Poamoho Section of the site from the NPL. The Kunia Section will remain on the NPL and is not the subject of this partial deletion. A Record of Decision (ROD) describing the selected cleanup plan for the Kunia Section was signed on September 25, 2003.

In a letter dated June 19, 2003, the State of Hawaii through its Department of Health, concurred with EPA's decision to delete the Poamoho Section of the site.

Dated: October 16, 2003.

Debra Jordan,

Acting Regional Administrator, Region 9.

[FR Doc. 03–27161 Filed 10–29–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 67 and 68

[USCG 2001–10048]

Vessel Documentation: ''Sold Foreign''

AGENCY: Coast Guard, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Coast Guard withdraws the proposed rule published on September 12, 2001, in which we sought comments on our interpretation of the term ''sold foreign,'' which may disqualify certain vessels whose ownership has become ''foreign'' in technical ways from eligibility for coastwise trade. While some affected parties claimed that this interpretation imposes a harsh penalty for slight, often unintended involvement, others feel that it just preserves the privilege of coastwise trade for the domestic fleet.

DATES: The proposed rule is withdrawn as of October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Willis, Director, National Vessel Documentation Center, telephone 304–271–2506.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 2001, we published a request for comments notice in the **Federal Register** (66 FR 47431), inviting comments on how to interpret the term ''sold foreign''. We received ten comments. After review of these comments, we decided not to take any further action.

Discussion of Comments

The request for comments posed several specific questions:

1. Should the Coast Guard issue a formal letter-ruling addressing the proposed reorganization of a business entity before the entity undertakes the reorganization?

2. a. If a qualified owner sells a vessel to an owner unqualified because foreign, should the unqualified owner be able to cure the defect through its own reorganization?

b. Should the Coast Guard count as accomplishing a ''sale'' the reorganization of an owner that, until the reorganization, qualified to document vessels in accordance with 46 U.S.C. 12102? If so, should the owner be able to cure the defect through a second reorganization?

c. If a business entity can reorganize to satisfy 46 U.S.C. 12102, so as to avoid a permanent loss of the privilege of coastwise trade, should a vessel sold to a natural person other than a citizen be able to regain the privilege upon the naturalization of that person?

3. Should there be a time by which the reorganization posited in paragraph 2.a, the second reorganization posited in paragraph 2.b, or the naturalization posited in paragraph 2.c must either start or finish?

We received six comments from maritime-industry associations representing a large number of U.S. owners and operators, three comments from vessel owners, and one joint comment from two law firms. All six associations opposed any change in the Coast Guard's current rule. They also opposed allowing reorganizations to cure defects after the fact, pointing out that affected vessel owners may seek legislative redress in a process that allows a public venue to evaluate the appropriate action to take. Two of the vessel owners, both eligible to own and operate coastwise-qualified vessels, affirmed their support for the associations; the third, which qualifies to document vessels, though not for purposes of coastwise trade, proposed an unrestricted right of cure when there is no accompanying transfer of flag.

The joint comment from the two law firms opposes the current Coast Guard interpretation and petitions for rulemaking. The Coast Guard notes, however, that that comment in part mischaracterizes its rules. For example, the comment states that these rules permanently bar a vessel from coastwise privileges if sold to an owner that is not ''both a U.S. citizen and a person permitted to document vessels pursuant to 46 CFR 68.'' In fact, the rules provide for loss of coastwise privileges under two circumstances: (1) the vessel is being sold to a person who is not a U.S. citizen eligible for full coastwise privileges (or, if the more limited coastwise privileges for a vessel operating under the Bowaters amendment or as an oil spill response vessel, to a person who is not qualified under the applicable statutes); or (2) the vessel is being sold to a person not permitted to document vessels pursuant to 46 U.S.C. 12102, and 46 CFR part 68. However, permanent loss of coastwise privileges results only if the vessel is sold to a person not eligible to document vessels. The comment also states that these rules fail to include vessels financed under 46 U.S.C. 12106(e) as vessels which would not be deemed sold foreign. Because vessels financed under 46 U.S.C. 12106(e) must be owned by persons eligible to document vessels under 46 U.S.C. 12102, the Coast Guard does not understand the comment.

