

§ 388.2

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 otherwise eligible for a U.S. Coast Guard certificate of documentation (i.e. 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 2102 U.S.C.

§ 388.3 Application; fee.

(a) An owner of the vessel may apply in writing to the Secretary, MARAD, MAR-120, Room 7210, 400 7th St., SW., Washington, DC 20590, for an administrative waiver of the coastwise trade laws of the United States for an eligible vessel to carry no more than 12 passengers for hire. The application need not be in any particular format, but must be signed and contain the following information:

(1) Name of vessel and owner for which waiver is requested.

(2) 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).

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

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

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

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

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

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

(c) You must enclose a non-refundable application fee for each waiver requested, in the form of a check or money order for \$300, made out to the order of "Maritime Administration—Transportation."

§ 388.4 Criteria for grant of a waiver.

(a) *General criteria.* (1) We will waive the foreign build and/or foreign rebuild prohibition in the coastwise trade laws 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) We may not limit the determination of "unduly adverse affect" on a coastwise operator or an U.S. vessel builder to operators or builders of vessels carrying 12 or fewer passengers.

(3) We will evaluate the expected impact of the proposed waiver on the basis of all the information received from all sources, including public comment, internal investigation and analysis, or any other sources or 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 impacted U.S. vessel builder has a history of construction of similar vessels, or can demonstrate the capability and capacity 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 operators.* 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.

(d) *Advance notice and approval needed for changes.* When we approve a waiver application, we will notify the applicant that the applicant may not make substantial changes in the employment of the vessel in the coastwise trade without prior notice to MARAD. If the applicant fails to provide advance notice of substantial changes to MARAD, we may immediately revoke the waiver under § 388.5.

§ 388.5 Criteria for revocation of a waiver.

(a) We may revoke a waiver previously granted under this part if we determine that the employment of the vessel in the coastwise trade has substantially changed since the issuance of the endorsement, and—

(1) The vessel is employed other than as a small passenger vessel or an uninspected passenger vessel; or

(2) The employment of the vessel unduly adversely affects—

(i) United States vessel builders; or

(ii) The coastwise trade business of any person who employs vessels built in the United States.

(b) We will evaluate the effects of the employment of the waived vessel in the coastwise trade on the basis of the information received from all sources, including public comment, internal investigation and analysis, or any other sources of information deemed appropriate.

§ 388.6 Process.

(a) *Initial process.* 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 a waiver. All applications that pass the initial screening will be available for public inspection in the Department of Transportation Docket Room following publication in the FEDERAL REGISTER. We will publish a notice of such applications in the FEDERAL REGISTER. Interested parties will be given an opportunity to comment on whether introduction of any of the proposed vessels would adversely affect them. In the absence of duly filed objections to an application, and in the absence of undue market impact on vessel operators or vessel builders 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 may, as a matter of discretion, hold a hearing on the application. The decision will be communicated in writing to the applicant, those who have submitted written comments, and the Coast Guard. If MARAD grants a waiver, the applicant must thereafter contact the Coast Guard to obtain the necessary documentation for domestic operation, provided the vessel and its owner, otherwise qualify.

(b) *Revocation.* We may, upon the motion of an interested party, or upon our own motion, publish a notice in the FEDERAL REGISTER, proposing to revoke a waiver granted under this part. We may request additional information 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 additional publicly available information or may, as a matter of discretion, refer the request for the revocation to a hearing. MARAD will communicate its decision in writing to the waiver recipient, the requestor (if any),