

**ACTION:** Proposed rule.

**SUMMARY:** The State of Rhode Island has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Rhode Island. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

**DATES:** Send your written comments by September 9, 2002.

**ADDRESSES:** Send any written comments to Robin Biscaia, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114-2023; telephone: (617) 918-1642. Copies of the State of Rhode Island's revision application and the materials which EPA used in evaluating the revision (the "Administrative Record") are available for inspection and copying during normal business hours at the following locations: Rhode Island Department of Environmental Management, Office of Technical and Customer Assistance, 235 Promenade Street, Providence, RI 02908-5767, business hours: 8:30 a.m. to 4 p.m., telephone: (401) 222-6822; or EPA New England Library, One Congress Street, 11th Floor, Boston, MA 02114-2023, business hours: 10 a.m. to 3 p.m., Monday through Thursday, telephone: (617) 918-1990.

**FOR FURTHER INFORMATION CONTACT:** Robin Biscaia, Hazardous Waste Unit, Office of Ecosystems Protection, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114-2023, telephone: (617) 918-1642.

**SUPPLEMENTARY INFORMATION:** For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: July 6, 2002.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*

[FR Doc. 02-19980 Filed 8-8-02; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 46 CFR Part 67

[USCG 2001-8825]

RIN 2115-AG08

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

**AGENCY:** Coast Guard, DOT.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend its regulations on the documentation of vessels engaged in the coastwise trade. These proposals address statutory amendments eliminating certain barriers to seeking foreign financing by lease for U.S.-flag vessels. These proposals would clarify the information needed to determine the eligibility of a vessel financed in this manner for a coastwise endorsement.

**DATES:** Comments and related material must reach the Docket Management Facility on or before October 8, 2002.

Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before October 8, 2002.

**ADDRESSES:** To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG-2001-8825), U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001.

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

(3) By fax to the Docket Management Facility at 202-493-2251.

(4) Electronically through the Web Site for the Docket Management System at <http://dms.dot.gov>.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725

17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call Patricia Williams, Deputy Director, National Vessel Documentation Center, Coast Guard, telephone 304-271-2506. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-9329.

#### **SUPPLEMENTARY INFORMATION:**

##### **Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG-2001-8825), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

##### **Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold

one at a time and place announced by a later notice in the **Federal Register**.

### Regulatory History

On May 2, 2001, we published a notice of proposed rulemaking (NPRM) entitled "Vessel Documentation: Lease-Financing for Vessels Engaged in the Coastwise Trade" in the **Federal Register** (66 FR 21902). This supplemental notice of proposed rulemaking (SNPRM) provides further opportunity for public comment. This SNPRM is necessary to better align the proposed rule with the applicable statute, its legislative history, and the existing vessel documentation regulations and to provide for vessels that have already received coastwise endorsements under the lease-financing statute. The specific proposed changes to the NPRM are discussed later in this preamble.

### What Happens to the Comments Already Submitted?

The proposed changes to the NPRM are technical in nature and are intended primarily for alignment and clarification purposes. They are not made in response to any of the many comments received to the NPRM. All comments on the NPRM and SNPRM that are submitted to the docket will be carefully considered before a final rule is published. If the changes in this SNPRM do not affect the comments that you have already submitted to the docket, there is no need to re-submit them. This will help members of the public who read the comments to avoid having to review duplicate sets.

### Background and Purpose

In 1996, Congress amended the vessel documentation laws to promote lease financing of vessels engaged in the coastwise trade (section 1113(d) of Public Law 104-324, the Coast Guard Authorization Act of 1996; 46 U.S.C. 12106(e)) ("the 1996 Act"). Lease financing has become a very common way to finance capital assets in the maritime industry. Under lease financing, ownership of the vessel is in the name of the lessor, with a demise charter to the charterer of the vessel. (A "demise charter" or "bareboat charter" is an agreement in which the charterer assumes the responsibility for operating, crewing, and maintaining the vessel as if the charterer owned it.) Many vessel operators choose to acquire or build vessels through lease financing, instead of the traditional mortgage financing, because of possible cost benefits. But, until the 1996 Act, operators were prevented from obtaining this financing from U.S. companies that are less than

75 percent U.S. owned because the leasing company had to be a U.S. citizen under section 2 of the Shipping Act, 1916, (46 U.S.C. app. 802), which requires at least 75 percent U.S. ownership. This situation severely restricted the source of available capital.

