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Docket Management Facility (USCG-2003-14472 / MARAD-2003-15171)
U.S. Department of Transportation
Room PL-401
400 Seventh Street, SW
Washington, D.C. 20590-0001

Re: Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade; Second Rulemaking; (USCG-2003-14472 / MARAD-2003-15171)

Dear Sir or Madam:

Crowley Maritime Corporation ("Crowley") appreciates very much the progress made thus far by the U.S. Coast Guard and the Maritime Administration ("MarAd") to prevent foreign companies from misusing the lease financing provision to gain access to U.S. domestic trades. After some tentative first steps, it is now apparent that the Coast Guard and MarAd appreciate how very important these proceedings are. Simply put, American control over the U.S. domestic maritime industry is at stake. Such control has been placed in jeopardy not by a considered decision of Congress that was based on evidence and testimony, that balanced the benefits to be gained against the costs of change, and that kept whole those who have invested billions of dollars based on the law as it has existed for most of the past century, laws that assure that U.S. domestic maritime commerce is conducted on a level playing field. Instead, American interests have been threatened by a complex, technical redefinition of the U.S. citizen ownership requirement that was difficult initially even to recognize, and that converts the 1996 law from a net benefit to the American maritime industry, as it was intended to be, into a Trojan horse that, as noted, jeopardizes American control over the domestic maritime industry.

More important than just understanding these issues is the fact that the Coast Guard and MarAd have begun to take appropriate and definitive action to prevent further harm to American interests. It is abundantly clear from the February 4, 2004, Final Rule in Docket No. 8825, and the Joint Proposed Rule in this docket, that the Coast Guard and MarAd do not intend to stand by and allow the lease financing provision to continue to be misused. In the Final Rule, the Coast Guard set standards in place that help assure that the lease financing provision is used as Congress intended – for lease financing, and not as an alternative form of ownership that opens the domestic maritime industry to foreign control. Those standards will screen out (and thereby deter the filing

of) applications that follow the model of most of the handful of improper transactions that have created this controversy.

The rules proposed in this proceeding are needed to finish the job. Charter-back arrangements are utterly inconsistent with the concept of lease financing. A bank, leasing company, or other equipment lessor is interested in the financial aspects of the assets it leases – rent, depreciation, maintenance, residual value, etc. The income producing use of the asset is the concern of the lessee. Charter-back arrangements turn these fundamental attributes of leasing upside down, putting the foreign owner/lessor in charge of using the asset, and converting the American citizen into a conduit providing relatively inconsequential services in support of the foreign owner's business. Such arrangements were created in this context for one purpose only – to allow foreign control over the ownership *and use* of vessels in domestic trade. They thereby allow tax-advantaged foreign interests to compete with tax-paying American citizens in U.S. domestic trades, and compromise an array of American security interests. That is not good policy, not remotely mandated by the terms of the lease financing provision, and clearly not what Congress intended when it passed the lease financing provision.

Crowley fully supports the comments submitted by the Maritime Cabotage Task Force, including its endorsement of the second option proposed by the Coast Guard addressing charter-back arrangements by amending 46 C.F.R. section 67.20(a)(9). Crowley further supports an exception to this blanket prohibition where a vessel is used to carry proprietary cargo. Allowing charter-back arrangements where the vessel owner is a proprietary shipper of liquid bulk commodities is not inconsistent with preventing misuse of the lease financing provision provided an appropriate means of administering this mechanism is in place. Such administration requires clear guidance as to what may and may not be treated as proprietary cargo, as well as oversight by the appropriate agency. In terms of defining proprietary cargo, Crowley has reviewed and supports the proposal we understand is being submitted today in connection with comments by BP America. It further supports an absolute exclusion of smaller vessels from the proprietary cargo exception, as such vessels are generally used in for hire services supporting other maritime activities, and not to carry liquid bulk commodities. Crowley thus supports excluding cargo carried on vessels under 6,000 GRT from the proprietary cargo definition.

With respect to the remaining issues, Crowley again supports the comments submitted by the Maritime Cabotage Task Force. In general, it is not appropriate to allow permanent coastwise privileges for vessels that have received a coastwise endorsement under the lease financing provision but that do not qualify under the final regulations adopted by the Coast Guard and MarAd. A three-year limit on such privileges is reasonable. Crowley recognizes, however, the very substantial investment made by BP America in newly constructed tankers based on assurances from the Coast Guard that such vessels would receive coastwise trading privileges. Crowley supports a permanent exemption for those vessels given the unique circumstances surrounding that transaction.

Crowley also submits that, to the extent more intensive scrutiny of transactions is required under the lease financing provision, the Coast Guard should obtain such additional assistance as it deems necessary before approving controversial transactions. Such assistance may come from a

public notice and comment process in appropriate circumstances, from review by other government officials (such as MarAd or an administrative law judge), or from a third-party auditor hired by the Coast Guard. In all cases, the final decision concerning whether or not a transaction is proper belongs ultimately to the government, and not to a third party.

Thank you very much for your consideration of these comments.

Respectfully submitted,

Thompson Coburn LLP

BY
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