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Issued at Washington, DC on January 21, 2010.

Saint Lawrence Seaway Development Corporation.

**Collister Johnson, Jr.,**  
Administrator.

[FR Doc. 2010-1608 Filed 1-26-10; 8:45 am]

BILLING CODE 4910-61-P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

#### 46 CFR Part 388

[Docket No. MARAD 2010 0012]

RIN 2133-AB76

#### Administrative Waivers of the Coastwise Trade Laws: New Definition of Eligible Vessels

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Maritime Administration (MARAD, or we, our, or us) is publishing this proposed rule to change the definition of vessels eligible for a waiver of the coastwise laws under special provisions of the Coast Guard Authorization Act of 1998. Under this measure, and taking into account several factors, MARAD may waive the U.S.-build requirement allowing vessels to operate as small passenger vessels or uninspected passenger vessels authorized to carry no more than 12 passengers for hire. The new definition of “eligible vessel” deletes the requirement that the vessel be five net tons or more. That requirement is not in the enabling statute and, therefore, does not need to be in the regulations.

**DATES:** Comments on the proposed rule are due March 29, 2010.

**ADDRESSES:** You may submit comments [identified by DOT DMS Docket Number MARAD-2010-0012] via any of the following methods:

*Web site/Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments on the electronic docket site.

*Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room PL-401, Washington, DC 20590-0001.

*Hand Delivery:* Room PL-401 of the Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the agency name and docket

number for this rulemaking. Note that all comments received will be posted without change to <http://www.regulations.gov> including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to Room PL-401 of the Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, Office of Cargo Preference and Domestic Trade, Maritime Administration, MAR-730, Room W21-203, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202-366-5979 or 800-9US-FLAG; e-mail: [Joann.Spittle@dot.gov](mailto:Joann.Spittle@dot.gov).

**SUPPLEMENTARY INFORMATION:** Public Law 105-383, which authorized the Secretary of Transportation to grant waivers of the U.S.-build requirement for the smallest of passenger vessels (those carrying 12 or fewer passengers) to operate in the coastwise trade, contained a provision that the Secretary of [Homeland Security] may issue a certificate of documentation with an appropriate endorsement for employment in the coastwise trade as a small passenger vessel or an uninspected passenger vessel in the case of an eligible vessel authorized to carry no more than 12 passengers for hire if the Secretary of Transportation, after notice and an opportunity for public comment, determines that the employment of the vessel in the coastwise trade will not adversely affect—(1) United States vessel builders; or (2) the coastwise trade business of any person that employs vessels built in the United States in that business.

Until now, the term “eligible vessel” was understood to mean a vessel eligible for U.S. Coast Guard documentation; therefore our regulation contained a five net ton minimum vessel size limit. However, under 46 U.S.C. 12102(b), a vessel of less than five net tons may engage in the coastwise trade without documentation, if the vessel otherwise satisfies the requirements to engage in the trade.

An unintended consequence of the present small passenger waiver regulations is that the Maritime Administration is unable to grant waivers to vessels of less than five net tons, the owners of which may desire to operate them in coastwise trade. There is no indication that the statute

intended this result, because the statute does not prohibit the granting of waivers to vessels of under five net tons.

Accordingly, in this proposed rule, the Maritime Administration will be increasing the number of eligible vessels by removing the 5 net ton minimum requirement for its Small Passenger Vessel Waiver Program.

#### Rulemaking Analysis and Notices

##### *Executive Order 12866 and DOT Regulatory Policies and Procedures*

This proposed rule is not significant under section 3(f) of Executive Order 12866, and as a consequence, OMB did not review the rule. This proposed rulemaking is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). The costs and benefits associated with this rulemaking are considered to be so minimal that no further regulatory impact analysis is necessary. Vessels eligible for a waiver of the coastwise trade laws will be limited to foreign built or foreign re-built small passenger vessels and uninspected passenger vessels as defined by section 2101 of Title 46, United States Code. Additionally, vessels requested for consideration must be greater than three years old. We will not grant waivers in instances where such waivers will have an unduly adverse effect on U.S. vessel builders or U.S. businesses that use U.S. flag vessels. Under Title V, MARAD also has the authority to revoke coastwise endorsements under the limited circumstances in which a foreign-built or foreign-rebuilt passenger vessel, previously allowed into service, is deemed to have obtained such endorsement through fraud.

##### *Executive Order 13132*

We analyzed this rulemaking in accordance with the principles and criteria contained in E.O. 13132 (“Federalism”) and have determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. The regulations herein have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, MARAD did not consult with State and local officials because it was not necessary.

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act requires MARAD to assess the impact that regulations will have on small

entities. After analysis of this proposed rule, MARAD certifies that this will not have a significant economic impact on a substantial number of small businesses. Although we expect many applicants for vessel waivers to be small businesses, we do not believe that the economic impact will be significant. This regulation allows MARAD to waive the U.S.-build and other requirements for eligible vessels and provides a small economic benefit to successful applicants. This regulation will only allow vessels to carry the statutory maximum of 12 passengers. As a consequence, MARAD estimates that a vessel owner who receives a waiver may earn a few hundred dollars per year for localized operations (geographic restrictions apply) such as whale watching and personalized fishing expeditions. Also, the economic impact of this rule is limited because it precludes vessel owners from participating in other economic activities such as carrying cargo and commercial fishing.

#### *Environmental Assessment*

This proposed rule would not significantly affect the environment because the small number and small size of vessels admitted to U.S. registry under this waiver program would have little or no effect on the environment. Accordingly, an Environmental Impact Statement is not required under the National Environmental Policy Act of 1969.

#### *Paperwork Reduction Act*

The Office of Management and Budget (OMB) has reviewed and approved the information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) The OMB approval number is 2133-0529.

#### *Unfunded Mandates Reform Act*

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$141.3 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

#### *Consultation and Coordination with Indian Tribal Governments*

MARAD believes that regulations evolving from this proposed rule would have no significant or unique effect on the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 3084 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order would not apply.

#### *Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### **Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register**

published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

#### **List of Subjects in 46 CFR Part 388**

Administrative practice and procedure, Maritime carriers, Passenger vessels, Reporting and recordkeeping requirements.

Accordingly, the Maritime Administration proposes to amend part 388, 46 CFR chapter II, subchapter J, as follows:

#### **PART 388—ADMINISTRATIVE WAIVERS OF THE COASTWISE TRADE LAWS**

1. The authority citation for part 388 continues to read as follows:

**Authority:** 46 App. U.S.C. 1114(b); Pub. L. 105-383, 112 Stat. 3445 (46 U.S.C. 12121); 49 CFR 1.66.

2. In § 388.2, revise paragraph (c) to read as follows:

#### **§ 388.2 Definitions.**

\* \* \* \* \*

(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.

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By Order of the Maritime Administrator  
Dated: January 21, 2010.

**Christine Gurland,**

*Secretary, Maritime Administration.*

[FR Doc. 2010-1589 Filed 1-26-10; 8:45 am]

**BILLING CODE 4910-81-P**