



Canadian
Transportation
Agency

Office
des transports
du Canada

Canadian Transportation Agency Guidelines Respecting Coasting Trade Licence Applications



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Part 1 – Introduction

1.1 Canadian Transportation Agency Mandate

1. The [Coasting Trade Act](#) reserves the carriage of goods and passengers between two points in Canada and any other marine activity of a commercial nature, including activities related to the exploration, exploitation, or transportation of minerals and non-living natural resources on the Canadian Continental Shelf, to Canadian-registered duty paid ships.
2. Under the *Coasting Trade Act*, the Minister of Public Safety and Emergency Preparedness issues a coasting trade licence authorizing a foreign ship or a non-duty paid ship to conduct a commercial activity in Canadian waters for a maximum period of 12 months once the Canadian Transportation Agency (Agency) has determined that no suitable Canadian ship or non-duty paid ship is available to perform the activity described in the application. If the coasting trade licence application is for the transportation of passengers, the *Coasting Trade Act* requires the Agency to also determine whether an identical or similar adequate marine service is offered (referred to collectively as “activity”).
3. While, pursuant to the *Coasting Trade Act*, the coasting trade licence application process involves directly or indirectly a number of other government departments and agencies, the *Canadian Transportation Agency Guidelines Respecting Coasting Trade Licence Applications* (Guidelines) specifically address the mandate of the Agency under the legislation. The other government departments and agencies that may need to be contacted prior to the commencement of any activity with a foreign ship in Canadian waters are listed in section 4.7. That section also describes their respective responsibilities and anticipated processing times. When an applicant has the necessary documentation, they proceed to a specified Canada Border Services Agency (CBSA) office where a licence is issued on behalf of the Minister of Public Safety and Emergency Preparedness that authorizes the ship to commence its specified operations.
4. A schematic of the Agency’s coasting trade licence application process, along with the roles of other government departments and agencies, is found in paragraph 15.

1.2 Purpose of the Guidelines

5. These Guidelines are intended to clarify the roles and responsibilities of the applicant and the offeror involved in the application process before the Agency,

and to provide options for processing different types of applications. The Guidelines also clarify the Agency's legislative mandate and administrative obligations, and describe the nature of the information required by the Agency to make a determination pursuant to the *Coasting Trade Act*.

6. In the event of conflict between the Guidelines and the *Coasting Trade Act* or any other Act of Parliament such as the *Canada Transportation Act*, S.C., 1996, c. 10, as amended, the legislation prevails.

