

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 “wetlands” 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

- Sec.
- 388.1 Purpose.
- 388.2 Definitions.
- 388.3 Application and fee.
- 388.4 Criteria for grant of a waiver.
- 388.5 Criteria for revocation of a waiver.
- 388.6 Process.

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

SOURCE: 69 FR 51772, Aug. 23, 2004, 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 authority to review and approve applications for waiver of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more, built or rebuilt outside the 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 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 U.S.C. 2101.

(g) *Fraud* means the intentional misrepresentation of a material fact or facts.

[69 FR 51772, Aug. 23, 2004, as amended at 75 FR 28206, May 20, 2010]

§ 388.3 Application and fee.

(a) An owner of a vessel may choose either of two methods to apply for an administrative waiver of the coastwise

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trade laws of the United States for an eligible vessel to carry no more than twelve passengers for hire.

(1) The application form contained on MARAD's Web site at <http://www.marad.dot.gov> may be submitted electronically with credit card or Automated Clearinghouse (ACH) payment of the \$500 application fee.

(2) Alternatively, applicants may send written applications to Small Passenger Vessel Waiver Applications, Office of Cargo Preference, MAR-730, 1200 New Jersey Ave., SE., Washington, DC 20590. Written applications need not be in any particular format, but must be signed, be accompanied by a check made out to the order of "Maritime Administration," and contain the following information:

(i) Name of vessel and owner for which waiver is requested and the vessel's official number.

(ii) 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).

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

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

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

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

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

(viii) A statement that the applicant represents that the foregoing information is true to the best of the applicant's knowledge.

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

[69 FR 51772, Aug. 23, 2004, as amended at 70 FR 66797, Nov. 3, 2005; 75 FR 28206, May 20, 2010]

§ 388.4 Criteria for grant of a waiver.

(a) *General Criteria.* (1) A waiver of the foreign build and/or foreign rebuild prohibition in the coastwise trade laws

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will be granted 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) The determination of "unduly adverse affect" on a coastwise operator or a U.S. vessel builder may not be limited to operators or builders of vessels carrying 12 or fewer passengers.

(3) We may evaluate the expected impact of the proposed waiver on the basis of the information received from all sources, including public comment, internal investigation and analysis, and any other sources of 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 affected U.S. vessel builder has a history of construction of similar vessels, or can demonstrate the capability and capacity and the fact it has taken definite steps to offer to build a similar vessel, for use in the same geographic region of the United States, as the proposed vessel of the applicant.

(c) *Impact on coastwise trade business.* We may use the following criteria to determine the effect on existing operators of U.S.-built vessels in coastwise trade:

(1) Whether the proposed vessel of the applicant and a vessel of an existing operator (or the vessel of an operator that can demonstrate it has taken definite steps to begin operation) would provide similar commercial service and would operate in the same geographic area.

(2) The number of similar vessels operating or proposed to operate in the same market with the same or similar itinerary, relative to the size of the market. For example, a single vessel may have a small impact on a large market.

(d) *Advance notice and approval needed for changes.* When we approve a waiver application, we will notify the applicant that no substantial change in the employment of the vessel in the coastwise trade may be made without prior

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notice to MARAD. In general, a substantial change in operating area will require a new waiver application.

§ 388.5 Criteria for revocation of a waiver.

We shall revoke a waiver previously granted under this part if we determine, after notice and opportunity for a hearing, that fraud was involved in any part of the waiver application.

§ 388.6 Process.

(a) *Initial process.* (1) We will review each application for completeness as received. We will notify the applicant if additional information is necessary or if the application does not meet the initial eligibility requirements for waiver. All applications will be available for public inspection electronically in the Department of Transportation Docket at <http://dot.dms.gov>.

(2) Applications being processed on the merits will be noticed in the FEDERAL REGISTER. Interested parties will be given an opportunity to comment on whether introduction of any proposed vessel would adversely affect them. In the absence of duly filed objections to an application, and in the absence of unduly adverse impact on vessel builders or businesses employing U.S.-built vessels otherwise discovered by us, we will conclude that there will be no adverse effect. If an objection to an application is received, additional information may be sought from the objector. The applicant will be given a sufficient amount of time to respond. The Director, Office of Ports and Domestic Shipping, will then either make a decision based on the written submissions and all available information or, on MARAD's motion or at the applicant's request, hold a hearing on the application and make a decision based on the hearing record. The decision will be communicated to the applicant, commenters and the United States Coast Guard in writing and placed in the docket. If MARAD grants a waiver, the applicant must thereafter contact the Coast Guard to obtain the necessary documentation for domestic operation. MARAD's waiver does not satisfy other requirements of the Coast Guard for documentation. The waiver, if approved, will be assigned to the vessel.

