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Jones Act Compliance for Publicly Traded Companies

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Following a much publicized investigation of Trico Marine Services, Inc., a publicly traded Jones Act company, and its compliance with the 75% U.S. citizen ownership and control requirements for coastwise operations, which then triggered a year-long review of the various compliance measures that other companies employ, the Coast Guard has now published a Federal Register notice that provides guidance to the industry on these issues. 77 Fed. Reg. 70452 (Nov. 26, 2012).

After reviewing the public comments and participating in on going industry discussions organized by the Chamber of Shipping of America, the Coast Guard acknowledged how much more complex the process has become in a paperless securities trading market since the Coast Guard's last policy statements on these issues. The notice tracks the recommendations of industry by identifying specific examples of acceptable compliance mechanisms, such as use of the Depository Trust Company segregated account, while recognizing that no one size fits all, and that individual company circumstances will vary.

Importantly, the Coast Guard advises that companies that employ and diligently administer and adhere to an active system of monitoring stock ownership utilizing these kinds of mechanisms will have a sufficient basis to make the on going certifications necessary to document initially, and to maintain, the Certificates of Documentation for their Jones Act vessels. The Coast Guard's long-standing policy, once those certifications have been made, is that a rebuttable presumption of citizenship is established, and absent direct proof to the contrary, the citizenship will be accepted.

The Coast Guard notes that while it expects diligence and good faith efforts, "it will be realistic about acceptable measures in the current trading environment." The Coast Guard notice also seeks to reassure the industry that in any investigation that may occur, the agency will give positive consideration to a company's diligent and good faith efforts to timely and effectively monitor the ownership of its stock and to take prompt action where necessary to maintain compliance with the statute.

Publication of this notice should help to clarify uncertainties created by the Trico investigation and left unresolved during the year-long review of the industry's compliance mechanisms. The full Federal Register notice can be found at <http://www.gpo.gov/fdsys/pkg/FR-2012-11-26/pdf/2012-28560.pdf>.

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