <http://dms.dot.gov>.

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590-0001.

(3) Fax: 202-493-2251.

(4) Hand delivery: Room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(5) Federal eRulemaking Portal: <http://www.regulations.gov>.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call Patricia Williams, Deputy Director, National Vessel Documentation Center, Coast Guard, telephone 304-271-2506. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-493-0402.

### SUPPLEMENTARY INFORMATION:

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  - D. Derivation table for proposed 46 CFR part 68.
  - E. Changes to existing 46 CFR part 67.
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  - G. Existing requirements under 46 CFR part 67 (proposed subpart D).
- IV. Regulatory Analysis
- V. List of Subjects
- VI. Regulatory Text

### I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://dms.dot.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

**Submitting comments:** If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG-2005-20258), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or hand delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**Viewing comments and documents:** To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://dms.dot.gov> at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Public Meeting:** We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Privacy Act:** Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://dms.dot.gov>.

## II. Background and Purpose

The Coast Guard Authorization Act of 1996 (1996 Act) amended the vessel documentation laws to promote lease financing of vessels with a coastwise endorsement on their certificate of documentation. Public Law 104-324, section 1113(d), 46 U.S.C. 12106(e). A

coastwise endorsement is required to engage in trade and passenger service within or between U.S. ports and in dredging and towing in U.S. waters. The vessels affected by this proposal are owned by foreign-owned or controlled U.S. companies that are demise chartered to a coastwise qualified U.S. citizen. A coastwise qualified citizen can be either an individual who is a U.S. citizen or any other entity that is at least 75 percent U.S. owned and controlled.

Lease financing has become a very common way to finance capital assets in the maritime industry. Under lease financing, ownership of the vessel is in the name of the owner, with a demise charter to the charterer (i.e., the operator) of the vessel. A demise or bareboat charter is an agreement in which the charterer assumes the responsibility for operating, crewing, and maintaining the vessel as if the charterer owned it. Because of the potential cost savings, many vessel operators choose to acquire or build vessels through lease financing, instead of the traditional mortgage financing. But, until the 1996 Act, operators were prevented from obtaining lease financing from U.S. companies that are less than 75 percent U.S. owned, because the leasing company had to be a U.S. citizen under section 2 of the Shipping Act, 1916, which requires at least 75 percent U.S. ownership. 46 U.S.C. app. 802.

The Coast Guard published a final rule in the **Federal Register** on February 4, 2004, implementing most of the provisions of the 1996 Act. 69 FR 5390. On the same day, the Coast Guard and the Maritime Administration published a joint notice of proposed rulemaking (NPRM) entitled "Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade; Second Rulemaking." 69 FR 5403. However, on August 9, 2004, the President signed the Coast Guard and Maritime Transportation Act of 2004 (2004 Act), which made amendments to 46 U.S.C. 12106 with regard to certain vessels engaged in the coastwise trade. Public Law 108-293. In response to those changes, the Coast Guard and Maritime Administration withdrew the joint NPRM. 70 FR 19376 (Apr. 13, 2005).

Subsection 608(a) of the 2004 Act adds a new paragraph (f) to 46 U.S.C. 12106 setting forth an ownership certification requirement. Under subsection 608(a), the owner of a lease-financed vessel must now certify each year:

- That it (or, if the vessel is owned by a trust or similar arrangement, the

beneficiary of the trust or similar arrangement) is a leasing company, bank, or financial institution;

- That it owns or holds the beneficial interest in the vessel solely as a "passive investment," as defined in 608(a);

- That it does not operate any vessel for hire and is not an affiliate of any person who operates any vessel for hire; and

- That it is independent from, and not an affiliate of, any charterer of the vessel or any person who has the right, directly or indirectly, to control or direct the movement or use of the vessel.

In addition, subsection 608(a) allows a separate certification for tank vessels that primarily carry qualified proprietary cargo such as oil, petroleum products, petrochemicals, or liquefied natural gas. Subsection 608(b) provides requirements for a few particular vessels in the Alaska trade and is referenced in the note to proposed § 68.60. Subsection 608(c) provides for a permanent grandfather from the provisions of subsection 608(a) for most vessels documented under 46 U.S.C. 12106(e) on or before August 9, 2004, the date of enactment of the 2004 Act.

## III. Discussion of Proposed Rule

This NRPM would amend the regulations on the documentation for U.S.-built vessels owned by foreign-owned or controlled U.S. companies that are lease financed to a U.S. citizen for use in the coastwise trade. This proposed rule addresses amendments provided by Congress under the 2004 Act concerning information needed to determine the eligibility of a vessel owner for a coastwise endorsement under the lease-financing law. Specifically, it proposes the following changes:

- Update and provide consistent documentation requirements to determine the eligibility of lease-financed vessels for coastwise endorsements.

- Permanently grandfather, from the new requirements, all lease-financed vessels, except for offshore supply vessels (OSV) documented on or before August 9, 2004.

- Require owners of lease-financed OSVs with valid coastwise endorsements issued before August 9, 2004, to reapply for a new coastwise endorsement by August 9, 2007.

- Require all owners of lease-financed vessels with recently-issued coastwise endorsements (i.e., those issued after August 9, 2004) to certify each year that their ownership and investment status has not changed.



- Require entities that enter into a demise sub-charter agreement to file a copy of the sub-charter and amendments to the sub-charter with the Director of the National Vessel Documentation Center (NVDC).

A. *Third-party audits.* Our February 4, 2004, NPRM that was withdrawn on April 13, 2005, requested comments as to whether we should require that endorsement applications to the Coast Guard be audited by a third party. 69 FR 5403. We stated that we were considering requiring each applicant to provide a certification from an independent auditor with expertise in the business of vessel financing and operations. That certification would provide additional assurance that the transaction would in fact qualify under the lease-financing statute and regulations. However, we recognized that this additional requirement would add time and cost to the process of preparing the application. We expressed particular interest in obtaining comments on this question.

The responses received were evenly split between those favoring third-party audits and those opposing it. However, in light of the new self-certification requirement in section 608 of the 2004 Act, which is reflected in proposed § 68.65, it would appear that the cost of third-party audits would outweigh any benefits. 46 U.S.C. 12106(f). The 2004 Act prohibits owners from being affiliates of vessel operators, which should not require a third-party audit. For this reason, we have not included a third-party-audit requirement in our proposed regulatory changes. However, before reaching a conclusion on this matter, we again seek comments on this question.

B. *Waiver of qualified proprietary cargo requirement by the Secretary of Transportation.* Section 608(d) of the 2004 Act authorizes the Secretary of Transportation to waive or reduce the requirement that at least 70 percent of annual cargo consist of qualified proprietary cargo under 46 U.S.C. 12106(f)(3)(A)(iii) for vessels owned by entities with ship-operating affiliates. This provision will be handled by the Secretary of Transportation under subsection 608 and will not be implemented by this proposed rule. See the note at the end of proposed § 68.65.

C. *Reorganization of the requirements for a coastwise endorsement under a demise charter.* To improve organization of the existing regulations for qualifying and documenting a vessel with a coastwise endorsement under a demise charter, we propose that they be transferred, without substantive change (except as described in paragraph G

below), from 46 CFR part 67 to 46 CFR part 68, which deals with other exceptions to the normal coastwise rules. In addition, all of the subparts and sections in existing part 68 would be re-designated to remove the outmoded, hyphenated numbering system. The existing regulations for coastwise endorsement under a demise charter would be placed in proposed subpart D and the new regulations under the 2004 Act would be placed in proposed subpart C. The following derivation table sets out the sources of each of the re-designated subparts and sections.

D. *Derivation table for proposed 46 CFR part 68.*

Proposed	Source
Subpart A .....	Subpart 68.01.
§ 68.1 .....	New.
§ 68.3 .....	68.01-1.
§ 68.5 .....	68.01-3.
§ 68.7 .....	68.01-5.
§ 68.9 .....	68.01-7.
§ 68.11 .....	68.01-9.
§ 68.13 .....	68.01-11.
§ 68.15 .....	68.01-13.
§ 68.17 .....	68.01-15.
§ 68.19 .....	68.01-17.
Appendix A to Subpart A.	Appendix A to Subpart 68.01.
Appendix B to Subpart A.	Appendix B to Subpart 68.01.
Subpart B .....	Subpart 68.05.
§ 68.25 .....	68.05-1.
§ 68.27 .....	68.05-3.
§ 68.29 .....	68.05-5.
§ 68.31 .....	68.05-7.
§ 68.33 .....	68.05-9.
§ 68.35 .....	68.05-11.
§ 68.37 .....	68.05-13.
Appendix A to Subpart B.	Appendix A to Subpart 68.05.
Appendix B to Subpart B.	Appendix B to Subpart 68.05.
Subpart C .....	New.
§ 68.50 .....	New.
§ 68.55 .....	New.
§ 68.60 .....	67.20.
§ 68.65 .....	New.
§ 68.70(a) .....	New.
§ 68.70(b) .....	67.147(b).
§ 68.75(a)(1) to (a)(5) .....	67.179.
§ 68.75(a)(6) .....	67.147(a)(1) and (a)(2).
§ 68.80 .....	New.
Subpart D .....	New.
§ 68.100 .....	New.
§ 68.103 .....	New.
§ 68.105 .....	New.
§ 68.107 .....	67.147.
§ 68.109 .....	67.179.
§ 68.111 .....	67.167(c)(10).

Part 68 would be renamed "DOCUMENTATION OF VESSELS: COASTWISE ENDORSEMENT; EXCEPTIONS TO OWNERSHIP QUALIFICATION." This heading better reflects the purpose of part 68, which

already contains the existing rules for coastwise qualification of vessels documented under the Bowaters Amendment and for oil spill response vessels. It would now also contain the lease-financing provisions under 46 U.S.C. 12106(e).

Existing subpart 68.03, which had been reserved for documentation of vessels under the Act of August 9, 1954, but which was never used, would be removed as unnecessary.

E. *Changes to existing 46 CFR part 67.* Because of the above described reorganization, the existing lease-financing provisions in part 67 would be moved, without substantive change (except as described in paragraph G below), to part 68, subpart D. The definitions of certain terms in § 67.3 would be relocated to proposed § 68.103.

Section 67.20, Coastwise endorsement for a vessel under a demise charter, would be transferred to 68.105. References to 67.20 would be removed from § 67.35(c), 67.36(c)(2), and 67.39(c)(2) and replaced with references to § 68.60 or 68.105.

