

October 1, 1990, a SNF must cooperate in an effective program which provides for a regular program of independent medical evaluation and audit of the residents in the facility to the extent required by the programs in which the facility participates (including medical evaluation of each resident's need for SNF care).

PART 488—SURVEY AND CERTIFICATION PROCEDURES

F. Part 488 is amended as follows:

1. The authority citation for Part 488 continues to read as follows:

Authority: Secs. 1102, 1814, 1861, 1865, 1866, 1871, 1880, 1881 and 1883 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395x, 1395bb, 1395cc, 1395hh, 1395qq, 1395rr and 1395tt).

§ 488.1 [Amended]

1a. In § 488.1, in the definition of "certification," the phrase "requirements (for SNFs and ICFs)," is added after the phrase "conditions of participation."

§ 488.3 [Amended]

1b. In § 488.3, the phrase "and requirements for SNFs and ICFs" is added to the heading of the section after the phrase, "Conditions for coverage".

1c. In § 488.3(a)(2), the phrase "or level A requirements (for SNFs)" is added after the phrase "applicable conditions."

§ 488.18 [Amended]

2. In § 488.18, paragraph (a), the phrase "or requirements (for SNFs and ICFs)" is added after the phrase "conditions of participation."

3. In § 488.18, paragraph (a), the phrase "or level A requirements (for SNFs and ICFs)" is added after the phrase "conditions of participation."

3a. In § 488.18, paragraphs (a) and (b), the phrase "or level A requirements (for SNFs and ICFs)" is added after the phrase "compliance with the conditions" wherever it appears.

§ 488.20 [Amended]

4. In § 488.20, paragraphs (a) and (c), the phrase "or requirements (for SNFs and ICFs)" is added after the phrase "conditions of participation."

§ 488.24 [Amended]

5. In § 488.24, paragraphs (a) and (b), the phrase "or level A requirements (for SNFs and ICFs)" is added after the phrase "conditions of participation."

§ 488.26 [Amended]

6. In § 488.26 paragraph (a), the phrase "or level A requirements (for SNFs and

ICFs)" is added after the phrase "conditions of participation."

6a. In § 488.26, paragraph (a), the phrase "and requirements (for SNFs and ICFs)" is added after the phrase "various standards within each condition."

§ 488.28 [Amended]

7. In § 488.28, paragraph (a), the phrase "or Level B requirements (for SNFs and ICFs)" is added after the phrase "standards in the conditions of participation."

8. In § 488.28, paragraph (b), the phrase "or Level B requirements (for SNFs and ICFs)" is added after the term "standards."

§ 488.50 [Amended]

9. In § 488.50, paragraph (a), introductory text, the phrase "Level B requirements" is substituted for the term "standards."

10. In § 488.50, paragraph (b), the phrase "Level B requirements(s)" is substituted for the term "standard(s)."

11. In § 488.50, paragraphs (d) introductory text and (e), the phrase "Level B requirements" is substituted for the term "standards" and the phrase "Level B requirement" is substituted for the term "standard."

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

G. Part 489 is amended as follows:

1. The authority citation for Part 489 continues to read as follows:

Authority: Secs. 1102, 1861, 1862(h), 1864, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(h), 1395aa, 1395cc, and 1395hh) and sec. 602(k) of Pub. L. 98-21 (42 U.S.C. 1395ww note).

§ 489.3 [Amended]

2. In Subpart A, § 489.3, in the definition of "immediate jeopardy," the phrase "level A requirements" is substituted for the term "conditions of participation."

§ 489.10 [Amended]

3. In § 489.10, paragraphs (a)(1) and (b), the phrase "or requirements (for SNFs)" is added after the phrase "conditions of participation."

§ 489.13 [Amended]

3a. In § 489.13, paragraph (a), the phrase "conditions of participation or level A requirements (for SNFs)" is substituted for the term "standards."

§ 489.15 [Amended]

4. In § 489.15, paragraphs (b) and (d)(2)(ii), the phrase "level A requirements" is substituted for the term "conditions of participation."

§ 489.53 [Amended]

5. In Subpart E, § 489.53, paragraph (a)(3), the phrase "or requirements (for SNFs and ICFs)" is added after the phrase "conditions of participation."

6. In § 489.53, paragraph (b)(1), the phrase "level A requirement" is substituted for the phrase "condition of participation."

§ 489.60 [Amended]

7. In Subpart F, § 489.60, paragraph (a) introductory text, the phrase "level A requirement" is substituted for the term "condition of participation."

§ 489.62 [Amended]

8. In § 489.62, paragraph (a), the term "requirements" is substituted for the phrase "conditions of participation."

9. In § 489.62, paragraph (c), the phrase "level A and level B requirements" is substituted for the phrase "the conditions of participation or standards."

§ 489.64 [Amended]

9a. In § 489.64, paragraphs (a)(1) and (b)(1), the phrase "level A requirements" is substituted for the phrase "the conditions of participation."

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM

H. Part 498 is amended as follows:

1. The authority citation for Part 498 continues to read as follows:

Authority: Secs. 205(a), 1102, 1869(c) 1871, and 1872 of the Social Security Act (42 U.S.C. 405(a), 1302, 1395ff(c), 1395hh and 1395ii, unless otherwise noted).

§ 498.3 [Amended]

2. In Subpart A, § 498.3, paragraphs (d)(1) and (2), the phrase "or level A requirements (for SNFs and ICFs)" is added after the phrase "conditions of participation."

2a. In § 498.3, paragraph (d)(10), the phrase "or a level A requirement (for SNFs and ICFs)" is added after the phrase "a condition of participation."

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance, No. 13.774, Medical Assistance Program.)

Dated: December 7, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: January 18, 1989.

Otis R. Bowen,

Secretary.

[FR Doc. 89-1697 Filed 1-27-89; 12:10 pm]

BILLING CODE 4120-01-M

1933-34 (continued)
The following table shows the results of the examination of the specimens of the various diseases of the respiratory system, as reported by the various hospitals and clinics, during the year 1933-34.

1934-35 (continued)
The following table shows the results of the examination of the specimens of the various diseases of the respiratory system, as reported by the various hospitals and clinics, during the year 1934-35.

TABLE 1.—RESULTS OF EXAMINATION OF SPECIMENS OF THE RESPIRATORY SYSTEM, 1933-34

The following table shows the results of the examination of the specimens of the various diseases of the respiratory system, as reported by the various hospitals and clinics, during the year 1933-34.

1933-34 (continued)
The following table shows the results of the examination of the specimens of the various diseases of the respiratory system, as reported by the various hospitals and clinics, during the year 1933-34.

1934-35 (continued)
The following table shows the results of the examination of the specimens of the various diseases of the respiratory system, as reported by the various hospitals and clinics, during the year 1934-35.

TABLE 2.—RESULTS OF EXAMINATION OF SPECIMENS OF THE RESPIRATORY SYSTEM, 1934-35

The following table shows the results of the examination of the specimens of the various diseases of the respiratory system, as reported by the various hospitals and clinics, during the year 1934-35.

1933-34 (continued)
The following table shows the results of the examination of the specimens of the various diseases of the respiratory system, as reported by the various hospitals and clinics, during the year 1933-34.

1934-35 (continued)
The following table shows the results of the examination of the specimens of the various diseases of the respiratory system, as reported by the various hospitals and clinics, during the year 1934-35.

TABLE 3.—RESULTS OF EXAMINATION OF SPECIMENS OF THE RESPIRATORY SYSTEM, 1934-35

The following table shows the results of the examination of the specimens of the various diseases of the respiratory system, as reported by the various hospitals and clinics, during the year 1934-35.

Federal Register

Thursday
February 2, 1989

Part III

Department of Energy

10 CFR Part 710

**Criteria and Procedures for Determining
Eligibility for Access to Classified Matter
or Significant Quantities of Special
Nuclear Material; Proposed Rule**

DEPARTMENT OF ENERGY

10 CFR Part 710

Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material

AGENCY: Office of Safeguards and Security, Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) is issuing a proposed rule for the Personnel Security Assurance Program (PSAP), which is a special access authorization program for positions that afford direct access to Category I quantities of special nuclear material (SNM) or have direct responsibility for transportation or protection of Category I quantities of SNM; that are identified as nuclear material production reactor operators; or with the potential for causing unacceptable damage to national security. The proposed rule sets forth the criteria for determining eligibility for this access authorization program, which includes supervisory review, medical assessment, management evaluation, and security review and clearance determination. This access authorization, called a PSAP clearance, is a security review and determination and is conducted by DOE personnel security specialists.

DATE: Comments must be submitted on or before March 6, 1989.

ADDRESSES: Send comments to Director, Office of Safeguards and Security, DP-34, Department of Energy, Germantown, Room E-369, Washington, DC 20545, (301) 353-5106.

FOR FURTHER INFORMATION CONTACT: Martin Hershkowitz (Program Manager, Personnel Security Assurance Program), (301) 353-5671, or Stephen P. Smith (Principal Attorney), (202) 586-6188.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The protection of certain of the Department's security interests, with the potential, if misused, of causing unacceptable damage to the national security, requires the implementation of a program designed to assure that individuals occupying positions affording access to certain material, facilities, and programs meet the highest standards of reliability. This objective is accomplished under the PSAP through a system of continuous evaluation which identifies those individuals whose judgment may be impaired by physical and/or emotional disorders, the use of controlled substances, or the use of

alcohol habitually to excess. The PSAP involves four components: supervisory review, medical assessment, management evaluation, and security determination. In order for an individual to be placed or continued in a PSAP position, he or she must successfully complete all reviews required and be granted (or have continued) a PSAP access authorization. A determination to grant initially and to continue annually the PSAP access authorization is based upon a DOE security assessment of any information of security concern developed in the course of the supervisory review, medical assessment, management evaluation, and security review. In the event of a question regarding eligibility for a PSAP access authorization, the procedures contained in the current 10 CFR Part 710 shall be used (the current 10 CFR Part 710 will become 10 CFR Part 710, Subpart A after this proposed regulation is final). PSAP positions include those positions: (a) That afford direct access to Category I quantities of SNM or have direct responsibility for transportation or protection of Category I quantities of SNM; (b) that are identified as nuclear material production reactor operators; and (c) with the potential for causing unacceptable damage to national security.

II. Amendment to 10 CFR Part 710

The present content of this part is entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material." This amendment proposes to take the entire content of 10 CFR Part 710 and restate it as 10 CFR Part 710, Subpart A, and then add a Subpart B entitled "Criteria and Procedures for Establishment of Personnel Security Assurance Program (PSAP) and Determination of Individual's Eligibility for Access to a PSAP Position," as set forth below.

III. Opportunity for Public Comment

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments, with respect to the proposal set forth in this notice. Comments should be submitted to the address indicated in the Addresses section of this notice and should be identified on the envelope with the designation, "Rulemaking Comment". Six copies should be submitted. All written comments received on or before the date specified in the beginning of this notice and all other relevant information will be considered by DOE before taking final action on this rule. All written

comments received on the proposed rule will be available for public inspection in the DOE Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday. Any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure should submit 1 complete copy, as well as 6 copies from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and treat it according to its determination. This procedure is set forth in 10 CFR 1004.11.

IV. Procedural Requirements

A. Executive Order 12291

Under Executive Order 12291 agencies are required to determine whether proposed rules are major rules as defined in the Order. DOE has reviewed this proposed rule and has determined that it is not a major rule because: Implementing the additional security requirements proposed in this rule will not have an annual effect on the economy of \$100 million or more; will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

B. Regulatory Flexibility Act

In accordance with section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., DOE finds that sections 603 and 604 of said Act do not apply to this rule because, if promulgated, the rule will affect only DOE contractors operating Government-owned facilities, their subcontractors, and selected DOE Federal operations, and will not affect small entities.

C. National Environmental Policy Act

There is no impact on the human environment under this proposed rule. It is a personnel security clearance effort and deals only with a determination to grant, deny, or suspend a PSAP access authorization. Accordingly, preparation of neither an environmental assessment nor an environmental impact statement is required.

D. Paperwork Reduction Act

The proposed regulation has been reviewed in accordance with the Paperwork Reduction Act and has been determined to contain no collection of information requirements.

E. Federalism Effects

DOE has reviewed this proposed rule under the provisions of Executive Order 12612. The principal impacts of this regulation will be on DOE employees and contractors. DOE finds that this regulation raises no Federalism implications and therefore no Federalism assessment is required.

List of Subjects in 10 CFR Part 710

Access authorization, suspension, revocation, Administrative practice and procedure, Classified information, Government contracts, Government employees, nuclear materials, access, Security measures, Personnel Security Assurance Program, PSAP position, Category I Quantities of Special Nuclear Material, PSAP access authorization.

Issued in Washington, DC, on January 19, 1989.

Troy E. Wade II,

Acting Assistant Secretary for Defense Programs.

In consideration of the foregoing, it is proposed to amend Part 710 of Title 10 of the Code of Federal Regulations, as set forth below.

PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SIGNIFICANT QUANTITIES OF SPECIAL NUCLEAR MATERIAL

1. The authority citation for Part 710 continues to read as follows:

Authority: Sec. 145, 68 Stat. 942, as amended (42 U.S.C. 2165); sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201). E.O. 10450, 3 CFR 1949-1953 Comp., p. 936, as amended; E.O. 10865, 3 CFR 1959-1963 Comp., p. 398, as amended. 3 CFR, Chap. IV; sec. 104(c), 38 Stat. 1237 (42 U.S.C. 5814); sec. 105(a), 88 Stat. 1238 (42 U.S.C. 5815).

Subpart A—General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material.

§§ 710.1 through 710.399 and Appendix A [Designated as Subpart A]

2. Part 710 is amended by designating §§ 710.1 through 710.39 and Appendix A in their entirety as Subpart A, and by adding a subpart heading to read as set forth above.

3. Part 710 is amended by adding Subpart B to read as set forth below:

General Provisions

Sec.

710.50 Purpose.

710.51 Scope.

710.52 References.

710.53 Policy.

710.54 Definitions.

710.55 Designations of PSAP positions.

710.56 Program process.

710.57 Supervisory review.

710.58 Medical assessment.

710.59 Management evaluation.

710.60 DOE security review and clearance determinations.

Subpart B—Criteria and Procedures for Establishment of Personnel Security Assurance Program (PSAP) and Determinations of Individual's Eligibility for Access to a PSAP Position

General Provisions

§ 710.50 Purpose.

(a) This part establishes the policies and procedures for implementing a Department of Energy (DOE) personnel security assurance program (PSAP) for individuals in positions which afford direct access to or have direct responsibility for transportation or protection of Category I quantities of special nuclear materials (SNM), which are identified as nuclear material production reactor operators, or with the potential for causing unacceptable damage to national security.

(b) The DOE personnel security assurance program is designed to establish the procedures for DOE and DOE contractors to utilize in the selection and continuing evaluation of individuals for assignment to the identified PSAP positions. Individuals selected for assignment to PSAP positions must be granted a PSAP access authorization in accordance with the procedures and requirements set forth in Subparts A and B of this part.

§ 710.51 Scope.

The criteria and procedures establishing a personal security assurance program shall apply to:

(a) Those employees of, and applicants for employment with, DOE who either occupy or make application for PSAP positions.

(b) Those employees of, and applicants for employment with, contractors and agents of the DOE who either occupy or make application for PSAP positions.

§ 710.52 References.

(a) Atomic Energy Act of 1954, as amended, Section 11, "Definitions"; Section 141, "Policy"; Section 143, "Department of Defense Participation"; Section 145, "Restriction"; Section 161.b, "General Provisions"; which provide statutory authority for establishing and

implementing a DOE security program for controlling access to Restricted Data and special nuclear material. Copies of selected provisions appear as Appendix A to Subpart A of this part.

(b) Executive Orders 10450, April 29, 1953, "Security Requirements for Government Employment," 10865, February 20, 1965, "Safeguarding Classified Information Within Industry," and 12564, September 15, 1986, "Drug-Free Federal Workplace," all as amended.

(c) 53 FR 11970, "Department of Health and Human Services; Mandatory Guidelines for Federal Workplace Drug Testing Programs" of 4-11-88, which contains requirements for conducting drug testing.

(d) Implementing directives (DOE Orders) which provide Departmental guidance on the PSAP and related areas are available from the U.S. Department of Energy, Washington, DC 20585.

§ 710.53 Policy.

The protection of certain of the Department's security interests, with the potential, if misused, of causing unacceptable damage to the national security, requires the implementation of a program designed to assure that individuals occupying positions affording access to certain material, facilities, and programs meet the highest standards of reliability. This objective is accomplished under the PSAP through a system of continuous evaluation which identifies those individuals whose judgment may be impaired by physical and/or emotional disorders, the use of controlled substances, or the use of alcohol habitually to excess. This process will reduce the risk resulting from the potential threat represented by such employees to an acceptable level. The determination to grant initially and to continue annually the access authorization to a PSAP position is based upon a DOE security assessment of any information of security concern developed in the course of an initial and annual security review process.

§ 710.54 Definitions.

As used in this part:

"Direct Access" means access to Category I quantities of SNM which would permit an individual to remove or misuse that material in spite of any controls that have been established to prevent such unauthorized actions.

"Illegal Drugs," means a controlled substance included in Schedule I or II, as defined by Section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under Chapter 13 of that Title. The term

"illegal drugs" does not apply to the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

"Nuclear Material Production Reactor Operator" means an individual certified by DOE contractor management to operate (manipulate the controls of) a DOE-owned nuclear material production reactor.

"PSAP Approving Official" means a senior DOE official with direct personnel security responsibilities appointed by an operations office manager to review all relevant information, including DOE F 5631.35, "PSAP Management, Medical, and Security Report" as part of the DOE security review process, and who is responsible for granting or continuing the PSAP access authorization, or determining that an individual be processed under the provisions of Subpart A of this part.

"PSAP Position" means a position that affords direct access to or has direct responsibility for transportation or protection of Category I quantities of SNM, nuclear material production reactor operators, or with the potential to cause unacceptable damage to national security.

