

SUBCHAPTER B—REGULATIONS AFFECTING MARITIME CARRIERS AND RELATED ACTIVITIES

PART 221—REGULATED TRANSACTIONS INVOLVING DOCUMENTED VESSELS AND OTHER MARITIME INTERESTS

Subpart A—Introduction

- Sec.
221.1 Purpose.
221.3 Definitions.
221.5 Citizenship declarations.
221.7 Applications and fees.

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

- 221.11 Required approvals.
221.13 General approval.
221.15 Approval for transfer of registry or operation under authority of a foreign country or for scrapping in a foreign country.
221.17 Sale of a documented vessel by order of a district court.
221.19 Possession or sale of vessels by mortgagees or trustees other than pursuant to court order.

Subpart C [Reserved]

Subpart D—Transactions Involving Maritime Interests in Time of War or National Emergency Under 46 App. U.S.C. 835 [Reserved]

Subpart E—Civil Penalties

- 221.61 Purpose.
221.63 Investigation.
221.65 Criteria for determining penalty.
221.67 Stipulation procedure.
221.69 Hearing Officer.
221.71 Hearing Officer referral.
221.73 Initial Hearing Officer consideration.
221.75 Response by party.
221.77 Disclosure of evidence.
221.79 Request for confidential treatment.
221.81 Counsel.
221.83 Witnesses.
221.85 Hearing procedures.
221.87 Records.
221.89 Hearing Officer's decision.
221.91 Appeals.
221.93 Collection of civil penalties.

Subpart F—Other Transfers Involving Documented Vessels [Reserved]

Subpart G—Savings Provisions

- 221.111 Status of prior transactions—controlling dates.

AUTHORITY: 46 App. U.S.C. 802, 803, 808, 835, 839, 841a, 1114(b), 1195; 46 U.S.C. chs. 301 and 313; 49 U.S.C. 336; 49 CFR 1.66.

SOURCE: 57 FR 23478, June 3, 1992, unless otherwise noted.

Subpart A—Introduction

§ 221.1 Purpose.

(a) This part implements statutory responsibilities of the Secretary of Transportation (the Secretary) with respect to:

(1) The regulation pursuant to 46 App. U.S.C. 808 of transactions involving transfers of:

(i) An interest in or control of Documented Vessels owned by Citizens of the United States (including the Transfer of a Controlling Interest in such owners) to Noncitizens or;

(ii) A Documented Vessel to registry or Operation under Authority of a Foreign Country or for scrapping in a foreign country; and

(2) Transactions involving maritime interests in time of war or national emergency under 46 App. U.S.C. 835.

(b) The responsibilities in paragraph (a) (1) and (2) of this section have been delegated by the Secretary to the Maritime Administrator.

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

§ 221.3 Definitions.

For the purpose of this part, when used in capitalized form:

(a) *Bowaters Corporation* means a Noncitizen corporation organized under the laws of the United States or of a State that has satisfied the requirements of 46 App. U.S.C. 883-1(a)-(e) and holds a valid Certificate of Compliance issued by the Coast Guard.

(b) *Charter* means any agreement or commitment by which the possession or services of a vessel are secured for a

period of time, or for one or more voyages, whether or not a demise of the vessel.

(c) *Citizen of the United States* means a Person (including receivers, trustees and successors or assignees of such Persons as provided in 46 App. U.S.C. 803), including any Person (stockholder, partner or other entity) who has a Controlling Interest in such Person, any Person whose stock or equity is being relied upon to establish the requisite U.S. citizen ownership, and any parent corporation, partnership or other entity of such Person at all tiers of ownership, who, in both form and substance at each tier of ownership, satisfies the following requirements—

(1) An individual who is a Citizen of the United States, by birth, naturalization or as otherwise authorized by law;

(2) A corporation organized under the laws of the United States or of a State, the Controlling Interest of which is owned by and vested in Citizens of the United States and whose chief executive officer, by whatever title, chairman of the board of directors and all officers authorized to act in the absence or disability of such persons are Citizens of the United States, and no more of its directors than a minority of the number necessary to constitute a quorum are Noncitizens;

(3) A partnership organized under the laws of the United States or of a State, if all general partners are Citizens of the United States and a Controlling Interest in the partnership is owned by Citizens of the United States;

(4) An association organized under the laws of the United States or of a State, whose chief executive officer, by whatever title, chairman of the board of directors (or equivalent committee or body) and all officers authorized to act in their absence or disability are Citizens of the United States, no more than a minority of the number of its directors, or equivalent, necessary to constitute a quorum are Noncitizens, and a Controlling Interest in which is vested in Citizens of the United States;

(5) A joint venture, if it is not determined by the Maritime Administrator to be in effect an association or a partnership, which is organized under the laws of the United States or of a State, if each coventurer is a Citizen of the

United States. If a joint venture is in effect an association, it will be treated as is an association under paragraph (c)(4) of this section, or, if it is in effect a partnership, will be treated as is a partnership under paragraph (c)(3) of this section; or

(6) A Trust described in paragraph (t)(1) of this section.