Section 67.147, Application procedure: Coastwise endorsement for a vessel under a demise charter, would be revised and re-designated as proposed 68.60, Eligibility of a vessel for a coastwise endorsement under [subpart C].

In 67.167, Requirements for exchange of Certificate of Documentation, paragraph(c)(10) would be revised by removing the list of requirements for exchange of a Certificate of Documentation for a vessel endorsement under 46 U.S.C. 12106(e). This would be replaced with a reference to the requirements now in proposed § 68.80 and 68.111. Paragraph (c)(11) of 67.167 would be removed.

Section 67.179, Application Procedure: Coastwise operation of a barge under a demise charter, is revised and re-designated as proposed 68.75, Application procedure for barges to be operated in coastwise trade without being documented.

F. *Requirements under the 2004 Act (proposed subpart C).* These proposed requirements track subsection 608(a) of the 2004 Act, which added new paragraph (f) to 46 U.S.C. 12106, setting forth an ownership certification requirement. New subpart C, consisting of §§ 68.50 through 68.80, would address vessels with a coastwise endorsement issued on or after August 9, 2004. Section 68.50 would provide the purpose and applicability of the new subpart. Section 68.55 would include the definition of the terms "affiliate," "cargo," "oil," "operation or

management," "passive investment," "qualified proprietary cargo," "sub-charter," and "United States affiliate." These definitions would come from the 2004 Act.

*G. Existing requirements under 46 CFR part 67 (proposed subpart D).* These requirements would be moved from part 67 to the new part 68, subpart D, consisting of § 68.100 through 68.111, which would address vessels with a coastwise endorsement issued before August 9, 2004.

The 2004 Act granted special rights to vessels under a demise charter that were eligible for, and received, a document with a coastwise endorsement before August 9, 2004; to barges deemed eligible to operate in coastwise trade before August 9, 2004, without being documented; and to certain replacement vessels. Until August 9, 2007, this subpart would also apply to OSVs with a certificate of documentation endorsed, as of August 9, 2004, with a coastwise endorsement under 46 U.S.C. 12106(e).

Proposed 68.103 would set forth definitions for terms carried over from existing § 67.3.

Proposed § 68.107(d) and (e) and 68.109(d) and (e) (as transferred from existing § 67.147(d) and 67.179(d)) would change the provision for notifying the Coast Guard's NVDC of sub-charters. In the existing regulations, notice is required only when requested by the Director of the NVDC. These provisions would be changed to require notice of demise sub-charters even without a request from the Director, while notice of other sub-charters remains only upon request by the Director. These changes, also found in proposed §§ 68.70(d) and (e) and 68.75(d) and (e), would assist the Coast Guard in determining whether an entity meets the statutory requirements.

#### IV. Regulatory Analysis

##### Assessment

This proposed rule is a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget (OMB) has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. We expect the economic impact of this proposed rule to be minimal. A draft Regulatory Analysis is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. A summary of the analysis follows:

The Coast Guard proposes to amend its regulations on the documentation for U.S.-built vessels owned by foreign-

owned or controlled U.S. companies that are lease financed to a U.S. citizen for use in the coastwise trade. This proposed rule mostly addresses amendments provided by Congress under the Coast Guard and Maritime Transportation Act of 2004 concerning information needed to determine the eligibility of a vessel owner for a coastwise endorsement under the lease-financing law.

This proposed rule would update and provide consistent documentation requirements to determine the eligibility of lease-financed vessels for coastwise endorsements as discussed under the "Discussion of Proposed Rule" section of this preamble. The proposed rule also implements the Congressionally-mandated permanent grandfathering of all lease-financed vessels, except for OSVs documented on or before August 9, 2004, from the new requirements. However, this proposed rule would make three changes to the existing regulations that would cause additional costs to industry. First, it would require owners of lease-financed OSVs with valid coastwise endorsements issued before August 9, 2004, to reapply for a new coastwise endorsement by August 9, 2007. Second, it would require all owners of lease-financed vessels with recently issued coastwise endorsements (*i.e.*, those issued after August 9, 2004) to certify each year that their ownership and investment status has not changed. Lastly, it would require entities that enter into a demise sub-charter agreement to file a copy of the sub-charter and amendments to the NVDC. These changes are additional collection-of-information (paperwork) requirements.

Based on Coast Guard data, there are currently eight owners of OSVs that would be affected by this proposed rule. We also estimate from the Coast Guard data and from NVDC information that there would be 25 current and future owners affected by the annual certification requirements of this proposed rule, which includes the eight owners of OSVs affected by this proposed rule. We do not have historical data on the number of affected entities impacted by the proposed collection-of-information requirements for demise sub-charter agreements. We assume there would be approximately three demise sub-charter agreements over the next 10 years based on NVDC projections.

We estimate that the total first-year cost of this proposed rule to industry is \$11,059. This first-year cost includes the one-time cost to the affected OSV owners to reapply for a new coastwise

endorsement, the first year cost of annual certification for the affected vessel owners, and a portion of the cost to affected vessel charterers associated with paperwork submissions of future demise sub-charter agreements. After the first year of implementation, the total annual cost of this proposed rule to industry is \$1,621, which is the first-year cost less the one-time cost to the affected OSV owners to reapply for a new coastwise endorsement. The estimated 10-year (2005–2014), discounted present value of the total cost of this proposed rule to all affected owners and charterers is \$21,623 based on a 7 percent discount rate and \$23,684 based on a 3 percent discount rate.

The benefit of this proposed rule would be that it updates and provides consistent documentation requirements. These requirements comply with mandates provided by Congress under the 2004 Act concerning information and documentation needed to determine the eligibility of a vessel owner. These updated documentation requirements would assist the Coast Guard in determining the eligibility of lease-financed vessels for coastwise endorsements. We need this information to determine whether an entity meets the current statutory requirements. The result of these proposed documentation requirements would support our efforts to accurately issue coastwise endorsements to eligible lease-financed vessels.

We are interested in the potential impacts from this proposed rule. If you think that this proposed rule would have a significant economic impact on you, your business, or your organization, please submit a comment to the Docket Management Facility at the address under ADDRESSES. In your comment, explain why, how, and to what degree you think this rule would have an economic impact on you.

##### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect owners of lease-financed OSVs with valid coastwise endorsements issued

before August 9, 2004, owners of lease-financed vessels with recently-issued coastwise endorsements, and charterers that enter into a demise sub-charter agreement.

The owners mentioned above are U.S. subsidiaries or branch companies that are owned or controlled by larger, foreign, corporate affiliates and, therefore, are considered as "one party with such interests aggregated" under the small business size regulations (13 CFR 121.103). We determined whether an owner is a small or large entity using the North American Industry Classification System (NAICS) codes and the small entity revenue or employee size standards provided by the U.S. Small Business Administration (SBA).

Based on our initial determination, the owners in each NAICS code category exceed the SBA size standard and are classified as large businesses. We used the following NAICS codes and SBA size standards to evaluate owner size:

- 238910—Site Preparation Contractors, \$12 million in annual corporate revenue.
- 483111—Deep Sea Freight Transportation, 500 annual corporate employees.
- 532310—General Rental Centers, \$6 million in annual corporate revenue.
- 551111—Bank Holding Companies, \$6 million in annual corporate revenue.

There would be costs of this proposed rule for the charterers of the lease-financed vessels mentioned above. Charterers would be affected by this proposed rule if they enter into a demise sub-charter agreement. However, we have determined that the possible charterers affected by the additional costs are classified as large businesses. We used the following NAICS codes and SBA size standards to evaluate the charterer size:

- 213112—Support Activities for Oil and Gas Operations, \$6 million in annual corporate revenue.
- 483111—Deep Sea Freight Transportation, 500 annual corporate employees.

This initial determination indicates that the owners and charterers affected by this proposed rule are classified as large businesses by SBA standards. Therefore, at this time, the Coast Guard certifies, under 5 U.S.C. 605(b), that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket

Management Facility at the address under ADDRESSES. In your comment, explain why you think it qualifies and how and to what degree this proposed rule would economically affect it.

#### *Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. Public Law 104-121. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Patricia Williams, Deputy Director, National Vessel Documentation Center (NVDC), U.S. Coast Guard, telephone 304-271-2506. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

#### *Collection of Information*

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 and require a revision to an existing collection. 44 U.S.C. 3501-3520.

As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Under 46 CFR 68.65, 68.70, 68.75, 68.100, 68.107, and 68.109, this proposed rule would amend the collection-of-information requirements for vessel owners and charterers engaging in the coastwise trade under the lease-financing provisions of 46 U.S.C. 12106(e). The Coast Guard needs

this information to determine whether an entity meets the statutory requirements. These provisions will require modifying the burden in the collection previously approved by the Office of Management and Budget (OMB) under OMB Control Number 1625-0027 (formerly 2115-0110).

*Title:* Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade; Third Rulemaking.

*OMB Control Number:* 1625-0027.

*Summary of the Collection of Information:* This proposed rule would add new collection-of-information requirements in proposed §§ 68.65, 68.70, 68.75, 68.100, 68.107, and 68.109 for vessel owners and charterers applying to engage in the coastwise trade under the lease-financing provisions of 46 U.S.C. 12106(e). These new requirements would require a change in previously approved collection under OMB Control No. 1625-0027.

*Need for Information:* The Coast Guard needs this information to determine whether an entity meets the statutory requirements.

*Proposed Use of Information:* The Coast Guard would use this information to determine whether an entity meets the statutory requirements.

*Description of Respondents:* The respondents are vessel owners and charterers that engage in the coastwise trade under the lease-financing provisions of 46 U.S.C. 12106(e). We estimate that this proposed rule would involve one-time responses for owners of lease-financed OSVs that must reapply for new certificates of documentation, annual responses for owners that must submit ownership certifications, and the possibility of an additional response every 3 years for entities involved in demise sub-charters.

*Number of Respondents:* The existing OMB-approved number of respondents, as adjusted on February 4, 2004, is 180,035. This proposed rule would increase the number of respondents in this OMB-approved collection by approximately 25. The total number of respondents would be 180,060.

*Frequency of Response:* The existing OMB-approved number of responses, as adjusted on February 4, 2004, is 245,285. It will vary by year due to the grandfathering provisions of the proposed rule. The first year of this proposed rule would increase that number by 58. After the first year of implementation, the increase would be 25 annually. We estimate an additional response every 3 years for entities involved in demise sub-charters. However, we consider this negligible. The total number of responses in the

first year of implementation would be 245,343 and 245,310 annually thereafter.