The joint comment also petitions for a rulemaking on the grounds that 46 CFR 67.19(d) directly contradicts the plain language of the Bowaters amendment in 46 U.S.C. app. 883–1, creating a limited privilege to engage in coastwise trade. The Coast Guard disagrees that 46 CFR 67.19(d) contradicts the Bowaters privilege. The comment in this regard appears to assume that 46 CFR 67.19(d) requires U.S. ''citizenship'' (by which it apparently means that the vessel must also be fully coastwise-qualified) and that it be qualified pursuant to the Bowaters amendment. However, this is not true. The Coast Guard holds that the vessel must (1) be eligible for documentation, that is, the corporation owning it must be qualified as a U.S. documentation citizen pursuant to 46 U.S.C. 12102, as implemented by 46 CFR 67.39(a), and (2) either meet the requirements of the Bowaters amendment pursuant to a certificate's so stating and having been filed with the Coast Guard pursuant to 46 CFR 67.39(d) (in which case it will qualify for a Bowaters coastwise endorsement), or meet the requirements specified in 46 CFR Subpart 68.05 (in which case it will qualify for a limited coastwise endorsement to engage in oil-spill cleanup and training). By confusing these two separate and distinct requirements, this comment has misstated the Coast Guard's position. It cites *Conoco* v. *Skinner,* 970 F.2d 1206 (DC Cir. 1992), in support of its position. However, a close reading of that case reveals that it does not support that position. Rather, the case (1) upholds the Coast Guard rules at issue as reasonable exercises of discretion committed to agencies (here, the Coast Guard and the Maritime

Administration), by Congress, and (2), more importantly, in the context of the issue at hand, does not deem invalid the regulatory requirement to qualify, that the corporate citizen must be a fully qualified documentation citizen as well as possess one of the two attributes (qualify pursuant to the Bowaters amendment or ownership by U.S. citizens of a minimum of 75 percent at every level in the entire chain of corporate ownership).

The joint comment also contends that 46 CFR 67.19(d) should be revised to ''return to the original intent and to permit the correction of technical defects in citizenship.'' It asserts that the requirement that a U.S. citizen be chairman of the board or hold an equivalent position is such a ''technical defect'', relying, in part, on an Opinion Memo 16713 of the Coast Guard dated 8 April 1980 (''the G–LMI memo''). Of course, whether to change some 35 years of policy strictly applying the literal terms of the statute in respect of the requirements of the ''sold foreign'' provision in Section 27 of the Shipping Act of 1916 was, indeed, the purpose of the request for comments that preceded this notice. But the Coast Guard disagreed in 1980 when the G–LMI memo was issued, and it disagrees today, that the law required the Coast Guard to change its policy. Rather, the Coast Guard believes now, just as it did then, that it has the discretion, notwithstanding the conclusions in the G–LMI memo, to apply the law strictly (as it had up to the point of publishing the request for comments on a possible change to that policy). It may be helpful in explaining this position to recount some of the legislative history of the Jones Act and some of the cabotage principles on which that law is based.

Congress entrusted the Coast Guard with the responsibility, under 46 U.S.C. Chapter 121, to administer the vessel documentation laws consistently with the Jones Act, 46 U.S.C. app. 802, 808, and 883 and 46 U.S.C. 12106. The Coast Guard has held this responsibility continuously since 1967. We have historically implemented those laws with due regard to the important cabotage principles embodied in the Jones Act. We have endeavored in the past, as we do now, to carry out those principles as expressed by Congress in the Act itself and its legislative history, as well as in the lease-financing amendment and its legislative history.

We are aware of the Congressional purpose of that Act, as explained on the floor of the House at the time of discussions on who could be a U.S. citizen for purposes of owning and operating a vessel in the U.S. coastwise trade. That purpose was expressed by Congressman Saunders, as follows:

The amendment [to Section 2 of the Shipping Act] intends to make it impossible for any arrangement to be effected by which such a corporation, partnership or association shall be a citizen of the United States when the real control of same is in the hands of aliens. We have sought to make the language so sweeping and comprehensive that no lawyer, however ingenious, would be able to work out any device under this section to keep the letter, while breaking the spirit of the law. [See 56 Cong. Rec. 8029 (June 19, 1918).]

None of the comments suggests that the Coast Guard lacks authority to amend its rules to adopt a more relaxed interpretation of the term ''sold foreign'' so as to allow a vessel purchaser to cure the so-called ''technical defects'' specified in the G–LMI memo, or to overcome those defects by reorganizing. Indeed, the Coast Guard has never doubted that Congress vested it with discretion to adopt a more liberal definition of that term.

