

**DEPARTMENT OF TRANSPORTATION****Maritime Administration****46 CFR Part 389**

[Docket No. MARAD-2008-0045]

RIN 2133-AB67

**Determination of Availability of Coastwise-Qualified Launch Barges****AGENCY:** Maritime Administration, DOT.**ACTION:** Interim final rule.

**SUMMARY:** The Maritime Administration supports the coastwise laws of the United States. We are publishing this interim final rule to establish regulations governing administrative determinations of availability of coastwise-qualified launch barges to be used in the transportation and, if needed, launch or installation of offshore oil drilling or production platform jackets in specified projects only. Based upon any further comments received, we may publish an amended final rule. We view this as a special, technical legislative requirement that does not indicate a change in our full support for other requirements of the coastwise laws.

Specifically, this rulemaking implements provisions of the Coast Guard and Maritime Transportation Act of 2004, which, among other things, requires the Secretary of Transportation (acting through the Maritime Administrator) to adopt procedures to maximize the use of coastwise-qualified launch barge vessels but if the Secretary determines such coastwise-qualified vessels are not available for platform jacket transport and launching, then to allow the use of non-coastwise-qualified launch barges.

**DATES:** This interim final rule will be effective June 30, 2008. Any further comments are due by July 28, 2008.

**ADDRESSES:** You may submit comments [identified by DOT DMS Docket Number MARAD-2008-0045] any of the following methods:

- **Web Site:** <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT 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.

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the

online instructions for submitting comments.

**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://dms.dot.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://dms.dot.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:**

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**SUPPLEMENTARY INFORMATION:** Section 27 of the Merchant Marine Act of 1920, commonly known as the Jones Act (46 U.S.C. 55102), requires, with a few exceptions, that all cargo transported in the coastwise trade be carried on ships that are U.S.-owned and U.S.-built. The Jones Act has been amended over the years, and in 1988 a special technical proviso, known as the thirteenth proviso, was added to allow for the use of foreign-built platform jacket launch barges in the coastwise trade if no U.S.-built vessels were found to be available.

On August 9, 2004, the thirteenth proviso of the Jones Act was amended by section 417 of the Coast Guard and Maritime Transportation Act of 2004, Public Law 108-293 (the Act), now codified at 46 U.S.C. 55108. Under the Act, the Secretary of Transportation is directed to establish procedures to issue determinations as to whether suitable U.S.-built barges are available for use in transportation and, if needed, launch or installation of offshore oil drilling or production structures and to maximize the use of U.S.-built coastwise-qualified vessels for such activities. The Act provides that if the Secretary determines that a suitable coastwise qualified vessel is not available for use in a specified platform jacket transportation and, if needed, launch or installation project, a foreign-built launch barge may be used.

**Public Comments**

The Maritime Administration published a Notice of Proposed Rulemaking requesting public comments on our administration of

these subject determinations on August 15, 2005 (70 FR 47771) with comments due on October 15, 2005. However, because of Hurricane Katrina and at the request of respondents, we extended the public notice period to December 13, 2005. At the further request of a commenting party, we subsequently opened a reply comment period on August 15, 2006, which closed on October 16, 2006. Based on our consideration of the nine responses received, we have adjusted our original proposal. The comments were received and our responses follow:

*Issue #1. How will the Maritime Administration meet the requirement to provide timely information to the coastwise industry?*

**Public comment:** Seven interests representing the owners or builders of U.S. barges said that significant notice of upcoming offshore petroleum development projects (which may require foreign-built launch barges) should be made a requirement of the Maritime Administration regulation. The owners of foreign vessels opposed any pre-notification requirement not provided for by law. U.S.-flag interests highlighted that the Act requires that "the Secretary of Transportation shall adopt procedures implementing this proviso that are reasonably designed to provide timely information so as to maximize the use of coastwise qualified-vessels." In order to build a launch barge to meet demand, which all agree is planned for years in advance, the U.S.-flag interested commenters recommended at least an 18 month notice period prior to the formal waiver application process. Operators of foreign-built vessels state that the Act did not specifically set forth assistance requirements to the U.S. Merchant Marine, nor did the Act require advance notice of launch barge needs beyond the 30-day public notice period for waiver applications provided in the statute.

