

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),

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each respondent to the proposed revocation notice; and the Coast Guard. If MARAD revokes a waiver, the Coast Guard shall revoke the vessel's coast-wise 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 after time for discretionary review by the Administrator has expired. Applicants and persons who submitted comments in response to a FEDERAL REGISTER notice may petition the Administrator to review a waiver, waiver denial, or waiver revocation within five (5) business days after MARAD files the decision in the docket. Each petition for review should state the petitioner's interest and the reasons review is being sought, clearly pointing out any alleged errors of fact or misapplied points of law. Within three (3) business days of submission of a petition for review, applicants for a waiver and persons who submitted comments in response to a FEDERAL REGISTER notice may request the Administrator not to review a waiver, waiver denial, or waiver revocation.

(2) Such petitions and responses may be sent by facsimile to the Secretary, Maritime Administration, at (202) 366-9206. To the extent possible, each petitioner or respondent should send a copy of their petition or response to

other interested parties by facsimile at the same time the submission is made to MARAD. The Administrator will decide whether to take review within two (2) business days following the time for submission of a request that the Administrator not take review. If the Administrator takes review, the determination by the Director, Office of Ports and Domestic Shipping, will be stayed until final disposition. If review is not taken, the determination by the Director, Office of Ports and Domestic Shipping, will become final two (2) business days after the time for submission of requests that the Administrator not take review. If the last day of a time limit falls on a Saturday, Sunday, or Federal holiday, the time is extended to the next business day. In the absence of any petition for review, the determination by the Director, Office of Ports and Domestic Shipping will become final within ten (10) business days. 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. The Secretary, MARAD, may extend any of the time limits for good cause shown.

§ 388.7 Sunset provision.

We will grant no waivers on or after September 30, 2002.