1.3 Background on the Process for Coasting Trade Licence Issuance

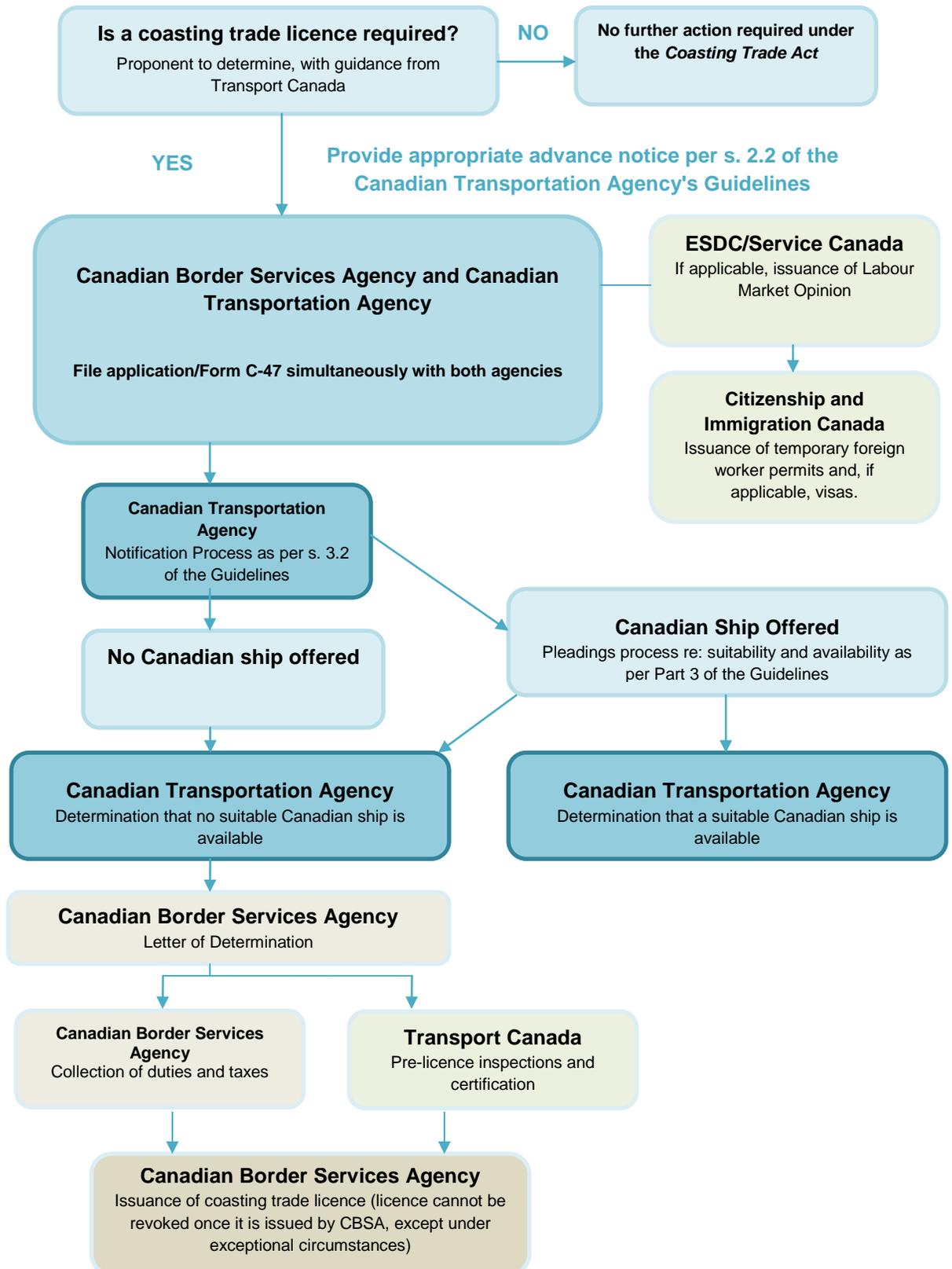
7. As indicated in the schematic of the Agency's process for coasting trade licence applications (paragraph 15), the process is initiated with the filing of an [Application for Vessel Temporary Admission to the Coasting Trade of Canada](#) (application) which is filed simultaneously with CBSA and the Agency.
8. The Agency administers a process to notify operators of Canadian-registered ships of the proposed activity to be performed (as described in the application). A *Notice of Coasting Trade Licence Application* (Notice of Application) will be posted on the Agency's website and sent to all interested parties who subscribed to receive [e-mail notifications](#). The notice will request that operators advise, within the time frames provided, whether they have a suitable ship available to perform the activity described in the application. In the case of passenger ships, they are to also advise whether an identical or similar adequate marine service is available.
9. If no offer of a Canadian ship is received by the deadline specified in the Notice of Application, the Agency considers the application to be uncontested and issues a determination that there is no suitable Canadian ship available.
10. If, following notification, one or more Canadian ships are offered to perform the proposed activity, the Agency considers the application to be contested and receives written submissions from the relevant parties (i.e., applicant, offeror(s)) to procure evidence related to the suitability and availability of the offered Canadian ship(s), and, in the case of passenger services, whether an identical or similar adequate service is offered by existing Canadian ships. Objections¹

¹ From time to time, the Agency receives objections to applications that do not contain an offer of a ship. While "objectors" can raise important systemic issues in the processing of these applications, it should be noted that the Agency's mandate in each application is to determine whether there is a suitable Canadian ship available to perform the activity or service. Accordingly, objections without an offer will not change the Agency's determination.

and offers of Canadian-registered ships are to be filed with the Agency and the applicant at the same time. The applicant may then file comments with the Agency and the offeror is then provided an opportunity to respond to those comments.