**Maritime Administration Response**

After considering these comments, the Maritime Administration has decided there is a need to provide for "timely information to maximize the use of coastwise qualified vessels." Therefore, our regulation will require the platform owner or operator to notify the Maritime Administration at the same time they register their Development Operations Coordination Document (DOCD) or Development and Production Plan (DPP) with the Minerals Management Service but not later than 21 months before the proposed date of using a launch barge. This will provide an 18 month notice to current and potential

coastwise-qualified vessel owners before the three month waiver process, should a waiver be sought. This is consistent with the advance planning that is common practice in the offshore industry and it provides sufficient time and information to establish discussions between project owners and vessel owners. It also complies with the statutory requirement to maximize the use of coastwise-qualified vessels by allowing sufficient time for the construction or modification of a launch barge.

*Issue #2. Should the petroleum production company or the vessel operator apply for the determination?*

**Public Comment:** Five commenters with interests in U.S.-built vessels said that a request for a determination to use a foreign-built launch barge should come from the offshore petroleum production company as the company is typically the decision maker in contracting for transportation, launch or installation arrangements.

**Maritime Administration Response**

We agree that the language and intent of the legislation means the owner or operator of the petroleum production company.

*Issue #3. Will the Maritime Administration deny requests for determinations if applications are incomplete?*

**Public Comment:** Five operators of U.S.-built vessels asked that the Maritime Administration establish clearly that if application requirements are not met, the application will be denied.

**Maritime Administration Response**

We will not process applications that are not complete but we will advise the applicant and seek to rectify errors and omissions to application information before we will begin the review process. If, after an opportunity to redress, the applicant has not met application requirements, we may take action to deny the request for determination based on an incomplete application.

*Issue #4. Will the Maritime Administration require that requestors register in advance?*

**Public Comment:** Five operators or builders of U.S.-built vessels requested that the Maritime Administration require petroleum production companies to formally register (as much as 18 months to two years in advance) with the Maritime Administration if they wish to use a foreign-built launch barge.

**Maritime Administration Response:**

As stated under Issue #1, we will require the platform owner/operator to notify us of a potential need for a launch barge at the same time they file their DOCD or DPP with the Minerals Management Service but not later than 21 months before they project a need for a launch barge. We will annually ask all coastwise-qualified launch barge potential owners/operators to register their contact information with us. This is consistent with Public Law 100-329, as amended by Public Law 108-293, which requires us to keep a listing of coastwise-qualified launch barges that are less than 12,000 tons. This exchange of contact information will allow the platform owner/operator to survey the market and hold discussions with operators of coastwise-qualified vessels. If the platform owner/operator is not successful in concluding business with a coastwise-qualified launch barge owner then they can begin the formal request for a determination of non-availability.

*Issue #5. Can the Maritime Administration clarify the definitions of "eligible vessel" and "launch barge?"*

**Public Comment:** One foreign vessel owner and one owner of U.S.-built vessels requested clarification on the use of the term "eligible vessel" and requested that the same definition for "launch barge" be used throughout the regulation.

**Maritime Administration Response**

The statute does not use the term "eligible vessel" and so it will not be used in the regulation. We have defined a "Launch Barge" as a vessel that is technically capable of loading, transporting, and launching or installing an offshore drilling or production platform jacket in a timely manner. We have defined the term "Foreign Launch Barge", for the purpose of this rule, to mean a non-coastwise-qualified vessel that was built before December 31, 2000 and is technically capable of loading, transporting, and launching or installing an offshore drilling or production platform jacket in a timely manner and has a launch capacity of 12,000 long tons or more.

*Issue #6. The application fee of \$16,460 is considered excessive, can it be lowered?*

**Public Comment:** Two owners of foreign-built vessels considered the application fee inapplicable or excessive.

**Maritime Administration Response**

We have reviewed the application fee issue. We have determined that it is the owner or operator of the production platform who is the responsible party and who must make application for any determination of non-availability and thus becomes the beneficiary of any such finding. We have also determined that a foreign launch barge must be classified as a launch barge by one of our named classification societies in order to be eligible for a positive determination. If the applicant requests that we find that an offered coastwise-qualified launch barge is not suitable or available, then we will review the technical details and charge the applicant for the number of hours of work required at the prevailing hourly rate plus overhead of the persons involved in the review and any administrative costs. We expect such review would entail the use of naval architects, marine engineers, electrical engineers, and various support staff. There will be a minimum non-refundable \$500 deposit to cover initial **Federal Register** costs and the applicant must sign a letter of commitment to pay any additional costs we incur. We estimate such costs could range from \$500 to \$20,000 or more.

