Tidewater

LEGAL DEPARTMENT

May 4, 2004

Docket Management Facility
(USCG-2003-14472 / MARAD Docket No.
MARAD-2203-15171)
U.S. Department of Transportation
400 Seventh Street SW
Washington, DC 20590-0001

Re: *Joint Notice of proposed Rulemaking (JNPRM), Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade*

Gentlemen:

Tidewater Inc., the largest owner/operator of Jones Act-qualified U.S. flag offshore oil and gas exploration and production support vessels, is greatly concerned that the lease financing provision of the Coast Guard Authorization Act of 1996 (46 U.S.C. § 12106(e)) must not be allowed to be misinterpreted so that the Jones Act ends up being undermined. The sole purpose of the 1996 Act was to broaden the sources of financing available to operators of U.S. coastwise trade qualified vessel, not to proved a means whereby non-citizens can, by simply setting up a framework involving no genuine financing, penetrate the U.S. coastwise trade.

For the foregoing reasons, Tidewater generally opposes all lease-financing schemes under 46 U.S.C. § 12106(e) involving chartering-back to a member of the owner's group. The Coast Guard's proposed Alternative No. 2 (amendment of 46 CFR Part 67.20(a)(9)) comes closest to this position, although it has an exclusion for the purposes of carrying proprietary cargo of a member of the owner's group. Based on the fact that the sole intent of the 1996 Act was to promote alternative financing methods for vessels engaged in the coastwise trade and the fact that there already exists a specific statute on the carriage of proprietary cargo by non-citizens in the coastwise trade (the Bowaters Act found at 46 U.S.C. App 883-1), we question whether the Coast Guard has the requisite legislative grant of authority to create any proprietary cargo carve-outs under 46 U.S.C. § 12106(e). Although we do not oppose proprietary cargo lease-back schemes involving large tanks vessels (which have huge capital requirements), we would strenuously object to any such schemes for non-tank vessels of any size and self-propelled tank vessels under 6,000 gross, registered tons as measured under the rules of the International Tonnage Convention.

As respects the grandfathering issue, we are of the opinion that <u>all</u> schemes pursuant to 46 U.S.C. § 12106(c) that do not involve genuine financing (totally passive ownership by lender) and/or involve chartering-back to a member of the owner's group undermine the Jones Act and

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are contrary to the Congressional intent in passing the Lease Financing Act of 1996. Therefore, it is our position that, except for any narrow proprietary cargo chartering-back arrangements that may be allowed by the Coast Guard as a result of this JNPRM, Certificates of Documentation issued to Vessels under 46 U.S.C. § 12106(c) involving chartering-back should immediately become invalid; provided, however, that, as a matter of fairness, any such Certificates of Documentation issued to a particular vessel pursuant to a Coast Guard letter ruling relating to that particular vessel should be entitled to a reasonable grandfathering period. In that regard, we are willing to support the Coast Guard's compromise proposal of three (3) years, which we consider to be not unreasonable.

Finally, as respect examination of proposed lease financing arrangements under the 46 U.S.C. § 12106(e), we urge detailed and careful review of all such schemes by the Coast Guard and MARAD and any third party experts they may deem to be appropriate. Certainly, this is a governmental function that needs to be carried out by impartial governmental agencies, and it should not be left up to experts hired by the applicant. If proprietary cargo charting back is allowed by the Coast Guard as a result of this JNPRM, we urge that MARAD be given the task of reviewing the proposed scheme in detail and making sure that solely proprietary cargo is involved. Even proposed schemes under 46 U.S.C. § 12106(c) not involving chartering back ought to be examined closely by MARAD (since it has the most expertise in evaluating such matters) to ensure that such schemes involve genuine financing and that the lessor is truly a silent owner who exerts no control, directly or indirectly, over the lessee, the vessel, its operation, its marketing, and its economic management.

Thank you for this opportunity to submit these comments. We urge that the Coast Guard and MARAD to take them under serious consideration as it deliberates this critically important rulemaking.

Very truly yours,

Tidewater Inc.

Marinus Quist

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Assistant General Counsel