**Burden of Response:** The burden resulting from this proposed rule would arise from changes that require entities that own certain lease-financed OSVs to reapply for new coastwise endorsements and require certain entities to submit annual ownership certifications to the NVDC. We estimate that it would take a total of 30 minutes per OSV to complete the application for a new coastwise endorsement, since the current Coast Guard paperwork-burden time for this application (Form CG-1258) is 30 minutes. We estimate that it would take 5 minutes processing time to sign and submit the annual ownership certification form, since the Coast Guard paperwork-burden time for the Endorsement Renewal Certification (Form CG-1280), a similar form, is 5 minutes.

**Estimate of Total Annual Burden:** The existing OMB-approved total annual burden, as adjusted on February 4, 2004, is 50,512 hours. The first year of this proposed rule would increase that number by approximately 19 hours. After the first year of implementation, the increase would be approximately 2 hours annually. The total number of hours in the first year of implementation would be 50,531 and 50,514 annually thereafter.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to OMB for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under ADDRESSES, by the date under DATES.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish notice in the *Federal Register* of OMB's decision to approve, modify, or disapprove the collection.

#### *Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them.

We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

#### *Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *Taking of Private Property*

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### *Civil Justice Reform*

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### *Protection of Children*

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### *Indian Tribal Governments*

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### *Energy Effects*

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order. Though it is a "significant regulatory action" under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### *Technical Standards*

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### *Environment*

We have analyzed this proposed rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2-1, paragraph (34)(d), of the Instruction, from further environmental documentation. This proposed rulemaking is administrative in nature and concerns the documentation of vessels engaged in the coastwise trade. A preliminary "Environmental Analysis Check List" is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. Comments on this section will be considered before we make the

final decision on whether this rule should be categorically excluded from further environmental review.

**List of Subjects**

**46 CFR Part 67**

Reporting and recordkeeping requirements, Vessels.

**46 CFR Part 68**

Oil pollution, Reporting and recordkeeping requirements, Vessels.

**Regulatory Text**

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR parts 67 and 68 as follows:

**PART 67—DOCUMENTATION OF VESSELS**

1. The authority citation for part 67 continues to read as follows:

**Authority:** 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2110; 46 U.S.C. app. 876; Department of Homeland Security Delegation No. 0170.1.

**§ 67.3 [Amended]**

2. In § 67.3, remove the following terms and their definitions: “affiliate,” “group,” “operation or management of

vessels,” “parent,” “primarily engaged in leasing or other financing transactions,” “sub-charter,” and “subsidiary.”

**§ 67.20 [Removed]**

3. Remove § 67.20.

**§ 67.35 [Amended]**

4. In § 67.35(c), remove the words “§ 67.20” and add, in their place, the words “§§ 68.60 or 68.105 of this chapter”.

**§ 67.36 [Amended]**

5. In § 67.36(c)(2), remove the words “§ 67.20” and add, in their place, the words “§§ 68.60 or 68.105 of this chapter”.

**§ 67.39 [Amended]**

6. In § 67.39(c)(2), remove the words “§ 67.20” and add, in their place, the words “§§ 68.60 or 68.105 of this chapter”.

**§ 67.147 [Removed]**

7. Remove § 67.147.

8. In § 67.167, in paragraph (c)(9), following the semicolon, add the word “and”; revise paragraph (c)(10) to read as shown below; and remove paragraph (c)(11):

**§ 67.167 Requirement for exchange of Certificate of Documentation.**

\* \* \* \* \*

(c) \* \* \*

(10) For a vessel with a coastwise endorsement under 46 U.S.C. 12106(e), one of the events in §§ 68.80 or 68.111 of this chapter occurs.

\* \* \* \* \*

**§ 67.179 [Removed]**

9. Remove § 67.179.

**PART 68—DOCUMENTATION OF VESSELS: EXCEPTIONS TO COASTWISE QUALIFICATION**

10. Revise the authority citation for part 68 to read as follows:

**Authority:** 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2110; 46 U.S.C. app. 876; Department of Homeland Security Delegation No. 0170.1.

11. Revise the heading to part 68 to read as shown above.

**Subpart 68.03 [Removed]**

12. Remove subpart 68.03.

13. In part 68—

a. Redesignate the subparts and their appendices as shown in the following table:

Old subpart/appendix	New subpart/appendix
Subpart 68.01 .....	Subpart A.
Appendix A to Subpart 68.01 of Part 68 .....	Appendix A to Subpart A of Part 68.
Appendix B to Subpart 68.01 of Part 68 .....	Appendix B to Subpart A of Part 68.
Subpart 68.03 .....	[Removed].
Subpart 68.05 .....	Subpart B.
Appendix A to Subpart 68.05 of Part 68 .....	Appendix A to Subpart B of Part 68.
Appendix B to Subpart 68.05 of Part 68 .....	Appendix B to Subpart B of Part 68.

b. In the redesignated subparts, redesignate the sections as shown in the following table:

Old section	New section
68.01-1 .....	68.3
68.01-3 .....	68.5
68.01-5 .....	68.7
68.01-7 .....	68.9
68.01-9 .....	68.11
68.01-11 .....	68.13
68.01-13 .....	68.15
68.01-15 .....	68.17
68.01-17 .....	68.19
68.05-1 .....	68.25
68.05-3 .....	68.27
68.05-5 .....	68.29
68.05-7 .....	68.31
68.05-9 .....	68.33
68.05-11 .....	68.35
68.05-13 .....	68.37

column is revised to read as shown in the third column:

New section	Old reference	New reference
68.7 .....	68.01-3	68.5
68.7 .....	68.01-9(a)	68.11(a)
68.9 .....	68.01-1	68.3
68.9 .....	68.01-9(a)	68.11(a)
68.11 .....	68.01-5	68.7
68.11 .....	68.01-3(a)	68.5(a)
68.11 .....	68.01-11	68.13
68.11 .....	68.01-13	68.15
68.11 .....	68.01-7	68.9
68.11 .....	13	68.15
68.13 .....	68.01-15	68.17
68.13 .....	68.01-17	68.19
68.15 .....	68.01-15	68.17
68.15 .....	68.01-1	68.3
68.15 .....	68.01-15(c)	68.17(c)
68.17 .....	68.01-1	68.3
68.19 .....	68.01-5	68.7
68.29 .....	68.05-9	68.33
68.31 .....	68.05-5	68.29
68.35 .....	68.05-13	68.37
68.35 .....	68.05-7(a)	68.31(a)

New section	Old reference	New reference
68.37 .....	68.05-11(a)	68.35(a)
68.37 .....	68.05-5	68.29
68.37 .....	68.05-9	68.33

d. The table of contents for part 68 reads as follows:

**PART 68—DOCUMENTATION OF VESSELS: EXCEPTIONS TO COASTWISE QUALIFICATION**

**Subpart A—Regulations for Engaging in Limited Coastwise Trade**

Sec.

68.1 Purpose of subpart.

68.3 Definitions for the purposes of this subpart.

68.5 Requirements for citizenship under 46 U.S.C. App. 833-1.

68.7 Qualification as an 883-1 corporation.

68.9 Qualification as a parent or subsidiary.

68.11 Cessation of qualifications.

c. In the redesignated sections listed in the first column of the following table, the reference in the second

68.13 Privileges conferred—documentation of vessels.

68.15 Privileges conferred—operation of vessels.

68.17 Restrictions.

68.19 Application by an 883-1 corporation to document a vessel.

Appendix A to Subpart A of Part 68—Oath for the Qualification of Corporation as a Citizen of the United States Under the Act of Sept. 2, 1958 (46 U.S.C. 883-1)

Appendix B to Subpart A of Part 68—Oath of Parent or Subsidiary Corporation Act of September 2, 1958 (46 U.S.C. 883-1)

#### Subpart B—Documentation of Certain Vessels for Oil Spill Cleanup

68.25 Purpose and scope.

68.27 Definitions for purpose of this subpart.

68.29 Citizenship requirements for limited coastwise endorsement.

68.31 Vessel eligibility requirements for limited coastwise endorsement.

68.33 Privileges of a limited coastwise endorsement.

68.35 Application to document a vessel under this subpart.

68.37 Cessation of qualifications.

Appendix A to Subpart B of Part 68—Oath for Qualification of a Not-For-Profit Oil Spill Response Cooperative

Appendix B to Subpart B of Part 68—Oath for Documentation of Vessels for Use by a Not-For-Profit Oil Spill Response Cooperative

#### Subpart C—Vessels with a Coastwise Endorsement Issued on or after August 9, 2004, that are Demised Chartered to Coastwise Qualified Citizens

68.50 Purpose and applicability.

68.55 Definitions.

68.60 Eligibility of a vessel for a coastwise endorsement under this subpart.

68.65 Annual ownership certification.

68.70 Application procedure for vessels other than barges to be operated in coastwise trade without being documented.

68.75 Application procedure for barges to be operated in coastwise trade without being documented.

68.80 Invalidation of a coastwise endorsement.

#### Subpart D—Vessels with a Coastwise Endorsement Issued Before August 9, 2004, and their Replacements that are Demise Chartered to Coastwise Qualified Citizens

68.100 Purpose and applicability.

68.103 Definitions.

68.105 Eligibility of a vessel for a coastwise endorsement under this subpart.

68.107 Application procedure for vessels other than barges to be operated in coastwise trade without being documented.

68.109 Application procedure for barges to be operated in coastwise trade without being documented.

68.111 Invalidation of a coastwise endorsement.

14. In part 68, revise the heading to subpart A to read as follows:

#### Subpart A—Regulations for Engaging in Limited Coastwise Trade

15. Add § 68.1 to subpart A to read as follows:

##### § 68.1 Purpose of subpart.

This subpart contains citizen ownership requirements and procedures to allow documentation of vessels that do not meet the requirements of part 67 of this chapter. The requirements are for corporations engaged in a manufacturing or mineral industry in the United States.

##### § 68.7 [Amended]

16. In § 68.7—

a. In paragraph (b), after the redesignated number “§ 68.11(a)”, remove the words “of this subpart”; and following the words “appendix A”, add the words “of this subpart”.