*Issue #7. Will there be a clear determination when coastwise qualified vessels are not available?*

**Public Comment:** One owner of a foreign-built vessel requested that the Maritime Administration clearly determine coastwise qualified vessel non-availability as this will then clearly allow the use of a foreign-built launch barge.

**Maritime Administration Response**

We have revised our regulation to state clearly that if we determine that no coastwise-qualified vessels are found to be suitable or available then our determination will allow for the use of a foreign-built launch barge.

*Issue #8. Will the approval of U.S. Customs and Border Protection be required?*

**Public Comment:** Two owners of foreign vessels and an interest group representing U.S.-built vessel operators said that further approval from U.S. Customs and Border Protection (CBP) should not be a regulatory requirement, if the Maritime Administration determines that U.S.-built vessels are not available.

**Maritime Administration Response**

The statute states that non-coastwise-qualified barges may be used after the

Secretary of Transportation (as administered by the Maritime Administration) determines that no coastwise qualified launch barges are available. Therefore, no formal CBP approval is being made a requirement of this regulation.

*Issue #9. Can the Maritime Administration make the determinations good for the duration of a project?*

*Public Comment:* Two foreign vessel owners would like either no expiration date on the determination that no U.S. vessels are available, or have the Maritime Administration issue determinations for the “duration of the project.”

#### Maritime Administration Response

To comply with the Congressional intent to maximize the use of coastwise-qualified vessels, we have decided to retain the 120-day expiration date for determinations of non-availability of coastwise-qualified vessels. We have the authority to extend the determination beyond 120 days on a case by case basis, and will do so as necessary.

*Issue #10. Can the Maritime Administration be flexible regarding submission of platform jacket technical requirements and launch dates?*

*Public Comment:* Two owners of foreign-built vessels asked for flexibility in the submission of platform jacket load dates, as well for flexibility in the exact technical specifications of the platform jacket to be launched. Commenters representing U.S.-built vessel interests opposed any flexibility on technical specifications or load dates noting that platform jacket specifications are often prepared years in advance of launch.

#### Maritime Administration Response

We believe that platform jacket specifications and launch schedules are developed far enough in advance of a project start date to be effective for review. If the launch schedule changes significantly, the Maritime Administration can change the expiration date of our determination for good cause.

*Issue #11. Can the Maritime Administration clarify the definition of “launching”?*

*Public Comment:* The owner of a foreign vessel recommended that our regulation should extend the definition regarding the permissible activity of these barges from just “launching” to also “transporting” in conformance with the law.

#### Maritime Administration Response

We agree and have made an effort to indicate that transporting, placement, and/or launching are all purposes provided for in the enabling legislation.

*Issue #12. Are technical documents from foreign classification societies acceptable?*

*Public Comment:* In our proposed rule, we had proposed that the American Bureau of Shipping (ABS) or U.S. Coast Guard (USCG) approve the technical elements of a proposed foreign-built launch barge. Foreign-built barge owners would like us to recognize other classification societies as well.

#### Maritime Administration Response

We will accept vessel launch barge classification and technical documentation from vessel classification societies recognized by the USCG. The specific societies are: American Bureau of Shipping (ABS), Bureau Veritas (BV), Lloyd's Register (LR), Germanischer Lloyd (GL), Det Norske Veritas (DNV), or Nippon Kaiji Kyokai (NK).

*Issue #13. Can the coastwise-qualified vessel availability window be narrowed from seven days to two?*

*Public Comment:* One owner of a foreign-built vessel requested that the definition of a launch barge be changed to require that the vessel be capable of transporting and launching a platform jacket within two days instead of the seven days listed in the notice of proposed rulemaking. A U.S.-built vessel owner commented that a seven day delivery window for a coastwise-qualified vessel may be too narrow.

