



**DEPARTMENT OF TRANSPORTATION**

**Maritime Administration**

**46 CFR Part 221**

**[Docket No. MARAD-2013-0021]**

**RIN 2133-AB81**

**Retrospective Review under E.O. 13563: Regulated Transactions Involving Documented Vessels and Other Maritime Interests**

**AGENCY:** Maritime Administration, Department of Transportation

**ACTION:** Final Rule.

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**SUMMARY:** In accordance with Executive Order 13563, “Improving Regulation and Regulatory Review,” the Maritime Administration (MarAd) is evaluating the continued accuracy of its rules and determining whether they effectively address current issues and provide the regulated public with necessary guidance. As part of this review, MarAd has decided to issue this final rule to correct numerous citations in accordance with the codification of Title 46 of the United States Code, update relevant agency contacts, update citations, and revise portions of the text. This rulemaking will have no substantive effect on the regulated public.

**DATES:** This rule is effective [Insert date 30 days after publication in the Federal Register].

**FOR FURTHER INFORMATION CONTACT:** You may contact T. Mitchell Hudson, Jr., Attorney-Advisor, Office of Chief Counsel, at (202) 366-9373. You may send mail to Mr. Hudson at Office of Chief Counsel, MAR-222, Maritime Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590-0001. You may send electronic mail to

Mitch.Hudson@dot.gov.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

On January 18, 2011, President Obama issued Executive Order 13563, which outlined a plan to improve regulation and regulatory review (76 FR 3821, 1/21/11). Executive Order 13563 reaffirms and builds upon governing principles of contemporary regulatory review, including Executive Order 12866, “Regulatory Planning and Review,” (58 FR 51735, 10/4/1993), by requiring Federal agencies to design cost-effective, evidence-based regulations that are compatible with economic growth, job creation, and competitiveness. The President’s plan recognizes that these principles should not only guide the Federal government’s approach to new regulations, but to existing ones as well. To that end, Executive Order 13563 requires agencies to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome.

Accordingly, the Maritime Administration identified its regulations governing transactions involving documented vessels and other maritime interests for improvement consistent with the President’s Order. The regulations were deemed to provide out-of-date information and citations. By updating agency regulations, this rulemaking will make the regulatory program more effective and less burdensome on the public.

As authorized by Subtitle III of 46 U.S.C. Chapters 301 and 313, and Subtitle V of 46 U.S.C. Chapter 561, and delegated under 49 CFR 1.93, MarAd may approve transactions involving the transfer of interest in or control of Documented Vessels owned by Citizens of the United States to Noncitizens or approve a Documented Vessel to registry or operation under the authority of a foreign country or for scrapping in a foreign country. In addition, under Part 221,

MarAd may assess civil penalties arising under commercial instruments and maritime liens in time of war or national emergency. Part 221 is now being updated to include technical changes such as MarAd's address at 1200 New Jersey Avenue and to include corrections to statutory references, some of which were made obsolete as the result of the codification of the Appendix to Title 46 of the United States Code.

### **Rulemaking Analysis and Notices**

Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review) and DOT Regulatory Policies and Procedures.

Under E.O. 12866 (58 FR 51735, October 4, 1993), supplemented by E.O. 13563 (76 FR 3821, January 18, 2011) and DOT policies and procedures, MarAd must determine whether a regulatory action is "significant," and therefore subject to Office of Management and Budget ("OMB") review and the requirements of the E.O. The Order defines "significant regulatory action" as one likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; and (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

MarAd has determined that this final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, it was not reviewed by the Office of Management and Budget. This final rule will not result in any of the effects contemplated under

E.O. 12866 or E.O. 13563. It also is not considered a major rule for purposes of Congressional review under Pub. L. 104-121. The rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and overall economic impact of this rulemaking do not require further analysis.

#### Executive Order 13132 (Federalism)

We analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism") and have determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. This rule has no substantial effect on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Nothing in this document preempts any State law or regulation. Therefore, MarAd did not consult with State and local officials because it was not necessary.

#### Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

MarAd does not believe that this final rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

#### Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rule.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires MarAd to assess whether this rule would have a significant economic impact on a substantial number of small entities and to minimize any adverse impact. MarAd certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### Environmental Assessment

We have analyzed this final rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order (MAO) 600-1, "Procedures for Considering Environmental Impacts," 50 FR 11606 (March 22, 1985), neither the preparation of an Environmental Assessment, an Environmental Impact Statement, nor a Finding of No Significant Impact for this rulemaking is required. This rulemaking has no environmental impact.

#### Executive Order 13211 (Energy Supply, Distribution, or Use)

MarAd has determined that the final rule will not significantly affect energy supply, distribution, or use. Therefore, no Statement of Energy Effects is required.

#### Executive Order 13045 (Protection of Children)

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, requires agencies issuing "economically significant" rules that involve an environmental health or safety risk that may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. As discussed previously, this final rule is not economically significant, and it will cause no environmental or health risk that disproportionately affects children.

#### Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Executive Order 12630 (Taking of Private Property)

This rule will 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.