(d) *Controlling interest* owned by and vested in Citizens of the United States means that—

(1) In the case of a corporation:

(i) Title to a majority of the stock thereof is owned by and vested in Citizens of the United States, free from any trust or fiduciary obligation in favor of any Noncitizen;

(ii) The majority of the voting power in such corporation is vested in Citizens of the United States;

(iii) Through no contract or understanding is it so arranged that the majority of the voting power may be exercised, directly or indirectly, in behalf of any Noncitizen; and

(iv) By no other means whatsoever control of the corporation is conferred upon or permitted to be exercised by any Noncitizen;

(2) In the case of a partnership, all general partners are Citizens of the United States and ownership and control of a majority of the partnership interest, free and clear of any trust or fiduciary obligation in favor of any Noncitizen, is vested in a partner or partners each of whom is a Citizen of the United States;

(3) In the case of an association, a majority of the voting power is vested in Citizens of the United States, free and clear of any trust or fiduciary obligation in favor of any Noncitizen; and

(4) In the case of a joint venture, a majority of the equity is owned by and vested in Citizens of the United States free and clear of any trust or fiduciary obligation in favor of any Noncitizen; but

(5) In the case of a corporation, partnership, association or joint venture owning a vessel which is operated in the coastwise trade, the amount of interest and voting power required to be owned by and vested in Citizens of the United States shall be not less than 75 percent as required by 46 App. U.S.C. 802.

§ 221.3

46 CFR Ch. II (10–1–10 Edition)

(e) *Documented vessel* means a vessel documented under chapter 121, title 46, United States Code or a vessel for which an application for such documentation is pending.

(f) *Fishing vessel* means a vessel that commercially engages in the planting, cultivating, catching, taking, or harvesting of fish, shellfish, marine animals, pearls, shells, or marine vegetation or an activity that can reasonably be expected to result in the planting, cultivating, catching, taking, or harvesting of fish, shellfish, marine animals, pearls, shells, or marine vegetation.

(g) *Fish processing vessel* means a vessel that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling.

(h) *Fish tender vessel* means a vessel that commercially supplies, stores, refrigerates, or transports (except in foreign commerce) fish, fish products, or materials directly related to fishing or the preparation of fish to or from a Fishing Vessel, Fish Processing Vessel, or another Fish Tender Vessel or a fish processing facility.

(i) *Hearing Officer* means an individual designated by the Maritime Administrator to conduct hearings under Subpart E of this part and assess civil penalties.

(j) *Noncitizen* means a Person who is not a Citizen of the United States.

(k) *Operation under the authority of a foreign country* means any agreement, undertaking or device by which a Documented Vessel is voluntarily subjected to any restriction or requirement, actual or contingent, under the laws or regulations of a foreign country or instrumentality thereof concerning use or operation of the vessel that is or may be in derogation of the rights and obligations of the owner, operator or master of the vessel under the laws of the United States, unless such restriction or requirement is of general applicability and uniformly imposed by such country or instrumentality in exercise of its sovereign prerogatives with respect to public health, safety or welfare, or in implementation of accepted principles of international law regarding cabotage or safety of navigation.

(l) *Party* means the Person alleged to have violated the statute or regulations for which a civil penalty may be assessed.

(m) *Person* includes individuals and corporations, partnerships, joint ventures, associations and Trusts existing under or authorized by the laws of the United States or of a State or, unless the context indicates otherwise, or any foreign country.

(n) *Pleasure vessel* means a vessel that has been issued a Certificate of Documentation with a recreational endorsement and is operated only for pleasure pursuant to 46 U.S.C. 12109.

(o) *Settlement* means the process whereby a civil penalty or other disposition of the alleged violation is agreed to by the Hearing Officer and the Party in accordance with §221.73 of this part.