"Security Concern" means the presence of information regarding an individual applying for or holding a PSAP position that may be considered derogatory under the criteria in Subpart A of this part.

"Unacceptable Damage" means an incident that could result in a nuclear explosive detonation, a major environmental release from a nuclear material production reactor, or an interruption of nuclear weapons production with a significant impact on national security.

Procedures

§ 710.55 Designation of PSAP positions.

PSAP positions shall be designated by the cognizant Operations Office Manager in accordance with the following criteria:

(a) Positions that afford direct access to Category I quantities of SNM or have direct responsibility for transportation or protection of Category I quantities of SNM.

(b) Positions that are identified as nuclear material production reactor operators.

(c) Positions with the potential for causing unacceptable damage to national security which are not included in paragraph (a) or (b) of this section, and are approved by the Director, Office of Safeguards and Security, DOE.

§ 710.56 Program process.

(a) Individuals selected for assignment to PSAP positions must be granted a PSAP access authorization in accordance with the procedures and requirements set forth in this part.

(b) The PSAP involves four (4) components: supervisory review, medical assessment, management evaluation, and security determination. A DOE determination to grant initially and to continue annually an individual's PSAP access authorization is based upon a DOE security assessment of any information of security concern developed in the course of the supervisory review, medical assessment, management evaluation, and security review.

(c) DOE shall make its decision as to a PSAP access authorization in accordance with the criteria in § 710.11 of this part. The intent of the PSAP is to establish a more comprehensive security evaluation of individuals applying for or occupying PSAP positions, on a more frequent basis, to determine whether they meet, or continue to meet, the criteria under Subpart A, § 710.11 of this part.

§ 710.57 Supervisory review.

(a) The supervisory review shall be performed on all applicants for PSAP positions, transferees to PSAP positions, individuals occupying PSAP positions but not yet holding a PSAP access authorization, and PSAP-cleared employees.

(b) The initial SF-86, OMB Control No. 3206.007, "Questionnaire for Sensitive Positions" of an applicant for a PSAP position and an annual update of the "Questionnaire for Sensitive Positions," including a completed Part II, of each incumbent in a PSAP position shall be completed and forwarded to the appropriate PSAP Approving Official.

(c) Before being considered for a PSAP position, all applicants must undergo a thorough preemployment check covering the past 10 years, which includes validation of the applicant's educational history; verification of the applicant's employment record; a credit check; a local agency criminal records check for the locations of interest, as permitted by state or local law; and contact with all references.

(d) Each applicant being considered for a PSAP position and each individual occupying a PSAP position but not yet holding a PSAP access authorization shall execute the appropriate PSAP releases, acknowledgments, and waivers. The request for a PSAP access authorization shall not be further processed until these documents are completed. Failure of an individual

occupying a PSAP position but not yet holding a PSAP access authorization to complete these documents shall result in their reassignment from PSAP duties and an effort be made to reassign the individual to a position that does not require a PSAP access authorization.

(e) Each applicant for a PSAP position and each individual occupying a PSAP position but not yet holding a PSAP access authorization shall undergo testing for the use of illegal drugs in accordance with the provisions of the DOE drug testing program. A determination of the use of illegal drugs based on a drug test shall result in the termination of consideration for the PSAP access authorization. An employee who has been determined to be a user of illegal drugs based on drug test shall be immediately reassigned from the PSAP duties and processed under the provisions of Subpart A of this part.

(f) The supervisor (or selecting official) shall report any security concerns resulting from his or her review to the appropriate management official.

(g) *Annual Review.* Each PSAP-cleared employee shall have an annual PSAP review conducted by the supervisor during which the supervisor shall evaluate relevant information of security interest. The supervisor shall report any security concerns resulting from his or her review to the appropriate management official following the annual review of each PSAP-cleared employee.

(h) *Recognition of Security Concerns and Unusual Conduct.* In order to facilitate early recognition of an individual who represents a possible security concern, individuals who in the judgment of the responsible supervisor exhibit unusual conduct shall be referred to the site Occupational Medical Director who may arrange for the PSAP-cleared employee to be examined by the appropriate medical staff. Information indicating a possible security concern shall be reported immediately to the appropriate management official and PSAP Approving Official.

(i) *Temporary Reassignment to non-PSAP Duties.* Where an individual has demonstrated a possible security concern or a condition which may temporarily affect his or her reliability, the individual with the recommendation and approval of the site Occupational Medical Director or the PSAP Approving Official may be temporarily reassigned to non-PSAP duties. In the event that a PSAP-cleared employee is temporarily reassigned to non-PSAP duties, the

supervisor, jointly with the site Occupational Medical Director and/or the PSAP Approving Official, as appropriate, may determine the temporary restrictions to be placed on the employee. The PSAP Approving Official shall be notified immediately upon the decision to temporarily reassign the employee to non-PSAP duties and the reason for such action, and upon the decision to reinstate such employee. If the reason for the temporary reassignment was based upon a security concern, the PSAP Approving Official must approve the request for reinstatement.

§ 710.58 Medical assessment.

(a) *The medical examination.* The purpose of the PSAP medical examination is to ensure that an application for, or incumbent in, a PSAP position does not represent a security concern or have a condition which may prevent the individual from performing PSAP duties in a reliable and safe manner. The examination shall include an evaluation to determine the presence of any physical or mental condition that causes or may cause a significant defect in the judgment or reliability of the individual, including that which may result from the use of illegal drugs or the use of alcohol habitually to excess.

(b) *When performed.* The medical assessment is performed initially upon applicants for PSAP positions and employees occupying PSAP positions who have not yet received a PSAP access authorization. The medical assessment shall be performed annually, or more often as may be required by the site Occupational Medical Director, for PSAP-cleared employees.

(c) *Contents of medical assessment.* The medical assessment shall include: a comprehensive medical examination; an examination for use of alcohol habitually to excess; a psychological assessment and/or psychiatric evaluation as provided for in any applicable DOE medical standards for personnel reliability programs, and as permitted by Federal regulations; and an examination for the cause of any reported unusual conduct.

(d) *Examination for use of alcohol habitually to excess.* The use of alcohol habitually to excess represents a potential threat to national security and is inconsistent with access to a PSAP position. Accordingly, the medical assessment shall include:

(1) *Diagnosis.* Individuals in, or applying for, a PSAP position shall be examined for the use of alcohol habitually to excess. Such individuals diagnosed currently to use alcohol habitually to excess shall be temporarily

reassigned to non-PSAP duties and the PSAP Approving Official shall be notified immediately.

(2) *Rehabilitation.* Individuals reinstated to PSAP duties following treatment leading to rehabilitation from the use of alcohol habitually to excess shall be required to undergo evaluation as prescribed by the site Occupational Medical Director in order to ensure continued rehabilitation. Such evaluation shall be consistent with appropriate Departmental substance abuse programs.

(e) *Examination for the cause of reported unusual conduct.* Upon referral of an PSAP-cleared employee by a supervisor for unusual conduct, the site Occupational Medical Director may arrange for the employee to be examined by appropriate specialists.

(f) *Report of Occupational Medical Director.* Upon completion of the medical assessment, the site Occupational Medical Director shall report any security concerns resulting from the medical assessment to the appropriate management official.

(g) *Temporary restriction on a PSAP position.* In the event that a condition or circumstance develops that may affect the judgment or reliability of a PSAP-cleared employee, the site Occupational Medical Director may recommend restrictions. The site Occupational Medical Director shall report immediately these restrictions in writing to the appropriate management official who shall notify immediately the appropriate PSAP Approving Official. Removal of the restrictions requires notification in writing to both the management official and the PSAP Approving Official by the site Occupational Medical Director.

(h) *Sick leave from a PSAP position.* PSAP-cleared employees who have been on sick leave for five (5) or more consecutive work days are required to report in person to the site Occupational Medical Director before being allowed to return to normal duties. The site Occupational Medical Director shall provide a recommendation to the appropriate management official regarding the employee's return to work. A PSAP-cleared employee may in certain circumstances also be required to report to the site Occupational Medical Director for written approval to return to normal duties after any period of sick leave.

§ 710.59 Management evaluation.

(a) *Evaluation components.* A management evaluation based upon a careful review of the results of the supervisory review, medical assessment, and drug testing of an individual in, or

applying for, a PSAP position is required before that individual can be considered for an initial or the continuance of a PSAP access authorization. The appropriate manager of an organization having PSAP positions (management official) shall evaluate the information in these reports and forward his or her recommendation, including any security concern, to the PSAP Approving Official.

(b) *Drug testing component.*—(1) *Program requirements.* DOE's drug testing program for the use of illegal drugs shall be established in accordance with the Department of Health and Human Services' "Mandatory Guidelines for Federal Workplace Drug Testing Programs," that will test all individuals in, or applying for, a PSAP position. The program shall include unannounced drug testing and testing for cause or reasonable suspicion. A PSAP-cleared individual who has been determined to be a user of illegal drugs based on a drug test shall be reassigned immediately to non-PSAP duties, and the PSAP Approving Official shall be notified immediately.

(2) *Rehabilitation.* Individuals reinstated to PSAP duties following treatment leading to rehabilitation from use of illegal drugs shall be required to undergo evaluation and testing as prescribed by the site Occupational Medical Director or other designated official, as appropriate, in order to ensure continued rehabilitation.

(3) *Corporate Policy.* Nothing in this part is intended to interfere with or prohibit a contractor of the Department from conducting medical and other evaluations, including testing for illegal drugs, as a matter of corporate policy.

§ 710.60 DOE security review and clearance determination.

(a) *When performed.* The final components of the PSAP process is a security review and clearance determination performed by the PSAP Approving Official upon receipt of the management evaluation and recommendation.

(b) *Review for initial PSAP access authorization.* An initial PSAP access authorization requires a special 15-year background investigation completed within the last five (5) years. The adjudication and determination for a PSAP access authorization shall be based upon a review of security information, including the results of the background investigation and the information provided by management and medical sources.

(c) *The criteria.* The PSAP access authorization and adjudications shall be

conducted in accordance with the criteria and procedures contained in Subparts A and B of this part.

(d) *Annual PSAP access authorization continuance.* Once an employee has received the PSAP access authorization, he or she shall thereafter undergo an annual security evaluation by the PSAP Approving Official. The evaluation shall include a credit check and national and local criminal records check, where available, review of the individual's DOE personnel security file, and an

updated SF-86, OMB Control No. 3206.007, "Questionnaire for Sensitive Positions," including completed Part II. The PSAP-cleared employees shall undergo a limited background investigation at least every five (5) years. The determination to continue the PSAP access authorization shall be based upon a review and adjudication of the information resulting from the annual security evaluation, and the information provided by management and medical sources, in accordance with

the criteria and procedures contained in Subparts A and B of this part.

(e) *Processing Under 10 CFR Part 710, Subpart A.* Any matters of security concern raised to the attention of the PSAP Approving Official, such as confirmed use of illegal drugs or use of alcohol habitually to excess, shall be evaluated in accordance with the criteria under Subpart A, § 710.11 of this part.

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February 2, 1989

Part IV

Department of Transportation

Maritime Administration

46 CFR Part 221

**Documented Vessels and Other Maritime
Interests; Regulated Transactions; Interim
Final Rule**

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 221

[Docket No. R-125]

RIN 2133-AA79

Regulated Transactions Involving Documented Vessels and Other Maritime Interests

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Interim final rule.

SUMMARY: The Maritime Administration ("MARAD") is issuing this interim final rule to conform its regulations to reflect significant changes in the law that became effective on January 1, 1989. These changes impose statutory requirements or standards that are either at variance with MARAD's existing regulations or require regulatory clarification to implement legislative intent. The legislative history of the new law clearly anticipates the need for contemporaneous regulatory guidelines implementing the statute to allow uniform application of underlying policy and to provide guidance to the public on that policy as of the effective date.

DATES: This interim final rule is effective February 2, 1989. The period for public comment will expire April 3, 1989.

ADDRESS: Send an original and two copies of comments to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. To expedite review of the comments, the agency requests, but does not require, submission of an additional ten (10) copies. All comments will be made available for inspection during normal business hours at the above address. Commentors wishing MARAD to acknowledge receipt of comments should enclose a stamped, self-addressed envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Robert J. Patton, Jr., Deputy Chief Counsel, Maritime Administration, Washington, DC 20590, tel. (202) 366-5711.

SUPPLEMENTARY INFORMATION:
Background

The amendment and codification of the former Ship Mortgage Act, 1920, in new 46 U.S.C. Ch. 313, Subch. II, which is contained in section 102 of Pub. L. 100-710 (enacted November 23, 1988), introduces significant changes that are at variance with the present law and existing regulations of the Maritime Administration ("MARAD"). For

example, the codification expands the categories of persons that can be mortgagees of preferred mortgages on documented vessels to include federally insured depository institutions, whether or not the entity is a "citizen of the United States" as defined in section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802). The Secretary of Transportation ("the Secretary") is also given broad authority to prescribe criteria for approval of a trustee, without regard to citizenship, for a mortgage held by a noncitizen that cannot qualify as a preferred mortgage. The codification also removes restrictions on who may hold a preferred mortgage on documented vessels operated only as a fishing vessel, a fish processing vessel, a fish tender vessel or a vessel operated only for pleasure.

Pub. L. 100-710 also contains an amendment to section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808), to reflect established administrative and judicial interpretation of the present law that requires, among other things and with new exceptions, the Secretary's approval of transfer to noncitizens of "control" of citizen-owned documented vessels. The legislative history of this amendment further directs that "the Secretary prescribe guidelines so there will be a uniform application of policy (as to what constitutes 'control') and to advise the public as to the types of transfer for which the Secretary has concern."

The provisions of Pub. L. 100-710 that require changes in MARAD's regulations became effective on January 1, 1989. While there is no statutory mandate that these regulations be in place when the law becomes effective, MARAD has concluded that it is imperative in the interest of all concerned to publish revised regulations as an interim final rule, effective on publication, to permit implementation of the new law without hiatus. This interim final rule is intended to minimize transitional uncertainty, while allowing subsequent fine-tuning of these regulations based on the opportunity for considered evaluation of comments from interested parties before adopting a final rule.

Apart from the substantive provisions implementing Pub. L. 100-710, MARAD has taken this opportunity to revise 46 CFR Part 221 in the interest of a more coherent and orderly statement of its regulatory responsibilities with respect to transactions involving citizen-owned documented vessels, including an explanation of certain policy guidelines in response to specific directions of the Congress contained in the legislative history of Pub. L. 100-710.

Whenever reference is made in these regulations to forms prescribed by MARAD for applications or other filing requirements, the format of such forms in effect prior to the effective date of these regulations may be used pending revision and issuance of new forms approved by The Office of Management and Budget. To the extent necessary to reflect statutory requirements, any form submitted may be modified or supplemented to facilitate processing, but until publication of new forms has been approved these regulations do not require more extensive paperwork or reporting requirements than exist under the present MARAD regulations. Indeed, with the exemptions provided herein those requirements should be less burdensome in the aggregate. Any additional burden imposed at this time in particular circumstances is a function of statutory, not regulatory, requirements.

Discussion of Rulemaking Text

Subpart A Introduction

Section 221.1 Purpose

Section 221.1, Purpose, is self-explanatory.

Section 221.3 Definitions

Section 221.3, Definitions, is intended to provide convenient reference to the meaning of significant terminology used in Part 221, based principally on statutory derivation.

Paragraph (a), "Charter," identifies arrangements other than conventional charter parties that have been found through past applications to involve sufficient interest in or control of a documented vessel under 46 App. U.S.C. 808 to warrant inclusion in this regulation. These include contracts of affreightment, space charters and leases. Although § 221.17(c) of this part provides for general approval of most charters for periods of six months or less, views are solicited on whether certain contracts of affreightment, space charters or leases in excess of six months should be accorded similar treatment. For example, some space charters may allow the use of less than a majority of a vessel's total capacity. Should such space charters nevertheless require approval under 46 App. U.S.C. 808?

Some contracts of affreightment provide for transportation of cargo on an as-needed basis, without a named vessel dedicated to the contract. Should such contracts of affreightment nevertheless require approval under 46 App. U.S.C. 808 for the owner's fleet, or only those contracts where identified

vessels have been dedicated under the contract?

Paragraph (b), "*Citizen of the United States*," is derived from 46 App. U.S.C. 802, 803, and includes a "controlling interest" test not found in the definition of "citizen of the United States" for purposes of U.S. Coast Guard documentation (46 U.S.C. 2101(3a), 1201).

Paragraph (c), "*Documented vessel*," includes a vessel for which a registry has been issued pursuant to 46 U.S.C. 12105, reflecting long-standing interpretation of the documentation laws by the Coast Guard. Also consistent with long-standing interpretation of those laws by the Coast Guard, a documented vessel retains that status, with attendant rights and obligations, until officially removed from the documentation rolls. Both interpretations are incorporated into this definition for purposes of these regulations.

Paragraph (d), "*Federally insured depository institution*," implements 46 U.S.C. 31322(a)(1)(d)(iii), introducing a new class of authorized mortgagees that may or may not be citizens of the United States. Many foreign banking institutions have noncitizen branches or agencies in the United States. So long as they are corporations or associations organized and doing business under the laws of the United States or of a State, are authorized by such law to accept deposits from the public, and are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or the National Credit Union Administration, those entities are now eligible to be a mortgagee of preferred mortgages on documented vessel unless disapproved by MARAD.

Paragraph (e), "*Fishing vessel*," is derived from 46 U.S.C. 2101(11a).

Paragraph (f), "*Fish processing vessel*," is derived from 46 U.S.C. 2101(11b).

Paragraph (g), "*Fish tender vessel*," is derived from 46 U.S.C. 2101(11c).

Paragraph (h), "*Mortgagee*," is derived from 46 U.S.C. 31322(a)(1)(d).

Paragraph (i), "*Noncitizen*," is the excluded residuum of persons not satisfying the definition of "citizen of the United States" contained in paragraph (b).

