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9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2011-0619]

Mechanisms of Compliance with United States Citizenship Requirements for the Ownership of Vessels Eligible to Engage in Restricted Trades by Publicly Traded Companies.

AGENCY: Coast Guard, DHS.

ACTION: Notice and request for comments.

SUMMARY: Under existing statutes, at least 75% of the ownership of vessels eligible to engage in the coastwise or fisheries trades must be vested in United States citizens. The Coast Guard is seeking comments and information on the various mechanisms that publicly traded companies have chosen to employ in order to assure compliance with those citizenship requirements. Although the Coast Guard may use information obtained in response to this notice to inform future rulemakings, we are not presently developing a new or revised regulation on this subject.

DATES: Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] or reach

the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG-2011-0619 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(5) For comments containing confidential information, business information or sensitive security information, please mail appropriately marked comments to Commandant (CG-0943) (RM 1417), U.S. Coast Guard, 2100 2nd Street, S.W., STOP 7121, Washington, D.C., 20593, Attention USCG-2011-0619.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Douglas Cameron, United States Coast Guard, National Vessel Documentation Center; telephone 304-271-2506, e-mail Douglas.G.Cameron@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

We encourage you to respond to this notice by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided. We will consider all comments and material received during the comment period regardless of whether you include identifying information.

A. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2011-0619) and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address,

an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Notices" and insert "USCG-2011-0619" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand 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.

B. Handling Confidential Information, Proprietary Information and Sensitive Security Information (SSI) submitted in public comments

Do not submit comments that include trade secrets, confidential commercial or financial information, or sensitive security information (SSI)¹ to the public

¹ "Sensitive Security Information" or "SSI" is information obtained or developed in the conduct of security activities, the

regulatory docket. Please submit such comments separately from other comments on the rulemaking. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the Coast Guard point of contact listed in the FOR FURTHER INFORMATION CONTACT section.

Upon receipt of such comments, the Coast Guard will not place the comments in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. The Coast Guard will hold them in a separate file to which the public does not have access, and place a note in the public docket that Coast Guard has received such materials from the commenter. If the Coast Guard receives a request to examine or copy this information, we will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552).

C. Viewing comments and documents

disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2011-0619" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

D. Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

II. Background

The United States citizenship requirements for

ownership of vessels eligible to engage in the coastwise or fisheries trades are established by 46 U.S.C. 50501. Among other things, they require that 75% of the ownership interest in qualified vessel-owning entities, as evidenced by title and voting power, must be vested in United States citizens. In addition, in accordance with 46 C.F.R. 67.31(d), where title to a vessel is held by an entity comprised, in whole or in part, of other entities, each entity contributing to the stock or equity interest qualifications of the entity holding title must be a citizen eligible to document vessels in its own right with a coastwise or fisheries trade endorsement.² Thus, for publicly traded companies, as with other entities holding title to coastwise or fisheries eligible vessels, each entity whose ownership interest in the stock or equity of that company contributes to the 75% ownership requirement for that company must itself be eligible to document vessels in its own right with a coastwise or fisheries trade endorsement. Moreover, for those entities to be so eligible themselves, they must also satisfy the requirements of 46 U.S.C. 50501 and 46 C.F.R. 67.31(d), as would, consequently,

² See, 46 C.F.R. Part 67, Subpart C, "Citizenship Requirements for Vessel Documentation."

any entities whose stock or equity ownership contributes in turn to their 75% United States citizen ownership requirement.

In addition to the stock or equity ownership interest requirement discussed above, there are other requirements that entities must satisfy in order to be qualified, in their own right, to document vessels, including to document vessels with coastwise or fisheries trade endorsements. As set forth at 46 C.F.R. 67.39(a), in the case of entities that are corporations, any such entity (1) must be incorporated under the laws of the United States or of a state; (2) its chief executive officer, by whatever title, must be a citizen of the United States; (3) the chairman of its board of directors must be a United States citizen; and (4) no more of its directors than a minority of the number necessary to constitute a quorum may be non-citizens of the United States.

The process for determining the citizenship of applicants for documentation of vessels, including for documentation with coastwise or fisheries trade endorsements, relies on self-certification. Because of that, it has long been the position of the Coast Guard that, when evidence of possible non-compliance is found, the burden is upon the applicant, or recipient of such

privilege, to establish its qualifications. A clear statement of that obligation, offered in the context of publicly traded companies, was published at 58 FR 60256 (November 15, 1993) where it was stated at page 60259 as follows:

The documentation laws are meant to be restrictive and are intended to limit the persons who are eligible to document vessels under U.S. law and acquire trading privileges. Corporations can make proof of citizenship less difficult, for instance by restricting sale of their stock to U.S. citizens, or using a transfer agent to administer a dual stock certificate system. Of course, any U.S. corporation that is unwilling to subject itself to the possibility of having to prove that it qualifies for coastwise or fisheries privileges can choose not to seek them. The Coast Guard will not be bound by any presumptions or inferences in making eligibility determinations for documentation purposes.

Against the background of this statement by the Coast Guard of the burden upon corporations to be able to prove their qualifications, as a necessary requirement of a self-certifying system for determining that U. S. citizenship standards have been met, the Coast Guard recently completed an investigation of a publicly-traded company owning vessels documented with coastwise endorsements and found that its U.S. citizenship could not be established. The report of that investigation, dated January 12, 2011, contains the Coast Guard's findings, opinions and recommendations with respect to this issue, as pertinent to the company

investigated, and can be found at <http://www.uscg.mil/hq/cg5/nvdc/nvdcreport.asp> or go to the National Vessel Documentation Center home page at <http://www.uscg.mil/hq/cg5/nvdc/>, click on "Latest News" on the left side of the page, then click on "Trico Investigation" under the drop-down menu.

III. Information Requested

This notice solicits information, for the benefit of the Coast Guard but also for the mutual benefit of industry, as to the mechanisms that publicly traded companies have employed, including but not limited to those mentioned in the quoted

language above, to assure compliance with United States citizenship requirements. We are also requesting information on the manner in which those mechanisms function to provide that assurance and, when called upon to do so, to offer proof of compliance. The Coast Guard will not retaliate against commenters that question or complain about citizenship requirements or any policy or action of the Coast Guard.

This document is issued under authority of 5 U.S.C. 552(a) and 33 CFR 1.05-1.

Dated: October 25, 2011

Timothy V. Skuby, Director
National Vessel Documentation Center
U.S. Coast Guard

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