

pollock harvesting or processing entity.

(f) If the Secretary of Commerce determines that there is enough evidence to pursue an enforcement action for violation of the harvesting or processing caps contained in section 210(e) of the AFA, the Person against whom an enforcement action is taken is entitled to notice and an opportunity for a hearing before the Secretary of Commerce in accordance with 5 U.S.C. 554.

PART 370—CLAIMS

Subpart A—Processing of Time-Barred Claims

Sec.

370.1 Definitions.

370.2 General policy.

Subpart A—Processing of Time-Barred Claims

§ 370.1 Definitions.

(a) *Time-barred claim* means a claim against the Government, for which the statutory period for filing suit has expired.

(b) *Contract* includes every agreement or contract entered into by the Maritime Administrator and/or Maritime Subsidy Board, the Director National Shipping Authority or their delegatee.

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114)

[G.O. 102, 34 FR 6928, Apr. 25, 1969]

§ 370.2 General policy.

(a) Time-barred claims shall be rejected, except as follows:

(1) A time-barred claim which could be asserted in court by way of set-off against a claim in favor of the United States arising out of the same contract may be considered in an overall settlement where settlement will result in a net payment to the United States, provided claimant releases the United States from all claims arising from or in any way connected with said contract.

(2) Time-barred claims in favor of friendly foreign governments shall not be rejected solely because they are time-barred. However, should any such government adopt the practice of as-

serting the statute of limitations as a defense against claims of the United States, the time-barred claims of that government shall be rejected.

(3) Time-barred claims arising under Second Seamen's War Risk insurance (or similar earlier types of crew insurance) where the policy was issued or the risks were assumed by the Maritime Administration (or its predecessors), shall not be rejected where the beneficiaries were precluded from receiving the proceeds of the policy by reason of regulations or orders of the U.S. Government (i) by reason of the beneficiary being physically or mentally unable to present the claim, (ii) by the beneficiaries being unaware of their entitlement to the proceeds in question, or (iii) where the claim is not "stale" under general principles of equity.

(b) For the purpose of a claim by a General Agent under General Agency Agreements set forth in 32A CFR AGE-1 for reimbursement by the Maritime Administration on account of a timely payment made to a third party within a period of limitations running from the date the claim of the third party accrued, the period of limitations applicable to the General Agent shall run from the date of such payment. In all other cases involving claims arising under General Agency Agreements, including third-party claims, the policy provided in paragraph (a) of this section shall apply.

(c) Consideration of any claim governed by applicable regulations in this chapter II, including without limitation parts 272, 292, and 205 of this chapter, shall be controlled by the time limitations expressly provided for with respect to the submission of such claims.

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114)

[G.O. 102, 34 FR 6928, Apr. 25, 1969]

PART 380—PROCEDURES

Subpart A—Filing of Applications Under Section 805(a), 1936 Act

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380.1 Purpose.

380.2 Filing applications.

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380.4 Notices; statements from interested parties and arrangements for hearing.

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380.40 Subpoenas, other compulsory processes and requests.

Subpart A—Filing of Applications Under Section 805(a), 1936 Act

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

SOURCE: General Order 86, Rev., 33 FR 810, Jan. 23, 1968, unless otherwise noted.

§ 380.1 Purpose.

To prescribe procedure to be followed for filing applications submitted to the Maritime Subsidy Board/Maritime Administration pursuant to the provisions of section 805(a), Merchant Marine Act, 1936, as amended.

§ 380.2 Filing applications.

(a) An applicant under section 805(a) shall file his application (16 copies, including three originals) with the Secretary, Maritime Subsidy Board/Maritime Administration at least 15 days in advance of the effective date of the action proposed in the application.

(b) The application shall concisely and clearly reflect:

(1) Whether the applicant holds an operating-differential subsidy contract under title VI of the Act, or has applied for such type contract, or

(2) Whether the applicant has a Government-owned vessel on charter under title VII of the Act or has applied for

the charter of a Government-owned vessel thereunder;

(3) The action for which approval of the Maritime Subsidy Board/Maritime Administration is sought, stated in terms of a request for permission to, directly or indirectly, own, operate, or charter a vessel(s) in the domestic intercoastal or coastwise service, or to own a pecuniary interest, directly or indirectly, in any person or concern that owns, charters, or operates any vessel(s) in the domestic intercoastal or coastwise service; and

(4) Whether the operator of the vessel to be engaged in the domestic trade is a citizen of the United States as required by and within the meaning of section 2 of the Shipping Act, 1916.

§ 380.3 Processing of application.