#### Maritime Administration Response

We believe that vessel delivery capability or availability should not be within some number of days specified by a regulation since the needs of each case will vary. Thus, we will require the delivery window be in “a timely manner” to be negotiated between the parties. This is similar to the way that “lay days” or “delivery dates” are negotiated in commercial transportation projects. If the platform owner and launch barge operator cannot reach agreement on the window timing, then we will make a determination based on the facts of the specific case.

*Issue #14. If coastwise-qualified vessels become unavailable, can foreign-built vessels be used instead?*

*Public Comment:* A foreign-built vessel operator asked that foreign-built vessels be allowed if for some reason a previously identified coastwise

qualified vessel cannot conduct a platform jacket launch operation.

#### Maritime Administration Response

If the selected coastwise-qualified vessel is not able to perform, and if we find there are no other coastwise-qualified vessels available, we can make a non-availability determination that would allow a foreign launch barge to provide the service.

*Issue #15. Can the Maritime Administration make its determinations faster than 90 days?*

*Public Comment:* One owner of a foreign-built vessel requested that the Maritime Administration determination be provided within 60 days of the **Federal Register** announcement seeking coastwise qualified vessels instead of within the 90-day period described in the Notice of Proposed Rulemaking.

#### Maritime Administration Response

We will issue our determination within 90 days of the **Federal Register** announcement as this is specifically required in the enabling legislation.

*Issue #16. Is a U.S. built barge still considered suitable if it needs modifications?*

*Public Comment:* A foreign-built barge operator asked that a coastwise qualified launch barge NOT be considered suitable or available if it needs modifications in excess of \$75,000.

#### Maritime Administration Response

One of our roles is to determine availability and suitability of launch barges. Therefore, we will review applications and comments on a case by case basis. The intent of the legislation is to maximize the use of coastwise-qualified barges. The enabling legislation provided the Maritime Administration with the authority to make a determination that coastwise-qualified launch barges are or are not suitable. We will use this authority as required.

#### Program Description

In this rulemaking, the Maritime Administration is establishing interim procedures to be followed to determine if coastwise-qualified U.S.-flag launch barges are available for a specific project and if they are not available, we will make a determination that will allow a foreign-built vessel to transport and, if needed, launch or install a platform jacket under certain conditions.

We will request coastwise-qualified launch barge owners and other potentially interested parties to register with us on an annual basis with their

full contact information. The registration process for platform owners/operators begins with a notification to us of a proposed offshore platform jacket project at the same time they file with the Minerals Management Service for DOCD or DPP approval but not later than 21 months before projected use of the launch barge. The notification information provided to us must include: the projected summary details of the platform jacket to be transported and, if needed, launched or installed; the approximate date of the operation; and contact information for the platform owner/operator individuals having decision-making responsibility with respect to the transportation and installation of the platform jacket. This information will be made public in order to "provide timely information to ensure maximum use of coastwise qualified vessels" as is required in the Act. At the same time, we will provide the current list of potentially interested registered parties to the platform owner/operator so they can begin canvassing the market and entering into discussions.

Once we determine that the prior notice requirement has been met, and if the platform owner/operator is unable to find a potential coastwise-qualified launch barge that will be available for the project, the application process seeking a determination of non-availability can begin. Each application must include: the complete engineering details for the platform jacket; the operational details for the loading, transport, launching or installation; the timing requirements; and the foreign launch barge they propose to use.

Upon the receipt of a complete application including deposit fee, we will publish a notice in the **Federal Register** requesting that comments and information on the availability of coastwise-qualified vessels be submitted within 30 days. We may also canvas the market. If, after the comment period, we determine that suitable coastwise-qualified vessels are not available for the project, upon receipt of final payment for all relevant costs, we will issue a determination of non-availability, allowing the transportation, launch or installation to proceed with the foreign-built launch barge vessel.

We will not take action on applications that are not complete. For example, if we are not in receipt of early prior notification, or if fees are not paid, or if the application is incomplete, we will not take action on the application. However, we will seek to rectify errors and omissions to the application. It is important to note that we may take action to deny a request for a

determination if the application remains incomplete. As previously stated, we will publish complete applications in the **Federal Register** for a period of 30 days and will provide a determination within 90 days thereafter.

