

§ 390.4

this section where the applicant proposes to reconstruct a small vessel.

[41 FR 4265, Jan. 29, 1976, as amended at 73 FR 56740, Sept. 30, 2008]

§ 390.4 Description of the agreement.

(a) *In general.* The agreement consists of a standard part and appended schedules. The standard part of the agreement contains recitals, covenants and warranties which apply to all parties. The appended schedules set forth the particular program of the party and contain other information unique to each agreement. See § 390.6 (relating to administration of the agreement) for procedures and criteria for the modification of schedules.

(b) *Schedule A—Eligible agreement vessels.* Schedule A lists the names of eligible agreement vessels (as defined in § 390.5), whether owned or leased, and the allowable percentage of the depreciation ceiling, if any, available for deposit purposes by the party. See § 390.7 (relating to deposits) for allowable depreciation in the case of leased vessels.

(c) *Schedule B—Program—(1) In general.* Schedule B sets forth the program of the party including the cost of the program and the time in which the program shall be accomplished.

(2) *Items in Schedule B.* Schedule B shall contain:

(i) A statement describing each qualified agreement vessel (as defined in § 390.5) to be acquired, constructed or reconstructed. In the case of reconstruction, the statement will include a general description of the work to be performed;

(ii) The anticipated date on which the acquisition, construction or reconstruction of each qualified agreement vessel will commence;

(iii) The anticipated total cost, including any costs which will not be paid from the fund, of the acquisition, construction or reconstruction of each qualified agreement vessel; and

(iv) The amount to be withdrawn from the fund with respect to the acquisition, construction or reconstruction of each qualified agreement vessel.

(3) *Submission of contracts.* When a contract is executed for any acquisition, construction or reconstruction relating to the agreement, such contract shall be submitted within 30 days after

46 CFR Ch. II (10–1–11 Edition)

execution to the Maritime Administrator who shall then determine whether such undertaking is in accordance with the program set forth in Schedule B.

(d) *Schedule C—Depositories.* Schedule C lists, by name and address, the depositories of the fund. See § 390.7 (relating to deposits).

(e) *Schedule D—Minimum deposits.* Schedule D sets forth the minimum deposits which must be made into the fund. See § 390.7 (relating to deposits) for the procedure in setting minimum deposits.

(f) *Submission of proposed schedules.* An applicant shall submit proposed schedules with his application. The specific information required in such schedules is set forth in the application instructions referred to in paragraph (a)(1) of § 390.2. A sample agreement (standard part and appended schedules) is contained in appendix II to this part.

§ 390.5 Agreement vessels.

(a) *In general.* 46 U.S.C. 53501 states the requirements for eligible, qualified and agreement vessels. The rules in this section further define such terms and state how vessels must be listed on Schedules A and B in the agreement.

(b) *Eligible agreement vessels—(1) Definition.* An eligible agreement vessel, which may be used to establish ceilings for deposit purposes, is any vessel:

(i) Constructed in the United States, and if reconstructed, reconstructed in the United States; the term *constructed or reconstructed in the United States* includes any vessel which was constructed or reconstructed outside of the United States but documented under the laws of the United States on April 15, 1970, or constructed or reconstructed outside of the United States for use in the United States foreign commerce pursuant to a contract entered into before April 15, 1970;

(ii) Documented under the laws of the United States;

(iii) Operated in the foreign or domestic commerce of the United States;

(iv) Engaged primarily in the waterborne carriage of men, materials, goods or wares; and

(v) Designated in the agreement as an “eligible agreement vessel.”

(2) *Scope of the term “eligible agreement vessel.”* For purposes of generating ceilings for deposits under 46 U.S.C. 53505 and the joint regulations the term *eligible agreement vessel* includes any:

- (i) Tug or barge;
- (ii) Vessels which have been contracted for or are in the process of construction; and
- (iii) Share interest in a vessel; the party is considered to have a share interest in an eligible agreement vessel if the party has the right to use the vessel to generate income or a right to the proceeds or a portion of the proceeds from its use even if the party does not have a proprietary interest in the vessel for purposes of State or Federal law.

(3) *Foreign or domestic commerce.* For the purpose of paragraph (b)(1)(iii) of this section the term *foreign or domestic commerce* means the water-borne carriage of men, materials, goods or wares between:

- (i) Two points in the United States;
- (ii) A point in the United States and a point in a foreign country; or
- (iii) Two points in the same foreign country or points in two different foreign countries.

(c) *Qualified agreement vessels—(1) Definition.* A qualified agreement vessel which may be acquired, constructed or reconstructed with the aid of qualified withdrawals, is any vessel:

- (i) Constructed in the United States, and if reconstructed, reconstructed in the United States; the term *constructed or reconstructed in the United States* includes any vessel which was constructed or reconstructed outside of the United States but documented under the laws of the United States on April 15, 1970, or constructed or reconstructed outside of the United States for use in the United States foreign commerce pursuant to a contract entered into before April 15, 1970;
- (ii) Documented under the laws of the United States;
- (iii) Operated in the United States foreign, Great Lakes, noncontiguous domestic, or short sea transportation trade.
- (iv) Engaged primarily in the water-borne carriage of men, materials, goods or wares; and

(v) Designated in the agreement as a “qualified agreement vessel.”

