

and Liability Act of 1980, as amended, warrants that:

(1) all remedial action necessary to protect human health and the environment with respect to any hazardous substance on the property has been taken before the date of the conveyance, and

(2) any additional remedial action found to be necessary after the date of the conveyance shall be conducted by the Government.

(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 "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.

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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 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 U.S.C. 2101.

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

§ 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 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 Vessel Waiver Applications, Office of Ports and Domestic Shipping, MAR-830, Room 7201, 400 7th St., SW., Washington, DC 20590. Written applications need not be in any particular format, but must be signed, be accompanied by a check for \$500 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]

§ 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 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—