

§ 221.11

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

§ 221.11 Required approvals.

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

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

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

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

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

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

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

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

§ 221.13 General approval.

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) At prevailing rates;

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

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

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

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

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

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

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

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

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

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(b) *Vessels of 1,000 gross tons or more.* (1) Applications for approval of Transfer to foreign registry and flag or Operation Under the Authority of a Foreign Country or for scrapping in a foreign country of Documented Vessels or vessels the last documentation of which was under the laws of the United States and which are of 1,000 gross tons or more will be evaluated in light of—
(i) The type, size, speed, general condition, and age of the vessel;
(ii) The acceptability of the owner, proposed transferee and the country of registry or the country under the authority of which the vessel is to be operated; and
(iii) The need to retain the vessel under U.S. documentation, ownership or control for purposes of national defense, maintenance of an adequate merchant marine, foreign policy considerations or the national interest.

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

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

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

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

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

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

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

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

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

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

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

(ii) A pledge of United States Government securities;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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