Under section 1113(d) of the 1996 Act, Congress eliminated this technical impediment to vessel financing by adding a new paragraph (e) to 46 U.S.C. 12106. Under 46 U.S.C. 12106(e), Congress authorized the Secretary of Transportation (since delegated to the Commandant of the Coast Guard) to issue coastwise endorsements if (1) the vessel is eligible for documentation; (2) the vessel's owner, the parent of the owner, or subsidiary of the parent of the owner is primarily engaged in leasing or other financing transactions; (3) the vessel is under a demise charter to a person certifying that the person is a U.S. citizen eligible to engage in coastwise trade under section 2 of the Shipping Act, 1916; and (4) the demise charter is for at least 3 years (or less under proposed § 67.20(a)(11)).

According to the legislative history for the 1996 Act (see House Conference Report No. 104-854; Public Law 104-324; 1996 U.S. Code Congressional and Administrative News, p. 4323)(Conference Report), Congress intended to broaden the sources of capital for owners of U.S. vessels engaged in the coastwise trade by creating new lease-financing options. At the same time, Congress did not intend to undermine the basic principle of U.S. maritime law that vessels operated in domestic trades must be built in shipyards in the U.S. and be operated and controlled by U.S. citizens, which is vital to U.S. military and economic security. In that report, Congress directed the Coast Guard to establish the necessary regulations to administer 46 U.S.C. 12106(e), including the filing of demise charters for vessels issued a coastwise endorsement under that provision.

### Purpose for this Supplemental Notice of Proposed Rulemaking

This supplemental notice of proposed rulemaking (SNPRM) is necessary for the following reasons:

1. To more closely align the proposed rule with the 1996 Act, the Conference Report, and existing vessel documentation regulations.
2. To address endorsements issued under the lease-financing section of the 1996 Act before the effective date of the final rule.
3. To align, for clarity, similar provisions within this proposed rule.

The SNPRM is not intended as a response to the comments received on the preceding NPRM. All comments on the NPRM and SNPRM that are submitted to the docket will be carefully considered before a final rule is published.

### Discussion of the Proposed Changes to the NPRM

In this section, we discuss only the changes we have made to the notice of proposed rulemaking (NPRM). For a discussion of the unchanged provisions, see the "Discussion of the Proposed Regulations" section in the preamble to the NPRM (66 FR 21903).

*Section 67.3—Definitions.* 1. In the definitions for the terms "parent" and "subsidiary", the words "more than 50 per cent", concerning ownership and control, have been changed to read "at least 50 percent". This aligns these definitions with similar definitions elsewhere in the Coast Guard's vessel documentation regulations (e.g., 46 CFR 68.01-1).

2. The NPRM had separate definitions for the words "entity" and "person". "Person" was defined as an individual or entity. In the SNPRM, the definition of "entity" is combined with that for "person", as is currently done in existing 46 CFR 67.3. This avoids unintentionally excluding, for example, individuals as possible owners.

3. In the definition for "primarily engaged in leasing or other financing transactions", the NPRM used "banking or similar financing transactions". This is narrower than the wording in the Conference Report and the policy being applied by the National Vessel Documentation Center (as described on page 21903 of the preamble to the NPRM). The SNPRM replaces these words with "banking, investing, leasing, or other financing transactions".

*Section 67.20—Coastwise endorsement for a vessel under a demise charter.* 1. The section heading is changed to delete "and that is owned by a lease-financing company and is" because the element of ownership is addressed in paragraph (a)(3) of this section.