Paragraph (j), "*Person*," is derived from section 1 of the Shipping Act, 1916 (46 App. U.S.C. 801), modified expressly to include individuals and joint ventures and to reflect the fact that "United States," as defined in paragraph (o), already includes the separate geopolitical entities referred to in that statutory definition.

Paragraph (k), "*Person who qualifies as a citizen of the United States under 46 App. U.S.C. 802*," reflects long-standing MARAD interpretations of who is a citizen within the meaning of 46 App. U.S.C. 802. In order to be a citizen, a person must not be subject to control by any means whatsoever by a noncitizen. This definition incorporates the legal principles articulated in *Mecham Corp. v. United States*, 207 F.2d 535, 543 (4th Cir., 1953), that the determination requires examination beyond the exterior structure of an entity to discover who has the actual beneficial interest or control.

Paragraph (l), "*Pleasure vessel*," is derived from 46 U.S.C. 2101(25), modified to reflect the exclusive use requirement for exemption of such vessels from the authorized mortgagee requirements of 46 U.S.C. 31322(a)(1)(D) and from the foreign transfer restrictions of section 9(c)(1) of the Shipping Act, 1916, as contemplated by Pub. L. 100-710. Although Pub. L. 100-710 requires exemption solely for "a vessel operated only for pleasure," it is believed that the broader definition in this regulation is warranted in view of the fact that the statutory exemption is predicated upon the use to which the vessel is put rather than upon ownership by the person using the vessel. The definition, however, makes clear that a bareboat-chartered pleasure vessel must be under the command of an individual who is a citizen of the United States for the entire charter period, consistent with 46 U.S.C. 12110(d).

Paragraph (m), "*State*," is derived from 46 U.S.C. 30101(6).

Paragraph (n), "*Trustee*," is derived from 46 U.S.C. 31328(a).

Paragraph (o), "*United States*," is derived from 46 U.S.C. 30101(8), and has been included to ensure parallelism between use of that term in the codified provisions of the former Ship Mortgage Act, 1920, and its use for purposes of section 9 of the Shipping Act, 1916, both as amended by Pub. L. 100-710.

Paragraph (p), "*United States Government*," is self-explanatory.

Section 221.5 Citizenship Declarations

Section 221.5, Citizenship Declarations, implements 46 U.S.C. 31306 (a) and (b), *vice* section 40 of the Shipping Act, 1916 (46 App. U.S.C. 838), repealed. The filing of Form MA-899 with the Coast Guard incident to presentation for filing or recording of any instrument transferring an interest in a documented vessel is for the purpose of demonstrating that the transaction is not in violation of section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808). This requirement is carried

forward from present law and regulations.

Section 221.7 Applications and Fees

Section 221.7, Applications and Fees, is self-explanatory. The fee amounts are the same as those specified in present 46 CFR 221.14 and 221.16. These fees are intended to recover the cost to the government of processing applications for the specified transactions and have not changed for many years. MARAD is reviewing the amount of the fees, and they may be adjusted upon publication of this rule in final form. Comment on this issue is specifically invited.

Subpart B, Transfers to Noncitizens or to Registry or Authority of a Foreign Country Under 46 App. U.S.C. 808

Section 221.11 Required Approvals

Paragraph (a) recites the statutory restrictions on transactions that generally require prior approval of the Maritime Administrator. The statutory exclusion for certain fishing vessels, fish processing vessels, fish tender vessels and pleasure vessels is dealt with in § 221.15(b)(1), and blanket approvals for other transactions are contained in § 221.17.

Paragraph (b) of this section contains a statement of the circumstances under which the Maritime Administrator will find that a transaction will result in a documented vessel being operated "under the authority of a foreign country." This constraint is mandated by the express statutory language of Pub. L. 100-710, but the legislative history provides no guidance as to its intended scope. The intent of the regulatory definition is to encompass any circumstances under which a documented vessel may be subjected voluntarily to requisition, forfeiture, taking or impairment of freedom of navigation in derogation of the rights and obligations of the owner, operator or master under the laws of the United States.

Section 221.13 Transfer of Control

This provision has been included in response to the House Merchant Marine and Fisheries Committee's statement of intent that—

The Secretary prescribe guidelines so there will be a uniform application of policy [concerning what constitutes "control"] and to advise the public as to the types of transfer for which the Secretary has concern. For example, a privately held corporation in which all of the stock is owned by U.S. citizens may be able to transfer 49 percent of that stock to foreign citizens without losing control over the vessel. However, a publicly traded corporation, in which the stock is

diluted among many stockholders, may have control transferred with only a 15 percent stock sale to foreign citizens. The guidelines prescribed by the Secretary should allow many normal business transactions to occur, while placing restrictions on those cases of real concern. The touchstone of any analysis in this area is who, in fact, exercises control and not the form of how a transaction is structured * * *.

H.R. Rept. No. 100-918, 100th Cong., 2d Sess. 25 (1988).

It is MARAD's intention that this section of the final regulations will comply fully with that directive, which clearly contemplates concepts of "control" that may go well beyond the majority equity interest/voting power/fiduciary obligations that have been the usual indicia. Paragraph (a), *Criteria*, addresses presumptions, both conclusive and rebuttable, in administration of this regulation. Paragraph (a)(1) reiterates indicia that have been the principal determinates of "control" for purposes of 46 App. U.S.C. 808 analysis prior to enactment of Pub. L. 100-710. Paragraph (a)(2) suggests new presumptive criteria. For example, under paragraph (a)(2)(i), covenants in loan agreements frequently provide restrictions on the borrower's financial transactions, sale of corporate assets, new business undertakings or abandonment of existing activities, either by prior approval or veto. To the extent such covenants are applicable to or may affect documented vessels owned by the borrower, they could be indicia of control of the vessels. Other contractual undertakings may give noncitizens an immediate or contingent right to exercise direct authority over operations of a documented vessel, such as powers contained in a mortgage to an approved noncitizen mortgagee authorizing, in the event of default, operation of the vessel by or on behalf of the noncitizen mortgagee, seizure of physical possession and/or sale of the vessel by the mortgagee under a power of attorney. Implicit in the House Committee's mandate is also the need to consider criteria of "control" that are applied by other Federal agencies, to the extent they may be relevant to a more realistic assessment of "control" by MARAD for purposes of 46 App. U.S.C. 808, and this is provided for in paragraph (a)(1)(ii). The legislative intent of Pub. L. 100-710 indicates that such direct control provisions, if they fall within the noncitizen "control" restrictions of 46 App. U.S.C. 808, would require explicit MARAD approval even though the noncitizen might hold a preferred mortgage on that vessel.

Paragraph (a)(3), attributing transfer to or acquisition of control to a

noncitizen if a parent or person that directly or indirectly controls the transferee or acquiring person is a noncitizen, is consistent with present MARAD policy.

Paragraph (b), *Voting Interest*, addresses, *inter alia*, the subject of convertible non-voting instruments, which has also been included in response to the House Committee's mandate that MARAD explicate policy guidelines concerning its approach to "control" determinations for purposes of 46 App. U.S.C. 808, as amended by Pub. L. 100-710.

Notwithstanding the foregoing, and mindful of the House Committee's injunction that the guidelines should not unnecessarily intrude on "normal business transactions" that are not "of real concern," the Maritime Administration does not intend to depart significantly at this time from the jurisdictional precedents under 46 App. U.S.C. 808 that are well-known to the maritime and financial communities, absent extenuating circumstances, until such time as there has been full opportunity for interested persons to express their views on precisely what would accommodate the Committee's invitation for a more expansive view of "control" in "cases of real concern" without, perforce, more intrusive interference with legitimate business transactions.

Section 221.15 Unrestricted Transfers

Paragraph (a) reflects the statutory exclusion from MARAD approval of transactions under 46 App. U.S.C. 808 if the owner of a documented vessel is not a citizen of the United States within the meaning of 46 App. U.S.C. 802.

Paragraph (b) implements the conditional statutory exemption from prior approval by MARAD for transfer to noncitizens of vessels that have been operated only as a fishing vessel, fish processing vessel, fish tender vessel or vessels that have been operated only for pleasure. Statutory use of the restrictive language, "have been operated only," bespeaks an intent that there have been a continuum of exclusive use of vessel for one or more of the designated purpose for the exemption to be applicable. Accordingly, this paragraph reflects this stringent test, but makes provision for the fact that vessels can be converted or adapted from prior non-qualifying use to a qualifying use and allows exclusion of such vessels so long as they have been exclusively operated with *bona fides* for any of the qualifying uses for a period of not less than twelve (12) consecutive months prior to the date of transfer. Nevertheless, in either event, exclusive use is a requisite for the

exemption. Many documented vessels that operate in the geographic ambit of the coastwise trade hold dual or multiple licenses or endorsements. For example, fish tender vessels holding a fisheries license or endorsed registry may also hold a coastwise license or endorsed registry for transport of commercial or proprietary cargo between points in the United States as an adjunct to primary usage of the vessels. Since the clear statutory exclusion applies solely to vessels that *have been operated only* as a fish tender vessel, the exclusion would not apply to such a vessel if it has also been operated for other purposes under the coastwise license or endorsed registry.

Accordingly, paragraph (c) conditions availability of the exemptions of this section on filing of Form MA-899 with the Coast Guard accompanying surrender for the certificate of documentation or registry, as required by law.

Section 221.17 General Approval

In paragraph (a), *All Transactions*, MARAD grants administrative approval for all transactions with respect to certain categories of vessels that, under the 46 App. U.S.C. 808 transfer-of-control authority, would not otherwise be exempt by statute from the approval requirements. MARAD is granting general approval relating to such transfers because, at the present time, there is deemed to be insufficient national interest to require prior MARAD approval for transactions, other than those excluded in the preamble, involving documented vessels that are: (1) Self-propelled vessels under 1,000 gross tons; (2) vessels located on inland lakes or waters from which there is no navigable exit; and (3) non-self-propelled vessels under 1,000 gross tons, other than LASH and SEABEE barges. Any noncitizen acquiring a vessel, or an interest in or control of, a vessel pursuant to this general exemption would, perforce, be precluded from using that vessel in the coastwise trade. However, a "Bowaters" corporation has, by special legislation (46 App. U.S.C. 883-1), a limited waiver, for proprietary carriage, of the Jones Act requirement that coastwise privileges are available only to a vessel owned by a person who qualifies as a citizen of the United States under 46 App. U.S.C. 802. Because "Bowaters" corporations have that dispensation for access to the Jones Act trade, MARAD is of the view that any acquisition of vessels or interests in or control of vessels by such corporations (other than by purchase, as permitted by this special legislation) should be

subject to regulatory scrutiny to ensure conformity with the limited operational purpose and intent of the statute. Accordingly, the preamble to this paragraph excepts "Bowaters" corporations from the general exemption from 46 App. U.S.C. 808 approval for transactions involving the stated categories of vessels.

In paragraph (b), *Mortgages*, blanket approval is given for mortgages to noncitizens under certain circumstances. Paragraph (b)(1) grants approval for mortgages of documented vessels to noncitizen federally insured depository institutions that have complied with the requirements of § 221.45(a) of this part, in accordance with 46 U.S.C. 31322(a)(1)(D)(iii).

Paragraph (b)(2) grants approval for mortgages to any noncitizen of vessels specified in § 221.17(a) of this part.

In paragraph (c), *Charters*, MARAD's present policy concerning charters generally is reiterated.

Paragraph (d), *Charters for Trade with the USSR*, reiterates present policy concerning charters by a citizen of the United States to a noncitizen for trade with the USSR and is carried forward with no intended change.

Section 221.19 Prohibited Transactions

Section 221.19, Prohibited Transaction, replicates the restrictions under present MARAD regulations concerning transactions with nationals of interdicted foreign political entities.

Section 221.21 Requests for Waiver of Required Documentation or Approval of Use

Paragraph (a) implements 46 U.S.C. 31329(a), which permits foreclosure sale of a documented vessel by order of a district court to a person eligible to own a documented vessel or to a mortgagee of the vessel. The statute also provides that a purchaser of the vessel, pursuant to order of a district court or from an intervening noncitizen mortgagee-purchaser, must document the vessel under the laws of the United States, unless that requirement is waived by MARAD. Although decisions concerning documentation of vessels is a Coast Guard function, MARAD has responsibility under 46 App. U.S.C. 808 for regulating the transfer of documented vessels to noncitizens or to foreign registry or authority. Since 46 U.S.C. 31329 contemplates that a vessel sold by order of a district court will continue to be operated and documented only under the laws of the United States, a requirement for express administrative permission for departure from that legislative intent is within the

ambit of MARAD's statutory responsibilities.

Paragraph (b) provides that in order to be considered for a waiver, a written request must be submitted to MARAD. Such request must contain the present and former name(s) and official number of the vessel; present and former owner(s) of the vessel; vessel type; vessel gross tonnage; and the intended country of registry.

Paragraph (c) implements 46 U.S.C. 31329(b)(1) and (c). If the purchaser-mortgagee at the court-ordered sale is not eligible to document the vessel, the vessel must be held for resale only and may be operated by the mortgagee only with MARAD approval.

Subpart C, Preferred Mortgages on Documented Vessels: Mortgagees and Trustees

Section 221.41 Purpose

Section 221.41, Purpose, is self-explanatory.

Section 221.43 General Approval of Mortgagees

Section 221.43, General Approval of Mortgagees, reflects exercise by the Maritime Administrator of the discretion contained in new 46 U.S.C.

31322(a)(1)(D)(vi) to approve persons other than those specifically identified in the statute to be mortgagees of preferred mortgages on documented vessels.

In paragraph (a)(1), blanket approval is granted to certain federally insured depository institutions to hold preferred mortgages on documented vessels, pursuant to authority of 46 U.S.C. 31322(a)(1)(D)(iii), notwithstanding that they are not citizens of the United States. The statute authorizes such institutions to be mortgagees, unless disapproved. For purposes of these interim final regulations MARAD has determined that the appropriate criteria for regulatory approval of a noncitizen federally insured depository institution as a mortgagee should be the same as those for statutory qualification of an institutional trustee, except for (1) the requirement that the institution have trust powers and (2) the option between supervision or examination by a State, rather than a Federal, official, as established in an application evidencing compliance with the requisite criteria. Relief from the general disapproval of such institutions in paragraph (a)(2) will be granted only upon receipt of an application pursuant to paragraph (a)(1). This is new ground, and should be tilted cautiously at the outset.

Paragraph (b)(1) provides general approval for noncitizens to be

mortgagees of vessels that are exempt from foreign transfer restrictions under these regulations. However, Paragraph (b)(2) limits this approval to mortgages that contain no provisions allowing noncitizens to operate the vessel without MARAD's approval, or to exercise control over the owner, charterer or management of the vessel. The term "control" is defined to mean the ability, present or prospective, through any means or device whatsoever, to influence in any manner business decisions affecting the vessel.

Notwithstanding the general approvals granted in paragraphs (a) and (b), paragraph (c) states that they are inapplicable where the mortgagee has direct or indirect ties to certain interdicted countries.

Section 221.45 Permitted Mortgages and Trusts

Paragraph (a) provides that where the United States Government or a State is the mortgagee of a documented vessel or trustee for the benefit of a person not qualifying as a citizen of the United States, issuance of the note or other evidence of indebtedness secured by the mortgage does not require MARAD approval.

Paragraph (b) makes clear that, unless a person is a mortgagee or trustee approved by MARAD, a note or other evidence of indebtedness secured by a mortgage on a documented vessel may not be issued, assigned, transferred to, or held in trust for the benefit of a noncitizen, by that person to a person who does not qualify as a citizen of the United States under 46 App. U.S.C. 802 without specific approval of MARAD.

Paragraph (c) provides that if the approval of a mortgagee or trustee lapses while the mortgage or trust is in effect, the former mortgagee or trustee is liable for curing the lapse by timely substitution of a successor with MARAD approval.

Section 221.47 Approval of Corporate Citizen Trustee

Section 221.47, Approval of Corporate Citizen Trustee, reflects the statutory criteria of 46 U.S.C. 31328(b)(1)-(4) for approval of a corporate trustee that is a citizen of the United States.

Section 221.49 Approval of Noncorporate Citizen Trustee

Section 221.49, Approval of Noncorporate Citizen Trustee, adapts the criteria of 46 App. U.S.C. 31328(b)(1)-(4) to noncorporate business entities that are citizens of the United States.

Section 221.51 Approval of Noncitizen Trustee

Paragraphs (a) and (b) implement 46 U.S.C. 31328 (a)(4) and (b)(5) to permit a federally insured depository institution that is not a citizen of the United States to serve as an approved trustee if it otherwise meets the criteria of 46 U.S.C. 31328(b)(1)-(4) either as a corporation or an association and files an application to that effect with MARAD.

Paragraph (c), consistent with the exclusion of fishing vessels, fish processing vessels, fish tender vessels and pleasure vessels from the restrictions on who may hold a preferred mortgage under 46 U.S.C. 31322(a)(2), grants approval for any noncitizen, other than an individual, to serve as a trustee of such mortgages.

Paragraph (d) provides that all other noncitizens, including a noncitizen federally insured depository institution that has not submitted the requisite application, are excluded from the general approval granted under this section, but may be considered for approval upon application to the Maritime Administrator.

Section 221.53 Application for Approval as Mortgagee or Trustee

Section 221.53, Application for Approval as Mortgagee or Trustee, establishes the procedure for such applications. General approvals of mortgagees or trustees are confirmed for one year, subject to annual renewal pursuant to § 221.55, and a list of such generally approved mortgagees and trustees will be published in the *Federal Register* from time to time. Specific approval of a mortgagee or trustee for a particular transaction is, of course, valid for the period stated in the approval.

Section 221.55 Renewal of General Approval as Mortgagee or Trustee

Section 221.55, Renewal of General Approval as Mortgagee or Trustee, is self-explanatory.

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

This Subpart reserves for later implementation regulations concerning foreign transfer of interests in or control of vessels or maritime facilities under the captioned circumstances.

Subpart E, Penalties

This subpart will be published as part of the final rule. The penalties will be those provided by statute, which are applicable in any event, but such publication will make the regulation more informative and self-contained.