Because launch barges have long lead times for construction, applicants are encouraged to provide the Maritime Administration and the public with as much notice as possible in advance of these projects. Early notification will help ensure the maximum utilization of coastwise-qualified vessels, and will assist the Maritime Administration in its review process.

#### Application Fee

Title V of the Independent Offices Appropriations Act of 1952 ("IOAA"; 31 U.S.C. 9701) authorizes Federal agencies to establish and collect user fees. The statute provides that each service or thing of value provided by an agency should be self-sustaining to the extent possible, and that each charge shall be fair and based on the costs to the Government, the value of the service or thing to the recipient, the policy or interest served, and other relevant factors. 31 U.S.C. 9701.

The primary guidance for implementation of the IOAA is Office of Management and Budget (OMB) Circular No. A-25 ("User Charges," July 8, 1993). Circular A-25, section 6, directs agencies to assess user charges against identifiable recipients for special benefits derived from Federal activities beyond those received by the general public. Circular A-25 further directs agencies, with limited exceptions, to recover the full cost of providing a Government service from the direct recipients of special benefits. Section 6(d) of Circular A-25 defines "full cost" as including "all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service."

Because determinations of availability under part 389 represent special benefits to identifiable recipients (i.e., platform owners/operators) that are beyond the benefits and services normally received by the general public, the IOAA and Circular A-25 direct us to assess user fees for providing this service.

Following the principles embodied in Circular A-25, we will estimate the costs associated with processing and issuing determinations under part 389 as follows. The main cost components of the program include direct and indirect personnel costs and **Federal Register** publication costs. We will charge the actual number of hours at the relevant personnel costs plus associated

overhead and administrative costs. The other cost component of the program will be the cost of publishing notices of applications in the **Federal Register**. The current **Federal Register** publication cost is \$155 per column and the average length of a public notice published for this program is estimated to be three columns. Thus, the total average publication cost currently is estimated to be about \$465.00. The total of personnel costs and **Federal Register** publication costs is estimated to range from \$500 to \$20,000 or more, dependent upon the extent of the required review. Each application will require a \$500 deposit and the payment of any additional costs prior to the final determination.

#### Rulemaking Analyses and Notices

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

This rulemaking is not significant under section 3(f) of Executive Order 12866, and as a consequence, OMB did not review the rule. This rulemaking is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). It is also not considered a major rule for purposes of Congressional review under Public Law 104-121. We believe that the economic impact of this rulemaking is so minimal as to not warrant the preparation of a full regulatory evaluation. This rulemaking merely establishes procedures to determine if a coastwise-qualified barge is available for use in a project and, if not, to allow the use of a non-coastwise qualified barge.

##### *Executive Order 13132*

We analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 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, the current Federal-State relationship, or the current distribution of power and responsibilities among local officials. Therefore, we did not consult with State and local officials because it was not necessary.

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act requires us to assess the impact that regulations will have on small entities. After analysis of this proposed rule, the Maritime Administrator certifies that this proposed rule will not have a

significant economic impact on a substantial number of small entities. We anticipate that few, if any, small entities will participate in this process due to the nature of the shipping industry and the capital costs associated with vessels that fall under this program.

#### *Environmental Assessment*

We have analyzed this proposed rule for purposes of compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et. seq.*) and we have concluded that, under the categorical exclusions provision in section 4.05 of Maritime Administrative Order (MAO) 600-1, "Procedures for Considering Environmental Impacts," 50 FR 11606 (March 22, 1985), neither the preparation of an Environmental Assessment, an Environmental Impact Statement, nor a Finding of No Significant Impact for this rulemaking is required. This rulemaking will not result, either individually or cumulatively, in a significant impact on the environment. This rulemaking only relates to the determination of whether a coastwise-qualified barge is available for a project, and, if not, allows the use of a non-coastwise qualified barge.

#### *Paperwork Reduction Act*

This rulemaking contains an information collection that will require review and clearance by the Office of Management and Budget (OMB).

#### *Unfunded Mandates Reform Act*

This rulemaking does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 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 this objective of U.S. policy.

#### *Executive Order 13175*

We believe that these regulations will have no significant or unique effect on the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do 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 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) or you may visit <http://dms.dot.gov>.