2. In paragraph (a), the "(e)" following "46 U.S.C. 12106" is deleted because there are other criteria for eligibility for a coastwise endorsement, such as "U.S.-built" in section 12106(a), that are not found in section 12106(e).

3. In paragraph (a)(2), the words "The vessel is considered built in the United States under § 67.97" are replaced with the words "The vessel is eligible for a coastwise endorsement under § 67.19(c)". This change is needed to include the non-U.S.-built vessels listed

in § 67.19(c) that are also eligible for coastwise endorsement.

4. In paragraph (a)(3), the words “and not in vessel operations or management” are deleted from the SNPRM. These words are confusing because they make it seem as if the parent or subsidiaries of the parent may not be engaged primarily in the direct operation or management of vessels. Page 4326 of the Conference Report states that it is only the owner that may not primarily engage in the direct operation or management of vessels. Therefore, a new paragraph (a)(5) is added to require that only the owner must not be primarily engaged in the direct operation or management of vessels.

5. A new paragraph (a)(4) is added to align this section with the requirement for applications in § 67.147 (a)(1)(i) of the NPRM that the entity that owns the vessel be organized under the laws of the United States or of a State.

6. Paragraph (a)(4) in the NPRM required that the majority of the aggregate revenues of an owner, the parent, or a subsidiary of the parent not be derived from the operation or management of vessels. However, the Conference Report states that it is the majority of the aggregate revenues of the whole group (*i.e.*, the owner, the parent, and all subsidiaries of the parent), not that of individual members of the group, that must not be derived from the operation or management of vessels. New paragraph (a)(7) has been aligned with the Conference Report.

7. Under paragraph (a)(5) of the NPRM, on the subject of the operation or management of commercial, foreign-flag vessels, the owner, parent, or subsidiary of the parent must not be primarily engaged in the operation or management of the vessels. However, under the Conference Report, it is the group that includes the person, the parent, and all subsidiaries of the parent that must not be primarily engaged in the operation or management of the vessels. New paragraph (a)(8) has been aligned with the Conference Report.

8. Paragraph (b) is new. It is a “grandfather” provision that addresses the coastwise endorsements issued under the lease-financing provision since the passage of the 1996 Act. It would allow these endorsements to continue to be eligible for renewal as long as the certificate of documentation is not subject to exchange under § 67.167(b)(1) through (b)(3) or to deletion under § 67.171(a)(1) through (a)(6) or § 67.173. These provisions deal with substantial changes, such as changes in the ownership or flag nation of the vessel. If the vessel became

subject to these provisions and the owner chose to again seek a coastwise endorsement under the lease-financing provisions, the owner would no longer be eligible under this grandfather provision, but would have to apply under the regulations applicable to non-grandfathered endorsements.

*Section 67.147—Application procedure: Coastwise endorsement for a vessel under a demise charter.* 1. The heading of this section is changed for the reasons discussed under § 67.20 in this preamble.

2. Section 67.147 is reorganized to better align it with § 67.20.

3. Paragraph (a)(1)(i) in the NPRM limited the person that must be primarily engaged in leasing or other financing transactions to the owner. However, the 1996 Act allows the owner, the parent, or a subsidiary of the parent to be so engaged. Paragraph (a)(1)(i) of the SNPRM is changed accordingly.

4. For a complete explanation of the changes to this section, see the preceding discussion of the corresponding changes to § 67.20.

*Section 67.167—Requirement for exchange of Certificate of Documentation.* 1. Paragraph (c) lists situations in which the Certificate of Documentation and all endorsements to it become invalid. Therefore, these provisions are similar to those discussed above but are set out in the negative.

2. For a discussion of the changes to paragraph (c)(10)(iii), see the discussion under § 67.20(a)(3) in this preamble.

3. For a discussion of the changes to paragraph (c)(10)(iv), see the discussion under § 67.20(a)(4) (new (a)(7)) in this preamble.

4. For a discussion of the changes to paragraph (c)(10)(v), see the discussion under § 67.20(a)(5) (new (a)(8)) in this preamble.