##### § 68.9 [Amended]

17. In § 68.9—

a. In paragraph (a), following the words “appendix B”, add the words “of this subpart”;

b. In paragraph (b), following the words “appendix B”, add the words “of this subpart”; and

c. In paragraph (c), following the redesignated number “§ 68.11(a)”, remove the words “of this subpart”; and following the words “appendix B”, add the words “of this subpart”.

##### § 68.11 [Amended]

18. In § 68.11—

a. In paragraph (a), after the redesignated number “§ 68.7”, remove the words “of this subpart”; and

b. In paragraph (b), after the redesignated number “§ 68.9”, remove the words “of this subpart”.

#### Appendix A to Subpart A of Part 68 [Amended]

19. In appendix A—

a. In the appendix heading and in the text, remove the words “(46 U.S.C. 883-1)” and add, in their place, the words “(46 U.S.C. app. 883-1)”; and

b. Following the word “§ 67.39(c)”, add the words “of this chapter”.

#### Appendix B to Subpart A of Part 68 [Amended]

20. In appendix B, in the appendix heading and in the text, remove the words “(46 U.S.C. 883-1)” and add, in their place, the words “(46 U.S.C. app. 883-1)”.

21. Add new subpart C, consisting of §§ 68.50 through 68.80, to read as follows:

#### Subpart C—Vessels With a Coastwise Endorsement Issued on or After August 9, 2004, That Are Demise Chartered to Coastwise Qualified Citizens

68.50 Purpose and applicability.

68.55 Definitions.

68.60 Eligibility of a vessel for a coastwise endorsement under this subpart.

68.65 Annual ownership certification.

68.70 Application procedure for vessels other than barges to be operated in coastwise trade without being documented.

68.75 Application procedure for barges to be operated in coastwise trade without being documented.

68.80 Invalidation of a coastwise endorsement.

#### Subpart C—Vessels With a Coastwise Endorsement Issued on or After August 9, 2004, That Are Demise Chartered to Coastwise Qualified Citizens

##### § 68.50 Purpose and applicability.

(a) This subpart contains requirements, in addition to those in part 67 of this chapter, for obtaining a coastwise endorsement for a U.S.-built vessel—

(1) That is owned by a person that qualifies as a citizen under §§ 67.35(a), 67.36(a), 67.37, or 67.39(a) of this chapter; and

(2) That is demise chartered to a coastwise qualified citizen under §§ 67.33, 67.35(c), 67.36(c), 67.37, 67.39(c), or 67.41 of this chapter.

(b) This subpart applies to a vessel with a coastwise endorsement issued on or after August 9, 2004. It does not apply to a vessel under subpart D of this part.

##### § 68.55 Definitions.

In addition to the terms defined in § 67.3 of this chapter, as used in this subpart—

*Affiliate* means, with respect to any person, any other person that is—

(1) Directly or indirectly controlled by, under common control with, or controlling that person; or

(2) Named as being part of the same consolidated group in any report or other document submitted to the United States Securities and Exchange Commission or the Internal Revenue Service.

*Cargo* does not include cargo to which title is held for non-commercial reasons and primarily for the purpose of evading the requirements of § 68.65(a)(2).

*Oil* has the meaning given that term in 46 U.S.C. 2101(20).

*Operation or management*, for vessels, means all activities related to the use of vessels to provide services.

These activities include, but are not limited to, ship agency; ship brokerage; activities performed by a vessel operator or demise charterer in exercising direction and control of a vessel, such as crewing, victualing, storing, and maintaining the vessel and ensuring its safe navigation; and activities associated with controlling the use and employment of the vessel under a time charter or other use agreement. It does not include activities directly associated with making financial investments in vessels or the receipt of earnings derived from these investments.

*Passive investment* means an investment in which neither the investor nor any affiliate of the investor is involved in, or has the power to be involved in, the formulation, determination, or direction of any activity or function concerning the use, operation, or management of the asset that is the subject of the investment.

*Qualified proprietary cargo* means—

(1) Oil, petroleum products, petrochemicals, or liquefied natural gas cargo that is beneficially owned by the person who submits to the Director, National Vessel Documentation Center, an application or annual certification under § 68.65(a)(2), or by an affiliate of that person, immediately before, during, or immediately after the cargo is carried in coastwise trade on a vessel owned by that person;

(2) Oil, petroleum products, petrochemicals, or liquefied natural gas cargo not beneficially owned by the person who submits to the Director, National Vessel Documentation Center, an application or an annual certification under § 68.65(a)(2), or by an affiliate of that person, but that is carried in coastwise trade by a vessel owned by that person and which is part of an arrangement in which vessels owned by that person and at least one other person are operated collectively as one fleet, to the extent that an equal amount of oil, petroleum products, petrochemicals, or liquefied natural gas cargo beneficially owned by that person, or an affiliate of that person, is carried in coastwise trade on one or more other vessels, not owned by that person, or an affiliate of that person, if the other vessel or vessels are also part of the same arrangement;

(3) In the case of a towing vessel associated with a non-self-propelled tank vessel where the two vessels function as a single self-propelled vessel, oil, petroleum products, petrochemicals, or liquefied natural gas cargo that is beneficially owned by the person who owns both the towing vessel and the non-self-propelled tank vessel, or any United States affiliate of that person, immediately before, during, or

immediately after the cargo is carried in coastwise trade on either of the two vessels; or

(4) Any oil, petroleum products, petrochemicals, or liquefied natural gas cargo carried on any vessel that is either a self-propelled tank vessel having a length of at least 210 meters (about 689 feet) or a tank vessel that is a liquefied natural gas carrier that—

(i) Was delivered by the builder of the vessel to the owner of the vessel after December 31, 1999; and

(ii) Was purchased by a person for the purpose, and with the reasonable expectation, of transporting on the vessel liquefied natural gas or unrefined petroleum beneficially owned by the owner of the vessel, or an affiliate of the owner, from Alaska to the continental United States.

*Sub-charter* means all types of charters or other contracts for the use of a vessel that are subordinate to a charter. The term includes, but is not limited to, a demise charter, a time charter, a voyage charter, a space charter, and a contract of affreightment.

*United States affiliate* means, with respect to any person, an affiliate the principal place of business of which is located in the United States.

**§ 68.60 Eligibility of a vessel for a coastwise endorsement under this subpart.**

(a) To be eligible for a coastwise endorsement under 46 U.S.C. 12106(e) and to operate in coastwise trade under 46 U.S.C. 12106(e) and 12110(b), a vessel must meet the following:

(1) The vessel is eligible for documentation under 46 U.S.C. 12102.

(2) The vessel is eligible for a coastwise endorsement under § 67.19(c) of this chapter and has not lost coastwise eligibility under § 67.19(d) of this chapter.

(3) The person that owns the vessel (or, if the vessel is owned by a trust or similar arrangement, the beneficiary of the trust or similar arrangement) makes the certification in § 68.65.

(4) The person that owns the vessel has transferred to a qualified U.S. citizen under 46 U.S.C. app. 802 full possession, control, and command of the vessel through a demise charter in which the demise charterer is considered the owner *pro hac vice* during the term of the charter.

(5) The charterer must certify to the Director, National Vessel Documentation Center, that the charterer is a citizen of the United States for engaging in the coastwise trade under 46 U.S.C. app. 802.

(6) The demise charter is for a period of at least 3 years, unless a shorter period is authorized by the Director,

National Vessel Documentation Center, under circumstances such as—

(i) When the vessel's remaining life would not support a charter of 3 years; or

(ii) To preserve the use or possession of the vessel.

(b) To apply for a coastwise endorsement for a vessel under a demise charter, see § 68.70 and, for a barge, see § 68.75.

**Note to § 68.60:** Section 608(b) of Public Law 108–293 provides special requirements for certain vessels in the Alaska trade.

**§ 68.65 Annual ownership certification.**

(a) At the time of initial application for documentation and at the time for annual renewal of the endorsement as required by § 67.163 of this chapter, the person that owns a vessel with a coastwise endorsement under § 68.60 must certify in writing to the Director, National Vessel Documentation Center—

(1) That the person who owns a vessel with a coastwise endorsement under § 68.60—

(i) Is a leasing company, bank, or financial institution;

(ii) Owns, or holds the beneficial interest in, the vessel solely as a passive investment;

(iii) Does not operate any vessel for hire and is not an affiliate of any person who operates any vessel for hire; and

(iv) Is independent from, and not an affiliate of, any charterer of the vessel or any other person who has the right, directly or indirectly, to control or direct the movement or use of the vessel.

(2) For vessels under paragraph (b) of this section, that—

(i) The aggregate book value of the vessels owned by that person and United States affiliates of that person does not exceed 10 percent of the aggregate book value of all assets owned by that person and its United States affiliates;

(ii) Not more than 10 percent of the aggregate revenues of that person and its United States affiliates is derived from the ownership, operation, or management of vessels;

(iii) At least 70 percent of the aggregate tonnage of all cargo carried by all vessels owned by that person and its United States affiliates and documented under 46 U.S.C. 12106 is qualified proprietary cargo;

(iv) Any cargo other than qualified proprietary cargo carried by all vessels owned by that person and its United States affiliates and documented under 46 U.S.C. 12106 consists of oil, petroleum products, petrochemicals, or liquefied natural gas;

(v) No vessel owned by that person or any of its United States affiliates and documented under 46 U.S.C. 12106 carries molten sulphur; and

(vi) That person owned one or more vessels documented under § 68.10 as of August 9, 2004.

(b) Paragraph (a)(2) of this section applies only to—

(1) A tank vessel having a tonnage of not less than 6,000 gross tons, as measured under 46 U.S.C. 14502 (or an alternative tonnage measured under 46 U.S.C. 14302 as prescribed under 46 U.S.C. 14104); or

(2) A towing vessel associated with a non-self-propelled tank vessel that meets the requirements of paragraph (b)(1) of this section, where the two vessels function as a single self-propelled vessel.

**Note to § 68.65:** The Secretary of Transportation may waive or reduce the qualified proprietary cargo requirement of § 68.65(a)(2)(iii) for a vessel if the person that owns the vessel (or, if the vessel is owned by a trust or similar arrangement, the beneficiary of the trust or similar arrangement) notifies the Secretary that circumstances beyond the direct control of the person that owns the vessel or its affiliates prevent, or reasonably threaten to prevent, the person that owns the vessel from satisfying this requirement, and the Secretary does not, with good cause, determine otherwise. The waiver or reduction applies during the period of time that the circumstances exist.