#### National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) requires Federal agencies adopting Government technical standards to consider whether voluntary consensus standards are available. If the Agency chooses to adopt its own standards in place of existing voluntary consensus standards, it must explain its decision in a separate statement to OMB. MarAd determined that there are no voluntary national consensus standards related to vessel registry transfer requests or other maritime interests under this regulation.

#### International Trade Impact Assessment

This rule is not expected to contain standards-related activities that create unnecessary obstacles to the foreign commerce of the United States.

#### Privacy Impact Assessment

Section 522(a)(5) of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005 (Pub. L. 108-447, div. H, 118 Stat. 2809 at 3268) requires the Department of Transportation and certain other Federal agencies to conduct a privacy impact assessment of each final rule that will affect the privacy of individuals. Claims submitted under this rule will be treated the same as all legal claims received by MarAd. The

processing and treatment of any claim within the scope of this rulemaking by MarAd shall comply with all legal, regulatory, and policy requirements regarding privacy.

#### Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. This final rule provides regulatory clarification to those seeking to transfer their vessels to noncitizens, or to registry or operation under the authority of a foreign country as well as addressing other maritime interests. This rulemaking contains no new or amended information collection or recordkeeping requirements that have been approved or require approval by the Office of Management and Budget.

#### Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 requires Agencies to evaluate whether an Agency action would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$141.3 million or more (as adjusted for inflation) in any one year, and if so, to take steps to minimize these unfunded mandates. This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$141.3 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

#### Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes

the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

### **List of Subjects in 46 CFR Part 221**

Administrative practice and procedure, Maritime carriers, Mortgages, Penalties, Reporting and recordkeeping requirements, Trusts and trustees.

Accordingly, MarAd amends 46 CFR part 221 as follows:

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

1. The authority citation for part 221 is revised to read as follows:

**Authority:** 46 U.S.C. chs. 301, 313, and 561; 49 CFR 1.93.

#### **§ 221.1 [Amended]**

2. In § 221.1:
  - a. In paragraph (a)(1), remove “46 App. U.S.C. 808” and add, in its place, “46 U.S.C. 56101 and 56103”.
  - b. In paragraph (a)(2), remove “46 App. U.S.C. 835” and add, in its place, “46 U.S.C. 56102”.
3. In § 221.3:
  - a. In paragraph (a), remove “46 App. U.S.C. 883-1(a) – (e)” and add, in its place, “46 U.S.C. 12118”.
  - b. In paragraph (c) introductory text, remove “46 App. U.S.C. 803” and add, in its place, “46 U.S.C. 50502”.
  - c. In paragraph (d)(5), remove “46 App. U.S.C. 802.” and add, in its place, “46 U.S.C. 50501”.
  - d. Revise paragraph (u).

The revision reads as follows:

### **§ 221.3 Definitions.**

\* \* \* \* \*

(u) *Vessel Transfer Officer* means the Maritime Administration’s Vessel Transfer and Disposal Officer, whose address is MAR–630, Maritime Administration, United States Department of Transportation, 1200 New Jersey Ave., S.E., Washington, DC 20590, or that person’s delegate.

### **§ 221.5 [Amended]**

4. In § 221.5(a), remove “sections 9 or 37 of the Shipping Act of 1916 (46 App. U.S.C. 808 and 837)” and add, in its place, “46 U.S.C. 56101 and 56103”.

### **§ 221.11 [Amended]**

5. In § 221.11(a) introductory text, remove “12106(e)” and add, in its place, “12119”.

### **§ 221.13 [Amended]**

6. In § 221.13(a), remove “46 App. U.S.C. 808(c)(1)” and add, in its place, “46 U.S.C. 56101”.

7. In § 221.15:

- a. In paragraph (a)(3), remove “section 37 of the Shipping Act, 1916, as amended (46 App. U.S.C. 835)” and add, in its place, “46 U.S.C. 56102”.
- b. In paragraph (c)(2), remove “section 902 of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1242)” and add, in its place, “46 U.S.C. chapters 563 and 565”.
- c. In paragraph (c)(4), revise the second sentence.
- d. In paragraph (f)(2), remove “App. U.S.C. 808, 835 and 839,” and add, in its place “U.S.C. chapter 561”.

The revision reads as follows:

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

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \* Pursuant to 46 U.S.C. 56105, the Maritime Administrator may remit forfeiture of the vessel upon such conditions as may be required under the circumstances of the particular case, including the payment of a sum in lieu of forfeiture, and execution of a new agreement containing substantially the same conditions set forth above and such others as the Maritime Administrator may deem appropriate and which will be applicable to the vessel for the remaining period of the original agreement. \* \* \*

\* \* \* \* \*

8. In § 221.61, revise the introductory text to read as follows:

**§ 221.61 Purpose.**

This subpart describes procedures for the administration of civil penalties that the Maritime Administration may assess under 46 U.S.C. 31309 and 31330, and 46 U.S.C. 56101, pursuant to 49 U.S.C. 336.

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By Order of the Maritime Administrator.

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Julie Agarwal

Secretary, Maritime Administration

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