5. Paragraph (c)(11) is a new grandfather provision. For a discussion of these provisions, see the discussion under § 67.20(b) in this preamble.

*Section 67.179—Application procedure: Coastwise operation of a barge under a demise charter.* 1. The changes to paragraphs (a)(1)(i) through (a)(1)(v) in this section correspond to the changes to similar provisions in §§ 67.20 and 67.147.

2. This section is reorganized to better align it with §§ 67.20 and 67.147.

#### Assessment

Due to substantial public interest since the NPRM was published, this proposed rule has been reclassified as a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review. The

Office of Management and Budget has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is “significant” under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). A draft Assessment is available in the docket as indicated under **ADDRESSES**. A summary of the Assessment follows:

The changes to the NPRM more closely align the SNPRM with the 1996 Act, the legislative history, and the existing vessel documentation regulations. The lease-finance provisions are intended to broaden the sources of capital for owners of vessels engaged in coastwise trade.

Several changes resulting from alignment with the 1996 Act and the Conference Report would increase the universe of owners eligible for the lease-financing option due to the increased number of sources for financing. (See § 67.20 (a)(3) through (a)(5) in the NPRM and § 67.20 (a)(3) and (a)(5) through (a)(8) in the SNPRM.) For example, § 67.20(a)(3) in the NPRM excluded owners with a parent or subsidiary of the parent that is primarily engaged in vessel operations or management. However, under the Conference Report, the parent or subsidiary of the parent may be so engaged (as long as the group also meets the restrictions in the Report on aggregate revenues and foreign vessel ownership).

The new Coast Guard estimate for the number of entities opting to apply for coastwise endorsements under the amended lease-finance provisions is approximately 35 annually.

There are no mandatory costs associated with this rulemaking. The costs imposed on those who choose to take advantage of lease financing would include the costs of preparing and submitting the documents required in § 67.147 for vessels and § 67.179 for barges. Those costs would vary from applicant to applicant and would probably be the same for vessels and barges. For further information on those costs, see the section on “Collection of Information” in this preamble.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this supplemental notice of proposed rulemaking (SNPRM) would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not

dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The SNPRM would affect vessel owners and charterers who choose to take advantage of the lease-financing option. This option reduces the burden on owners by enabling them to obtain the cheapest financing available anywhere in the world. Under the SNPRM, to take advantage of the lease-financing option, the vessel owner and charterer must submit affidavits and a copy of their demise charter to the NVDC. The estimated cost of preparing and submitting this material would be minimal and is discussed further under "Collection of Information" in this preamble. Companies would tend to choose lease financing only if they expect its costs to be offset by increased profits.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Patricia Williams, Deputy Director, National Vessel Documentation Center (NVDC), Coast Guard, telephone 304–271–2506.

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

#### Collection of Information

This supplemental notice of proposed rulemaking (SNPRM) would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection. This estimate applies to the documents to be submitted under §§ 67.147 and 67.179. This collection would change the previously approved burden under Control Number OMB 2115–0110.

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

*Summary of the Collection of Information:* This supplemental notice of proposed rulemaking (SNPRM) in §§ 67.147 and 67.179, would amend the collection-of-information requirements for vessel owners and charterers applying to engage in the coastwise trade under the lease-financing provisions of 46 U.S.C. 12106(e). These provisions would require modifying the burden in the previously approved OMB Collection 2115–0110.

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

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

*Number of Respondents:* Approximately 35 entities a year, including charter amendments and sub-charters.

*Frequency of Response:* Whenever an entity seeks to qualify to engage in the coastwise trade under 46 U.S.C. 12106(e), a qualified entity amends the charter, or the demise charterer sub-charters the vessel by demise charter.

*Burden of Response:* The burden resulting from this proposed rule would arise from the requirements in §§ 67.147 and 67.179 that affidavits be prepared and submitted, along with a copy of the demise charter, to the NVDC. We estimate that it would take a total of 12 hours to prepare the affidavits and make the submissions. As for the per-hour cost to accomplish this administrative

task, we estimate that it could be as low as \$67 per hour. We expect most, if not all, of the applicants to use law firms to accomplish these tasks, even though the proposed rule would not require their use. Hourly cost for legal assistance could be substantially higher. To align our estimates more closely with industry practice, we used \$167 per hour for a total of \$2,004 per application.