**§ 68.70 Application procedure for vessels other than barges to be operated in coastwise trade without being documented.**

(a) The person that owns the vessel (other than a barge under § 68.75) and that seeks a coastwise endorsement under § 68.60 must submit the following to the National Vessel Documentation Center:

(1) Application for Initial Issue, Exchange, or Replacement of Certificate of Documentation; or Redocumentation (form CG-1258);

(2) Title evidence, if applicable;

(3) Mortgagee consent on form CG-4593, if applicable;

(4) If the application is for replacement of a mutilated document or for exchange of documentation, the outstanding Certificate of Documentation;

(5) The certification required by § 68.65(a)(1) or, if a vessel under § 68.65(b), the certification required by § 68.65(a)(2);

(6) A certification in the form of an affidavit and, if requested by the Director, National Vessel Documentation Center, supporting documentation establishing the following facts with respect to the transaction from an individual who is

authorized to provide certification on behalf of the person that owns the vessel and who is an officer in a corporation, a partner in a partnership, a member of the board of managers in a limited liability company, or their equivalent. The certificate must certify that the person that owns the vessel has transferred to a qualified United States citizen under 46 U.S.C. app. 802 full possession, control, and command of the U.S.-built vessel through a demise charter in which the demise charterer is considered the owner *pro hac vice* during the term of the charter.

(7) A copy of the charter, which must provide that the charterer is deemed to be the owner *pro hac vice* for the term of the charter.

(b) The charterer must submit the following to the National Vessel Documentation Center:

(1) A certificate certifying that the charterer is a citizen of the United States for the purpose of engaging in the coastwise trade under 46 U.S.C. app. 802.

(2) Detailed citizenship information in the format of form CG-1258, Application for Documentation, section G, citizenship. The citizenship information may be attached to the form CG-1258 that is submitted under paragraph (a)(1) of this section and must be signed by, or on behalf of, the charterer.

(c) Whenever a charter submitted under paragraph (a)(7) of this section is amended, the vessel owner must file a copy of the amendment with the Director, National Vessel Documentation Center, within 10 days after the effective date of the amendment.

(d) Whenever the charterer of a vessel under paragraph (a) of this section enters into a sub-charter that is a demise charter with another person for the use of the vessel, the charterer must file a copy of the sub-charter and amendments to the sub-charter with the Director, National Vessel Documentation Center, within 10 days after the effective date of the sub-charter and the sub-charterer must provide detailed citizenship information in the format of form CG-1258, Application for Documentation, section G, citizenship.

(e) Whenever the charterer of a vessel under paragraph (a) of this section enters into a sub-charter other than a demise charter with another person for the use of the vessel, the charterer must file a copy of the sub-charter and amendments to the sub-charter with the Director, National Vessel Documentation Center, within 10 days after a request by the Director to do so.

(f) A person that submits a false certification under this section is subject to penalty under 46 U.S.C. 12122 and 18 U.S.C. 1001.

**§ 68.75 Application procedure for barges to be operated in coastwise trade without being documented.**

(a) The person that owns a barge qualified to engage in coastwise trade must submit the following to the National Vessel Documentation Center:

(1) The certification required by § 68.65(a)(1) or (a)(2).

(2) A certification in the form of an affidavit and, if requested by the Director, National Vessel Documentation Center, supporting documentation establishing the following facts with respect to the transaction from an individual who is authorized to provide certification on behalf of the person that owns the barge and who is an officer in a corporation, a partner in a partnership, a member of the board of managers in a limited liability company, or their equivalent. The certificate must certify the following:

(i) That the person that owns the barge is organized under the laws of the United States or a State.

(ii) That the person that owns the barge has transferred to a qualified United States citizen under 46 U.S.C. app. 802 full possession, control, and command of the U.S.-built barge through a demise charter in which the demise charterer is considered the owner *pro hac vice* during the term of the charter.

(iii) That the barge is qualified to engage in the coastwise trade and that it is owned by a person eligible to own vessels documented under 46 U.S.C. 12102(e).

(3) A copy of the charter, which must provide that the charterer is deemed to be the owner *pro hac vice* for the term of the charter.

(b) The charterer must submit the following to the National Vessel Documentation Center:

(1) A certificate certifying that the charterer is a citizen of the United States for engaging in the coastwise trade under 46 U.S.C. app. 802.

(2) Detailed citizenship information in the format of form CG-1258, Application for Documentation, section G, citizenship. The citizenship information must be signed by, or on behalf of, the charterer.

(c) Whenever a charter under paragraph (a) of this section is amended, the barge owner must file a copy of the amendment with the Director, National Vessel Documentation Center, within 10 days after the effective date of the amendment.



(d) Whenever the charterer of a barge under paragraph (a) of this section enters into a sub-charter that is a demise charter with another person for the use of the barge, the charterer must file a copy of the sub-charter and amendments to the sub-charter with the Director, National Vessel Documentation Center, within 10 days after the effective date of the sub-charter and the sub-charterer must provide detailed citizenship information in the format of form CG-1258, Application for Documentation, section G, citizenship.

(e) Whenever the charterer of a barge under paragraph (a) of this section enters into a sub-charter other than a demise charter with another person for the use of the barge, the charterer must file a copy of the sub-charter and amendments to the sub-charter with the Director, National Vessel Documentation Center, within 10 days after a request by the Director to do so.

(f) A person that submits a false certification under this section is subject to penalty under 46 U.S.C. 12122 and 18 U.S.C. 1001.

#### § 68.80 Invalidation of a coastwise endorsement.

In addition to the events in § 67.167(c)(1) through (c)(9) of this chapter, a Certificate of Documentation together with a coastwise endorsement under this subpart becomes invalid when—

(a) The owner fails to make the certification required by § 68.65 or ceases to meet the requirements of the certification on file;

(b) The demise charter expires or is transferred to another charterer; or

(c) The citizenship of the charterer or sub-charterer changes to the extent that they are no longer qualified for a coastwise endorsement.

22. Add new subpart D, consisting of §§ 68.100 through 68.111, to read as follows:

#### Subpart D—Vessels With a Coastwise Endorsement Issued Before August 9, 2004, and Their Replacements That Are Demised Chartered to Coastwise-Qualified Citizens

68.100 Purpose and applicability.

68.103 Definitions.

68.105 Eligibility of a vessel for a coastwise endorsement under this subpart.

68.107 Application procedure for vessels other than barges to be operated in coastwise trade without being documented.

68.109 Application procedure for barges to be operated in coastwise trade without being documented.

68.111 Invalidation of a coastwise endorsement.

#### Subpart D—Vessels With a Coastwise Endorsement Issued Before August 9, 2004, and Their Replacements That Are Demised Chartered to Coastwise-Qualified Citizens

##### § 68.100 Purpose and applicability.

(a) This subpart contains requirements for the documentation of U.S.-built vessels in the coastwise trade that were granted special rights under the Coast Guard and Maritime Transportation Action of 2004 (Pub. L. 108-293).

(b) This subpart applies to—

(1) A vessel under a demise charter that was eligible for, and received, a document with a coastwise endorsement under § 67.19 of this chapter and 46 U.S.C. 12106(e) before August 9, 2004;

(2) A barge deemed eligible under 46 U.S.C. 12106(e) and 12110(b) to operate in coastwise trade without being documented before August 9, 2004; and

(3) A replacement vessel of a similar size and function for any vessel under paragraphs (b)(1) through (b)(3) of this section.

(c) Except for vessels under paragraph (d) of this section, this subpart applies to a certificate of documentation, or renewal of one, endorsed with a coastwise endorsement for a vessel under 46 U.S.C. 12106(e) or a replacement vessel of a similar size and function that was issued before August 9, 2004, as long as the vessel is owned by the person named in the certificate, or by a subsidiary or affiliate of that person, and the controlling interest in the owner has not been transferred to a person that was not an affiliate of the owner as of August 9, 2004.

(d) With respect to offshore supply vessels with a certificate of documentation endorsed with a coastwise endorsement as of August 9, 2004, this subpart applies until August 9, 2007. On and after August 9, 2007, subpart C of this part applies to these vessels.

##### § 68.103 Definitions.

In addition to the terms defined in § 67.3 of this chapter, as used in this subpart—

*Affiliate* means a person that is less than 50 percent owned or controlled by another person.

*Group* means the person that owns a vessel, the parent of that person, and all subsidiaries and affiliates of the parent of that person.

*Offshore supply vessel* means a motor vessel of more than 15 gross tons but less than 500 gross tons as measured under 46 U.S.C. 14502, or an alternate tonnage measured under 46 U.S.C.

14302 as prescribed under 46 U.S.C. 14104, that regularly carries goods, supplies, individuals in addition to the crew, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources.

*Operation or management of vessels* means all activities related to the use of vessels to provide services. These activities include ship agency; ship brokerage; activities performed by a vessel operator or demise charterer in exercising direction and control of a vessel, such as crewing, victualing, storing, and maintaining the vessel and ensuring its safe navigation; and activities associated with controlling the use and employment of the vessel under a time charter or other use agreement. It does not include activities directly associated with making financial investments in vessels or the receipt of earnings derived from these investments.

*Parent* means any person that directly or indirectly owns or controls at least 50 percent of another person. If an owner's parent is directly or indirectly controlled at least 50 percent by another person, that person is also a parent of the owner. Therefore, an owner may have multiple parents.

*Person* means an individual; corporation; partnership; limited liability partnership; limited liability company; association; joint venture; trust arrangement; and the government of the United States, a State, or a political subdivision of the United States or a State; and includes a trustee, beneficiary, receiver, or similar representative of any of them.

*Primarily engaged in leasing or other financing transactions* means lease financing, in which more than 50 percent of the aggregate revenue of a person is derived from banking, investing, lease financing, or other similar transactions.

*Replacement vessel* means—

(1) A temporary replacement vessel for a period not to exceed 180 days if the vessel described in § 68.50 is unavailable due to an act of God or a marine casualty; or

(2) A permanent replacement vessel if—

(i) The vessel described in § 68.50 is unavailable for more than 180 days due to an act of God or a marine casualty; or

(ii) A contract to purchase or construct a replacement vessel is executed not later than December 31, 2004.

*Sub-charter* means all types of charters or other contracts for the use of a vessel that are subordinate to a charter. The term includes, but is not

limited to, a demise charter, a time charter, a voyage charter, a space charter, and a contract of affreightment.