11. Each party is responsible for presenting its case and making all pertinent arguments in its pleadings, as the Agency bases its decision on the information provided.
12. Where an offer of a Canadian-registered ship is made, **the applicant must contact the Canadian offeror(s)** to discuss the availability and suitability of the Canadian ship. If the application or offer(s) are not subsequently withdrawn, the applicant must file any relevant comments on the offer within the applicable time period and the offeror(s) must file any final reply to those comments within the applicable time period. The Agency will then, based on the evidence before it, make a determination as to whether, on a balance of probabilities (i.e., it is more likely than not), a Canadian ship is suitable and available to perform the proposed activity and, in the case involving the transportation of passengers, whether an identical or similar adequate marine service is offered. The Agency issues a decision containing this determination.
13. A determination of the Agency pursuant to the *Coasting Trade Act* is provided to the Minister of Public Safety and Emergency Preparedness for further action. **An Agency determination does NOT constitute an authority to commence operations in respect of the activity for which the application has been made with the Minister of Public Safety and Emergency Preparedness. The coasting trade licence issued by the Minister of Public Safety and Emergency Preparedness constitutes that authority.**
14. Applicants are advised that they are responsible for ensuring that they meet other government departments and agencies requirements related to coasting trade as noted in section 4.7 of these Guidelines. In so doing, applicants should plan accordingly to take into consideration the time required for each relevant authority to carry out its obligations.

15. Figure – Schematic of the Agency’s Coasting Trade Licence Application Process, along with the Roles of Other Government Departments and Agencies



Part 2 – Advance Notice and Content of Application

2.1 General

16. Applications of a general and speculative nature will not be accepted, as they do not provide sufficient information to enable the Agency to determine whether a suitable Canadian ship or non-duty paid ship is available to perform the activity described in the application.
17. ***Applications should be filed with the Agency as far in advance as possible prior to the start of the proposed activity.*** The Agency has adopted performance targets to efficiently protect the interests of Canadian-registered ships while allowing access to foreign ships when suitable Canadian-registered ships are not available. The Agency is committed to process the applications according to its performance targets, which are 80 percent of coasting trade licence applications within 90 days when an offer is made and 95 percent of applications prior to the commencement date of the activity when no offer is made.² Although the Agency strives to meet these performance targets and issue a determination as expeditiously as possible, in certain situations, the Agency may need the full 120 days of the time period provision set out in the *Canada Transportation Act* to issue its determination. This should be anticipated by applicants if offers are expected to be filed, the case is complex and/or submissions do not contain enough information.
18. While the *Coasting Trade Act* does not prescribe an advance notice time for the submission of applications to the Agency or any other deadlines related to the parties' submissions made in the application, the Guidelines provide various *minimum* time periods for advance notice, depending on the nature or urgency of the activity. Applicants should, when possible, provide more advance notice than these minimum time periods. This is in keeping with the intent of the *Coasting Trade Act*, which recognizes the interests of operators of Canadian-registered ships by permitting foreign ships to temporarily engage in coasting trade in Canadian waters only if no suitable Canadian ship or non-duty paid ship is available to perform the activity described in the application. This will provide operators of Canadian-registered ships with more time to review the

² The Agency publishes its performance results against these performance indicators in its [Annual Report](#) and [statistics](#).

requirements of the proposed activity and to prepare a possible offer of a Canadian ship.

19. In the event of a contested application, the Agency is required to make a determination on the pleadings of parties as to whether operators of Canadian-registered ships have a suitable ship available to perform the activity described in the application, and, in the case of passenger ships, whether an identical or similar adequate marine service is offered. **As contested applications typically take much longer than 30 days to process, it is the applicant's responsibility to ensure that sufficient time is available, prior to the commencement of the proposed activity, for the process to be carried out as stipulated in these Guidelines, as well as to provide for the processing time of other federal departments and agencies.**

2.2 Minimum Advance Notice Periods

20. The following *minimum* advance notice time periods are established by the Agency for various types (or circumstances) of coasting trade licence applications. All time periods are in business days. They are with respect to the Agency process only, and do not take into account time constraints that may be imposed by other federal departments or agencies. The time requirements for an applicant to deal with other federal departments or agencies should be considered in providing adequate advance notice in the filing of an application with the Agency.

21. The time periods are as follows:

- 30 days: For all applications other than those falling under processes requiring a minimum advance notice time of 8 days, fast track or urgent treatment. This would include non-urgent activities, including, but not limited to, multi-trips or yearly operations as well as shorter term activities, including, but not limited to, a single trip, isolated or non-repetitive operations. These applications are normally for pre-planned activities where specific dates and/or locations are known in advance. Examples include activities related to offshore resource exploration and development, dredging, or passenger services such as sightseeing, cruises or tall ships.
- 8 days: For all applications proposing the operation of oil tankers.
- Fast Track: The fast track process applies to unforeseen short-term situations where the economic consequences of the commercial shipping activity not being performed would have a negative impact on a

business or a community (e.g., a mill facing closure and loss of jobs for lack of urgent raw material supply).