Subpart F, Other Transfers Involving Documented Vessels

This subpart preserves the unaltered text of present 46 CFR 221.13 as 221.90, pending determination whether this provision should be retained, repositioned elsewhere in 46 CFR Ch. II, revised or revoked.

Appendix to Part 221

This appendix carries forward the present statement of procedures and conditions for approval of transfers of documented vessels to foreign ownership or registry, which will also be applicable to operation of documented vessels under the authority of a foreign country as mandated by Pub. L. 100-710.

Summary

This revision of 46 CFR Part 221 is being published as an interim final rule in order to implement recently-enacted legislation concerning vessel financing and foreign transfer of documented vessels, effective January 1, 1989. The issues involved in transition from the present regime to the new statutory mandate are complex, and absence of immediate guidance would almost certainly occasion serious disruption in the business planning of the maritime and financial communities that are affected by this legislation. Public comment is solicited, and will provide the input necessary for MARAD to formulate and publish a final rule that is consistent with the expressed congressional intent concerning national interest.

Because of the need to avoid uncertainty that could jeopardize complex maritime financial transactions presently in progress or contemplation, MARAD finds that good cause exists for making this rule effective on publication.

Analysis of Regulatory Impact

This rulemaking has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of \$100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

While this rulemaking does not involve any change in important Departmental policies, it is considered significant because it implements

statutory changes that will substantially effect the regulation of transactions involving U.S.-documented vessels, and may be expected to generate significant public interest. However, because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, the Maritime Administrator certifies that this amendment will not have a significant economic impact on a substantial number of small entities.

This rulemaking does not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Finally, this rulemaking contains reporting requirements that either have previously been approved by the Office of Management and Budget (Approval No. 2133-0006), or are being submitted for its approval, pursuant to provision of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Use of present Maritime Administration forms will be continued pending approval of proposed revisions.

List of Subjects in 46 CFR Part 221

Maritime administration, Maritime carriers.

Accordingly, 46 CFR Part 221 is revised to read as follows:

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 Authority of a Foreign Country Under 46 App. U.S.C. 808

- 221.11 Required approvals.
- 221.13 Transfer of control.
- 221.15 Unrestricted transfers.
- 221.17 General approval.
- 221.19 Prohibited transactions.
- 221.21 Requests for waiver of required documentation or approval of use.

Subpart C—Preferred Mortgages on Documented Vessels: Mortgagees and Trustees

- 221.41 Purpose.
- 221.43 General approval of mortgages.
- 221.45 Permitted mortgages and trusts.

- 221.47 Approval of corporate citizen trustee.
 221.49 Approval of noncorporate citizen trustee.
 221.51 Approval of noncitizen trustee.
 221.53 Application for approval as mortgagee or trustee.
 221.55 Renewal of general approval as mortgagee or trustee.

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- 221.90 Uniform Bareboat Charter of a Government-owned dry-cargo vessel under section 705 of the Merchant Marine Act, 1936, as amended, "Form No. 705."

Appendix—to Part 221

Authority: Secs. 2, 9, 37, 41 and 43, Shipping Act, 1916, as amended, and Secs. 204(b) and 705, Merchant Marine Act, 1936, as amended (46 App. U.S.C. 705, 802, 803, 808, 835, 839, 841a, 11149(b), 1195); 49 CFR 1.66.

Subpart A—Introduction

§ 221.1 Purpose.

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

(a) Approval of mortgagees and trustees of preferred mortgages on vessels documented under the laws of the United States pursuant to 46 U.S.C. ch. 313, subch. II, contained in section 102 of Pub. L. 100-710, amending and codifying provisions of the former Ship Mortgage Act, 1920;

(b) The regulation of transactions involving transfers of vessels documented under the laws of the United States to noncitizens or to the registry or authority of foreign countries under 46 App. U.S.C. 808, as amended by section 104 of Pub. L. 100-710; and

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

Those responsibilities have been delegated by the Secretary to the Maritime Administrator (49 CFR 1.66). Accordingly, statutory references to "the Secretary" have been modified herein to refer to the "Maritime Administrator," to reflect that delegation for regulatory purposes.

§ 221.3 Definitions.

For the purpose of this part:

(a) "Charter" means any agreement, contract, lease or commitment whereby possession, use, or services of a vessel are obtained. The term includes all bareboat, time and voyage charters as

well as contracts of affreightment, space charters, drilling contracts and leases.

(b) "Citizen of the United States" means any person who qualifies as a citizen of the United States under 46 App. U.S.C. 802 (hereinafter defined), including receivers and trustees and successors or assignees of such persons pursuant to 46 App. U.S.C. 803.

(c) "Documented vessel" means a vessel documented under chapter 121, title 46, United States Code, including a vessel for which a registry has been issued pursuant to section 12105 of that title. A vessel shall be deemed to be documented until such time as surrender of the Certificate of Documentation or Certificate of Registry has been officially accepted by the United States Coast Guard.

(d) "Federally insured depository institution" means a corporation or association organized and doing business under the laws of the United States or of a State, authorized by such law to accept deposits from the public and whose deposit accounts are insured by any of the following agencies:

- (1) Federal Deposit Insurance Corporation (FDIC);
- (2) Federal Savings and Loan Insurance Corporation (FSLIC); and
- (3) National Credit Union Administration (NCUA).

(e) "Fishing vessel" means a vessel that commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

(f) "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.

(g) "Fish tender vessel" means a vessel that commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing vessel, fish processing vessel, or fish tender vessel or a shoreside fish processing facility.

(h) "Mortgagee" means

- (1) A State;
- (2) The United States Government;
- (3) A federally insured depository institution that has not been disapproved by the Maritime Administrator;
- (4) An individual who is a citizen of the United States;
- (5) Any other person who qualifies as a citizen of the United States; or
- (6) Any other person approved by the Maritime Administrator to whom a documented vessel is mortgaged.

(i) "Noncitizen" means a person who is not a citizen of the United States

within the meaning of paragraph (b) of this section.

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

(k) "Person who qualifies as a citizen of the United States under 46 App. U.S.C. 802" means a person that, in both form and substance, satisfies the following requirements—

(1) An individual who is a citizen 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 citizens of the United States and whose president or chief executive officer and chairman of the board of directors are each a citizen of the United States, the majority of a quorum of the board of directors is composed of citizens of the United States and the controlling interest of which is owned by citizens of the United States, but the interest owned by citizens of the United States shall be not less than 75 percent in the event of direct or indirect ownership of a vessel engaging in the coastwise trade;

(3) A partnership organized under the laws of the United States or of a State, if all the general partners are citizens of the United States; a majority of the partnership interests are owned by citizens of the United States and if entitlement to a majority of the proceeds or benefits of the partnership accrue to citizens of the United States, but not less than 75 percent of the partnership interests must be owned by citizens of the United States in the event of direct or indirect ownership of a vessel engaging in the coastwise trade;

(4) An association organized under the laws of the United States or of a State, whose president or other chief executive officer and chairman of the board of directors (or equivalent committee or body) are citizens of the United States, the majority of a quorum of the board of directors, or equivalent, are citizens of the United States, and a majority of the members entitled to vote are citizens of the United States, but not less than 75 percent of the members entitled to vote shall be citizens if in the event of direct or indirect ownership of a vessel engaging in the coastwise trade; or

(5) A joint venture organized under the laws of the United States or of a State, if each coventurer is a citizen of the United States, but not less than a 75

percent interest in each coventurer must be owned by citizens of the United States in the event of direct or indirect ownership of a vessel engaging in the coastwise trade.

(1) "Pleasure vessel" means a vessel that has been issued a recreational vessel license pursuant to 46 U.S.C. 12109 and—

(1) Is operated by the owner only for pleasure; or

(2) Is bareboat chartered by or on behalf of the owner to another person and operated only for that person's pleasure, subject to compliance throughout the period of the charter with the requirement of 46 U.S.C. 12110(d) that a documented vessel may be placed under the command only of a citizen of the United States.

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

(n) "Trustee" means:

(1) A State;

(2) The United States Government;

(3) A citizen of the United States approved by the Maritime Administrator; or

(4) Any other person approved by the Maritime Administrator.

(o) "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 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.

(p) The term "United States Government" means the Federal government acting by and through any of its departments or agencies.

§ 221.5 Citizenship declarations.

(a) When an instrument transferring an interest in a documented vessel is presented to the United States Government for filing or recording, the person filing shall submit therewith a written declaration on Maritime Administration Form No. MA-899 (available from the Coast Guard Documentation Officer at the home port of the vessel or from the Vessel Transfer and Disposal Officer (MAR-745.1), Maritime Administration, United States Department of Transportation, Washington, DC 20590), that the transferee is a citizen of the United States, is an authorized mortgagee or trustee under 46 U.S.C. 31322 or 31328 or is exempt from the approval requirement of section 9 of the Shipping Act, 1916, as amended (46 App. U.S.C. 808) in

accordance with § 221.15(b)(1) or § 221.17(a) of this part.

(b) A declaration filed by any person other than an individual shall be signed by its president, secretary, treasurer, or other official authorized by the entity to execute the declaration.

§ 221.7 Applications and fees.

(a) *Applications.* Whenever approval of the Maritime Administrator is required under § 221.11 of this part, or pursuant to a Maritime Administration contract or Transfer 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 and Disposal Officer (MAR-745.1), Maritime Administration, United States Department of Transportation, Washington, DC 20590.

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

(1) Transactions requiring approval under § 221.11:

(i) Sale and delivery to a noncitizen, or transfer to foreign registry of, or foreign governmental authority over, a documented vessel, per vessel—

(A) Of 3,000 gross tons and..... 325

(B) Of less than 3,000 gross tons..... 170

(ii) Mortgage, or transfer of any interest in, or control of, a documented vessel to a noncitizen, per vessel..... 250

(iii) Charter of a documented vessel to a noncitizen, per vessel..... 250

(iv) Sale or transfer of stock in a corporation that is a citizen of the United States and owns any documented vessel, if by such sale or transfer the controlling interest or a majority of the voting power of the corporation is vested in, or for the benefit of, any noncitizen..... 325

(v) An application for approval to act as mortgagee or trustee for an indebtedness secured by a preferred mortgage on a documented vessel, and all required annual renewal applications..... 215

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

(i) Transfer of ownership or registry, or, both, of a contract vessel, per vessel..... 260

(ii) Sale or transfer to a noncitizen of stock in the foreign corporate owner of the contract vessel..... 235

(iii) Charter of a contract vessel to a noncitizen, per vessel..... 240

(iv) Transfer of title to a vessel subject to a mortgage in favor of the United States and to have the mortgage assumed by a new mortgagor, per vessel..... 400

(c) *Modification of applications or prior approvals.* An application for modification of any approval sought, or of an outstanding Maritime Administration contract or Transfer 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 to conform the fee charged more closely with administrative costs, or may waive the fee entirely in extenuating circumstances where the best interest of the United States Government would be served.

Subpart B—Transfers to Noncitizens or to Registry or Authority of a Foreign Country Under 46 App. U.S.C. 808

§ 221.11 Required approvals.

(a) Except as provided in §§ 221.15(b)(1) and 221.17(a) of this part, a person may not, without the written approval of the Maritime Administrator:

(1) Sell, mortgage, lease, charter, deliver, or in any manner transfer, or agree to sell, mortgage, 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

(2) Place a documented vessel under foreign registry or operate that vessel under the authority of a foreign country.

(b) For purposes of this part, operation of a documented vessel "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 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 or 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.

§ 221.13 Transfer of control.

(a) *Criteria.* (1) A conclusive presumption that a transfer of control of a documented vessel has taken, or will take, place will arise if the legal or beneficial owner of the vessel ceases to

be a person who qualifies as a citizen of the United States under 46 App. U.S.C. 802, as defined for purposes of these regulations.

(2) A rebuttable presumption that a transfer of control of a documented vessel has taken, or will take, place will arise if the legal or beneficial owner is a citizen of the United States and:

(i) Through any means or device whatsoever a noncitizen acquires the ability, present or prospective, to control in any manner the business decisions of the owner affecting the vessel; or

(ii) There is an acquisition of control, as defined by the United States Government, of the vessel owner by, or imputed to, a noncitizen.

(3) For purposes of this section, transfer of control to, or acquisition of control by, a noncitizen includes any noncitizen parent or other person that directly or indirectly controls the transferee or the acquiring person.

(b) *Voting interest.* In determining whether a transfer of control of the owner of a documented vessel has taken or will take place, consideration will usually be limited to voting interests or their equivalent. Non-voting interests, including *bona fide* limited partnership interests, are generally excluded. However, for convertible instruments, the following guidelines will be followed in determining whether a voting interest exists:

(1) Instruments that may be converted solely at the option of the holder (e.g., debentures or preferred stock convertible to common shares) are deemed voting instruments from the date of acquisition;

(2) Instruments that specify a date or condition(s) for convertibility are deemed voting instruments from the release date; and

(3) Instruments that are convertible solely at the option of or with concurrence by the issuer are deemed voting instruments from the date convertibility is authorized.

§ 221.15 Unrestricted transfers.

(a) None of the transactions specified in § 221.11(a)(1) of this part shall require approval if the owner of a documented vessel is not a person who qualifies as a citizen of the United States under 46 App. U.S.C. 802, and that owner is not otherwise required to obtain approval pursuant to a Maritime Administration contract.

(b) None of the transactions specified in § 221.11(a)(1) of this part shall require approval of the Maritime Administrator if the vessel has been operated exclusively and with *bona fides*, for one or more of the following uses, under the appropriate license or endorsed registry

and no other, since initial documentation following construction or transfer from foreign registry; or if converted to such use from a prior use, has been exclusively so operated for a period of not less than twelve (12) consecutive months prior to the date of transfer:

- (1) A fishing vessel;
- (2) A fish processing vessel;
- (3) A fish tender vessel; or
- (4) A pleasure vessel.

(c) Entitlement to either of the exemptions specified in this section shall be established by filing Maritime Administration Form MA-899 with the Coast Guard at the time of surrender of the Certificate of Documentation or of Registry, stating with particularity compliance with the grounds for exemption.

§ 221.17 General approval.

(a) *All transactions.* Except when the transferee of a vessel or an interest in or control of a vessel is a corporation holding a Certificate of Compliance issued under 46 App. U.S.C. 883-1, the Maritime Administrator grants prior approval for each of the transactions described in § 221.11(a)(1) of this part, subject to the conditions specified below, for the following documented vessel types:

(1) A self-propelled vessel under 1,000 gross tons;

(2) A vessel operating on inland lakes or waters from which there is no navigable exit; and

(3) A non-self-propelled vessel under 1,000 tons, excluding LASH and SEABEE type barges.

(b) *Mortgages.* The Maritime Administrator grants general approval for the following mortgages of documented vessels to noncitizens:

(1) A mortgage to a noncitizen federally insured depository institution that has complied with the requirements of § 221.45(a) of this part; and

(2) A mortgage to any noncitizen of a vessel specified in § 221.17(a) of this part.

(c) *Charters.* The Maritime Administrator approves, subject to the conditions specified below, charters of a documented vessel by citizens of the United States to noncitizens, not to exceed six months. The respective dates for commencement and termination of a charter, as set forth in its provisions, shall be accepted as *prima facie* evidence of the dates of the events. This approval excludes and does not apply to the following charters:

(1) Demise or bareboat charters, other than the charter of vessel types described in §§ 221.15(b) and 221.17(a) of this part, subject (i) to the conditions

therein and (ii) to submission of a copy of the charter party to the Maritime Administrator not later than 30 days following execution;

(2) Charters for the carriage of cargoes of any kind to or from the USSR (except as provided in paragraph (d) of this section), Latvia, Lithuania, Estonia, Libya, Iran, Czechoslovakia, Bulgaria, Albania, North Korea, German Democratic Republic (including East Berlin), Laos, Kampuchea, Vietnam, Outer Mongolia or Cuba¹; and

(3) (i) Any charter to a non-citizen providing for a duration that is or may be for a period in excess of six (6) months, other than the charter of vessel types described in §§ 221.15(b) and 221.17(a) of this part. The Maritime Administrator shall consider the charter period to include any extension period, irrespective of the inclusion of a provision in the agreement that either makes any charter period extension beyond six (6) months subject to the approval of the Maritime Administrator or permits the substitution of another vessel, including other than a documented vessel. For such a charter, the vessel owner shall submit the charter party to the Maritime Administrator for approval prior to the commencement date of the first six (6) months period; and

(ii) Any new charter of a vessel to a noncitizen that is executed within thirty (30) days after the date of any charter approved under this with the same noncitizen charterer, shall be considered to be a renewal or extension of the original charter. If the cumulative period of time of the charters exceeds six (6) months, the new charter shall be submitted for approval. This requirement shall apply, notwithstanding any provision in a new charter that permits the substitution of another vessel, including other than a documented vessel.

(d) *Charters for trade with the USSR.* The Maritime Administrator hereby approves 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 USSR, or to other permissible ports of discharge for transshipment to the USSR, pursuant to an operating-differential subsidy agreement that is consistent with the requirements of part 252 of this chapter.

¹ This list of countries is subject to change from time to time. Information concerning current restrictions may be obtained from the official identified in § 221.07 of this part.

§ 221.19 Prohibited transactions.

(a) Transactions that are otherwise unrestricted or approved under § 221.15 and 221.17 (a) through (c) of this part are prohibited if the transferee or a person with a controlling interest in the transferee is a citizen or operates under the laws of any country identified in § 221.17(c)(2) of this part, unless:

(1) Such transferee is an individual who has been lawfully admitted into, and resides in the United States, and expressly undertakes under surety bond, in an amount and form and substance satisfactory to the Maritime Administrator, not to cause or allow removal of the vessel from the territorial limits of the United States, or

(2) Such transferee is a citizen of the USSR, but only for the purposes of § 221.17(d) of this part.

(b) No approval shall be granted if the vessel is to be transferred to or placed under the registry, or operated under the authority, of any such country.