*Subsidiary* means a person at least 50 percent of which is directly or indirectly owned or controlled by another person.

**§ 68.105 Eligibility of a vessel for a coastwise endorsement under this subpart.**

(a) Except as under paragraphs (b) through (e) of this section, to be eligible for a coastwise endorsement under 46 U.S.C. 12106(e) and to operate in coastwise trade under 46 U.S.C. 12106(e) and 12110(b), a vessel under a demise charter must meet the following:

(1) The vessel is eligible for documentation under 46 U.S.C. 12102.

(2) The vessel is eligible for a coastwise endorsement under § 67.19(c) of this chapter, has not lost coastwise eligibility under § 67.19(d) of this chapter, and was financed with lease financing.

(3) The person that owns the vessel, the parent of that person, or a subsidiary of the parent of that person is primarily engaged in leasing or other financing transactions.

(4) The person that owns the vessel is organized under the laws of the United States or of a State.

(5) None of the following is primarily engaged in the direct operation or management of vessels:

(i) The person that owns the vessel.

(ii) The parent of the person that owns the vessel.

(iii) The group of which the person that owns the vessel is a member.

(6) The ownership of the vessel is primarily a financial investment without the ability and intent to directly or indirectly control the vessel's operations by a person not primarily engaged in the direct operation or management of vessels.

(7) The majority of the aggregate revenues of each of the following is not derived from the operation or management of vessels:

(i) The person that owns the vessel.

(ii) The parent of the person that owns the vessel.

(iii) The group of which the person that owns the vessel is a member.

(8) None of the following is primarily engaged in the operation or management of commercial, foreign-flag vessels used for the carriage of cargo for parties unrelated to the vessel's owner or charterer:

(i) The person that owns the vessel.

(ii) The parent of the person that owns the vessel.

(iii) The group of which the person that owns the vessel is a member.

(9) The person that owns the vessel has transferred to a qualified U.S.

citizen under 46 U.S.C. app. 802 full possession, control, and command of the U.S.-built vessel through a demise charter in which the demise charterer is considered the owner *pro hac vice* during the term of the charter.

(10) The charterer must certify to the Director, National Vessel Documentation Center, that the charterer is a citizen of the United States for engaging in the coastwise trade under 46 U.S.C. app. 802.

(11) The demise charter is for a period of at least 3 years, unless a shorter period is authorized by the Director, National Vessel Documentation Center, under circumstances such as—

(i) When the vessel's remaining life would not support a charter of 3 years; or

(ii) To preserve the use or possession of the vessel.

(b) A vessel under a demise charter that was eligible for, and received, a document with a coastwise endorsement under § 67.19 of this chapter and 46 U.S.C. 12106(e) before February 4, 2004, may continue to operate under that endorsement on and after that date and may renew the document and endorsement if the certificate of documentation is not subject to—

(1) Exchange under § 67.167(b)(1) through (b)(3) of this chapter;

(2) Deletion under § 67.171(a)(1) through (a)(6) of this chapter; or

(3) Cancellation under § 67.173 of this chapter.

(c) A vessel under a demise charter that was constructed under a building contract that was entered into before February 4, 2004, in reliance on a letter ruling from the Coast Guard issued before February 4, 2004, is eligible for documentation with a coastwise endorsement under § 67.19 of this chapter and 46 U.S.C. 12106(e). The vessel may continue to operate under that endorsement and may renew the document and endorsement if the certificate of documentation is not subject to—

(1) Exchange under § 67.167(b)(1) through (b)(3) of this chapter;

(2) Deletion under § 67.171(a)(1) through (a)(6) of this chapter; or

(3) Cancellation under § 67.173 of this chapter.

(d) A barge deemed eligible under 46 U.S.C. 12106(e) and 12110(b) to operate in coastwise trade before February 4, 2004, may continue to operate in that trade after that date unless—

(1) The ownership of the barge changes in whole or in part;

(2) The general partners of a partnership owning the barge change by addition, deletion, or substitution;

(3) The State of incorporation of any corporate owner of the barge changes;

(4) The barge is placed under foreign flag;

(5) Any owner of the barge ceases to be a citizen within the meaning of part 67, subpart C, of this chapter; or

(6) The barge ceases to be capable of transportation by water.

(e) A barge under a demise charter that was constructed under a building contract that was entered into before February 4, 2004, in reliance on a letter ruling from the Coast Guard issued before February 4, 2004, is eligible to operate in coastwise trade under 46 U.S.C. 12106(e) and 12110(b). The barge may continue to operate in coastwise trade unless—

(1) The ownership of the barge changes in whole or in part;

(2) The general partners of a partnership owning the barge change by addition, deletion, or substitution;

(3) The State of incorporation of any corporate owner of the barge changes;

(4) The barge is placed under foreign flag;

(5) Any owner of the barge ceases to be a citizen within the meaning of subpart C of this part; or

(6) The barge ceases to be capable of transportation by water.

**§ 68.107 Application procedure for vessels other than barges to be operated in coastwise trade without being documented.**

(a) In addition to the items under § 67.141 of this chapter, the person that owns the vessel (other than a barge under § 68.109) and that seeks a coastwise endorsement under this subpart must submit the following to the National Vessel Documentation Center:

(1) A certification in the form of an affidavit and, if requested by the Director, National Vessel Documentation Center, supporting documentation establishing the following facts with respect to the transaction from an individual who is authorized to provide certification on behalf of the person that owns the vessel and who is an officer in a corporation, a partner in a partnership, a member of the board of managers in a limited liability company, or their equivalent. The certificate must certify the following:

(i) That the person that owns the vessel, the parent of that person, or a subsidiary of a parent of that person is primarily engaged in leasing or other financing transactions.

(ii) That the person that owns the vessel is organized under the laws of the United States or a State.

(iii) That none of the following is primarily engaged in the direct operation or management of vessels:

(A) The person that owns the vessel.

(B) The parent of the person that owns the vessel.

(C) The group of which the person that owns the vessel is a member.

(iv) That ownership of the vessel is primarily a financial investment without the ability and intent to directly or indirectly control the vessel's operations by a person not primarily engaged in the direct operation or management of vessels.

(v) That the majority of the aggregate revenues of each of the following is not derived from the operation or management of vessels:

(A) The person that owns the vessel.

(B) The parent of the person that owns the vessel.

(C) The group of which the person that owns the vessel is a member.

(vi) That none of the following is primarily engaged in the operation or management of commercial, foreign-flag vessels used for the carriage of cargo for parties unrelated to the vessel's owner or charterer:

(A) The person that owns the vessel.

(B) The parent of the person that owns the vessel.

(C) The group of which the person that owns the vessel is a member.

(vii) That the person that owns the vessel has transferred to a qualified United States citizen under 46 U.S.C. app. 802 full possession, control, and command of the U.S.-built vessel through a demise charter in which the demise charterer is considered the owner *pro hac vice* during the term of the charter.

(viii) That the vessel is financed with lease financing.

(2) A copy of the charter, which must provide that the charterer is deemed to be the owner *pro hac vice* for the term of the charter.

(b) The charterer must submit the following to the National Vessel Documentation Center:

(1) A certificate certifying that the charterer is a citizen of the United States for the purpose of engaging in the coastwise trade under 46 U.S.C. app. 802.

(2) Detailed citizenship information in the format of form CG-1258, Application for Documentation, section G, citizenship. The citizenship information may be attached to the form CG-1258 that is submitted under § 67.141 of this chapter and must be signed by, or on behalf of, the charterer.

(c) Whenever a charter under paragraph (a) of this section is amended, the vessel owner must file a copy of the

amendment with the Director, National Vessel Documentation Center, within 10 days after the effective date of the amendment.

(d) Whenever the charterer of a vessel under paragraph (a) of this section enters into a sub-charter that is a demise charter with another person for the use of the vessel, the charterer must file a copy of the sub-charter and amendments to the sub-charter with the Director, National Vessel Documentation Center, within 10 days after the effective date of the sub-charter and the sub-charterer must provide detailed citizenship information in the format of form CG-1258, Application for Documentation, section G, citizenship.

(e) Whenever the charterer of a vessel under paragraph (a) of this section enters into a sub-charter other than a demise charter with another person for the use of the vessel, the charterer must file a copy of the sub-charter and amendments to the sub-charter with the Director, National Vessel Documentation Center, within 10 days after a request by the Director to do so.

(f) A person that submits a false certification under this section is subject to penalty under 46 U.S.C. 12122 and 18 U.S.C. 1001.

**§ 68.109 Application procedure for barges to be operated in coastwise trade without being documented.**

(a) The person that owns a barge qualified to engage in coastwise trade under the lease-financing provisions of 46 U.S.C. 12106(e) must submit the following to the National Vessel Documentation Center:

(1) A certification in the form of an affidavit and, if requested by the Director, National Vessel Documentation Center, supporting documentation establishing the following facts with respect to the transaction from an individual who is authorized to provide certification on behalf of the person that owns the barge and who is an officer in a corporation, a partner in a partnership, a member of the board of managers in a limited liability company, or their equivalent. The certificate must certify the following:

(i) That the person that owns the barge, the parent of that person, or a subsidiary of the parent of that person is primarily engaged in leasing or other financing transactions.

(ii) That the person that owns the barge is organized under the laws of the United States or a State.

(iii) That none of the following is primarily engaged in the direct operation or management of vessels:

(A) The person that owns the barge.

(B) The parent of the person that owns the barge.

(C) The group of which the person that owns the barge is a member.

(iv) That ownership of the barge is primarily a financial investment without the ability and intent to directly or indirectly control the barge's operations by a person not primarily engaged in the direct operation or management of the barge.

(v) That the majority of the aggregate revenues of each of the following is not derived from the operation or management of vessels:

(A) The person that owns the barge.

(B) The parent of the person that owns the barge.

(C) The group of which the person that owns the barge is a member.

(vi) That none of the following is primarily engaged in the operation or management of commercial, foreign-flag vessels used for the carriage of cargo for parties unrelated to the vessel's owner or charterer:

(A) The person that owns the barge.

(B) The parent of the person that owns the barge.

(C) The group of which the person that owns the barge is a member.

(vii) That the person that owns the barge has transferred to a qualified United States citizen under 46 U.S.C. app. 802 full possession, control, and command of the U.S.-built barge through a demise charter in which the demise charterer is considered the owner *pro hac vice* for the term of the charter.

