Date _____

[CGD 90–055, 57 FR 7642, Mar. 3, 1992, as amended by USCG–2003–14505, 68 FR 9535, Feb. 28, 2003. Redesignated by USCG–2005–20258, 71 FR 61418, Oct. 18, 2006]

Subpart C—Vessels With a Coastwise Endorsement Issued on or After August 9, 2004, That Are Demised Chartered to Coastwise Qualified Citizens

SOURCE: USCG–2005–20258, 71 FR 61419, Oct. 18, 2006, unless otherwise noted.

§68.50 Purpose and applicability.

(a) This subpart contains requirements, in addition to those in part 67 of this chapter, for obtaining a coastwise endorsement for a U.S.-built vessel—

(1) That is owned by a person that qualifies as a citizen under §67.35(a), §67.36(a), §67.37, or §67.39(a) of this chapter; and

(2) That is demise chartered to a coastwise qualified citizen under §67.33, §67.35(c), §67.36(c), §67.37, §67.39(c), or §67.41 of this chapter.

(b) This subpart applies to a vessel with a coastwise endorsement issued on or after August 9, 2004. It does not apply to a vessel under subpart D of this part.

§68.55 Definitions.

In addition to the terms defined in §67.3 of this chapter, as used in this subpart—

Affiliate means, with respect to any person, any other person that is—

(1) Directly or indirectly controlled by, under common control with, or controlling that person; or

(2) Named as being part of the same consolidated group in any report or other document submitted to the United States Securities and Exchange Commission or the Internal Revenue Service.

Cargo does not include cargo to which title is held for non-commercial reasons and primarily for the purpose of evading the requirements of §68.65(a)(2).

Oil has the meaning given that term in 46 U.S.C. 2101(20).

Operation or management, for vessels, means all activities related to the use of vessels to provide services. These activities include, but are not limited to, ship agency; ship brokerage; activities performed by a vessel operator or demise charterer in exercising direction and control of a vessel, such as crewing, victualing, storing, and maintaining the vessel and ensuring its safe navigation; and activities associated with controlling the use and employment of the vessel under a time charter or other use agreement. It does not include activities directly associated with making financial investments in vessels or the receipt of earnings derived from these investments.

Passive investment means an investment in which neither the investor nor any affiliate of the investor is involved in, or has the power to be involved in, the formulation, determination, or direction of any activity or function concerning the use, operation, or management of the asset that is the subject of the investment.

Qualified proprietary cargo means—

(1) Oil, petroleum products, petrochemicals, or liquefied natural gas cargo that is beneficially owned by the person who submits to the Director, National Vessel Documentation Center, an application or annual certification under §68.65(a)(2), or by an affiliate of that person, immediately before, during, or immediately after the cargo is carried in coastwise trade on a vessel owned by that person;

(2) Oil, petroleum products, petrochemicals, or liquefied natural gas cargo not beneficially owned by the person who submits to the Director, National Vessel Documentation Center, an application or an annual certification under §68.65(a)(2), or by an affiliate of that person, but that is carried in coastwise trade by a vessel owned by that person and which is part of an arrangement in which vessels owned by that person and at least one other person are operated collectively as one fleet, to the extent that an equal amount of oil, petroleum products, petrochemicals, or liquefied natural gas cargo beneficially owned by that person, or an affiliate of that person, is carried in coastwise trade on one or more other vessels, not owned by that person, or an affiliate of that person, if

the other vessel or vessels are also part of the same arrangement;

(3) In the case of a towing vessel associated with a non-self-propelled tank vessel where the two vessels function as a single self-propelled vessel, oil, petroleum products, petrochemicals, or liquefied natural gas cargo that is beneficially owned by the person who owns both the towing vessel and the non-self-propelled tank vessel, or any United States affiliate of that person, immediately before, during, or immediately after the cargo is carried in coastwise trade on either of the two vessels; or

(4) Any oil, petroleum products, petrochemicals, or liquefied natural gas cargo carried on any vessel that is either a self-propelled tank vessel having a length of at least 210 meters (about 689 feet) or a tank vessel that is a liquefied natural gas carrier that—

(i) Was delivered by the builder of the vessel to the owner of the vessel after December 31, 1999; and

(ii) Was purchased by a person for the purpose, and with the reasonable expectation, of transporting on the vessel liquefied natural gas or unrefined petroleum beneficially owned by the owner of the vessel, or an affiliate of the owner, from Alaska to the continental United States.

Sub-charter means all types of charters or other contracts for the use of a vessel that are subordinate to a charter. The term includes, but is not limited to, a demise charter, a time charter, a voyage charter, a space charter, and a contract of affreightment.

United States affiliate means, with respect to any person, an affiliate the principal place of business of which is located in the United States.

§ 68.60 Eligibility of a vessel for a coastwise endorsement under this subpart.

(a) To be eligible for a coastwise endorsement under 46 U.S.C. 12106(e) and to operate in coastwise trade under 46 U.S.C. 12106(e) and 12110(b), a vessel must meet the following:

(1) The vessel is eligible for documentation under 46 U.S.C. 12102.

(2) The vessel is eligible for a coastwise endorsement under § 67.19(c) of this chapter and has not lost coastwise eligibility under § 67.19(d) of this chapter.

(3) The person that owns the vessel (or, if the vessel is owned by a trust or similar arrangement, the beneficiary of the trust or similar arrangement) makes the certification in § 68.65.

(4) The person that owns the vessel has transferred to a qualified U.S. citizen under 46 U.S.C. app. 802 full possession, control, and command of the vessel through a demise charter in which the demise charterer is considered the owner *pro hac vice* during the term of the charter.

(5) The charterer must certify to the Director, National Vessel Documentation Center, that the charterer is a citizen of the United States for engaging in the coastwise trade under 46 U.S.C. app. 802.

(6) The demise charter is for a period of at least 3 years, unless a shorter period is authorized by the Director, National Vessel Documentation Center, under circumstances such as—

(i) When the vessel's remaining life would not support a charter of 3 years; or

(ii) To preserve the use or possession of the vessel.

(b) To apply for a coastwise endorsement for a vessel under a demise charter, see § 68.70 and, for a barge, see § 68.75.

NOTE TO § 68.60: Section 608(b) of Public Law 108–293 provides special requirements for certain vessels in the Alaska trade.

§ 68.65 Annual ownership certification.

(a) At the time of initial application for documentation and at the time for annual renewal of the endorsement as required by § 67.163 of this chapter, the person that owns a vessel with a coastwise endorsement under § 68.60 must certify in writing to the Director, National Vessel Documentation Center—

(1) That the person who owns a vessel with a coastwise endorsement under § 68.60—

(i) Is a leasing company, bank, or financial institution;

(ii) Owns, or holds the beneficial interest in, the vessel solely as a passive investment;