§ 221.21 Requests for waiver of required documentation or approval of use.

(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 and, unless waived by the Maritime Administrator, a person purchasing the vessel pursuant to court order or from an intervening noncitizen mortgagee-purchaser must document the vessel under chapter 121 of Title 46, United States Code, unless that requirement is waived by the Maritime Administrator.

(b)(1) A purchaser wishing to obtain such a waiver of that documentation requirement must submit a written application to the official identified in § 221.7(a) of this part.

(2) The application must identify the present and former name(s) and Official Number of the vessel; present and former owner(s) of the vessel; vessel type; vessel gross tonnage; and the intended country of registry.

(c) A mortgagee not eligible to document a vessel shall not operate, or cause to be operated, in commerce a vessel purchased by order of a district court unless approved by the Maritime Administrator. An application for such approval shall be submitted in the manner prescribed in paragraph (b)(2).

Subpart C—Preferred Mortgages on Documented Vessels: Mortgagees and Trustees**§ 221.41 Purpose.**

The purpose of this subpart is to implement responsibilities of the Maritime Administrator with respect to approving mortgagees and trustees of

preferred mortgages on documented vessels pursuant to Pub. L. 100-710.

§ 221.43 General approval of mortgagees.

(a)(1) The Maritime Administrator will approve as a preferred mortgagee of documented vessels a federally insured depository institution that is a noncitizen if it shall first have filed with the Maritime Administrator an application, executed by the chief executive officer or other authorized official, establishing that it—

(i) Is organized and doing business in and under the laws of the United States or of a State;

(ii) Has a combined capital and surplus (as stated in its most recent published report of condition) of at least \$3,000,000;

(iii) Is federally insured by an agency identified in § 221.03(c) of this part and is subject to examination by an official of the United States Government.

(2) The Maritime Administrator hereby disapproves any federally insured depository institution as a preferred mortgagee that is a noncitizen unless and until it shall have complied fully with the requirements of paragraph (a)(1).

(b)(1) Except as provided below in paragraph (b)(2), the Maritime Administrator grants approval for persons who do not meet the requirements of 46 U.S.C.

31322(a)(1)(D)(i)-(v) to be mortgagees of preferred mortgages on the types of documented vessels identified in §§ 221.15(b) and 221.17(a) of this part.

(2) To qualify for this approval, at the time the mortgage is executed, and at all times thereafter, the mortgage on such vessels shall contain no provisions allowing persons, including the mortgagee, who are not citizens of the United States: (i) To operate the vessel without the consent of the Maritime Administrator; (ii) exercise control over the vessel owner; (iii) exercise control over any charterer of the vessel; or (iv) exercise control over the management of the vessel. The term "control" as used herein means the ability, present or prospective, through any means or device whatsoever, to influence in any manner business decisions affecting the vessel.

(c) The approvals granted in this section shall not apply if the mortgagee is a person who is a citizen, or whose parent is organized and existing under the laws, or who is subject, directly or indirectly to control, of any country identified in § 221.17(c)(2) of this part.

§ 221.45 Permitted mortgages and trusts.

(a) An instrument or evidence of indebtedness secured by a mortgage on

a documented vessel may be issued to the United States Government or to a State acting in the capacity of mortgagee or of trustee for the benefit of a person not qualifying as a citizen of the United States. No application to, approval by or notice to the Maritime Administrator is required on the part of the United States Government or such State, or on the part of the mortgagor.

(b) As to all other persons, an instrument or evidence of indebtedness secured by a mortgage on a documented vessel may be issued, assigned, transferred to, or held in trust by a trustee for the benefit of a person not qualifying as a citizen of the United States under 46 App. U.S.C. 802 only if the mortgagee or trustee has been approved by the Maritime Administrator under this part, in which event no further application to, approval by or notice to the Maritime Administrator is required for a particular transaction.

(c) If an approved mortgagee or trustee at any time shall no longer qualify to serve in such capacity under this part:

(1) The mortgagee or trustee shall notify immediately the official identified in § 221.7 of this part;

(2) The Maritime Administrator shall issue a disapproval notice and order and promptly serve the vessel owner with a copy; and

(3) The vessel owner shall promptly nominate a successor mortgagee or trustee to assume the mortgage or trust, which assumption shall be effected within thirty days receipt of the notice given pursuant to paragraph (c)(2) subject to approval of the Maritime Administrator.

§ 221.47 Approval of corporate citizen trustee.

A corporate trustee shall be approved under 47 U.S.C. 31328(b) if it—

(a) Is a person who qualifies as a citizen of the United States;

(b) Is organized as a corporation, and is doing business, under the laws of the United States or of a State;

(c) Is authorized under those laws to exercise corporate trust powers;

(d) Is subject to supervision of examination by an official of the United States Government or of a State; and

(e) Has a combined capital and surplus (as stated in its most recent published report of condition) of at least \$3,000,000.

§ 221.49 Approval of noncorporate citizen trustee.

A noncorporate trustee may be approved under 46 U.S.C. 31328(a)(4) if it—

(a) Is a person who qualifies as a citizen of the United States;

(b) Is otherwise organized and doing business under the laws of the United States or of a State;

(c) Is authorized under those laws to exercise trust powers;

(d) Is subject to supervision or examination by an official of the United States Government or of a State; and

(e) Has a combined capital and surplus or the equivalent (as stated in its most recently published report of condition) of at least \$3,000,000.

§ 221.51 Approval of noncitizen trustee.

(a) No federally insured depository institution that is not a citizen of the United States may serve as a trustee unless it shall first have filed with the Maritime Administrator an application, executed by the chief executive officer or other authorized official, establishing that it—

(1) Is organized under the laws of the United States or of a State and is doing business in the United States;

(2) Is authorized under those laws to exercise trust powers;

(3) Has a combined capital and surplus (as stated in its most recent published report of condition) of at least \$3,000,000;

(4) Is federally insured and is subject to examination by an official of the United States Government.

(b) Pursuant to 46 U.S.C. 31328 (a)(4) and (b)(5), a noncitizen federally insured depository institution that complies with the requirements of paragraph (a) of this section may act as a trustee without specific transactional approval of the Maritime Administrator.

(c) There are no restrictions on who may serve as a mortgagee of preferred mortgages on documented vessels that meet the criteria of §§ 221.15(b) or 221.17(a) of this part. Accordingly, any noncitizen is hereby approved as a trustee of such mortgages.

(d) Except as provided in paragraph (c) of this section, all other noncitizens, including a federally insured depository institution that has not complied with the filing requirement of paragraph (a) of this section, are hereby disapproved as trustees, subject to consideration on a case-by-case basis upon application for approval on Maritime Administration Form MA-29.

§ 221.53 Application for approval as mortgagee or trustee.

(a) Each applicant for specific approval as a mortgagee in a particular transaction shall submit a completed Maritime Administration Form MA-29 to the official identified in § 221.7 of this part. Each applicant for general

approval as a mortgagee or as a trustee shall submit a completed Maritime Administration Form MA-579 to that official.

(b) Each approval of an application to be an approved mortgagee or trustee shall be in writing and an original copy shall be provided by the Maritime Administrator to the approved mortgagee or trustee.

(c) Each general approval of a mortgagee or trustee shall be effective for a period of one (1) year from the date of issuance, subject to renewal for additional annual periods upon satisfaction of the provisions of § 221.55.

(d) A list of generally approved mortgagees and trustees will be published from time to time in the Federal Register.

§ 221.55 Renewal of general approval of mortgagee or trustee.

(a) Upon filing of a complete and acceptable Maritime Administration Form MA-580, approval of a general mortgagee or trustee continuing to meet the requirements of this subpart will be extended for an additional period of one (1) year.

(b) The form shall be submitted to the official identified in § 221.7 of this part, not later than the last business day of, and not earlier than the thirtieth (30th) calendar day before expiration of, the one (1) year period then in effect.

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

Subpart E—Penalties [Reserved]

Subpart F—Other Transfers Involving Documented Vessels

§ 221.90 Uniform Bareboat Charter of a Government-owned dry-cargo vessel under section 705 of the Merchant Marine Act, 1936, as amended, "Form No. 705."

(a) On July 16, 1956, the United States Department of Commerce, through the Maritime Administration, approved and authorized publication of a standard form of bareboat charter for use in the chartering, under section 705 of the Merchant Marine Act, 1936, as amended, of Government-owned dry-cargo vessels, which are subject to Title VII of said act. The chartering of such vessels is subject to competitive bidding procedures as prescribed under section 706 of said act.

(b) Except as otherwise authorized, the form of such charter shall be substantially as follows:

Form No. 705 (7-56) Contract No. _____

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Maritime Administration—Bareboat Charter Agreement

This Charter Party Agreement (hereinafter called the "Agreement") dated as of _____, 19____, between the United States of America, acting by and through the Department of Transportation (Maritime Administration) (hereinafter called the "Owner") and _____ (hereinafter called the "Charterer"), whose address is _____, Witnesseth:

Whereas:

1. The Owner, acting pursuant to authority vested in it by the Merchant Marine Act, 1936, as amended (herein referred to as the "Act"), and particularly Title VII thereof, issued under date of _____, 19____, its Invitation for Sealed Bids for the bareboat charter of certain Vessel(s) ¹ for operation in a service determined to be essential, as provided by section 221 of the Act.

2. Bids received pursuant to such Invitation were opened on _____, 19____, and the Charterer stated in its bid for the charter of said Vessel(s) that such Vessel(s) would be operated in the service hereinafter described, which has heretofore been determined to be essential, as provided in Section 211 of the Act, and established to the satisfaction of the owner its qualifications as a bidder (including the sufficiency of its capital, credit, and experience), and its compliance with the

¹ The term "Vessels" as used in the plural in either Part I or Part II of this Agreement also refers to any single Vessel, whenever appropriate, and similarly the term "Vessel" as used in the singular refers to all Vessels within the Agreement whenever appropriate.

terms and conditions for the award of a charter of said Vessel(s) as set forth in said Invitation.

3. The Owner accepted the bid of the Charterer for the bareboat charter of said Vessel(s) for operation in the service described in said bid, and awarded a charter to the Charterer for the period and upon the terms and conditions herinafter set forth.

Now therefore, in consideration of the premises, the parties hereto agree as follows:

Part I

Clause A. *Uniform terms.* This Agreement consists of two parts, this Part I and Part II. Unless otherwise in this Part I expressly provided, all of the provisions of said Part II shall be part of this Agreement as though fully set forth in this Part I. In the event of a conflict between the provisions of Parts I and II, the provisions of Part I shall govern to the extent of such conflict.

Clause B. *Agreement of the parties.* The Owner hereby agrees to let and the Charterer agrees to hire, the _____ for the carriage of lawful merchandise and passengers during the period and upon the terms and conditions hereinafter set forth.

Clause C. *Period of charter.* Subject to termination as provided in this Clause and in Section F, Part II, hereof, the period of this Agreement shall be as follows:

Provided, That whenever the President shall proclaim that the security of the national defense makes its advisable, or during any national emergency declared by proclamation of the President, or after a declaration of war or of national emergency made by the Congress, the Owner may terminate this Agreement without cost to the United States, upon such notice to the Charterer as the President or Congress shall determine.

Clause D. *Place and date of delivery.* The Vessel shall be delivered by the Owner to the Charterer at a safe berth in the port or place, hereinafter designated, on or about the delivery date tentatively scheduled.

| Vessel name | Place of delivery | Estimated delivery date |
|-------------|-------------------|-------------------------|
| | | |

Clause E. *Service.* The Charterer shall maintain and operate the Vessel in service or services on the following described trade route and not otherwise:

Clause F. *Rate of basic charter hire.*

Basic charter hire at the rate of \$_____ per calendar month for each Vessel or pro rata of any portion thereof, shall be paid by the Charterer to the Owner in accordance with Clause I, Part II of this Agreement.

Clause G. *Amount of insurance.* The Charterer shall at all times during the period of the Vessel's use under this Agreement carry and maintain on each Vessel policies of insurance in the manner and form prescribed in Clause 25, Part II, in the minimum amounts as follows:

| | |
|---|-----------------|
| Marine hull and machinery. | \$_____ |
| War risk hull and machinery. | \$_____ |
| Marine P & I..... | \$_____ per GRT |
| War risk P & I..... | \$_____ per CRT |
| Marine excess, general average, salvage, and collision liability. | \$_____ |
| War risk excess, general average, salvage, and collision liability. | \$_____ |

together with such additional amounts of P & I and excess liability insurance as the owner may require from time to time.

The insertion of the amount of Marine and War Risk Hull and Machinery insurance shall be for the purpose of (a) fixing the minimum amount for the placing of insurance as prescribed in Clause 25, Part II, and (b) constituting the replacement or total loss value of the Vessel as between the Charterer and the Owner, but for no other purpose. The Charterer shall also at all times during the period of the Vessel's use under this Agreement carry and maintain such crew insurance as is required by the Charterer's current bargaining agreements.

Clause H. *Amount of bond.* The Charterer, at or before delivery of each Vessel under this Agreement, shall furnish the Owner with a bond in the amount of \$_____ for each Vessel, in the manner prescribed in Clause 3, Part II of this Agreement.

Clause I. *Special provisions.*

In witness whereof, this Agreement has been executed in triplicate by the Owner on the _____ day of _____, and by the Charterer on the _____ day of _____, 19____.

United States of America,
Department of Transportation

(Maritime Administration)

By: _____
(corporate seal)

Attest:

By: _____

Secretary _____

PART II—GENERAL PROVISIONS

A. Charter hire and bond

Clause 1. *Basic charter hire.* The Charterer shall pay the Owner the basic charter hire at the monthly rate provided for in Part I hereof from the day and hour of delivery of the Vessel until and including the day and hour of redelivery to the Owner pursuant to the terms of this Agreement; or if any Vessel shall be lost, hire shall continue until the time of such loss, if known, or if the time of loss be uncertain, then up to and including the time last heard from. Payment of such basic charter hire shall be made to the Owner at Washington, D.C., on delivery of each Vessel for the remainder of the calendar month in which delivery is made, and thereafter monthly in advance of the first day of each month.

Clause 2. *Additional charter hire.* (a) if, at the end of the calendar year in which this agreement becomes effective, or any subsequent calendar year or at the termination of this Agreement, the cumulative net voyage profit (after the payment of the basic charter hire hereinabove specified and payment of the Charterer's fair and reasonable overhead expenses applicable to operation of the Vessel(s)) shall exceed 10 per centum per annum on the Charterer's capital necessarily employed in the business of the Vessel(s) (all as herein after defined), the Charterer shall pay over to the Owner at Washington, DC., within thirty (30) days after the end of such year or other period, as additional charter hire for such year or other period, an amount equal to one-half of such cumulative net voyage profit in excess of 10 per centum per annum on the Charterer's capital necessarily employed in the business of the Vessel(s). Such cumulative net profit so accounted for shall not be included in any calculation of cumulative net profit in any subsequent year or period.

For purposes of calculating "cumulative net voyage profit" it is agreed by the parties that at the end of each accounting period any net voyage losses and/or any unearned portion of the aforesaid allowable return of 10% per annum on capital necessarily employed, may be carried forward into the next accounting period, but that in

no event shall profits in excess of 10% per annum on capital employed, at the end of any accounting period, be carried forward into the next accounting period; such profits being subject to distribution at the end of each accounting period as herein provided.

(b) The Charterer agrees to make preliminary payments to the Owner on account of such additional charter hire at such time and in such manner and amounts as may be required by the Owner; provided, however, that such payment of additional charter hire shall be deemed to be preliminary and subject to adjustment either at the time of the rendition of preliminary statements or upon the completion of each final audit by the Owner, at which times such payments will be made to the Owner as such preliminary statements or final audit may show to be due, or such overpayments refunded to the Charterer as may be required.

Clause 3. *Bond.* The Charterer, at or before delivery of each Vessel under this Agreement, shall furnish the Owner with a bond with sufficient surety, in the amount specified in Part I hereof, such bond to be approved by the Owner, both as to form and sufficiency of the sureties, and to be conditioned upon the true and faithful performance of all and singular the covenants and agreements of the Charterer contained in this Agreement, including, but not limited to, the Charterer's obligation to pay charter hire and damages and to indemnify against liens. The Charterer may, in lieu of furnishing such bond, pledge United States Government securities in the par value of the required amount under an agreement satisfactory in form and substance to the Owner.

B. Condition of Vessel(s) Equipment and Stores

Clause 4. *Condition of vessel(s) on delivery.* Each Vessel on delivery shall be in Class A-1 American Bureau of Shipping or equivalent, with all required certificates, including but not limited to marine inspection certificates of the Coast Guard, Treasury Department, and so far as due diligence can make her so, tight, staunch, strong and well and sufficiently tackled, appareled, furnished and equipped, and in every respect seaworthy and in good running condition and repair, with clean swept holds and in all respects fit for service.

Clause 5. *Surveys.* (a) Each Vessel shall be jointly surveyed before delivery and before redelivery under this Agreement to determine and state the condition of the Vessel. Such surveys shall include drydocking to determine and state the condition of the underwater parts, unless, at Owner's option, the drydocking in connection

with delivery is postponed, in which event the cost and time (including Vessel expenses) of any damage to underwater parts found either upon delivery or during the period of the Vessel's use under this Agreement shall be for Owner's account unless such damage is established, from the basis of all evidence, to have occurred during the period of the Vessel's use under this Agreement. The cost and time of such delivery survey shall be for account of the Owner, and similarly the cost and time of such redelivery survey shall be for the account of the Charterer. Each party shall bear the cost of surveyors appointed by it in connection with both delivery and redelivery surveys.