(viii) That the barge is qualified to engage in the coastwise trade and that it is owned by a person eligible to own vessels documented under 46 U.S.C. 12102(e).

(ix) That the barge is financed with lease financing.

(2) A copy of the charter, which must provide that the charterer is deemed to be the owner *pro hac vice* for the term of the charter.

(b) The charterer must submit the following to the National Vessel Documentation Center:

(1) A certificate certifying that the charterer is a citizen of the United States for engaging in the coastwise trade under 46 U.S.C. app. 802.

(2) Detailed citizenship information in the format of form CG-1258, Application for Documentation, section G, citizenship. The citizenship information must be signed by, or on behalf of, the charterer.

(c) Whenever a charter under paragraph (a) of this section is amended, the barge owner must file a copy of the amendment with the Director, National Vessel Documentation Center, within 10

days after the effective date of the amendment.

(d) Whenever the charterer of a barge under paragraph (a) of this section enters into a sub-charter that is a demise charter with another person for the use of the barge, the charterer must file a copy of the sub-charter and amendments to the sub-charter with the Director, National Vessel Documentation Center, within 10 days after the effective date of the sub-charter and the sub-charterer must provide detailed citizenship information in the format of form CG-1258, Application for Documentation, section G, citizenship.

(e) Whenever the charterer of a barge under paragraph (a) of this section enters into a sub-charter other than a demise charter with another person for the use of the barge, the charterer must file a copy of the sub-charter and amendments to the sub-charter with the Director, National Vessel Documentation Center, within 10 days after a request by the Director to do so.

(f) A person that submits a false certification under this section is subject to penalty under 46 U.S.C. 12122 and 18 U.S.C. 1001.

**§ 68.111 Invalidation of a coastwise endorsement.**

(a) In addition to the events in § 67.167(c)(1) through (c)(9) of this chapter, a Certificate of Documentation together with a coastwise endorsement in effect before February 4, 2004, becomes invalid when—

(1) The demise charter expires or is transferred to another charterer;

(2) The citizenship of the charterer or sub-charterer changes to the extent that they are no longer qualified for a coastwise endorsement; or

(3) Neither the person that owns the vessel, nor the parent of that person, nor a subsidiary of the parent of that person is primarily engaged in leasing or other financing transactions.

(b) In addition to the events in § 67.167(c)(1) through (c)(9) of this chapter, a Certificate of Documentation together with a coastwise endorsement in effect on or after February 4, 2004, and before August 9, 2004, becomes invalid when—

(1) The demise charter expires or is transferred to another charterer;

(2) The citizenship of the charterer or sub-charterer changes to the extent that they are no longer qualified for a coastwise endorsement;

(3) Neither the person that owns the vessel, nor the parent of that person, nor a subsidiary of the parent of that person is primarily engaged in leasing or other financing transactions;

(4) The majority of the aggregate revenues of at least one of the following

is derived from the operation or management of vessels:

(i) The person that owns the vessel.  
(ii) The parent of the person that owns the vessel.

(iii) The group of which the person that owns the vessel is a member; or  
(5) At least one of the following is primarily engaged in the operation or management of commercial, foreign-flag vessels used for the carriage of cargo for parties unrelated to the vessel's owner or charterer:

(i) The person that owns the vessel.  
(ii) The parent of the person that owns the vessel.

(iii) The group of which the person that owns the vessel is a member.

Dated: February 7, 2006.

T.H. Collins,

Admiral, Coast Guard Commandant.

[FR Doc. 06-1242 Filed 2-14-06; 8:45 am]

BILLING CODE 4910-15-P

**GENERAL SERVICES ADMINISTRATION**

**48 CFR Chapter 5**

[GSAR ANPR 2006-N01]

RIN 3090-00XX

**General Services Administration Acquisition Regulation; GSAR Revision Initiative**

**AGENCY:** Office of the Chief Acquisition Officer, General Services Administration (GSA).

**ACTION:** Advance notice of proposed rulemaking with request for comments.

**SUMMARY:** The General Services Administration (GSA) is requesting comments from both Government and industry on areas in which the General Services Administration Acquisition Regulation (GSAR) can be revised to improve clarity and simplify procedures.

**DATES:** Interested parties should submit comments in writing on or before April 17, 2006 to be considered in the formulation of a proposed rule.

**ADDRESSES:** Submit written comments identified by GSAR ANPR2006-N01, by using any of the following methods:

• Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

• Agency Web Site: <http://www.acqnet.gov/GSAM/gsamproposed.html>. Click on the GSAR case number to submit comments.

• E-mail: [gsaranpr.2006-N01@gsa.gov](mailto:gsaranpr.2006-N01@gsa.gov). Include GSAR ANPR 2006-N01 in the subject line of the message.

• Fax: 202-501-4067.

• Mail: General Services

Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405. Instructions: Please submit comments only and cite GSAR ANPR 2006-N01 in all correspondence related to this case. All comments received will be posted without change to <http://www.acqnet.gov/GSAM/gsamcomments.html>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mrs. Althea Kireilis at 202-208-4724. Please cite GSAR ANPR 2006-N01 notice on GSAR Revision Initiative.

**SUPPLEMENTARY INFORMATION:**

**Background**

GSA is beginning the review and update of the General Services Administration Acquisition Regulation (GSAR). The GSAR is the regulatory part of the General Services Administration Acquisition Manual (GSAM). The GSAM contains both regulatory and non-regulatory acquisition guidance. The GSAR contains GSA's agency acquisition policies and practices, contract clauses, solicitation provisions, and forms that control the relationship between GSA and contractors and prospective contractors. The GSAM can be found online at [www.acqnet.gov/GSAM/gsam.html](http://www.acqnet.gov/GSAM/gsam.html). The regulatory parts making up the GSAR are the shaded parts of the document at this site. In this ANPR, GSA is seeking comments on the regulatory, or shaded parts, only.

Revisions to the GSAR are necessary to maintain consistency with the FAR, and to implement streamlined and innovative acquisition procedures that contractors, offerors and GSA contracting personnel can utilize when entering into and administering contractual relationships.

In this effort, GSA is asking industry and other interested parties, including Government personnel, to submit suggestion on which parts of the GSAR—

- Should be clarified to provide consistency with the FAR;
- Should be eliminated because they duplicate the FAR or create inconsistencies within the GSAR;
- Have inappropriate references listed to indicate the basis for the regulation;
- Have become irrelevant because of changes in technology or business processes;

## 46 U.S.C. § 12106

(e)(1) A certificate of documentation for a vessel may be endorsed with a coastwise endorsement if—

(A) the vessel is eligible for documentation;

(B) the person that owns the vessel (or, if the vessel is owned by a trust or similar arrangement, the beneficiary of the trust or similar arrangement) meets the requirements of subsection (f);

(C) the vessel is under a demise charter to a person that certifies to the Secretary that the person is a citizen of the United States for engaging in the coastwise trade under section 2 of the Shipping Act, 1916;

(D) the demise charter is for a period of at least 3 years or a shorter period as may be prescribed by the Secretary; and

(E) the vessel is otherwise eligible for documentation under this section.

(2) The demise charter and any amendments to that charter shall be filed with the certificate required by this subsection, or within 10 days following the filing of an amendment to the charter, and such charter and amendments shall be made available to the public.

(3) Upon termination by a demise charterer required under paragraph (1)(C), the coastwise endorsement of the vessel may, in the sole discretion of the Secretary, be continued after the termination for default of the demise charter for a period not to exceed 6 months on such terms and conditions as the Secretary may prescribe.

(4) For purposes of section 2 of the Shipping Act, 1916, and section 12102(a) of this title, a vessel meeting the criteria of this subsection is deemed to be owned exclusively by citizens of the United States.

**(f) Ownership certification requirement.—**

(1) **In general.**—A person meets the requirements of this subsection if that person transmits to the Secretary each year the certification required by paragraph (2) or (3) with respect to a vessel.

(2) **Investment certification.**—To meet the certification requirement of this paragraph, a person shall certify that it—

(A) is a leasing company, bank, or financial institution;

(B) owns, or holds the beneficial interest in, the vessel solely as a passive investment;

(C) does not operate any vessel for hire and is not an affiliate of any person who operates any vessel for hire; and

(D) is independent from, and not an affiliate of, any charterer of the vessel or any other person who has the right, directly or indirectly, to control or direct the movement or use of the vessel.

**(3) Certain tank vessels.—**

**(A) In general.**—To meet the certification requirement of this paragraph, a person shall certify that—

(i) the aggregate book value of the vessels owned by such person and United States affiliates of such person does not exceed 10 percent of the aggregate book value of all assets owned by such person and its United States affiliates;

(ii) not more than 10 percent of the aggregate revenues of such person and its United States affiliates is derived from the ownership, operation, or management of vessels;

(iii) at least 70 percent of the aggregate tonnage of all cargo carried by all vessels owned by such person and its United States affiliates and documented under this section is qualified proprietary cargo;

(iv) any cargo other than qualified proprietary cargo carried by all vessels owned by such person and its United States affiliates and documented under this section consists of oil, petroleum products, petrochemicals, or liquified natural gas;

(v) no vessel owned by such person or any of its United States affiliates and documented under this section carries molten sulphur; and

(vi) such person owned 1 or more vessels documented under subsection (e) of this section as of the date of enactment of the Coast Guard and Maritime Transportation Act of 2004.

**(B) Application only to certain vessels.**—A person may make a certification under this paragraph only with respect to—

(i) a tank vessel having a tonnage of not less than 6,000 gross tons, as measured under section 14502 of this title (or an alternative tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title); or

(ii) a towing vessel associated with a non-self-propelled tank vessel that meets the requirements of clause

(i), where the 2 vessels function as a single self-propelled vessel.

**(4) Definitions.**—In this subsection:

**(A) Affiliate.**—The term “affiliate” means, with respect to any person, any other person that is—

(i) directly or indirectly controlled by, under common control with, or controlling such person; or

(ii) named as being part of the same consolidated group in any report or other document submitted to the United States Securities and Exchange Commission or the Internal Revenue Service.

**(B) Cargo.**—The term “cargo” does not include cargo to which title is held for non-commercial reasons and primarily for the purpose of evading the requirements of paragraph (3).

**(C) Oil.**—The term “oil” has the meaning given that term in section 2101(20) of this title.

**(D) Passive investment.**—The term “passive investment” means an investment in which neither the investor nor any affiliate of such investor is involved in, or has the power to be involved in, the formulation, determination, or direction of any activity or function concerning the management, use, or operation of the asset that is the subject of the investment.