*Estimate of Total Annual Burden:* The annual hour burden for industry is 12 hours per application x 35 applications per year for a total of 420 hours per year. The annual cost burden for industry is \$420 hours per year x \$167 per hour (the higher of the two figures discussed above) for a total of \$70,140 per year.

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

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

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

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

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of

their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

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

### Civil Justice Reform

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

### Protection of Children

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

### Indian Tribal Governments

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

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

### Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use. We have determined that it is not a "significant energy action" under that order, although it is considered a "significant regulatory action" under Executive Order 12866. We expect that this rulemaking will not have any significant adverse effect on the supply, distribution, or use of energy, including a shortfall in supply, price increases, and increased use of foreign supplies. Furthermore, it has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

We request your comments to assist us in identifying any likely significant adverse effects this proposed rule may have on the supply, distribution, or use of energy. Submit your comments to the Docket Management Facility at the address under **ADDRESSES**.

### Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2-1, paragraph (34)(d), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This proposed rulemaking is administrative in nature and identifies the information necessary to apply for a coastwise endorsement under 46 U.S.C. 12106(e). A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

### List of Subjects in 46 CFR Part 67

Reporting and recordkeeping requirements, Vessels.

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

### PART 67—DOCUMENTATION OF VESSELS

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

**Authority:** 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2107, 2110, 12106, 12120, 12122; 46 U.S.C. app. 841a, 876; 49 CFR 1.45, 1.46.

2. In § 67.3, revise the definition for the term "person"; and add, in alphabetical order, definitions for the terms "parent", "primarily engaged in leasing or other financing transactions", and "subsidiary" to read as follows:

#### § 67.3 Definitions.

\* \* \* \* \*

*Parent* means any person that directly or indirectly owns or controls at least 50 percent of another person.

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

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

\* \* \* \* \*

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

\* \* \* \* \*

3. Add § 67.20 to read as follows:

#### § 67.20 Coastwise endorsement for a vessel under a demise charter.

(a) Except as under paragraph (b) of this section, to be eligible for a coastwise endorsement under 46 U.S.C. 12106, a vessel under a demise charter must meet the following:

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

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

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

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

(5) The person that owns the vessel is not primarily engaged in the direct operation or management of vessels.

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

(7) The majority of the combined aggregate revenues of the person that owns the vessel, the parent of that person, and all subsidiaries of the parent of that person is not derived from the operation or management of one or more vessels.

(8) The group that includes the person that owns the vessel, the parent of that person, and all subsidiaries of the parent of that person is not primarily engaged in the operation or management of commercial, foreign-flag vessels used for the carriage of cargo for parties unrelated to the vessel's owner or charterer.

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

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

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

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

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

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

(1) Exchange under § 67.167(b)(1) through (b)(3); or

(2) Deletion under §§ 67.171(a)(1) through (a)(6) or 67.173.

(c) To apply for a coastwise endorsement for a vessel under a demise charter, see § 67.147.

#### § 67.35 [Amended]

4. In § 67.35, at the end of paragraph (c), add the words “or the vessel qualifies under § 67.20”.

5. In § 67.36, revise paragraphs (c)(1) and (c)(2) to read as follows:

#### § 67.36 Trust.

\* \* \* \* \*

(c) \* \* \*

(1) It meets the requirements of paragraph (a) of this section and at least 75 percent of the equity interest in the trust is owned by citizens; or

(2) It meets the requirements of § 67.20.

6. In § 67.39, revise paragraphs (c)(1) and (c)(2) to read as follows:

#### § 67.39 Corporation.

\* \* \* \* \*

(c) \* \* \*

(1) It meets the requirements of paragraph (a) of this section and at least 75 percent of the stock interest in the corporation is owned by citizens; or

(2) It meets the requirements of § 67.20.