(b) Except as to items sighted prior to delivery and noted on the delivery survey report as defective, which shall be for the Owner's account, including cost and time (inclusive of Vessel expenses) the delivery of each Vessel by the Owner and the acceptance thereof by the Charterer shall constitute full performance by the Owner of all the Owner's obligations under this Clause with respect to such Vessel, and thereafter the Charterer shall not be entitled to make or assert any claim against the Owner on account of any agreements, representations or warranties, expressed or implied with respect to the condition of such Vessel; provided, however, that the Owner shall nevertheless be responsible for the cost and time (exclusive of Vessel expenses) of repairs or renewals occasioned by latent defects in such Vessel, her machinery or appurtenances or defects due to locked-in stresses in such Vessel existing at the time of delivery, not recoverable under the terms and conditions of the American Hull form of policy (American Institute Time (Hulls) December, 1955) containing no deductible average clause.

Clause 6. *Determination of class.* For the purpose of this Agreement a Vessel chartered hereunder shall be deemed to be in class, whether or not any requirements or recommendations of the Classification Society are outstanding at the time of delivery or redelivery, as the case may be, unless the time limit for the accomplishment of any such requirements or recommendations, including any extension or period of grace allowed, shall have expired.

Clause 7. *Inventory.* A complete inventory of each Vessel's entire outfit, equipment, furniture, furnishings, appliances, spare and replacement parts and of all unbroached consumable stores, subsistence stores, slop chest, containers, and bunker fuel shall be jointly taken and mutually agreed upon as to items and quantities, at the time of

delivery, by representatives of the Charterer and the Owner. The parties may agree, however, to accept any suitable prior inventory which may have been taken before the delivery of the Vessel under this Agreement. Such delivery inventory of consumable and subsistence stores, slop chest, containers, and bunker fuel shall be priced by the Charterer at the current market price prevailing at the port and time of delivery. At redelivery a complete inventory of each Vessel's entire outfit, equipment, furniture, furnishings, appliances and spare and replacement parts shall, also, be jointly taken and mutually agreed upon as to items and quantities by representatives of the Charterer and the Owner. In addition, a complete inventory of all broached and unbroached consumable stores, subsistence stores, slop chest, containers, and bunker fuel shall be taken by the Charterer immediately prior to the redelivery. Such inventory shall be priced by the Charterer at the current market price prevailing at the port and time of performance of Charterer's redelivery obligations, and the Owner shall be furnished with three certified copies of such inventory, together with an affidavit certifying as to its correctness.

Clause 8. Consumable stores and fuel. The Charterer shall accept and pay for any unbroached consumable stores, subsistence stores, slop chest, returnable containers, and bunker fuel furnished by the Owner or on board at the time of delivery at the market prices current at the time and place of repairs and outfitting. The Owner shall have no obligation upon redelivery to accept or pay for consumable stores (either broached or unbroached), subsistence stores, slop chest, or returnable containers, and shall accept and pay for bunker fuel only in such minimum amounts as the Owner may determine. (Bunkers accepted by the Owner shall be paid for at the current market price prevailing at the port and time of redelivery, or, in event of redelivery at a Reserve Fleet site, at the current market price at the port and time of redelivery repairs.) Prior to redelivery, such items shall be removed from the Vessels by the Charterer in accordance with the provisions of NSA Order No. 64, as revised from time to time, and the fair and reasonable cost of such removal shall be charged in the Vessel's voyage accounts for the last voyage prior to redelivery. With respect to the aforesaid items, there shall be taken into account in the determination of additional charter hire, in accordance with Clause 2, Part II, of this Agreement, (a) the

current market value thereof at the port and time of redelivery, in the event redelivery is effected at a redelivery port, or, in the event redelivery is effected at a Reserve Fleet site, the current market value at the port and time of redelivery repairs, or (b) the net proceeds from the disposition thereof, in the event the Charterer elects to dispose of the removed goods and notifies the Owner of such intention prior to redelivery. The manner of, time of and determination of net proceeds from such disposition of the items shall be subject to approval of the Owner.

Clause 9. Use of equipment. The Charterer shall have the use of all outfit, equipment, furniture, furnishings, appliances, spare and replacement parts on board the Vessel at the time of delivery under this Agreement without extra cost and the same shall be returned to the Owner upon redelivery in good order and condition. Any such items damaged or so worn in service as to be unfit for use or lost or destroyed shall be replaced or made good by the Charterer in kind at or before redelivery, or at Owner's option, the Charterer shall pay for said items at the current market prices at the port and time of performance of Charterer's redelivery obligations, based upon the condition of the items at the time of delivery. The Owner shall have a right, but not an obligation, to accept any overages on the Vessel at redelivery. Any overages accepted by the Owner shall be paid for at the current market prices at the port and time of performance of Charterer's redelivery obligations, based upon the condition of the items at the time of redelivery. Overage and shortage statements shall be prepared and priced by the Charterer, subject to review and adjustment by the Owner.

Clause 10. Maintenance. The Charterer, except as otherwise provided in Clause 4, shall, at its own expense, maintain each Vessel, her machinery, boilers, appurtenances, and spare parts during the period of the Vessel's use under this Agreement in good state of repair and in efficient operating condition and in accordance with good commercial maintenance practices and shall keep each Vessel in such condition as will entitle the Owner at all times to all required Certificates, including, without limitation, the highest classification and rating for vessels of the same age and type in the American Bureau of Shipping and with unexpired marine inspection certificates of the Coast Guard, Treasury Department.

Clause 11. Structural changes. The Charterer shall make no structural changes in the Vessel(s) and shall make

no changes in the machinery, boilers, appurtenances or spare parts thereof, without in each instance first securing the written approval of the Owner.

Clause 12. Drydocking. The Charterer shall drydock each Vessel and clean and paint the underwater parts, when necessary, but not less than once in about every nine (9) months from date of delivery. The Charterer shall give the Owner reasonable notice of the time and place of drydocking and if practicable fifteen (15) days in advance thereof and afford the Owner an opportunity to inspect the Vessel(s) while drydocked. The Charterer shall also promptly notify the Owner sufficiently in advance to enable its representative to be present at repairs or surveys of the Vessel(s), and shall furnish the Owner with copies of reports made pursuant to such surveys.

Clause 13. Inspections. The Owner shall have the right at any time, without notice, to inspect or survey the Vessels at its own expense, to ascertain their condition and to satisfy itself that the Vessels are being properly repaired and maintained in accordance with good commercial maintenance practices, but such inspections shall be held at such time and in such manner as to not interfere with Vessels' schedule. The Charterer shall make all such repairs, at its own expense, as such inspection or survey may show to be required in compliance with the Charterer's obligations under this Agreement. The Charterer shall also permit the Owner to inspect the Vessels' logs whenever requested, and shall furnish the Owner upon request with full information regarding any casualties or other accidents or damage to the Vessels.

Clause 14. Redelivery of vessel(s). (a) *Port or place of redelivery.* The port of redelivery shall be the port of delivery or such other port as may be mutually agreed, *Provided*, that the Owner shall have the option of requiring the Charterer to place the Vessel(s) in layup at a Reserve Fleet site designated by the Owner, on the same coast as the port of redelivery, in the manner and on the basis provided for in subparagraph (d) of this Clause. In the event the Owner exercises this option, the Owner shall have the right to designate the port at which Charterer's redelivery obligations under this Clause will be performed.

(b) *Redelivery conditions.* Each Vessel, unless lost, shall be redelivered to the Owner, pursuant to the terms of this Agreement, in the same good order and condition as that in which she was delivered, unless the lack of good order and condition is due solely to ordinary wear and tear, and with valid

classification and Coast Guard certificates, whether or not classification or Coast Guard repairs are due wholly or in part to ordinary wear and tear. At the redelivery survey provided for in Clause 6, surveyors appointed by the Charterer and surveyors appointed by the Owner, shall be present, who shall determine and state the repairs or work necessary to place each Vessel on the date of redelivery in the condition and class required under this Clause, which findings shall include all repairs and work required to be performed at the time of redelivery by the Classification Society and all other regulatory bodies, and all repairs and work which are necessary to place each Vessel on the date of redelivery in the good order and condition required by this Clause. The Charterer, before redelivery, shall make all such repairs and do all such work so found to be necessary at its expense and time, or at Owner's option, the Charterer shall, on Owner's request, discharge such obligation by payment to the Owner of an amount sufficient to place each Vessel in such class, order and condition and to provide for the foregoing work and repairs at the prices current at the time of redelivery, which amount shall also include compensation at the rate of basic hire payable under this Agreement for the time reasonably required under then existing conditions to complete such work or repairs and compensation for all other expenses (including insurance), reasonably required incident to such work or repairs. In the event the Owner exercises this option, the Charterer's redelivery repair obligations shall be limited to the amount of Marine Hull and Machinery insurance required by the provisions of Part I hereof. The Charterer shall not be required to make any repairs which were for Owner's account under Clause 4 of this Agreement, but if such repairs were made after delivery under this Agreement and paid for by the Owner, they shall be considered as having been made at the time of delivery for the purpose of determining the Charterer's obligations under this Clause 14.

(c) *Disputes.* Should any dispute arise between the Owner and the Charterer with respect to responsibility for repairs, renewals, replacements, or condition of the Vessel(s), at the time of redelivery, the Charterer shall, without prejudice to its contentions, make and pay for such disputed repairs, renewals, or replacements, or any part thereof, before redelivery, and may recover the cost from the Owner, together with Vessel expenses and charter hire during the

period required for the performance of such work over and above the time required to perform the Charterer's redelivery repairs, in event Owner's liability therefor is established.

(d) *Vessel layup.* In the event that the Owner exercises its option under subparagraph (a) of this Clause to require the Charterer to place the Vessel(s) in layup following completion of Charterer's normal redelivery obligations, the Charterer shall perform and pay for all work required in connection with the preparation for layup and movement of the Vessel(s) to the Reserve Fleet site designated by the Owner, as prescribed in NSA Order No. 64, as revised from time to time. In such event, (i) basic charter hire shall cease as of completion of Charterer's normal redelivery obligations, and (ii) all reasonable costs incurred by the Charterer during the period of the stripping and layup of the Vessel(s) as aforesaid, including but without limitation, cost of insurance, shall, to the extent authorized and approved by the Owner, be taken into account as voyage expense in the determination of additional charter hire under Clause 2.

C. Operation of the Vessel(s)

Clause 15. *Charterer to man, etc.* During the period of this Agreement, the Charterer shall, at its own expense, and by its own procurement, man, victual, navigate, operate, supply, fuel and, except as otherwise expressly provided in Clause 4 of this Agreement, repair each Vessel and pay all charges and expenses of every kind and nature whatsoever incident to the use and operation of the Vessel(s) under this Agreement. The Owner reserves the right to require the removal of the Master(s) or the Chief Engineer(s) if it shall have reason to be dissatisfied with their conduct or if it considers their employment to be prejudicial to the interests of the United States. Except as otherwise expressly provided in this Clause and Clause 40 of this Agreement, the Charterer and not the Owner shall have exclusive possession, control and command of the Vessel(s) during the entire period of use under this Agreement.

Clause 16. *Owner's representatives.* The Charterer agrees that, at its expense, it will furnish transportation on each Vessel, during the period of this Agreement, for not more than five officers and/or employees of the Federal Maritime Board—Maritime Administration, travelling on official business, who shall be given full, free and complete access at all reasonable times to all parts of such Vessel, and shall have full opportunity to observe

and inspect the working of such Vessel in all of its parts, but without any directing or controlling power over such Vessel's operations. The Charterer also agrees to cooperate with such representatives in the making of any inspection or investigation which the Owner may deem desirable and to prepare and furnish full and complete reports, records or other data pertaining to such Vessel's operation, as requested by the Owner. It is mutually understood and agreed that the transportation of such Owner's representatives, shall be on the basis of not more than one round-trip per calendar year per Vessel, upon the written request of the Maritime Administrator.

Clause 17. *Employment of affiliates, etc., rental of office space.* (a) Unless granted an exemption upon such terms and conditions and for such specific period of time as the Owner shall determine pursuant to Section 803 of the Act, the Charterer shall not employ any person or concern performing or supplying stevedoring, ship-repairs, ship-chandler, towboat, or kindred services to supply such services to the chartered Vessel(s) if the Charterer or any subsidiary company, holding company, affiliate company, or associate company of the Charterer, or any officer, director, or employee of the Charterer, such subsidiary company, holding company, affiliate company, or associate company of the Charterer, or any member of the immediate family of the Charterer, or of such officer, director, or employee of the Charterer, or any member of the immediate family of any officer, director, or employee of such subsidiary company, holding company, affiliate company, or associate company of the Charterer owns any pecuniary interest, directly or indirectly, in the person or concern supplying such services to the chartered Vessel, or receives any payment or other things of value, directly or indirectly, as a result of such employment of services.

(b) Without prior approval of the Owner granted upon such terms and conditions as the Owner may prescribe, the Charterer shall not rent office space owned by the Charterer or by any subsidiary, holding company, affiliate or associate company of the Charterer, or by any officer, director, or employee of the Charterer, or any member of the immediate family of the Charterer, or of such officer, director, or employee of the Charterer, or any member of the immediate family of any officer, director, or employee of such subsidiary, holding company, affiliate, or associate company of the Charterer.

Clause 18. *Efficient operation.* The Charterer agrees to conduct its business and its operations with respect to each Vessel in an economical and efficient manner.

Clause 19. *Use of United States goods.* Whenever practicable, the Charterer shall use only articles, materials, and supplies of the growth, production, and manufacture of the United States, as defined in Section 505(a) of the Act, except when it is necessary to purchase supplies and equipment outside the United States to enable a Vessel to continue and complete a voyage, and the Charterer shall perform repairs to the Vessel(s) within the continental limits of the United States, except in an emergency.

Clause 20. *Development of American-flag merchant marine.* The Charterer shall cooperate with the Owner and with other American-flag companies in the development of the American-flag merchant marine as a whole, and, whenever practicable, the Charterer shall favor American-flag companies in transshipping of cargo, in selecting foreign domestic agents or other representatives, and in the rental of terminal and other facilities and in related matters.

Clause 21. *Services rendered vessel(s).* The Charterer, if and when requested by the Owner, shall file with the Owner rates and schedules covering any services rendered the Vessel(s) under this Agreement by any individual, firm or corporation.

Clause 22. *No transfer or assignment.* The Charterer shall not, without the Owner's written or telegraphic consent, sell, transfer, or assign this Agreement or any interest therein, or time charter or subcharter the Vessel(s), or make any arrangement whereby the maintenance, management, or operation of the Vessel(s) is to be performed by any other person.

Clause 23. *Preference and conference agreements.* (a) The Charterer shall not unjustly discriminate in any manner so as to give preference, directly or indirectly, in respect to cargo in which the Charterer has a direct or indirect ownership or purchase or vending interest. If the Charterer carries any cargo on its own behalf or for its own account or on behalf or for the account of any associate, affiliate, subsidiary, parent or holding company, the Charterer shall not discriminate in its own favor, or in favor of any such associate, affiliate, subsidiary, holding or parent company, in regard to rates charged or service rendered. The Charterer shall also hold confidential and shall not reveal to any such associate, affiliate, subsidiary, holding

or parent company any information whatsoever, except such information as is generally made available to the public in the regular course of the steamship business in regard to cargo of similar kind or nature which the Charterer may at any time carry for any other interests or otherwise.

(b) The Charterer agrees not to continue as a party to or to conform to any agreement with another carrier or carriers by water, or to engage in any practice in concert with another carrier or carriers by water, which is unjustly discriminatory or unfair to any other citizen of the United States who operates a common carrier by water exclusively employing vessels registered under the laws of the United States on any established trade route from and to a United States port or ports.

Clause 24. *Liens.* Neither the Charterer nor the Master of the Vessel(s) nor any other person shall have the right, power, or authority to create, incur, or permit to be placed upon the Vessel(s) any liens whatsoever other than for crew's wages or salvage. The Charterer agrees to carry a properly certified copy of this Agreement with the ship's papers on board each Vessel and agrees to exhibit the same to any person having business with such Vessel and agrees also to exhibit the same to any representative of the Owner on demand.

The Charterer agrees to notify any person furnishing repairs, supplies, towage, or other necessities to the Vessel(s) that neither the Charterer nor the Master has any right to create, incur, or permit to be imposed upon the Vessel(s) any liens whatsoever, except for crew's wages and salvage. Such notice as far as may be practicable shall be in writing. The Charterer further agrees to fasten in each Vessel in a conspicuous place, and to maintain during the charter period, a notice reading as follows:

This Vessel is the property of the United States of America. It is under charter to:

and by the terms of the charter neither the Charterer nor the Master has any right, power, or authority to create, incur, or permit to be imposed upon the Vessel any lien whatsoever, except for crew's wages and salvage.

The Owner shall indemnify and hold harmless and defend the Charterer against any liens, claims or liabilities of whatsoever nature upon the Vessel(s) at the time of delivery under this Agreement. The Charterer shall indemnify and hold harmless and defend the Owner against any liens of

whatsoever nature upon the Vessel(s) and against any claims against the Owner arising out of the operation of the Vessel(s) by the Charterer, or out of any act or neglect of the Charterer, in relation to the Vessel(s) or the operation thereof, except insofar as such liens or claims arise out of any matter covered by the insurance procured and in force, as provided herein. If a libel should be filed against the Vessel(s) or if the Vessel(s) is/are otherwise levied against or taken in custody by virtue of legal proceedings in any court because of any liens or claims arising out of the operation of the Vessel(s) by the Charterer, the Charterer shall at its own expense within fifteen (15) days thereof cause the Vessel(s) to be released and the lien to be discharged.

Clause 25. *Insurance.* (a) The Charterer shall, at all times during the period of the Vessels' use under this Agreement, carry on each Vessel policies of insurance covering all marine and war risk hull and marine and war risk protection and indemnity risks, and all other hazards and liabilities in the amounts set out in Part I hereof, in such form and with such insurance companies, underwriters or funds as the Owner shall require and approve. All insurance required under the terms of this Agreement to be carried by the Charterer shall include the United States of America as an assured, without recourse against the United States for payment of premiums, or for assessments under any mutual form of policy. The underwriters shall have full rights of subrogation against the United States of America to the extent of any loss paid for which any assured other than the United States of America could bring suit against the United States of America, under the Suits in Admiralty, Public Vessels or Tucker Acts to recover for such loss, and, notwithstanding the fact that the United States of America may be named as an assured and as payee in the policy, such loss shall be considered to have been paid to and sustained by any assured other than the United States of America, in the first instance.

