

(t) The Government reserves the right of access to any and all portions of the property for purposes of environmental investigation, remediation or other corrective action and compliance inspection purposes.

(u) The Grantee shall agree that in the event, the Grantor exercises its option to revert all right, title, and interest in and to any portion of the property to the Government, or Grantee voluntarily returns title to the property in lieu of a reverter, the Grantee shall provide protection to, and maintenance of the property at all times until such time as the title is actually reverted or returned to and accepted by the Government. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in regulations implementing the Act.

(v) The Grantor expressly reserves from the conveyance:

- (1) oil, gas and mineral rights,
- (2) improvements without land,
- (3) military chapels, and
- (4) property disposed of pursuant to 204 (c) of the Act.

(w) The Government reserves all right, title, and interest in and to all property of whatsoever nature not specifically conveyed, together with right of removal thereof from the Port Facility within one (1) year from the date of the deed.

(x) The Grantee shall agree to maintain any portion of the property identified as "historical" in accordance with recommended approaches in the Secretary of Interior Standards for Historic Property at 16 U.S.C. 461-470w-6.

(y) Prior to the use of any property by children under seven (7) years of age, the Grantee shall remove all lead-based paint hazards and all potential lead-based paint hazards in accordance with applicable lead-based paint laws and regulations.

(z) The Grantee agrees that any construction or alteration is prohibited unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration.

(aa) The Grantee shall agree that in its use and occupancy of the Port Facility it shall comply with all laws relating to asbestos.

(bb) All construction on any portion of the property identified as "wet-

lands" as determined by the appropriate District of the Army Corps of Engineers shall comply with Department of the Army Wetland Construction Restrictions contained in Title 33 CFR, Parts 320 through 330.

(cc) The Grantee shall agree to maintain, indemnify and hold harmless the Grantor and the Government from any and all claims, demands, costs or judgments for damages to persons or property that may arise from the use of the property by the Grantee, guests, employees and lessees.

(dd) The Grantor, on written request from the Grantee, may grant release from any of the terms, reservations, restrictions and conditions contained in the deed, or the Grantor may release the Grantee from any terms, restrictions, reservations or conditions if the Grantor determines that the property so conveyed no longer serves the purpose for which it was conveyed.

(ee) The Grantor shall make reforms, corrections or amendments to the deed if necessary to correct such deed or to conform such deed to the requirements of applicable law.

PART 388—ADMINISTRATIVE WAIVERS OF THE COASTWISE TRADE LAWS FOR ELIGIBLE VESSELS

Sec.

- 388.1 Purpose.
- 388.2 Definitions.
- 388.3 Application; fee.
- 388.4 Criteria for grant of a waiver.
- 388.5 Criteria for revocation of a waiver.
- 388.6 Process.
- 388.7 Sunset provision.

AUTHORITY: 46 App. U.S.C. 1114(b); 49 U.S.C. 322; Public Law 105-383, 112 Stat. 3445 (46 U.S.C. 12106 note); 49 CFR 1.66(cc).

SOURCE: 65 FR 6910, Feb. 11, 2000, unless otherwise noted.

§388.1 Purpose.

This part prescribes regulations implementing the provisions of Title V of Public Law 105-383, 112 Stat. 3445, which grants the Secretary of Transportation authority to review and approve applications for waiver of the coastwise trade laws to allow the carriage of no more than 12 passengers for hire on vessels, which are three years old or more, built or rebuilt outside the

§ 388.2

United States, and grants authority for revocation of those waivers.

§ 388.2 Definitions.

For the purposes of this part:

(a) Administrator means the Maritime Administrator.

(b) Coastwise Trade Laws include:

(1) The Coastwise Endorsement Provision of the Vessel Documentation Laws, (46 U.S.C. 12106);

(2) The Passenger Services Act, section 8 of the Act of June 19, 1886 (46 App. U.S.C. 289); and

(3) The Jones Act, section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883).

(c) Eligible Vessel means a vessel otherwise eligible for a U.S. Coast Guard certificate of documentation (i.e. of five or more tons) that is either a small passenger vessel or an uninspected passenger vessel that—

(1) Was not built in the United States and is at least 3 years of age; or

(2) If rebuilt, was rebuilt outside the United States at least 3 years before the certificate of documentation with appropriate endorsement, if granted, would become effective.

(d) MARAD means the Maritime Administration, U.S. Department of Transportation.

(e) Secretary means the Secretary of Transportation.

(f) The terms, small passenger vessel, uninspected passenger vessel, and passenger for hire have the meaning given such terms by 46 2102 U.S.C.

§ 388.3 Application; fee.

(a) An owner of the vessel may apply in writing to the Secretary, MARAD, MAR-120, Room 7210, 400 7th St., SW., Washington, DC 20590, for an administrative waiver of the coastwise trade laws of the United States for an eligible vessel to carry no more than 12 passengers for hire. The application need not be in any particular format, but must be signed and contain the following information:

(1) Name of vessel and owner for which waiver is requested.

(2) Size, capacity and tonnage of vessel (state whether tonnage is measured pursuant to 46 U.S.C. 14502, or otherwise, and if otherwise, how measured).

46 CFR Ch. II (10-1-01 Edition)

(3) Intended use for vessel, including geographic region of intended operation and trade.

(4) Date and place of construction and (if applicable) rebuilding. (If applicant is unable to determine the origin of the vessel, foreign construction will be assumed).

(5) Name, address, and telephone number of vessel owner.

(6) A statement on the impact this waiver will have on other commercial passenger vessel operators, including a statement describing the operations of existing operators.

(7) A statement on the impact this waiver will have on U.S. shipyards.

(b) MARAD may ask additional questions of the applicant as part of the application review.

(c) You must enclose a non-refundable application fee for each waiver requested, in the form of a check or money order for \$300, made out to the order of "Maritime Administration—Transportation."

§ 388.4 Criteria for grant of a waiver.

(a) *General criteria.* (1) We will waive the foreign build and/or foreign rebuild prohibition in the coastwise trade laws for an eligible vessel only if we determine that the employment of the vessel in the coastwise trade will not unduly adversely affect—

(i) United States vessel builders; or

(ii) The coastwise trade business of any person who employs vessels built in the United States in that business.

(2) We may not limit the determination of "unduly adverse affect" on a coastwise operator or an U.S. vessel builder to operators or builders of vessels carrying 12 or fewer passengers.

(3) We will evaluate the expected impact of the proposed waiver on the basis of all the information received from all sources, including public comment, internal investigation and analysis, or any other sources or information deemed appropriate.

(b) *Impact on U.S. vessel builders.* We may use the following criteria to determine the effect on U.S. vessel builders: Whether a potentially impacted U.S. vessel builder has a history of construction of similar vessels, or can demonstrate the capability and capacity to build a similar vessel, for use in