All applications under section 805(a) shall be referred to the Chief, Office of Government Aid, Maritime Administration, for consideration and such further action as may be appropriate.

§ 380.4 Notices; statements from interested parties and arrangements for hearing.

(a) A notice shall be published in the FEDERAL REGISTER which shall:

(1) Identify and abstract the subject of the application.

(2) Provide that interested parties may inspect the proposed application in the Office of Government Aid, Maritime Administration.

(3) Provide for a specific date by which parties having any interest (within the meaning of section 805(a)) in such application and desiring to be heard on issues pertinent to section 805(a) shall petition to intervene, or submit a written statement with reference to the application addressed to the Secretary, Maritime Subsidy Board/Maritime Administration.

(4) Provide that if no petitions for leave to intervene are received within the specified time, the Maritime Subsidy Board/Maritime Administration will take such action as may be deemed appropriate.

(5) Provide that in the event petitions are received from parties with standing to be heard on the application, a hearing will be held on a date specified in the notice.

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(6) Indicate that the purpose of the hearing will be to receive evidence under section 805(a) relative to whether the proposed operation (i) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service or (ii) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

§ 380.5 Exception to procedure.

The Maritime Subsidy Board or the Maritime Administrator may dispense with the publication of notice when not inconsistent with applicable laws.

Subpart B—Application for Designation of Vessels as American Great Lakes Vessels

AUTHORITY: Sec. 204(b), Merchant Marine Act, 1936, as amended, (46 app. U.S.C. 1114(b)); Subtitle B, Pub. L. 101-624; 49 CFR 1.66.

SOURCE: 56 FR 3980, Feb. 1, 1991, unless otherwise noted.

§ 380.10 Purpose.

The purpose of this subpart is to prescribe the requirements for the submission of applications for designation of vessels as American Great Lakes vessels, subject to the conditions imposed by section 1522 of Pub. L. 101-624 (November 28, 1990).

§ 380.11 Designation of American Great Lakes Vessels.

The Secretary shall designate a vessel as an American Great Lakes vessel if—

(a) The vessel is documented under the laws of the United States;

(b)(1) The vessel is not more than 6 years old, and not less than 1 year old, on the effective date of the designation; or

(2) The vessel is not more than 11 years old, and not less than 1 year old, on the effective date of the designation, and the Secretary determines that suitable vessels are not available for providing the type of service for which the vessel will be used after designation;

(c) The vessel has not been previously designated as an American Great Lakes vessel; and

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(d) The person who will be the owner of the vessel at the time of such designation agrees to enter into an agreement with the Secretary which provides that if the Secretary determines that the vessel is necessary to the defense of the United States, the United States Government shall have, during the 120-day period following the date of any revocation of such designation an exclusive right to purchase the vessel for a price equal to—

(1) The approximate world market value of the vessel; or

(2) The cost of the vessel to the owner less an amount representing reasonable depreciation of the vessel, whichever is greater.

§ 380.12 Application requirements.

(a) *Submission.* An application for designation of one or more vessels as an American Great Lakes vessel shall be filed with the Secretary, Maritime Administration, Department of Transportation, 400 Seventh St. SW., Room 7300, Washington, DC 20590, at least 60 days prior to the date when the owner wishes to commence operation of one or more vessels with such designation. The application shall state with specificity that the vessel complies with the requirements of § 380.11.

(b) *Fee.* Each application shall be accompanied by a fee of \$50 per vessel. Payment shall be made by cashier's check, certified check, or money order, payable to "Maritime Administration."

(c) *Unavailability of suitable vessels.* Where the owner requests that the Secretary make a determination that would allow the designation of one or more vessels that would be over 6 years of age, but less than 11 years of age, on the effective date of designation, the owner shall include with the application all relevant and material information from which the Secretary may determine that suitable vessels will not be available for the type of service in which the vessel(s) will be used after designation.

Subpart C—Records Retention Schedule

AUTHORITY: Secs. 204, 207, 49 Stat. 1987, as amended, 1988, as amended; 46 U.S.C. 1114, 1117; sec. 801, 49 Stat. 2011, 46 U.S.C. 1211.

§ 380.20 Purpose.

The purpose of this subpart is to prescribe the procedure to be followed by contractors for the retention and disposal of books, records, and accounts created and maintained by them under construction or operating-differential subsidy contracts with the Maritime Administration/Maritime Subsidy Board (hereinafter referred to as the "Administration"). The minimum retention periods prescribed herein govern only the Administration's requirements for the preservation of the hereinafter specified books, records, and accounts. The failure to describe a particular book, record, or account shall not exempt a contractor from retaining the particular book, record, or account, unless expressly so authorized by the Administration.

(Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Pub. L. 97-31 (August 6, 1981); 49 CFR 1.66 (46 FR 47458, Sept. 28, 1981))

[48 FR 45560, Oct. 6, 1983]

§ 380.21 Reproduction.

(a) The records described in § 380.24 may be microfilmed or otherwise reproduced in lieu of their retention in original form: *Provided*, That such reproductions shall not be made prior to completion of the audit of such records by the Administration.

(b) The following standards are established for reproduction processes:

(1) *Microfilm*. The film stock used in making photographic or microphotographic copies shall comply with Interim Federal Standard No. 125 covering photographic film and processed photographic film. The microfilm shall be regularly inspected for aging in accordance with Handbook 96, entitled, "Inspection of Processed Photographic Record Films for Aging Blemishes", published by the U.S. Department of Commerce, National Bureau of Standards. If blemishes are detected, a dupli-

cate copy of the roll or print shall be made immediately.

(2) *Photocopy*. Electrostatic or wet processes only.

(Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Pub. L. 97-31 (August 6, 1981); 49 CFR 1.66 (46 FR 47458, Sept. 28, 1981))

[G.O. 101, 30 FR 12356, Sept. 28, 1965, as amended at 48 FR 45560, Oct. 6, 1983]

§ 380.22 Responsibility.

(a) Notwithstanding the minimum retention periods hereinafter set forth, it shall be the sole responsibility of any party subject to the provisions of this subpart to retain such books, records, and accounts:

(1) For the periods specifically provided by any statutory, regulatory, and contractual requirements of the Administration, or

(2) Pertaining to or related to matters in litigation, to matters which knowingly may become involved in litigation, to unsettled claims of whatsoever nature, and to all unsettled matters specifically reserved by the parties at the time of any final accounting as may be required under statute, contract and/or agreement.

(b) With respect to books, records, and accounts which, subject to the provision of paragraph (a) of this section, are to be disposed of upon the expiration of the minimum retention period prescribed herein, there shall be filed with the Records Officer, Maritime Administration, Washington, DC, 20590, a written notification, at least thirty (30) days prior to the contemplated, disposal requesting permission to dispose of records. MARAD will accept electronic options (such as facsimile and Internet) for transmission of required information to MARAD, if practicable. The request shall be in such form that the books, records, and accounts can be readily identified. Within thirty (30) days after receipt of such notification the Records Officer shall grant approval for disposal, or advise the necessity for continued retention of all or any specified portion thereof. Failure of the Record Officer to reply within the thirty (30) days period following receipt by the Administration of such request shall constitute approval.

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(c) Applications for special authority to dispose of certain books, records, and accounts prior to the expiration of prescribed minimum retention periods, and any inquiries as to the interpretation or applicability of this subpart to specific items shall be submitted to the Records Officer, Maritime Administration. MARAD will accept written or electronic options (such as facsimile and Internet) for transmission of required information to MARAD, if practicable. The applicant shall describe in detail the items to be disposed of and explain why continued retention is unnecessary.

[G.O. 101, 30 FR 12356, Sept. 28, 1965, as amended at 68 FR 62538, Nov. 5, 2003; 69 FR 61452, Oct. 19, 2004]

§ 380.23 Supervision of records.

(a) Contractors and others subject to the provisions of this subpart shall designate, through formal action, the official company position by title, the incumbent of which shall be responsible for supervision of its document retention and disposal program. Immediately upon designation of the position, a copy of the formal action and name of the incumbent shall be filed with the Records Officer, Maritime Administration. MARAD will accept written or electronic options (such as facsimile and Internet) for transmission of required information, if practicable.

(b) The person in charge of the retention and disposal program shall maintain a record of all books, records, and accounts held in storage, and in such form that the items and their location are readily identifiable. A copy of the written, or by electronic options (such as facsimile and Internet), if practicable, notification requesting permission to dispose of any books, records, and accounts, and the original approval from the Administration, as required in § 380.22(b), together with a statement showing date, place and method of disposal will suffice as a record of such disposed items. These retention and disposal records shall be available at all times for inspection by Administration officials and auditors.

[69 FR 61452, Oct. 19, 2004]

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§ 380.24 Schedule of retention periods and description of records.