(b) All losses under the policies of insurance carried on the Vessels, except those payable under crew insurance policies, shall be made payable to the Owner for distribution by it to itself and the Charterer as their interests may appear, provided, however, that in the absence of specific instructions to the contrary, P and I insurance claims in amounts not exceeding \$10,000 may be payable directly to the Charterer. Charterer shall at Charterer's expense keep the Vessels entered in the Marine

Index Bureau, Inc. The originals of all cover notes or binders and policies, except those for crew insurance, shall be delivered promptly to the Owner for its custody and approval.

(c) In the event that any of the insurance hereinbefore provided for shall not, by reason of any act, omission, or negligence of the Charterer, be kept in full force and effect, or for any reason, including but without limitation the existence of any deductible average, franchise provisions, or other exclusion contained therein, but excluding insolvency of the underwriters, does not cover in full all losses, damages, claims or demands, the Charterer shall indemnify and hold harmless and defend the Owner against all such losses, claims and demands.

(d) No tender of abandonment as a constructive total loss shall be made without the prior approval of the Owner, provided, however that in the event the Owner refuses to approve such tender or fails to act thereon within twenty (20) days after receipt of Charterer's request, then charter hire shall cease as of the date of such refusal or at the expiration of such twenty (20) day period, as the case may be, and provided further that charter hire shall cease only in the event that, but for the refusal of the Owner to agree to tender of abandonment, the amount which would have been recoverable from the hull insurance underwriters would have squaled or exceeded the amount set forth in Part I hereof.

Clause 26. *Bills of lading or voyage charters.* All bills of lading or voyage charters issued under this Agreement shall contain directly or by reference substantially the following clauses:

(i) *Clause paramount.* This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the Carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading be repugnant to said Act to any extent, such term shall be void to that extent but no further.

(ii) *General average clause.* General average shall be adjusted, stated, and settled, according to York-Antwerp Rules, 1950, exclusive of Rule 22, at such port or place in the United States as may be selected by the Carrier, and as to matters not provided for by these Rules, according to the laws and usages at the port of New York. In such adjustment, disbursements in foreign currencies shall be exchanged into United States

money at the rate prevailing on the dates made and allowances for damage to cargo claimed in foreign currency shall be converted at the rate prevailing on the last day of discharge at the port or place of final discharge of such damaged cargo from the ship. Average agreement or bond and such additional security, as may be required by the carrier, must be furnished before delivery of the goods. Such cash deposit as the carrier or his agents may deem sufficient as additional security for the contribution of the goods and for any salvage and special charges thereon, shall, if required, be made by the goods, shippers, consignees, or owners of the goods to the carrier before delivery. Such deposit shall, at the option of the carrier, be payable in United States money, and be remitted to the adjuster. When so remitted the deposit shall be held in a special account at the place of adjustment in the name of the adjuster pending settlement of the general average and refunds or credit balances, if any, shall be paid in United States money.

(iii) *Amended "Jason" clause.* In the event of accident, danger, damage, or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or act, for which or for the consequence of which the carrier is not responsible by statute, contract, or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods. If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the salving ship or ships belong to strangers.

(iv) *Liberties clauses.* In any situation whatsoever and wheresoever occurring and whether existing or anticipated before commencement of or during the voyage, which in the judgment of the carrier or master is likely to give rise to risk of capture, seizure, detention, damages, delay or disadvantage to or loss of the ship or any part of her cargo, or to make it unsafe, imprudent, or unlawful for any reason to commence or proceed on or continue the voyage or to enter or discharge the goods at the port of discharge, or to give rise to delay or difficulty in arriving, discharging at or leaving the port of discharge or the usual place of discharge in such port, the carrier may before loading or before the commencement of the voyage, require the shipper or other person entitled thereto to take delivery of the goods at

port of shipment and upon their failure to do so, may warehouse the goods at the risk and expense of the goods; or the carrier or master, whether or not proceeding toward or entering or attempting to enter the port of discharge or reaching or attempting to reach the usual place of discharge therein or attempting to discharge the goods there, may discharge the goods into depot, lazaretto, craft or other place; or the ship may proceed or return, directly or indirectly to or stop at any such port or place whatsoever as the master or the carrier may consider safe or advisable under the circumstances, and discharge the goods, or any part thereof, at any such port or place; or the carrier or the master may retain the cargo on board until the return trip or until such time as the carrier or the master thinks advisable and discharge the goods at any place whatsoever as herein provided; or the carrier or the master may discharge and forward the goods by any means at the risk and expense of the goods. The carrier or the master is not required to give notice of discharge of the goods or the forwarding thereof as herein provided. When the goods are discharged from the ship, as herein provided, they shall be at their own risk and expense; such discharge shall constitute complete delivery and performance under this contract and the carrier shall be freed from any further responsibility. For any service rendered to the goods as herein provided the carrier shall be entitled to a reasonable extra compensation.

The carrier, master, and ship shall have liberty to comply with any orders or directions as to loading, departure, arrival, routes, ports of call, stoppages, discharge, destination, delivery or otherwise howsoever given by the Government of any nation or department thereof or any person acting or purporting to act with the authority of such government or of any department thereof, or by any committee or person having under the terms of the war risk insurance on the ship, the right to give such orders or directions. Delivery or other disposition of the goods in accordance with such orders or directions shall be a fulfillment of the contract voyage. The ship may carry contraband, explosives, munitions, warlike stores, hazardous cargo, and may sail armed or unarmed and with or without convoy.

In addition to all other liberties herein the carrier shall have the right to withhold delivery of, reship to, deposit or discharge the goods at any place whatsoever, surrender or dispose of the goods in accordance with any direction,

condition or agreement imposed upon or exacted from the carrier by any government or department thereof or any person purporting to act with the authority or either of them. In any of the above circumstances the goods shall be solely at their risk and expense and all expenses and charges so incurred shall be payable by the owner or consignee thereof and shall be a lien on the goods.

Clause 27. *General and particular average.* Average adjusters shall be appointed by the Charterer from a list of adjusters satisfactory to the Owner, who shall attend to the settlement and collection of both general and particular average losses subject to customary charges. The Charterer agrees to assist the adjuster in preparing the average statement and to take all other possible measures to protect the interests of each Vessel and the Owner.

Clause 28. *Salvage.* Earned salvage shall be prorated 25% to the Owner and 75% to the Charterer, after deducting Owner's and Charterer's expenses, Master's and Crew's shares, and legal and other expenses incident to the salvage, provided, however, that hire of the Vessel(s) shall not be considered an item of the Charterer's expense hereunder. Salvage earned by the Charterer shall be considered gross income as defined in Clause 38(a). Settlement of such claims for earned salvage shall be subject to the approval of both Owner and Charterer. Provided, that the amount of awards for the salvaging of vessels of which the United States, or any department or agency thereof, is the Owner or Owner pro hac vice, or for the cargoes and freights on such vessels, shall be approved by the Owner.

D. Management—Other Activities of Charterer

Clause 29. *Mergers, business not related to shipping.* The Charterer agrees that during the charter period it will not, without the prior written approval of the Owner, (1) effect any merger, consolidation or substantial acquisition or disposition of assets not in the ordinary course of business, or (2) directly or indirectly embark upon any new enterprise or business activity not directly connected with the business of shipping.

Clause 30. *Coastwise or intercoastal service.* Neither the Charterer nor any holding company, subsidiary, affiliate, or associate of the Charterer nor any officer, director, agent, or executive thereof shall, without the permission of the Owner granted pursuant to Section 805(a) of the Act, directly or indirectly, own, operate, or charter any vessel or vessels engaged in the domestic

intercoastal or coastwise service, or own any pecuniary interest, directly or indirectly, in any person or concern that owns, charters or operates any vessel or vessels in the domestic intercoastal or coastwise service; Provided that, if such permission is or has been granted, none of the persons mentioned in this Clause shall divert, directly or indirectly, any moneys, property, or other thing of value, used in foreign trade operation, for which a subsidiary is paid by the United States, into any such coastwise or intercoastal operations; Provided further, that where such permission is or has been granted pursuant to the Proviso clause of the first paragraph of Section 805(a) of the Act, in the event of substantial change in the character or extent of such operations over those conducted during 1935, the foregoing permission to continue such operations may be limited or terminated by the Owner, after notice to the Charterer and opportunity for hearing, with respect to any or all of the operations thus permitted.

Clause 31. *Supervision of employment.* Whenever the Charterer receives an operating-differential subsidy and is in default with respect to any mortgage, note, purchase contract or other obligation to the Owner, or has not maintained, in a manner satisfactory to the Owner, all of the reserves provided for in the Act, the Owner shall have the right to supervise the number and compensation of all officers and employees of the Charterer, and the Charterer shall then comply with all instructions of the Owner with respect thereto.

Clause 32. *Salaries and fees.* No salary for personal services in excess of \$25,000 per annum paid to a director, officer, or employee by the Charterer, its affiliates, subsidiary, or associates, directly or indirectly, shall be taken into account under this Agreement. The terms "director," "officer," or "employee" shall be construed in the broadest sense to include, but not to be limited to, managing trustee or other administrative agent. The term "salary" shall include wages and allowances or compensation in any form for personal services which will result in a director, officer, or employee receiving total compensation for his personal services from such sources exceeding in amount or value \$25,000 per annum.

Clause 33. *Employment of managing agent.* The Charterer shall not without the prior consent of the Owner employ any other person or concern as the managing or operating agent of the Charterer.

Clause 34. *Members or Delegates of Congress.* The Charterer shall not

employ any Member of Congress, either with or without compensation, as an attorney, agent, officer, or director. Except to the extent permitted by law, no Member of or Delegate to Congress or any Resident Commissioner is or shall be admitted to any share or interest in this Agreement, or any benefit that may arise therefrom.

Clause 35. *Rescission provision.* Upon determination by the Owner that any willful violation of any provision of Clauses, 30, 31, 32, 33 or 34 has occurred, the Owner shall have the right to rescind the Agreement, and upon such rescission, the Owner shall be relieved of all further liability under this Agreement.

Clause 36. *Foreign-flag vessels.* Neither the Charterer, nor any holding company, subsidiary, affiliate, or associate of the Charterer, nor any officer, director, agent or executive thereof shall, directly or indirectly, own, charter, act as agent or broker for, or operate any foreign-flag vessel which competes with any American-flag vessel service which may be determined by the Owner to be essential pursuant to Section 211 of the Act, except as the Owner in its discretion and for a specific period of time may otherwise permit in accordance with the provisions of the Act.

E. Accounting—Definitions

Clause 37. *Accounting, report and supervision.* (a) The Charterer and, to the extent required by the Owner, every affiliate, domestic agent, subsidiary, or holding company connected with, or directly or indirectly controlling or controlled by the Charterer:

(1) Shall keep its books, records and accounts relating to the management, operation, conduct of the business of and maintenance of the Vessel(s) covered by this Agreement in accordance with the "Uniform System of Accounts for Maritime Carriers" prescribed by the Maritime Administration, U.S. Department of Transportation, in General Order 22, Revised, (Issue of 1950) effective January 1, 1951, and under such regulations as may be prescribed by the Owner; *Provided*, That notwithstanding the provisions of said General Order 22, Revised, such reserves as may be specifically authorized by the Owner shall be taken into account in the determination of "Net Voyage Profit" hereunder or the expenses to provide for which such reserves are so authorized shall be distributed over the period of use hereunder of the Vessel involved in such manner as will accomplish the same result as though such reserves

were established, all pursuant to regulations prescribed by the Owner; and *Provided further*, That if the Charterer is subject to the jurisdiction of the Interstate Commerce Commission, the Owner shall not require the duplication of books, records, and accounts required to be kept in some other form by that Commission; and

(2) Shall file, upon notice from the Owner, balance sheets, profit and loss statements, and such other statements of financial operations, special reports, memoranda of any facts and transactions, which in the opinion of the Owner affect the financial results in, the performance of, or transactions or operations under, this Agreement. The Owner reserves the right to require that all or any of such statements, reports and memoranda shall be certified by independent certified public accountants acceptable to the Owner. Specific reporting requirements subsequently prescribed will be subject to the approval of the Bureau of the Budget pursuant to the Federal Reports Act of 1942.

(b) The Owner is hereby authorized to examine and audit the books, records and accounts of all persons referred to above in this Clause whenever it may deem it necessary or desirable, including an analysis of the surplus and all supporting accounts. The Charterer agrees to allow any and all auditors, inspectors, attorneys, and other employees, designated by the Owner, full, free and complete access at all reasonable times, to the Vessel when in port or undergoing repairs, and to all books, records, papers, memoranda or other documents of the Charterer wherever located or of any holding company, subsidiary company or affiliated company of the Charterer pertaining to any activities relating in any way to the Vessel(s), and further agrees to permit the making of photostatic or other copies of any such books, records, papers, memoranda or other documents and to furnish without charge adequate office space and other facilities reasonably required by such auditors, attorneys, or inspectors in the performance of their duties. The Charterer further agrees to establish and maintain from time to time such checks upon or systems of control of expenditures or revenues in connection with the operation of the Vessel(s) as the Owner may request.

(c) Upon the willful failure or willful refusal of any person described in this Clause to comply with the above provisions of this Clause, the Owner shall have the right to rescind this Agreement, and upon such rescission,

the Owner shall be relieved of all further liability under this Agreement.

Clause 38. *Definitions*. The terms "net voyage profit," "fair and reasonable overhead expenses," and "capital necessarily employed" as used herein with respect to the operations of the Vessel(s) and services incident thereto are hereby defined for the purpose of this Agreement only, as follows:

(a) "Net voyage profit" shall be determined by deducting from gross income, as hereinafter defined, such direct vessel operating expenses, terminal and other auxiliary operating expenses, overhead expenses, interest expense, amortization of deferred charges, depreciation on property utilized in the operation of the Vessel(s), and all other charges which are customarily made in accordance with sound accounting practice in determining net profits before provision for federal income taxes, all as the Owner may deem fair and reasonable, provided, that in instances where the Charterer engages in other activities in addition to the operation of the Vessel(s) covered by this Agreement, such charges, other than those directly and exclusively allocable to the operation of the Vessel(s) shall be prorated between these activities on such basis as the Owner may determine to be fair and reasonable.

"Gross income" shall include such items as revenue earned from the carriage of cargo, passengers, and mail, terminal and other auxiliary operations and miscellaneous profits and losses, such as those arising from pooling agreements, advance and prepaid beyond items, bar and slop chest, and such other transactions as the Owner may determine are properly included. "Gross income" shall include also interest earned, dividends received, and other non-operating income, as well as all accruals, if any, to the Charterer as an operating-differential subsidy. If the Charterer engages in any other activities in addition to the operation of the Vessel(s), the revenues and miscellaneous income, other than those exclusively applicable to the operation of the Vessel(s), shall be prorated between these activities on such basis as the Owner may determine to be fair and reasonable.

Income consisting of capital gains and expenses consisting of capital losses shall in no event be included in the computation of "Net Voyage Profit," as above defined.

Income from and expenses attributable to assets, other than the Vessel(s), excluded in the computation of "Capital Necessarily Employed," as

hereinafter defined, shall not be included in the computation of "Net Voyage Profit," as above defined.

In determining "Net Voyage Profit," as above defined, all profits of persons performing services or supplying facilities to the Charterer which are required to be included in the earnings of the Charterer under section 803 of the Act shall be taken into account.

(b) "Fair and reasonable overhead expenses" shall include those expenses actually and necessarily incurred in the conduct of the business of operating the Vessel(s), such as salaries of officers; wages of employees; legal and accounting fees and expenses; rent, heat, light, and power; communication expenses; office supplies, stationery, and printing; membership dues and subscriptions; entertaining and solicitation; traveling expenses; insurance and bond premiums; postage; maintenance of office equipment; and miscellaneous administrative and general expenses, all as the Owner may determine to be fair and reasonable and properly included, provided, that there shall be deducted from the total of such expenses, agency fees, commissions, brokerage, and such other miscellaneous earnings as the Owner may determine to be properly deductible.

"Fair and reasonable overhead expenses" shall include also freight, passenger, and other expenses incident to advertising the Vessel(s) and the route served; taxes, other than Federal income taxes; and management and operating commissions, but only if and in the cases where the express written consent of the Owner has been given the Charterer to employ any other person or concern as the managing or operating agent of the Charterer; all as the Owner may determine to be fair and reasonable and properly included.

If the Charterer engages in other activities in addition to the operation of the Vessel(s), the "Fair and Reasonable Overhead Expenses" other than those directly and exclusively allocable to the Operation of the Vessel(s) shall be prorated between such activities on such basis as the Owner may determine to be fair and reasonable.

(c) Except in instances where the Charterer is granted an operating-differential subsidy (which is covered by the last paragraph of this subsection (c)), "Capital necessarily employed" shall be determined upon the basis of the net worth reported by the Charterer in its balance sheet as of the close of the month preceding the date of delivery of the first vessel under this Agreement (or in the last previous balance sheet deemed by the Owner to fairly present

the financial position of the Charterer, but adjusted to take into account subsequent changes in net worth and such other changes as the Owner may deem essential to a proper determination of "Capital Employed" as at the end of such month), and as at each succeeding December 31st during the effective period of the Agreement, adjusted as hereinafter provided. For the purpose of this determination, net worth, as stated in the balance sheet of the Charterer, shall be deemed to include capital stock, surplus and such subdivisions thereof as capital surplus, earned surplus, and accounts of like nature. Net worth, as thus stated, shall be adjusted in such manner as the Owner may determine to be fair and reasonable, including the elimination of appreciation, adequate statement of the liabilities, and such other adjustments as are consistent with sound accounting principles. In the computation of "Capital Necessarily Employed," good will, intangibles not actually purchased and paid for, and stock held in treasury shall be excluded.