(2) *Scope of the term “qualified agreement vessel.”* For purposes of making qualified withdrawals under 46 U.S.C. 53509 and the joint regulations the term *qualified agreement vessel* includes any:

- (i) Cargo handling equipment which the Maritime Administrator determines will be used primarily on a qualified agreement vessel. Normally any auxiliary equipment which is ordinarily carried from port to port, excluding equipment that needs frequent replacement due to normal wear and tear, and is used in conjunction with the loading or unloading of the vessel is deemed to be cargo handling equipment;
- (ii) Ocean-going towing vessel or barge which the Maritime Administrator determines is suitable for the trade in which the party intends to operate such vessel or barge, or any comparable vessel or barge operated on the Great Lakes which is suitable for its intended trade; and
- (iii) Proprietary interest in a qualified agreement vessel as, for example, that which may result from a joint venture or partnership.

(3) *Foreign trade.* Foreign trade shall mean the water-borne carriage of men, materials, goods or wares between:

- (i) A point in the United States and a point in a foreign country;
- (ii) Two points in the domestic trade permitted under the first sentence of 46 U.S.C. 53101 note; or
- (iii) Two points in the same foreign country or points in two different foreign countries in the case of liquid and dry bulk cargo carrying services provided the party demonstrates that such operating flexibility is needed to compete with foreign flag vessels in its operations or in competing for charters.

(4) *Great Lakes trade.* Great Lakes trade shall mean the waterborne carriage of men, materials, goods or wares between points on the Great Lakes and their connecting and tributary waterways in the immediate environs of the Great Lakes.

(5) *Noncontiguous domestic trade.* Noncontiguous domestic trade shall mean the water-borne carriage of men, materials, goods or wares between:

§ 390.6

46 CFR Ch. II (10–1–11 Edition)

(i) The contiguous 48 States on the one hand and Alaska, Hawaii, Puerto Rico and the insular territories and possessions of the United States on the other hand; and

(ii) Any point in Alaska, Hawaii, Puerto Rico and the insular territories and possessions of the United States, and any other point in Alaska, Hawaii, Puerto Rico and such territories and possessions.

(6) Short Sea Transportation Trade. The term short sea transportation trade means the carriage by vessel of cargo—

(i) That is:

(A) Contained in intermodal cargo containers and loaded by crane on the vessel; or

(B) Loaded on the vessel by means of wheeled technology; and

(ii) That is:

(A) Loaded at a port in the United States and unloaded either at another port in the United States or at a port in Canada located in the Great Lakes Saint Lawrence Seaway System; or

(B) Loaded at a port in Canada located in the Great Lakes Saint Lawrence Seaway System and unloaded at a port in the United States.”

(7) *Nonqualified operations.* Nonqualified operations for qualified agreement vessels include:

(i) Positioning vessels in support of domestic operations prohibited by Chapter 535;

(ii) Use of barges as docks and ramps;

(iii) Except as provided in (c)(8) (i) and (ii) of this section:

(A) Foreign-to-foreign trade, consisting of voyages originating and ending in foreign ports, with no intermediate domestic cargo operation, and

(B) Trade from foreign ports to and from U.S. oil rigs in international waters; and

(iv) Bunkering in support of nonqualified trade operations.

(8) *Permissible operations.* Permissible operations for qualified agreement vessels include:

(i) Foreign-to-foreign trade in the case of vessels operating as part of U.S.-flag service and carrying cargo originating in or destined for U.S. ports, i.e., U.S.-flag feeder vessels;

(ii) Foreign-to-foreign trade, including the lightering of foreign-flag ves-

sels, in the case of vessels carrying liquid or dry bulk cargoes when the carrier has demonstrated to the Administrator:

(A) The need for such foreign-to-foreign shipments (as required by 46 U.S.C. 109 and paragraph (c)(iii) of this section), and

(B) That the proposed cargo would qualify as liquid or dry bulk cargo;

(iii) Ship assist work, including lightering or shifting of a vessel at the end or beginning of a noncontiguous domestic, short sea transportation trade, Great Lakes or U.S. foreign trade voyage. In addition, the lightering of foreign-flag vessels in U.S. ports is permitted.

(9) *United States construction.* An agreement vessel is considered to be of United States construction if:

(i) It is built entirely in a shipyard or shipyards within any of the United States and the Commonwealth of Puerto Rico;

(ii) All components of the hull and superstructure are fabricated in the United States; and

(iii) The vessel is assembled entirely in the United States.

(d) *Agreement vessels—(1) Definition.* The term *agreement vessel* means any eligible or qualified vessel which is subject to an agreement.

(2) *Scope of the term “agreement vessel.”* For purposes of generating ceilings and making qualified withdrawals the term *agreement vessel* includes containers, trailers or barges which are part of the complement of an agreement vessel. The complement is limited to three times the container, trailer or barge capacity of the vessel, unless the Maritime Administrator shall agree to a different complement.

[41 FR 4265, Jan. 29, 1976, as amended at 55 FR 34928, Aug. 27, 1990; 73 FR 56740, Sept. 30, 2008; 74 FR 17097, Apr. 14, 2009]

§ 390.6 Administration of the agreement.

(a) *In general.* The Maritime Administrator will administer and enforce the agreement in a manner which will insure that the fund is properly established, that the assets in the fund are used to accomplish the program and that the party fully complies with all obligations and responsibilities. This