(p) *State* means a State of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

(q) *Transfer* means the passing of control of or an interest in a Documented Vessel and includes the involuntary conveyance by a foreign judicial or administrative tribunal of any interest in or control of a Documented Vessel owned by a Citizen of the United States to a Noncitizen that is not eligible to own a Documented Vessel.

(r) *Trust* means:

(1) In the case of ownership of a Documented Vessel, a Trust that is domiciled in and existing under the laws of the United States, or of a State, of which the trustee is a Citizen of the United States and a Controlling Interest in the Trust is held for the benefit of Citizens of the United States; or

(s) *United States*, when used in the geographic sense, means the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States; when used in other than the geographic sense, it means the United States Government.

(t) *United States Government* means the Federal Government acting by or

Maritime Administration, DOT

§ 221.7

through any of its departments or agencies.

(u) *Vessel Transfer Officer* means the Maritime Administration's Vessel Transfer and Disposal Officer, whose address is MAR-745.1, Maritime Administration, United States Department of Transportation, Washington, DC 20590, or that person's delegate.

[57 FR 23478, June 3, 1992, as amended at 63 FR 6880, Feb. 11, 1998; 69 FR 34310, June 21, 2004]

§ 221.5 Citizenship declarations.

(a) Pursuant to 46 U.S.C. 31306(a), when an instrument transferring an interest in a Documented Vessel owned by a Citizen of the United States is presented to the United States Government for filing or recording, the Person filing shall submit therewith Maritime Administration Form No. MA-899 so it may be determined if sections 9 or 37 of the Shipping Act of 1916 (46 App. U.S.C. 808 and 837) apply to the transaction. Form No. MA-899 is available from the Coast Guard Documentation Office at the port of record of the vessel or from the Vessel Transfer Officer.

(b) The filing required by paragraph (a) of this section is not required for transactions involving vessel types described in § 221.11(b)(1)(i) through (iv) of this part.

(c) The filing required by paragraph (a) of this section is waived for transactions which are given general approval in this part.

(d) If the transfer of interest is one which requires written approval of the Maritime Administrator, the Person filing shall submit therewith evidence of that approval.

(e) A declaration filed by any Person other than an individual shall be signed by an official authorized by that Person to execute the declaration.

§ 221.7 Applications and fees.

(a) *Applications.* Whenever written approval of the Maritime Administrator is required for transfers to Noncitizens or to foreign registry or Operation Under Authority of a Foreign Country, or pursuant to a Maritime Administration contract or Order, an application on Maritime Administration Form MA-29 or MA-29B giving full particulars of the proposed transaction shall

be filed with the Vessel Transfer Officer.

(b) *Fees.* Applications for written approval of any of the following transactions shall be accompanied by the specified fee:

(1) Transactions requiring approval for:

(i) Sale and delivery by a Citizen of the United States to a Noncitizen, or Transfer to foreign registry or Operation Under Authority of a Foreign Country, of a Documented Vessel, per vessel—	
(A) Of 1,000 gross tons and over	\$325
(B) Of less than 1,000 gross tons	170
(ii) Transfer of any interest in, or control of, a Documented Vessel owned by a Citizen of the United States to a Noncitizen, per vessel	250
(iii) Charter of a Documented Vessel owned by a Citizen of the United States to a Noncitizen, per vessel	250
(iv) Sale or Transfer of an interest in or the control of an interest in an entity that is a Citizen of the United States and owns, or is the direct or indirect parent of an entity that owns, any Documented Vessel, if by such sale or Transfer the Controlling Interest in such entity is vested in, or held for the benefit of, any Noncitizen	325

(2) Transactions requiring written approval pursuant to a Maritime Administration contract or Order:

(i) Transfer of ownership or registry, or, both, of the vessel, per vessel	\$260
(ii) Sale or Transfer of any interest in the owner of the vessel, if by such sale or Transfer the Controlling Interest in the owner is vested in, or held for the benefit of, a Noncitizen, per vessel	235
(iii) Charter of the vessel to a Noncitizen, per vessel	240

(c) *Modification of applications or approvals.* An application for modification of any pending application or prior approval, or of an outstanding Maritime Administration contract or Order, shall be accompanied by the fee established for the original application.

(d) *Reduction or waiver of fees.* The Maritime Administrator, in appropriate circumstances, and upon a written finding, may reduce any fee imposed by paragraph (b) or (c) of this section, or may waive the fee entirely in extenuating circumstances where the interest of the United States Government would be served.

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