#### **List of Subjects in 46 CFR Part 389**

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

■ Accordingly, the Maritime Administration amends 46 CFR chapter II, subchapter J, by adding part 389 to read as follows:

#### **PART 389—DETERMINATION OF AVAILABILITY OF COASTWISE-QUALIFIED LAUNCH BARGES**

Sec.

- 389.1 Purpose.
- 389.2 Definitions.
- 389.3 Registration.
- 389.4 Application and fee.
- 389.5 Review; issuance of determinations.

**Authority:** 49 U.S.C. 322(a); 46 U.S.C. 55102; 46 U.S.C. 55108; Public Law 108-293, 118 Stat 1028; 49 CFR 1.66.

##### **§ 389.1 Purpose.**

This part prescribes regulations implementing the provisions of section 417 of Public Law 108-293, which grants the Secretary of Transportation, acting through the Maritime Administration, the authority to review and approve applications for determinations of availability of coastwise-qualified launch barges. Owners or operators of proposed platform jackets may submit information regarding a specific platform jacket transport, placement and/or launch project, following the procedures set forth in this regulation, in order for us to determine whether a suitable coastwise-qualified barge is available for the project. If we determine a suitable coastwise-qualified launch barge is not available, then a non-coastwise qualified foreign-built launch barge may be used.

##### **§ 389.2 Definitions.**

For the purposes of this Part: "Administrator" means the Maritime Administrator.

"Coastwise-qualified Vessel" means a vessel that has been issued a certificate of documentation with a coastwise endorsement under 46 U.S.C. 12112.

Coastwise Trade Laws include:

(1) The Coastwise Endorsement Provision of the Vessel Documentation Laws, (46 U.S.C. 12112);

(2) The Passenger Services Act, section 8 of the Act of June 19, 1886 (46 U.S.C. 55103);

(3) The Jones Act, section 27 of the Merchant Marine Act, 1920 (46 U.S.C. 55102); and

(4) Section 2(c) of the Shipping Act of 1916 (46 U.S.C. 50501).

"Launch barge" means a vessel that is technically capable of transporting and, if needed, launching or installing an offshore drilling or production platform jacket in a timely manner.

"Foreign launch barge", for the purpose of this rule, means a non-coastwise-qualified launch barge that was built before December 31, 2000, and has a launch capacity of 12,000 long tons or more.

A "long ton" equals 2,240 pounds.

"Platform Jacket" refers to a single physical component and includes any type of offshore exploration, development, or production structure or component thereof, including platform jackets, tension leg or SPAR platform superstructures (including the deck, drilling rig and support utilities, and supporting structure), hull (including vertical legs and connecting pontoons or vertical cylinder), tower and base sections of a platform jacket, jacket structures, and deck modules (known as "topsides").

"Secretary" means the Secretary of the Maritime Administration, who will route the correspondence to the proper office within the Maritime Administration for handling.

"Classed as a launch barge by a recognized classification society" means that the vessel holds a current classification document to be used as a launch barge by at least one of the following classification societies: American Bureau of Shipping (ABS), Bureau Veritas (BV), Lloyd's Register (LR), Germanischer Lloyd (GL), Det Norske Veritas (DNV), or Nippon Kaiji Kyokai (NK).

"Applicant" means the offshore development company as identified to the Minerals Management Service (MMS) in their Development Production Plan (DPP) or Development Operations Coordination Document (DOCD), who has applied to the Maritime Administration (MARAD) for a waiver.

##### **§ 389.3 Registration**

In order to provide timely notification and to identify the potential participants

to each other so they may examine how they can best work together to maximize the use of coastwise-qualified launch barges, we will require early notification as outlined in this section.

(a) In January of each calendar year, the Maritime Administration will publish a notice in the **Federal Register** requesting that owners or operators or potential owners or operators of coastwise-qualified launch barges notify us of:

(1) Their interest in participating in the transportation and, if needed, the launching or installation of offshore platform jackets; and,

(2) Provide us with contact

information for their company; and,

(3) Provide specifications of any currently owned or operated coastwise-qualified launch barges or plans to construct same.