**(E) Qualified proprietary cargo.**—The term “qualified proprietary cargo” means—

(i) oil, petroleum products, petrochemicals, or liquefied natural gas cargo that is beneficially owned by the person who submits to the Secretary an application or annual certification under paragraph (3), or by an affiliate of such person, immediately before, during, or immediately after such cargo is carried in coastwise trade on a vessel owned by such person;

(ii) oil, petroleum products, petrochemicals, or liquefied natural gas cargo not beneficially owned by the person who submits to the Secretary an application or an annual certification under paragraph (3), or by an affiliate of such person, but that is carried in coastwise trade by a vessel owned by such person and which is part of an arrangement in which vessels owned by such person and at least one other person are operated collectively as one fleet, to the extent that an equal amount of oil, petroleum products, petrochemicals, or liquefied natural gas cargo beneficially owned by such person, or an affiliate of such person, is carried in coastwise trade on 1 or more other vessels, not owned by such person,

or an affiliate of such person, if such other vessel or vessels are also part of the same arrangement;

(iii) in the case of a towing vessel associated with a non-self-propelled tank vessel where the 2 vessels function as a single self-propelled vessel, oil, petroleum products, petrochemicals, or liquefied natural gas cargo that is beneficially owned by the person who owns both such towing vessel and the non-self-propelled tank vessel, or any United States affiliate of such person, immediately before, during, or immediately after such cargo is carried in coastwise trade on either of the 2 vessels; or

(iv) any oil, petroleum products, petrochemicals, or liquefied natural gas cargo carried on any vessel that is either a self-propelled tank vessel having a length of at least 210 meters or a tank vessel that is a liquefied natural gas carrier that—

(I) was delivered by the builder of such vessel to the owner of such vessel after December 31, 1999; and

(II) was purchased by a person for the purpose, and with the reasonable expectation, of transporting on such vessel liquefied natural gas or unrefined petroleum beneficially owned by the owner of such vessel, or an affiliate of such owner, from Alaska to the continental United States.

(F) **United States affiliate.**—The term “United States affiliate” means, with respect to any person, an affiliate the principal place of business of which is located in the United States.

(Pub.L. 98–89, Aug. 26, 1983, 97 Stat. 586; Pub.L. 98–454, Title III, § 301(b), Oct. 5, 1984, 98 Stat. 1734; Pub.L. 100–239, § 6(a)(2), (3), Jan. 11, 1988, 101 Stat. 1781; Pub.L. 101–225, Title III, § 301(a)(6), Dec. 12, 1989, 103 Stat. 1921; Pub.L. 101–380, Title IV, § 4205, Aug. 18, 1990, 104 Stat. 533; Pub.L. 104–324, Title VII, § 743, Title XI, § 1113(d), Oct. 19, 1996, 110 Stat. 3942, 3971; Pub.L. 108–293, Title VI, § 608(a), Aug. 9, 2004, 118 Stat. 1054.)

<sup>1</sup> So in original. Probably should be “coastwise”.

#### HISTORICAL AND STATUTORY NOTES

##### Revision Notes and Legislative Reports

**1984 Acts.** House Report No. 98–784, see 1984 U.S. Code Cong. and Adm. News, p. 2908.

**1988 Acts.** House Report No. 100–423, see 1987 U.S. Code Cong. and Adm. News, p. 3245.

**1989 Acts.** House Report No. 101–227, see 1989 U.S. Code Cong. and Adm. News, p. 1368.

**1990 Acts.** Senate Report Nos. 101–94 and 101–99, House Conference Report No. 101–653, and Statement by President, see 1990 U.S. Code Cong. and Adm. News, p. 722.



**COAST GUARD AND MARITIME TRANSPORTATION  
ACT OF 2004**

*PUBLIC LAW 108-293, see page 118 Stat. 1028*

**DATES OF CONSIDERATION AND PASSAGE**

*House: November 5, 2003*

*Senate: March 30, 2004*

**Cong. Record Vol. 150 (2004)**

**House Report (Transportation and Infrastructure Committee)**

**No. 108-233, July 24, 2003**

**[To accompany H.R. 2443]**

**House Conference Report**

**No. 108-617, July 20, 2004**

**[To accompany H.R. 2443]**

*The House Conference Report is set out below.*

**HOUSE CONFERENCE REPORT 108-617**

[page 1]

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**JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE**

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2443), to authorize appropriations for the Coast Guard for fiscal year 2004, to amend various laws administered by the Coast Guard, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the bill struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

## COAST GUARD & MARITIME TRANSP. ACT

PUBLIC LAW 108-293

The Conference substitute adopts the House provision with an amendment that provides coastwise trade endorsements for two additional vessels, the Miss Linda, and the Ragland.

### Section 608. Requirements for Coastwise Endorsement

Section 609 of the House bill requires the Secretary of the department in which the Coast Guard is operating to implement final regulations to carry out section 12106(e) of title 46, United States Code, regarding lease financing by foreign entities of vessels intended to be used in the coastwise trade.

The Senate amendment does not contain a comparable provision.

The Conference substitute requires that foreign owners of U.S.-built vessels engaged in the coastwise trade annually certify that the owner is a financial institution without any active interest in the operation of the vessel or any affiliation with a parent company, subsidiary or other affiliate that operates vessels for hire or has the ability to directly or indirectly control or direct the use of any vessel.

The substitute exempts certain vessels that carry predominantly proprietary cargo (defined as petroleum-derived products) and vessels owned by one entity engaged in the transportation and distribution of petroleum products in Alaska from these requirements.

The substitute allows vessels that had been procured by lease financing under the Coast Guard's pre-February 4, 2004 policy to maintain their coastwise endorsements for the life of the vessel. Replacement vessels for such vessels may receive a coastwise endorsement if replacement is due to an act of God or a marine casualty, or if a contract to build such a replacement vessel is entered into prior to December 31, 2004. Offshore supply vessels procured by lease financing under the Coast Guard's pre-February 4, 2004 policy may maintain their coastwise endorsement for 3 years after the date of enactment of this Act.

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### *Section 609. Correction of References to National Driver Register*

Section 614 of the House bill makes technical corrections to the National Driver Register Act of 1982 (23 U.S.C. 401 note).

The Senate amendment does not contain a comparable provision.

The Conference substitute adopts the House provision.

### *Section 610. Wateree River*

Section 615 of the House bill designates a portion of the Wateree River in the state of South Carolina stretching from 100 feet upstream of the railroad bridge located at approximately mile marker 10.0 to a point 100 feet downstream of the bridge to be non-navigable waters for purposes of bridge administration.

Section 405 of the Senate amendment contains a similar provision.

The Conference substitute adopts the House provision.

### *Section 611. Merchant Mariners' Documents Demonstration Program*

Section 616 of the House bill authorizes the Secretary of the department in which the Coast Guard is operating to establish a pilot program in the 17th Coast Guard District to improve processing and procedures for issuing merchant mariners' documents. The provision directs the Secretary to consult with the Secretary of the Air Force so that any such demonstration program will implement some of the measures currently in place in the Air Force program.

## **MLA MARINE FINANCE – SPRING, 2006**

Section 31301 of Chapter 313 of Title 46 U.S. Code is amended by inserting therein in appropriate alphabetical order the following definitions:

“Documentation Owner” with respect to a vessel means any person identified as the owner of a Documented Vessel in any Application for Documentation filed with the Secretary. A person who retains only legal title to a vessel may be a Documentation Owner, notwithstanding any transfer by such person of all equitable or beneficial ownership interest in such vessel

“Financing Charter” means a contract in the form of a demise or bareboat charter of the entire vessel, which contract in fact creates a security interest in the vessel.

### Section 31321A

(a) Without adversely affecting the documentation of a vessel or the renewal of documentation, a Documentation Owner may execute a financing charter and file with the Secretary a notice of financing charter with respect to a vessel documented in the name of such Documentation Owner. Such notice shall be in the form prescribed by the Secretary and shall include the name and official number of the vessel, title and date of the financing charter, the names and addresses of the Documentation Owner and the charterer, the dates of commencement and scheduled expiry of the financing charter and the aggregate of the nominal amount of all charter hire payments to be paid thereunder, exclusive of any interest, indemnities, expenses or fees and any other information that the Secretary deems necessary for purposes of national security. A security interest in favor of a Documentation Owner evidenced by a financing charter, notice of which is filed pursuant to this Section 31321A, shall constitute a lien on the vessel.

(b) A Documentation Owner may also file a notice of any renewals, amendments, supplements, assignments, and assumptions of a financing charter as to which a notice shall theretofore have been filed pursuant to paragraph (a) of this Section 31321A.

(c) A Documentation Owner shall have the power to grant one or more preferred mortgages, supplements and amendments thereto and may grant or incur liens on a vessel notwithstanding that such Documentation Owner or predecessor in interest shall have entered into any financing charter which creates a security interest in the vessel.

(d) A Documentation Owner may have a lien on a vessel to which it holds title only to the extent provided in this Chapter 313.

(e) The mere filing of notice of a financing charter hereunder shall not constitute evidence that such document creates a security interest.

Section 31331.

For purposes of Sections 31325, 31326 and 31329, a financing charter, notice of which has been filed pursuant to Section 31321A hereof, shall be deemed a preferred mortgage over the whole of the vessel, subordinate to any other preferred mortgage, as defined in Section 31322 of Chapter 313; provided, however, that any financing charter which does not create a security interest under the laws applicable to its execution, by agreement of the parties or otherwise, shall not be deemed to constitute a preferred mortgage for any purpose under this Chapter 313.

## MINUTES

### MARINE FINANCING COMMITTEE

November 3, 2005

Scottsdale, Arizona

Stephen B. Johnson discussed the current status of the Magnuson-Stevens Fishery Conservation Management Act reauthorization legislation, and the potential impact of current proposals on lenders.

There was a lengthy discussion of the proposal, discussed at the previous meeting in New York in the Spring, of whether the United States should adopt a statute that would federalize security interests in vessels under construction, by permitting vessels under construction to be documented and for preferred mortgages to be granted thereon that would have priority over supplier liens, and for the *in rem* jurisdiction of U.S. federal courts to extend to these mortgages on vessels under construction, even if the vessels are registered under foreign flag as vessels under construction.

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