(a) The following records shall be retained for not less than two (2) years after final release agreement or settlement agreement is completed between the Administration and contractors under operating-differential subsidy contracts:

(1) Official company or corporate records such as certificates or articles of incorporation, minute books, stock ledgers, bond registers, merger or acquisition records, patents and copyrights;

(2) Financial statements and reports such as annual reports to stockholders and audit reports by independent public accountants;

(3) Insurance records such as policies, underwriters' audit reports, indemnity bonds, salvage data, and claim files;

(4) Contracts, agreements, franchises, licenses, etc., such as subsidy, charter, ship construction, and pooling agreements;

(5) Vessel operating records such as log books, surveys, position reports, and vessel itineraries;

(6) Voyage account items such as manifests, bills of lading, master's accounts, ship's payrolls;

(7) Underlying traffic records pertaining to tariffs, dray tickets, pooling agreements, passenger reports, freight and passenger conference records.

(b) The following records shall be retained for three (3) years after final audit and/or approval by the Administration:

(1) Ship construction or reconversion records such as bids, plans, progress payments, and construction-differential subsidy data;

(2) Canceled checks;

(3) Miscellaneous documents and work papers such as correspondence, operating and construction-differential subsidy rate data, subsidy adjustments pursuant to 46 CFR part 276 and approvals pursuant to Article II-10(c) of operating-differential subsidy contracts;

(4) Any document generated under the provisions of the Shipping Act, 1916;

(5) Books of account such as general and subsidiary ledgers, journals, cash books, and check registers;

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(6) Personnel records and supplementary records such as union agreements.

(c) Reports prepared by Federal, State, Local, or foreign governments pertaining to any documents referred to in this § 380.24, shall be retained for the same period as prescribed herein for the retention of the documents to which they apply.

(d) If identical copies of the same document serve more than one purpose, only the original copy is required to be retained.

(Approved by the Office of Management and Budget under control number 2133-0501)

(Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Pub. L. 97-31 (August 6, 1981); 49 CFR 1.66 (46 FR 47458, Sept. 28, 1981))

[48 FR 45560, Oct. 6, 1983]

Subpart D [Reserved]

Subpart E—Compulsory Disclosure

§ 380.40 Subpoenas, other compulsory processes and requests.

In any case where it is sought by subpoena, order, or other compulsory process or other demand of a court or other authority to require the production or disclosure of any record in the files of the Maritime Administration or other information acquired by an officer or employee of the Maritime Administration as a part of the performance of his official duties or because of his official status, the matter shall be immediately referred for determination, through the Secretary of the Maritime Administration and Maritime Subsidy Board, to the Maritime Administrator, Department of Transportation.

[G.O. 112, 36 FR 21816, Nov. 16, 1971]

PART 381—CARGO PREFERENCE— U.S.-FLAG VESSELS

Sec.

381.1 Purpose.

381.2 Definitions.

381.3 Reporting information and procedure.

381.4 Fair and reasonable participation.

381.5 Fix American-flag tonnage first.

381.6 Informal grievance procedure.

381.7 Federal Grant, Guaranty, Loan and Advance of Funds Agreements.

381.8 Subsidized vessel participation.

381.9 Available U.S.-flag service.

AUTHORITY: 46 App. U.S.C. 1101, 1114(b), 1122(d) and 1241; 49 CFR 1.66.

SOURCE: General Order 103, 36 FR 6894, Apr. 10, 1971, unless otherwise noted.

§ 381.1 Purpose.

The purpose of this part 381 is to prescribe regulations to be followed by all departments and agencies having responsibility under the Cargo Preference Act of 1954, section 901(b) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1241(b)), in the administration of their programs with respect to that Act, and to provide a uniform system for the collection of data on the administration of such programs for use in preparing the annual reports to Congress required by that Act.

§ 381.2 Definitions.

(a) *Cargo Preference Act of 1954* means section 901(b) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1241(b)).

(b) *Cargoes subject to the Cargo Preference Act of 1954*, include equipment, material or commodities:

(1) Procured, contracted for or otherwise obtained within or outside the United States for the account of the United States;

(2) Furnished within or outside the United States to or for the account of any foreign nation without provision for reimbursement;

(3) Furnished within or outside the United States for the account of any foreign nation in connection with which the United States advances funds or credits or guarantees the convertability of foreign currencies.

(4) Procured, contracted for, or otherwise obtained within or outside of the United States with advance of funds, loans or guaranties made by or on behalf of the United States.

(c) *Department or agency having responsibility under the Cargo Preference Act of 1954* means any department or agency of the Federal Government, administering a program that involves the transportation on ocean vessels of cargoes subject to the Cargo Preference Act of 1954. At present, these agencies include:

(1) Department of State.