(b) When current or potential owners or operators of any type of offshore exploration, development, or production structure expect to need the use of a launch barge they must notify the Maritime Administration. Such notification must be the earlier of either:

(1) The filing of their Development and Production Plan (DPP) or Development Operations Coordination Document (DOCD) with the Minerals Management Service as required by 30 CFR 250.201; or

(2) Not later than twenty-one (21) months before the proposed date of using a launch barge.

(c) The early notification information to be provided to the Maritime Administration by the platform owner or operator shall include:

(1) A summary of technical details of the platform jacket that will need to be transported and, if needed, launched or installed; and,

(2) The projected physical requirements for a suitable launch barge to be used in this project; and,

(3) The projected time period and load and launching sites for the launch barge operation; and,

(4) Full contact information for the company and the individuals having decision-making authority with respect to the utilization of the launch barge and the transportation and, if needed, the launching or installation of the platform jacket.

(d) The information in paragraphs (a), (b), and (c) of this section must be submitted either electronically to [cargo.marad.dot.gov](mailto:cargo.marad.dot.gov) or delivered to the Secretary, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Any information that is business confidential must be so noted and accompanied by a justification.

(e) We will publish a list of potential coastwise-qualified launch barge owners/operators on our Web site at <http://marad.dot.gov>. We will publish a summary of the early notification information in paragraph (c) of this section on the website and also disseminate it to the registered potential coastwise-qualified launch barge owners/operators.

#### **§ 389.4 Application and fee.**

(a) When, after surveying the market and discussing the platform project with potential coastwise-qualified launch barge owners/operators, it appears that coastwise-qualified vessels will not be available, the platform jacket owner/operator may apply to the Maritime Administration for a determination of non-availability and request to use a foreign launch barge.

(1) The fully complete application must be submitted to the Secretary, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 at least 120 days prior to the proposed launch barge operations date.

(2) We reserve the right to waive or reduce or extend the time requirements based upon our evaluation of any national emergency or other situation.

(b) Applications must contain the information set forth in paragraphs (c) and (d) of this section and be accompanied by a statement signed by an officer of the company containing the following language:

"This application is made for the purpose of inducing the United States of America to grant a determination of non-availability of a coastwise-qualified launch barge as set forth in 46 U.S.C. 55108. I have carefully examined the application and all documents submitted and, to the best of my knowledge, information and belief, the statements and representatives contained in said application and related documents are full, complete, accurate and true. Further, I agree to pay any fees that result from the work required by this application.

Signature: \_\_\_\_\_

Name (typed): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

(c) The applicant must submit a non-refundable check in the amount of \$500 (Five Hundred Dollars) made payable to the Maritime Administration, which is a minimum fee and represents a deposit against any costs to the Government for processing the application. The applicant must also submit a signed statement (see paragraph (b) of this section) that they agree to pay all such additional costs that will be invoiced by the Government. Government costs will

be billed for actual staff hours at applicable hourly rates plus overhead, administrative and other relevant costs.

#### **(d) Required Transport and Launch Project Information.**

(1) Applications must include a general description of the transport, placement and/or launch project, including:

(i) A description of the platform jacket structure with launching weight, center of gravity, major dimensions, and a general arrangement plan,

(ii) The projected loading date and site,

(iii) The projected launching date and site,

(iv) The names of the potential coastwise-qualified launch barges' owners/operators contacted and their response regarding suitability and availability, and

(v) The technical merits and availability studies for the coastwise-qualified launch barges considered.

(2) Characteristics of the applicant's desired foreign launch barge, including, at a minimum, the following information:

(i) Name of the vessel,

(ii) Registered owner of the vessel,

(iii) Physical dimensions, deadweight capacity in long tons, ballasting capacities and arrangements, and launch capacity in long tons, and arrangements,

(iv) Documentation showing classification as a launch barge by one of the following classification societies: American Bureau of Shipping (ABS), Bureau Veritas (BV), Lloyd's Register (LR), Germanischer Lloyd (GL), Det Norske Veritas (DNV), or Nippon Kaiji Kyokai (NK).

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

(vi) Name, address, and telephone number of the foreign launch barge owner.

(3) The signed statement that the applicant represents that the foregoing information is true to the best of the applicant's knowledge, as required by paragraph (b) of this section and the \$500 deposit fee.

(e) We may require additional information from the applicant as part of the review process. The application will not be considered complete until we have received all relevant information.