More favourable costs (e.g., duty, crew, fuel) and operating conditions of foreign ships compared to Canadian-registered ships will not be considered as “economic consequences” to justify a fast track application.

Urgent: The urgent process only applies to urgent commercial activities that cannot be accommodated under any of the above notices (e.g., accidents, safety of individuals is at risk, natural disasters).

22. The fast track and urgent processes are *not* to be used when an applicant has failed to properly plan for an activity that would typically have a longer advance notice period. If an applicant does not provide clear and concise written reasons why the advance notice period of a minimum of 30 days and the associated time lines described in these Guidelines are not feasible, the Agency will process the application in accordance with the timeframes associated with the minimum advance notice period of 30 days.
23. ***Once an application has been accepted for fast track or urgent processing***, the Agency will post a Notice of Application on its website and an e-mail of the notice will be sent to all interested parties who subscribed to receive [e-mail notifications](#). The Notice of Application will set the time limit to file an offer. For fast track processing, see paragraph 41. For urgent processing, timelines are established by the Agency based on the facts and circumstances of each case.
24. If an offer has been filed with the Agency, the adjudicative process commences and an Agency determination will be issued. While the Agency is committed to issuing determinations in a timely and expeditious manner as per its performance targets as set out in paragraph 17, in certain situations, the Agency may need the full 120 days provided for in the *Canada Transportation Act* to issue its determination.

2.3 Content of Applications

25. As required by the *Coasting Trade Act*, applications must be signed by a Canadian resident. ***As the onus is on the applicant to justify the need to import a foreign ship, the application must clearly state all the relevant facts and circumstances and the grounds for the application.*** In particular, the application must provide comprehensive justification as to why a foreign ship must be imported to perform the proposed activity.

26. The applicant's justification for the temporary admission of a foreign ship to the coasting trade of Canada should focus primarily on the nature of the proposed activity.

27. *All applications must* include the following information:

- a) a detailed description of the activity identified in the application, including, but not limited to:
 - i) origin(s)/destination(s) (if multiple);
 - ii) number of trips (schedules if multiple);
 - iii) dates; and
 - iv) any physical limitations (e.g., draft limitations, etc.).
- b) the following information by type of activity:

Cargo:

- volume of the cargo (m³, etc./per voyage – per destination, if applicable);
- type of cargo (bulk, containers, miscellaneous); and
- any special requirements (e.g., crane, reefer plugs, deck structure, self-loading, physical limitations at ports of loading/discharge, etc.).

Tanker:

- volume of cargo (m³, etc./per voyage – per destination, if applicable); and
- type of cargo (e.g., clean, heavy oil, etc.).

Passenger service:

- number of passengers;
 - if overnight stay, number of rooms/berths;
 - nature of the service (e.g., bareboat, cruise, sightseeing/excursions, business venue, etc.);
 - length of the excursion;
 - targeted customer (luxury); and
 - pricing structure.
- c) the name of the proposed foreign ship. In exceptional circumstances (e.g., urgent applications), the Agency will consider applications without the

name of the foreign ship. However, the applicant must provide clear reasons why the name of the foreign ship is not yet known;

- d) the type of ship required, size, capability and any other specifications that are required for the proposed activity;
- e) an indication of whether the dates of the proposed activity can be changed, and, if not, reasons why the dates cannot be changed;
- f) reasons why the applicant determined that there was no alternative but to import the foreign ship identified in the application; and
- g) any other relevant information supporting the application, including, but not limited to, environmental permits and any attached conditions that have been issued under the *Canadian Environmental Protection Act* and are required to perform the proposed activity. In the case of Northern waters (north of the 60th parallel), indicate if the activity and/or the ship is subject to any restrictions imposed by Schedule VIII of the *Arctic Shipping Pollution Prevention Regulations*.

28. 30 Days Advance Notice and 8 Days Advance Notice (oil tankers only) must also include the following additional information:

- a) the names of the operators of Canadian-registered ships who have been contacted before the filing of the application and the results of that communication in terms of potential offers, including suitability and availability of Canadian-registered ships.