(b) *Revocation.* We may, upon the request of a U.S. builder or a coastwise trade business of a person who employs U.S.-built vessels or upon our own initiative propose to revoke a waiver granted under this part, on the basis that the waiver was obtained through fraud. The grantee of the waiver in question will be notified directly by mail, and a notice will be published in the FEDERAL REGISTER. The original docket of the application will be reopened. We may request additional information from the applicant granted the waiver or from any respondent to the notice. The Director, Office of Ports and Domestic Shipping, will then either make a decision based on the written submissions and all available information or, on MARAD's motion or at the applicant's request, hold a hearing on the proposed revocation and make a decision based on the hearing record. The decision will be communicated in writing to: the applicant granted the waiver, the requestor (if any), each respondent to the proposed revocation notice, the Coast Guard; and placed in the docket. If MARAD revokes a waiver, the Coast Guard, automatically and without further proceedings, shall revoke the vessel's coastwise endorsement.

(c) *Review of determinations.* (1) The decisions by the Director, Office of Ports and Domestic Shipping, to grant a waiver, deny a waiver, or revoke a waiver will not be final until time for discretionary review by the Administrator has expired. Each decision to grant, deny, or revoke a waiver will be made in writing and a copy of the written decision will be provided to each applicant and other parties to the decision. Applicants, persons who requested revocation of a waiver, and persons who submitted comments in response to a FEDERAL REGISTER notice may petition the Administrator to review a decision by the Director, Office of Ports and Domestic Shipping, to grant a waiver, deny a waiver, or revoke a waiver within five (5) business days after such decision is filed in the docket. Each petition for review should state the petitioner's standing and the reasons review is being sought, clearly pointing out alleged errors of fact or misapplied points of law. Within five

(5) business days of submission of a petition for review, the applicant, and other persons with standing, may request that the Administrator not review a decision by the Director, Office of Ports and Domestic Shipping, to grant, deny, or revoke a waiver. Such petitions and responses must either be sent by facsimile to the Secretary, Maritime Administration, at (202) 366-9206 or filed electronically in the appropriate DOT docket at <http://dms.dot.gov>. The Administrator will decide whether to review within five (5) business days following the last day for submission of a request that the Administrator not take review. If the Administrator undertakes review, the decision by the Director, Office of Ports and Domestic Shipping, is stayed until final disposition. In the event the Administrator decides to undertake review, a decision will be made based on the written submissions and all available information. As a matter of discretion, the Administrator or designated representative may hold a hearing on the proposed action and make a decision based on the hearing record. The decision will be communicated in writing to the interested parties and the Coast Guard. In the review process, the decision of the Maritime Administrator is the final disposition. In the absence of any petition for review, the determination by the Director, Office of Ports and Domestic Shipping, becomes final on the sixth business day after the decision. The Secretary, MARAD, may extend any of the time limits, but only for good cause shown.

(2) Such petitions and responses must either be sent by facsimile to the Secretary, Maritime Administration, at (202) 366-9206 or filed electronically in the appropriate DOT docket at <http://dms.dot.gov>. The Administrator will decide whether to review within five (5) business days following the last day for submission of a request that the Administrator not take review. If the Administrator takes review, the decision by the Director, Office of Ports and Domestic Shipping, is stayed until final disposition. In the event the Administrator decides to take review, a decision will be made based on the written submissions and all available informa-

tion. As a matter of discretion, the Administrator or designated representative may hold a hearing on the proposed action and make a decision based on the hearing record. The decision will be communicated in writing to the interested parties and the Coast Guard. In the review process, the decision of the Maritime Administrator is the final disposition. In the absence of any petition for review, the determination by the Director, Office of Ports and Domestic Shipping, becomes final on the sixth business day after the decision. The Secretary, MARAD, may extend any of the time limits, but only for good cause shown.

PART 389—DETERMINATION OF AVAILABILITY OF COASTWISE-QUALIFIED VESSELS FOR TRANSPORTATION OF PLATFORM JACKETS

Sec.

- 389.1 Purpose.
- 389.2 Definitions.
- 389.3 Registration.
- 389.4 Application and fee.
- 389.5 Review; issuance of determinations.

AUTHORITY: 49 U.S.C. 322(a); 46 U.S.C. 55102; 46 U.S.C. 55108; Public Law 108–293, 118 Stat 1028; and 49 CFR 1.66.

SOURCE: 75 FR 62474, Oct. 12, 2010, unless otherwise noted.

§ 389.1 Purpose.

This part prescribes regulations implementing the provisions of section 417 of Public Law 108–293, which grants the Secretary of Transportation, acting through the Maritime Administrator, the authority to review and approve applications for determination of availability of coastwise-qualified vessels. Owners or operators of proposed platform jackets may submit information regarding a specific platform jacket transport, placement and/or launch project, following the procedures set forth in this regulation, in order for the Maritime Administration to determine whether a suitable coastwise-qualified vessel is available for the project. If the agency determines that a project owner has registered as required herein and sought in good faith to meet its transportation needs using U.S. flag vessels in compliance with