\* \* \* \* \*

7. Add § 67.147 to read as follows:

#### § 67.147 Application procedure: Coastwise endorsement for a vessel under a demise charter.

(a) In addition to the items under § 67.141, the person that owns the vessel (other than a barge under § 67.179) and that seeks a coastwise endorsement under § 67.20 must submit the following to the National Vessel Documentation Center:

(1) A certification, in the form of an affidavit and supported with documentation, from an officer of the person that owns the vessel certifying the following:

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

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

(iii) That the person that owns the vessel is not primarily engaged in the direct operation or management of vessels.

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

(v) That the majority of the combined aggregate revenues of the person that owns the vessel, the parent of that person, and all subsidiaries of the parent of that person is not derived from the operation or management of one or more vessels.

(vi) That the group that includes the person that owns the vessel, the parent of that person, and all subsidiaries of the parent of that person is not primarily engaged in the operation or management of commercial, foreign-flag vessels used for the carriage of cargo for parties unrelated to the vessel's owner or charterer.

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

(2) A copy of the charter.

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

(1) A certificate certifying that the charterer is a citizen of the United States

for the purpose of engaging in the coastwise trade under 46 U.S.C. app. 802.

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

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

(d) Whenever the charterer of a vessel under paragraph (a) of this section demise charters the vessel to a sub-charterer—

(1) The charterer must file a copy of the sub-charter with the Director, National Vessel Documentation Center, within 10 days after the effective date of the sub-charter; and

(2) The sub-charterer must provide detailed citizenship information in the format of form CG-1258, Application for Documentation, section G, citizenship.

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

8. In § 67.167, in paragraph (c)(8), remove the last “or”; in paragraph (c)(9), remove the period and add, in its place, a semicolon; and add paragraphs (c)(10) and (c)(11) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(10) Except for a vessel with a coastwise endorsement under 46 U.S.C. 12106(e) that was in effect before [the effective date of the final rule.]—

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

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

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

(iv) The majority of the combined aggregate revenues of the person that owns the vessel, the parent of that person, and all subsidiaries of the parent of that person is derived from the operation or management of one or more vessels; or

(v) The group that includes the person that owns the vessel, the parent of that person, and all subsidiaries of the

parent of that person becomes primarily engaged in the operation or management of foreign-flag vessels used for the carriage of cargo unrelated to the vessel's owner or charterer; or

(11) For a vessel with a coastwise endorsement under 46 U.S.C. 12106(e) that was in effect before [the effective date of the final rule.]—

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

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

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

\* \* \* \* \*

9. Add § 67.179 to subpart M to read as follows:

**§ 67.179 Application procedure: Coastwise operation of a barge under a demise charter.**

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

(1) A certification, in the form of an affidavit and supported with documentation, from an officer of the person that owns the barge certifying the following:

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

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

(iii) That the person that owns the barge is not primarily engaged in the direct operation or management of vessels.

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

(v) That the majority of the combined aggregate revenues of the person that owns the barge, the parent of that person, and all subsidiaries of the parent of that person is not derived from the operation or management of one or more vessels.

(vi) That the group that includes the person that owns the barge, the parent of that person, and all subsidiaries of the parent of that person is not primarily engaged in the operation or management of commercial, foreign-flag vessels used for the carriage of cargo for parties unrelated to the barge's owner or charterer.

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

(viii) That the barge is qualified to engage in the coastwise trade and that it is owned by a person eligible to own vessels documented under 46 U.S.C. 12106(e).

(2) A copy of the charter.

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

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

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

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

(d) Whenever the charterer of a barge under paragraph (a) of this section demise charters the barge to a sub-charterer—

(1) The charterer must file a copy of the sub-charter with the Director, National Vessel Documentation Center, within 10 days after the effective date of the sub-charter; and

(2) The sub-charterer must provide detailed citizenship information in the format of form CG-1258, Application for Documentation, section G, citizenship.

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

Dated: March 28, 2002.

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