#### **§ 389.5 Review; issuance of determinations.**

(a) The Maritime Administration will review each application for

completeness including evidence of prior notification and payment of application fee. Applications will not be processed until deemed complete. We will notify the applicant if additional information is necessary. We encourage the submission of applications well in advance of project dates in order to allow sufficient time for review under this part.

(b) We will review the information required by § 389.4. When the application is deemed complete, we will publish a notice in the **Federal Register** describing the project and platform jacket involved, advising that all relevant information reasonably needed to assess the transportation and launching requirements will be made available to interested parties upon request. The notice will request that information on the availability of coastwise-qualified launch barges be submitted within thirty (30) days after the publication date. We will also notify the coastwise-qualified owners/operators who have registered with us as per § 389.3.

(c) The Maritime Administration will review any submittals whereby an owner or operator of a coastwise-qualified launch barge asserts they are available and we will facilitate discussions between the offeror and the platform jacket owner/operator. If the parties are unable to reach agreement, we will make a determination regarding availability.

(d) If needed, the Maritime Administration's technical personnel will review the data required in § 389.4. The data must be complete and current. Any data submitted will not be returned to the applicant and will be retained by us on file for a period of time. The Maritime Administration review will not substitute for the review and approval by either a major classification society (ABS, BV, LR, GL, DNV, NK) or the U.S. Coast Guard. The Maritime Administration review will not verify the accuracy or correctness of the applicant's engineering proposal; rather, it will only pertain to the general reasonableness and soundness of the technical approach.

(e) The Maritime Administration will deny the application if:

(1) We find the applicant did not comply with the requirements in § 389.3 or § 389.4; or,

(2) We determine a suitable coastwise-qualified launch barge is reasonably available.

(f) The Maritime Administration will issue a determination of non-availability if we determine that no suitable coastwise-qualified vessel is reasonably available.

(g) Our determination will be issued within ninety (90) days from the date the application notice was published in the **Federal Register**.

(g) Our determination of non-availability will expire one-hundred and twenty (120) days after the date of issuance, unless we provide an extension for good cause.

Maritime Administration determinations in this regard should NOT be interpreted as a change setting new federal maritime precedents. The Maritime Administration continues to support the Jones Act, the Passenger Vessel Services Act, and other federal U.S.-flag requirements.

By order of the Maritime Administrator.

Dated: May 19, 2008.

**Leonard Sutter,**

*Secretary, Maritime Administration.*

[FR Doc. E8-11704 Filed 5-28-08; 8:45 am]

**BILLING CODE 4910-81-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MB Docket No. 07-91; FCC 07-228]

### Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection(s) associated with section 73.682(d) of the rules. On January 30, 2008, the Commission established May 29, 2008 as the effective date for this rule—section 73.682(d)—in the summary document of the Report and Order, which was published in the **Federal Register** at 73 FR 5634. The Ordering Clause of the Report and Order stated that the Commission would publish a notice in the **Federal Register** announcing when OMB approval for this rule section has been received and when this rule will take effect. This notice is consistent with the statement in the Report and Order.

**DATES:** Effective May 29, 2008.

**FOR FURTHER INFORMATION CONTACT:** For additional information, please contact Evan Baranoff, *Evan.Baranoff@fcc.gov*, or Kim Matthews,

*Kim.Matthews@fcc.gov*, of the Media Bureau, Policy Division, (202) 418-2120.

**SUPPLEMENTARY INFORMATION:** This document announces that, on March 4, 2008, OMB approved, for a period of three years, the information collection requirement contained in section 73.682(d) of the rules. The Commission publishes this notice as a second announcement of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Number, 3060-1104, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov*.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

### Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on March 4, 2008, for the information collection requirement contained in the Commission's rules at 47 CFR 73.682(d). The OMB Control Number is 3060-1104. The total annual reporting burden for respondents for these collections of information, including the time for gathering and maintaining the collection of information, is estimated to be: 1,812 respondents, a total annual hourly burden of 47,112 hours, and there is no total annual cost burden associated with this information collection.

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB Control Number.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

[FR Doc. E8-11984 Filed 5-28-08; 8:45 am]

**BILLING CODE 6712-01-P**