

MARINE ENGINEERS' BENEFICIAL ASSOCIATION (AFL-CIO)

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U.S. DOT West Building
Ground Floor, Room W12-140
1200 New Jersey Ave, SE
Washington, DC 20590-0001

Re: USCG-2010-0797, Recognition of Foreign Certificates Under the International Convention on Standards and Training, Certification and Watchkeeping for Seafarers, 1978, as Amended, Regulation I/10

Statement of Organizational Interest

The Marine Engineers' Beneficial Association (MEBA) is a national labor union of licensed merchant mariners sailing in the Coastwise, Jones Act, government, and international trades aboard United States flagged vessels. Because the MEBA almost exclusively represents licensed mariners aboard U.S. Flag vessels, there are not a significant number of foreign citizens carrying foreign-issued STCWs or working aboard vessels managed by MEBA-contracted companies. Therefore, the MEBA cannot provide the Coast Guard with the requested information. However, because the Coast Guard's proposed policy could have profound implications for MEBA members, the organization would like to take the opportunity to clarify its understanding of current U.S. citizenship requirements on U.S. flag vessels and its understanding of the changes proposed by the Coast Guard's new STCW policy. This comment is the official organization comment, as authorized by the President and Secretary-Treasurer of the MEBA.

Current Citizenship Requirements

Under 46 U.S.C. § 8103, only a citizen of the United States may serve as master, chief engineer, radio officer, or officer in charge of a deck watch or engineering watch on a documented vessel. § 8103(a). In addition, at least 75% of the unlicensed component of a documented vessel must be U.S. citizens; the remaining 25% of the unlicensed crew must be permanent U.S. residents. § 8103(b). All seamen serving aboard U.S. documented vessels must bear a valid merchant mariner credential or a merchant mariner document and STCW endorsement. 46 C.F.R. § 12.02-7. In order to obtain any merchant mariner document, an alien is required to present acceptable documentary evidence from Citizenship and Immigration Services that he is lawfully admitted to the United States for permanent residence. 46 C.F.R. § 12.02-10.

As the MEBA understands the Coast Guard's proposed policy, changes in the acceptance of foreign-sourced STCW credentials will not affect U.S. citizenship requirements under section 8103. Of course, agency regulations, promulgated after notice and comment

rulemaking, cannot contradict an unambiguous statute. *E.g.*, *Chevron v. National Resources Defense Council*, 467 U.S. 837, 843 (1984).

Regulation I/10 Requirements

Under STCW '95 Annex 1 Regulation I/10, the Coast Guard is required to accept STCW endorsements issued by a foreign authority provided those endorsements are issued only after all training, safety, and competence requirements are met. However, nothing in the STCW requires a country's government to accept foreign seamen for employment in contravention of domestic citizenship requirements. Instead, as the MEBA understands the proposed policy, the STCW amendment only deals with training and safety and is unrelated to citizenship requirements aboard a country's documented vessels. The proposed policy, if enacted, will ensure that those foreign mariners who work aboard U.S. documented vessels under existing citizenship laws (*i.e.* a complement no greater than 25% of the unlicensed component and none of the licensed component) will be able to serve aboard U.S. vessels without obtaining a U.S. issued STCW provided that they have met all the training and safety requirements imposed on U.S. mariners in their grade.

The Department Should Clarify the Intended Effect of the Proposed Policy Because of Confusion within the U.S. Citizen Mariner Community

Many citizen mariners, after reading the Department's proposed policy, assumed the new policy would expand access to U.S. documented vessels for foreign seamen. *See, e.g.*, Comment of Jeff Cowan, USCG-2010-0797-0003, Sept. 29, 2010 ("This appears as a loop hole to allow foreign [sic] nationals into domestic Jones Act trades because companies do not want to pay a decent American wage."); Comment of John Kauffman, USCG-2010-0797-0005.1, Sept. 30, 2010 ("In the end it must be seen as what it is, an attempt by industry (under disguise of being 'forced' to comply with international agreements) to eliminate United States Merchant Marine jobs, careers and livelihoods."). Citizen mariners, including many MEBA members, have assumed that the department's proposed policy will increase access to U.S. documented vessels in violation of the Jones Act. *See* 46 U.S.C. § 8103. As stated above, as the MEBA understands Regulation I/10 and the proposed policy, the Coast Guard intends to establish a program through which foreign mariners, *who would otherwise be allowed under existing policy to sail aboard U.S. documented vessels*, will be able to use their foreign issued STCW credentials provided those credentials meet all U.S. safety and training requirements, as required by international law.

Under existing citizenship law, the Secretary of Transportation can grant an exemption from U.S. citizenship requirements in the event the Secretary determines, after an investigation, that qualified seamen who are citizens of the United States are not available. 46 U.S.C. § 8103(b)(3)(C). Nothing in the proposed policy suggests that the procedure for granting a waiver under this provision or the frequency of such waivers will change under the new policy.

If this understanding is correct and the Coast Guard does not intend to change citizenship requirements aboard U.S. documented vessels, the department should issue a clarification to the maritime community. Such a clarification will have the benefit of increasing buy-

in to the new policy among citizen mariners and companies currently engaged in the Jones Act trade. If the maritime community understands the limits of the proposed policy, citizen mariners and the companies for which they work will be more likely to provide the department with the requested information. In turn, the department can use this information to craft an STCW policy that complies with international law, allows vessels to efficiently pass through safety and security checkpoints, and complies with the congressional purpose of ensuring that the United States maintains a skilled and available merchant marine to serve the country in times of emergency. *See* 46 U.S.C § 50101 (“It is necessary for the national defense and the development of the domestic and foreign commerce of the United States that the United States have a merchant marine”).

Thank you for providing us with the opportunity to express our views on this matter.

Sincerely,

Nils Djusberg, MEBA Counsel