Property and other assets utilized in the operation of the Vessel(s) shall be valued at cost, including betterments and reconditioning costs, to the present owner or to any former owner at any time affiliated or associated directly or indirectly with the present owner, whichever is the lower, less depreciation; provided, that the cost of acquisition of assets acquired in exchange for capital share or other securities of the Charterer from other than holding, subsidiary, affiliated, or associated companies, shall not be in excess of the fair value of such property at the date of acquisition.

Additional capital, in the form of cash or tangible property paid in during the charter period, shall be included in the computation of "Capital Necessarily Employed" from the date paid in. Conversely, any withdrawals of capital shall be deducted from the date withdrawn; provided, however, that no capital shall be withdrawn and no share capital shall be converted into debt without the prior written approval of the Owner. Earnings and capital gains (or losses) for any accounting period subsequent to the last day of the month preceding the month during which delivery of the first Vessel is made hereunder to the Charterer by the Owner shall not be included in the computation of the "Capital Necessarily Employed" for the year or other accounting period in which realized (or sustained). Dividends paid out of earnings that have not been included in

"Capital Employed" shall not be deducted from "Capital Employed."

If the Charterer engages in other activities in addition to the operation of the Vessel(s), the Owner shall determine the proper allocation of capital as between such activities. The amount so allocated to the operation of the Vessel(s) shall be deemed to be the "Capital Necessarily Employed."

In the event the Charterer is granted an operating-differential subsidy, "Capital Necessarily Employed" in the business of the Vessel(s) chartered hereunder shall be determined upon the bases provided by the United States Maritime Commission with respect to subsidized vessels in its General Order No. 71 as adopted by its successors, the Federal Maritime Board and Maritime Administration, and amended from time to time, excepting inapplicable provisions of that Order (such as those relating to (1) ship equities, (2) deposits in the Special Reserve Fund, (3) deposits in the Capital Reserve Fund, and (4) progress payments on vessels under construction) as determined by the Owner.

F. Termination—Miscellaneous

Clause 39. *Events of default.* The following shall constitute events of default under this Agreement:

(a) The failure of the Charterer to pay the charter hire on each Vessel as and when the same shall be due under the terms of this Agreement.

(b) The failure of the Charterer to operate each Vessel as required by Clause E, Part I, or the operation of the Vessel(s) on some other route without the prior written approval of the Owner.

(c) Any material misrepresentation by the Charterer in connection with this Agreement whether before or after execution hereof and whether made in an application, report or otherwise, or any wilful failure by the Charterer to disclose information necessary to cause any material representation by it not to be misleading.

(d) The occurrence of any event causing the Charterer to be ineligible for charter of the Owner's vessels.

(e) A voluntary sale by the Charterer of this Agreement or any interest therein, or any assignment, transfer, agreement or any other arrangement whereby the maintenance, management or operation of the above described service, route, or Vessel(s) shall pass out of the direct control of the Charterer without the consent of the Owner.

(f) The filing of a petition in bankruptcy by the Charterer or the entry of an order, upon petition against the Charterer, adjudicating the Charterer a bankrupt, or the making of a general

assignment for the benefit of creditors, or the Charterer losing its charter by foreclosure or otherwise, or the appointment of a receiver or receivers of any kind whatsoever, whether appointed or not in Admiralty, Bankruptcy, Common Law or Equity proceedings, and whether temporary or permanent, for the property of the Charterer, or the filing of a petition by the Charterer for reorganization under the Bankruptcy Act, or the filing of such a petition by creditors and the same approved by the court, or the approval of the court of a reorganization of the Charterer under said Act, whether proposed by a creditor, a stockholder or any other person whomsoever.

(g) Any breach by the Charterer of its obligations under this Agreement (including but without limitation, the obligation to maintain a Performance Bond as required by Clause 3) or any agreement executed in connection therewith (including but not limited to any operating-differential subsidy agreement with respect to the Vessel), or any ship mortgage given to construction agreement made with the United States.

(h) Failure by the Charterer to comply with any applicable provision of the Merchant Marine Act, 1936, as amended, or of any law relating to the operation of the Vessel(s).

(i) Failure by any subsidiary company, holding company, affiliate company or associate company of the Charterer, or failure by any person performing services or supplying facilities to the Charterer subject to the provisions of section 803 of the Act, to conform to the provisions of this Agreement.

Clause 40. Termination upon default.

(a) The Owner may terminate this Agreement in whole or in part without notice to the Charterer in case any event of default specified in paragraph (a), (b), (c), (d), (e) or (f) of the preceding Clause 39 shall occur, or if any other default specified in paragraph (g), (h) or (i) of said Clause shall occur and shall continue for a period of 30 days after notice thereof has been mailed or telegraphed by the Owner to the Charterer.

(b) Upon termination, the Owner may, at its option, retake the Vessel(s), wherever the same may be found, whether upon the high seas or in any port, harbor, or other place, without prior demand and without legal process and for that purpose may enter upon any dock, pier, or other premises where the Vessel(s) may be and may take possession thereof, or may require the Charterer to redeliver such Vessel(s) in accordance with terms of this

Agreement immediately upon the receipt of a notice demanding such redelivery.

(c) The rights conferred upon the Owner by this Clause are cumulative and in addition to any rights which it may have at law or in equity or by virtue of the terms of the Agreement.

Clause 41. *Termination of business.* Upon termination of this Agreement, the Charterer shall turn over to the Owner, at such time and at such place as the Owner may direct, each Vessel and all property of whatsoever nature which the Owner may theretofore have delivered to the Charterer or to which the Owner is entitled under the terms of this Agreement, and the Charterer shall at its own expense make to the owner such accounting as the Owner may require of all matters arising out of the operation of the Vessel(s) and this Agreement, and shall adjust, settle, and liquidate such accounts, provided, however, that the Owner may collect directly all freight moneys or other debts remaining unpaid and apply any moneys collected on any unpaid balance due from the Charterer to the Owner. All expenses of such collection shall be for the account of the Charterer.

Clause 42. *Cancellation or modification by mutual consent.* This Agreement may be terminated, modified, or amended at any time by mutual consent.

Clause 43. *Warranty against contingent fees.* The Charterer warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by the Charterer for the purpose of securing business. For breach or violation of this warranty, the Owner shall have the right to annul this contract without liability or in its discretion to require the Charterer to pay, in addition to the charter hire, the full amount of such commission, percentage, brokerage, or contingent fee.

Clause 44. *Renegotiation.* This Agreement shall be deemed to contain all the provisions required by section 104 of the Renegotiation Act of 1951, as amended and extended. The Contractor (which term as used in this sentence in the Bareboat Charterer Agreement, means the Bareboat Charterer, and, as used in this sentence in related sub-contracts shall mean the party contracting to perform the work or furnish the materials required under such sub-contract) shall, in compliance with said section 104, insert the provisions of this Clause in each sub-

contract and purchase order made or issued in carrying out this Agreement.

Clause 45. *Citizenship.* The Charterer hereby warrants and represents that it is and at all time during the period of this Agreement will continue to be a citizen of the United States within the meaning of section 2 of the Shipping Act of 1916, as amended.

Clause 46. *Officers and crew.* The Charterer agrees, with respect to the Vessel(s) that during the period of this Agreement:

(a) Insofar as is practicable, officers' living quarters shall be kept separate and apart from those furnished for members of the crew; the Charterer shall comply with all rules and regulations promulgated by the appropriate agencies of the United States.

(b) Licensed officers and unlicensed members of the crew shall be entitled to make complaints or recommendations to the Owner, providing they file such complaint or recommendation directly with the Owner or with their immediate superior officer, who shall be required to forward such complaint or recommendation with his remarks to the Owner, or with the authorized representative of the respective collective bargaining agencies.

(c) Licensed officers who are members of the United States Naval Reserve shall wear on their uniforms such special distinguishing insignia as may be approved by the Secretary of the Navy; officers being those men serving under licenses issued by the United States Coast Guard or its successor.

(d) The uniform stripes, decoration, or other insignia shall be of gold braid or woven gold or silver material, to be worn by officers, and no member of the ship's crew other than licensed officers shall be allowed to wear any uniform with such officer's identifying insignia.

(e) No discrimination shall be practiced against licensed officers who are otherwise qualified, because of their failure to qualify as members of the United States Naval Reserve.

(f) The Charterer shall comply with all laws governing the citizenship of licensed officers and crews, including section 302 of the Act.

Clause 47. *Nondiscrimination in employment.* In connection with the performance of work under this Agreement, the Charterer agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The aforesaid provision shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms

of compensation; and selection for training, including apprenticeship. The Charterer agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Owner setting forth the provisions of the nondiscrimination clause.

The Charterer further agrees to insert the foregoing provisions in all sub-contracts hereunder, except sub-contracts for standard commercial supplies or raw materials.

Clause 48. *Notices.* Unless otherwise provided in this Agreement or mutually agreed upon, all payments, notices and communications from the Owner to the Charterer, pursuant to the terms of or in connection with this Agreement, shall be made or addressed to the Charterer at the address provided herein, and all payments, notices and communications from the Charterer to the Owner, pursuant to the terms of or in connection with this Agreement, shall be made or addressed to the Owner at its offices in Washington, District of Columbia.

Clause 49. *Headnotes.* The use of headnotes at the beginning of the clauses of this Agreement is for the purpose of description only and shall not be construed as limiting or in any other manner affecting the substance of the clauses themselves.

(c) The charterer's books, records, and accounts, required to be kept and maintained under Clause 37(1), Part II, of Form No. 705 charter, shall be retained by the charterer for a period of three (3) years after a release or final settlement is completed between the Maritime Administration and the charterer.

Appendix to Part 221

I. Transfer of Documented Vessels to Foreign Registry or Ownership, or Both

Each application for the transfer to foreign registry or ownership or both or to the authority of a foreign country (hereinafter referred to as a "foreign transfer") of any vessel of 3,000 gross tons and over will be evaluated on its individual merits with consideration being given to the following:

- (1) The type, size, speed, general condition, and age of the vessel;
- (2) The acceptability of the foreign buyer and country of registry; and
- (3) The need to retain the vessel under U.S. flag or ownership and control for the purposes of national defense, maintenance of an adequate merchant marine, foreign policy of the United States, and the national interest.

II. Conditions of Approval

The Maritime Administrator's approval of foreign transfer of vessels of 3,000 gross tons and over, under section 9 or 37 or both of the Shipping Act, 1916, as amended (46 App.

U.S.C. 808 and 835), whether such transfer is for operation or scrapping, shall be subject to the terms and conditions hereinafter stated.

If the vessel is being transferred for foreign flag operation, the terms and conditions shall run with the title to the vessel and 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, whichever period is longer. The economic life of a vessel for the purpose of this statement of policy is 25 years from the date the vessel was delivered by the shipbuilder. This period will be extended another five years, or such other period of time approved by the Maritime Administrator, if the vessel is converted or jumboized. The terms and conditions are as follows:

A. Transfer of Existing Vessels of 3,000 Gross Tons or Over to Either Foreign Registry or Ownership, or Both, or to the Authority of a Foreign Government

(1) *Ownership.* (a) Without the prior approval of the Maritime Administrator, there shall be no transfer in the ownership or change in the registry of such vessel.

(b) Without the prior approval of the Maritime Administrator, there shall be no transfer of stock interest in the foreign corporate contractor to persons not citizens of the United States (within the meaning of section 2 of the Shipping Act, 1916, as amended (46 App. U.S.C. 802)). However, transfers of such stock or changes in ownership resulting from the death of any stockholder or owner are not subject to this condition. Notification of any such transfer of stock or ownership occurring by reason of death shall be filed with the Maritime Administrator within 60 days from the date of the transfer of stock or change of ownership.

(2) *Availability.* The vessel shall, if requested by the United States or any qualified department or agency thereof, be sold or chartered to the United States on the same terms and conditions upon which a ship owned by a citizen of the United States could be requisitioned for purchase or charter, as provided for in section 902 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1242). If the foreign transfer of the vessel is to the flag of a country that is a member of the North Atlantic Treaty Organization (NATO), the Administrator will consider this condition satisfied if the vessel upon request is made available to a NATO country.

(3) *Trade.* (a) The vessel shall not be chartered to aliens on a demise or bareboat basis without the prior approval of the Maritime Administrator; and,

(b) There shall be no charter or other foreign transfer to a non-citizen for carriage of cargoes of any kind to or from the USSR, Latvia, Lithuania, Estonia, Czechoslovakia, Bulgaria, Albania, North Korea, Poland, German Democratic Republic (including East Berlin), Laos, Kampuchea, Vietnam, Outer Mongolia, Manchuria, Libya, Iran or Cuba, without the prior approval of the Maritime Administrator. This list of countries shall be subject to change periodically to conform to the laws and foreign policy of the United States.

(4) *Default.* In the event of default under conditions 1 or 2 or 3 above, the vessels

approved for foreign transfer shall be subject to the penalties imposed by section 41 of the Shipping Act, 1916, as amended (46 App. U.S.C. 839). Pursuant to the provisions of section 38 of the Shipping Act, 1916, as amended (46 App. U.S.C. 836), the Maritime Administrator may remit the forfeiture of the vessel provided for in section 41 of the Shipping Act, 1916, as amended (46 App. U.S.C. 839), 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 the execution of a new agreement containing substantially the same conditions set forth above which will be applicable to the vessel for the remaining period of the original agreement. In order to secure the payment of any such sum of money, a foreign contractor owned or controlled by foreign citizens shall agree by way of a contract approved as to form 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 ranging from \$25,000 to \$250,000 depending upon the type, size and condition of the vessel. "Other surety" may be any one of the following:

(a) An irrevocable letter of credit directly issued by a United States bank;

(b) United States Government securities;

(c) The written guarantee of a friendly government of which the foreign person is a national; or

(d) A written guarantee or penal bond by a United States corporation which is found to be financially qualified to service the undertaking to pay the stipulated amount.

If the foreign person is owned or controlled by U.S. citizens, the foreign person and its principal U.S. citizen owners shall agree in form satisfactory to the Chief Counsel, Maritime Administration, to pay an amount ranging from \$25,000 to \$250,000, such agreement to be secured by the written guarantee of said parties, or other form of guarantee, as may be required by the Maritime Administrator.

B. Sale of U.S. Documented Vessels of 3,000 Gross Tons and Over to Foreign Buyers for Scrapping Abroad

(1) *Ownership.* The vessel or any interest therein shall not be sold without the prior written approval of the Maritime Administration.

(2) *Time within which to be scrapped.* 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, steamship, or any other means of transportation.

(3) *Distribution of scrap material.* 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 noncitizen of the United States residing in the Soviet Union, Latvia, Lithuania, Estonia, Poland, Czechoslovakia, Hungary, Rumania, Bulgaria, Albania, North Korea, German Democratic Republic (including East Berlin), Manchuria, Libya,

Iran, Vietnam, Laos, Kampuchea, Outer Mongolia, or Cuba. Such scrap shall not be exported to these countries. In addition, the engines, machinery and major items of equipment shall not be exported to destinations within the United States.

(4) *Default.* In the event of default under any or all of (1), (2), and (3) above, the contractor shall pay to the Maritime Administration, Department of Transportation, without prejudice to any other rights which the United States may have, as liquidated damages and not as a penalty, the sum of not less than \$25,000, depending upon the size, type and condition of the vessel. This payment shall be secured by a surety company bond or other guarantee satisfactory to the Maritime Administration. "Other guarantee" may be one of those set out in section A(4) of this statement of policy.

(5) *Evidence of scrapping and destination of scrap materials.* There shall be filed with the Maritime Administrator a certificate or other evidence satisfactory to its Chief Counsel, 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, the engines, machinery and major items of equipment have been accomplished in the manner prescribed by this section.

C. Resident Agent in the United States to Accept Service of Process for Foreign Transferee

All foreign transferees, whether corporate entities, associations, companies, partnerships, individuals, or joint ventures, which or who have been granted approval by the Maritime Administration pursuant to section 9 or 37 or both of the Shipping Act, 1916, as amended (46 App. U.S.C. 808 and 835), shall, prior to the issuance and delivery of the Transfer Order covering the vessel or vessels to be transferred, appoint and designate 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 of America relating to any claim arising out of the approved transaction. This appointment and designation of the resident agent shall not be terminated, revoked, amended or altered without the prior written consent and approval of the Maritime Administrator. 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, shall be a banking or lending institution or a ship operating or shipowning company incorporated under the laws of the United States, or another U.S. corporation which is satisfactory to the Maritime Administrator. No individual and no foreign business entity will be accepted as a resident agent.

The foreign transferee shall file with the Maritime Administrator a written copy of the appointment of the resident agent, which copy shall be fully endorsed by the resident agent that it accepts the appointment, that it will act thereunder and that it will notify in writing the Maritime Administrator in the event it is 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.

The subsequent transfer of ownership or registry of vessels which have been transferred to either foreign ownership or registry or both or to authority of a foreign government subject to Maritime Administration contractual control, as set forth above, will be subject to substantially the same Maritime Administration policy that governed the original transfer and sale, 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.

The completion of all approved transactions, either by virtue of sections 9, 37 and 41 of the Shipping Act, 1916, as amended (46 App. U.S.C. 808, 835 and 839), or the Maritime Administration's contract with the foreign person, will be authorized by notification in the form of a Transfer Order to all interested parties, upon the receipt of the executed contract, the required bond or other surety, and other supporting documents required by said contract.

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 Maritime Administrator 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 to the Maritime Administrator as

soon as possible, but not later than ten days after the same has occurred.

III. Vessels Under 3,000 Gross Tons

Generally, the Maritime Administrator will grant approvals required by section 9 or 37 or both of the Shipping Act, 1916, as amended, (46 App. U.S.C. 808 and 835), of vessels of under 3,000 gross tons provided the vessel is not needed for reasons of national defense and provided also that the foreign person and country of registry are acceptable to the Maritime Administration. Except an unusual circumstances, no conditions will be imposed.

Dated: January 30, 1989.

By Order of the Maritime Administrator.

James E. Saari,

Secretary, Maritime Administration.

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