Congress has apparently acceded to the Coast Guard's approach of strictly applying the requirements of the statute in interpreting the term ''sold foreign''. It has, on several occasions, granted limited legislative relief from what it perceived as the harsh results of the Coast Guard's strict interpretation in the case of individual vessels. It is noteworthy, in this regard, that rather than change the legislative scheme generally, or instructing the Coast Guard to adopt a more liberal approach, it has chosen to act only in the cases of individual vessels when it thought relief was warranted. Pub. L. 105–383, Section 403, is one example of such relief. In that law, Congress granted Bowaters coastwise privileges to vessels acquired by a company before it applied for, and was granted, a Bowaters certificate. Congress recognized that the vessels did not qualify under the Coast Guard's strict interpretation. They had not been acquired after the company obtained the necessary Bowaters certificate. Nevertheless, Congress granted Bowaters privileges to the vessels individually; but, significantly, it neither changed the underlying statute nor directed that the Coast Guard cease applying the statute strictly.

The joint comment argues that qualification for Bowaters privileges exists irrespective of the filing of an application together with its attestation that the applicant qualifies. According to the comment, the filing of the application together with its attestation is a mere formality or ''technicality'' that is not a necessary pre-requisite to the qualification for Bowaters privileges. The issue is important because, if this view prevailed, a corporation could qualify its existing owned vessels, when it got around to filing the application together with its attestation—not just qualify newly acquired vessels after the application and the issuance of the qualification certificate. After considering all comments, and notwithstanding the G–LMI memo, the Coast Guard believes that the problems of administering a documentation regime that allows persons who are not documentation citizens to ''correct'' their citizenship defects, and thereby ''cure'' those defects so as to be able to own and operate coastwise-qualified vessels, could act only on ad hoc, or case-by-case, determinations of what factual patterns would qualify. Such a regime does not lend itself to a statement of objective criteria in advance that would govern all such determinations.

Such a regime would, in turn, inevitably lead to inconsistent results, to an increasingly burdensome and resource intensive-process, and ultimately to an administrative quagmire that would be worse than whatever perceived problems the current strict interpretation presents. Even the comments that support a more ''flexible'' or liberal policy and advocate revising the rules to incorporate such a policy acknowledge that it would result in corporate citizens' being treated differently in this respect from natural persons. Thus, they admit that a foreign natural person's vessel could never qualify for coastwise privileges, including the limited Bowaters privileges, because of Section 27. If that same person became a naturalized citizen, the vessel, owned by that person while an alien, could never qualify for coastwise privileges (even Bowaters exception privileges), whereas once that alien becomes a naturalized citizen any U.S.-built, coastwise-qualified vessel (s)he acquired after the naturalization would continue to be fully coastwise-qualified.

Termination

After review of all of the comments, the Coast Guard has concluded that it is inappropriate to change its current interpretation of the term ''sold foreign'' and has decided to terminate this project. The Coast Guard agrees with industry representatives that adopting procedures allowing entities to cure citizenship problems after the sales would contravene the cabotage principles upon which the Jones Act rests, and that owners of affected vessels

should seek redress through the legislative process. The Coast Guard believes that this approach best effectuates the intent of Congress and the expectations and needs of maritime commerce.

Dated: October 27, 2003.

L. L. Hereth,

Acting Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–27464 Filed 10–28–03;1:07 pm]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2982; MB Docket No. 03–163, RM–10734]

Radio Broadcasting Services; Fortuna Foothills and Wellton, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Audio Division dismisses a Petition for Rule Making filed by Dana J. Puopolo, requesting the allotment of Channel 240A to Fortuna Foothills, Arizona, as that community's first local aural transmission service. In order to accommodate this allotment, the petition for rule making also proposed the substitution of Channel 248A for vacant Channel 240A at Wellton, Arizona. *See* 68 FR 43705, July 24, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 03–163, adopted October 1, 2003, and released October 3, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW, Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–27368 Filed 10–29–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2893, MB Docket No. 03–207, RM–10769]

Television Broadcast Service; Osage Beach, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Timothy D. Lischwe requesting the allotment of channel 49+ to Osage Beach, Missouri. TV Channel 49+ can be allotted to Osage Beach at reference coordinates 38–17–33 N. and 92–34–24 W.

DATES: Comments must be filed on or before November 17, 2003, and reply comments on or before December 2, 2003.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings,* GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Aaron P. Shainis, Shainis & Peltzman, Chartered, 1850 M Street, NW., Suite 240, Washington, DC 20036 (Counsel for Timothy D. Lischwe).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–207, adopted September 16, 2003, and released September 24, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Missouri, is amended by adding Osage Beach, channel 49+.