29. Fast track applications must include the following *additional* information:

- a) reasons why the minimum advance notice period of 30 days or 8 days (oil tankers) could not be provided for this activity;
- b) the date on which the applicant (or party represented by the applicant) became aware of the requirement or opportunity to conduct the proposed activity;
- c) the names of the operators of Canadian-registered ships who have been contacted before the filing of the application; and
- d) a detailed description of the economic consequences of not obtaining a coasting trade licence in terms of the negative impact on businesses or communities.

Such applications should also include any relevant statements from representatives of businesses or communities that are or would be negatively impacted as a result of this unforeseen short-term situation.

More favourable costs (e.g., duty, crew, fuel) and operating conditions of foreign ships compared to Canadian-registered ships will not be considered by the Agency as “economic consequences” to justify a fast track application.

30. *Urgent applications* **must** include the following *additional* information:

- a) reasons why the minimum advance notice period of 30 days or 8 days (oil tankers) could not be provided for this activity; and
- b) a detailed description of the emergency situation.

31. **To avoid unnecessary delays during pleadings and in order to provide operators of Canadian-registered ships with an adequate opportunity to make an offer of a Canadian-registered ship, applicants should provide as much supplementary, relevant information as possible to the minimum information requirements set out above.**

32. The type of relevant information required in an application will vary by the type of proposed activity (e.g., carriage of cargo, passenger service, etc.). The onus is on the applicant to complete the application in full, providing information in sufficient detail to permit the Canadian industry to assess and respond to the application.

33. **Incomplete applications or those not filed in accordance with the instructions included in these Guidelines may result in delays in processing and/or may result in the application being returned as incomplete to the applicant.**

34. An applicant may need to disclose to the Agency information of a commercially sensitive nature (e.g., names of cargo shippers) during pleadings. In such case, there is a process (refer to [Appendix A](#) of these Guidelines) for making a claim for confidentiality for information of this nature and allowing other parties to comment on the form of disclosure of the confidential information.

35. All applicants, offerors and/or objectors participating in this process are reminded that, pursuant to sections 18 and 19 of the *Coasting Trade Act*, it is a criminal offence for a person to knowingly make a false or misleading statement, either orally or in writing, as the case may be, in the course of a coasting trade licence proceeding.

Part 3 – Pleadings

3.1 Conduct of Pleadings

36. Following the receipt of an application, the Agency prepares a Notice of Application which is posted on the Agency's website and an e-mail of the notice is sent to all interested parties who have subscribed to receive [e-mail notifications](#). The Notice of Application requests that operators of Canadian registered ships advise, within the time limits provided, whether they have a suitable Canadian-registered ship available to perform the activity described in an application, and, in the case of passenger ships, whether an identical or similar adequate marine service is already available from any person operating one or more Canadian ships.
37. Where no offers are received, there is deemed to be no suitable Canadian-registered ship available and the Agency will issue its determination promptly.
38. Offers of Canadian-registered ships filed with the Agency need to be simultaneously copied by the party filing the offer to the party filing the application so that the applicant can respond to the offer within the deadline prescribed in the Notice of Application.
39. Any comments submitted by the applicant in response to an offer or objection need to be copied to the offeror for reply, if any, within the deadline established in the Notice of Application. Should the offeror provide a reply, it must copy its reply to the applicant.
40. Under section 9 of the *Coasting Trade Act*, the Agency, in making its determination on an application, may request any information and documentation related to an application from the applicant and from the offeror, as deemed necessary.

3.2 Time Limits for Pleadings

41. The time periods, in business days, allowed for the pleadings related to each application process are as follows:

Minimum advance notice periods:	Minimum 30 days	Minimum 8 days	Fast Track
Offer from offeror:	8 days	2 days	2 days
Applicant's answer:	5 days	2 days	1 day
Reply from offeror:	2 days	1 day	1 day

Note: Urgent process time limits will be determined on a case-by-case basis.

42. The above time periods are intended to balance the applicant's need for a determination within a reasonably short period of time and an offeror's need for a reasonably adequate period of time to review the requirements of the application and make an offer of a Canadian-registered ship. The above time periods and the timing of the Agency's determination are subject to the nature of the issues raised during the pleadings, the complexity and completeness of the pleadings, and any need for the Agency to obtain additional information from the parties.

3.3 Roles and Responsibilities of the Parties During Pleadings

43. It is important that parties understand their roles and responsibilities during pleadings in the context of the Agency's determinations made under the *Coasting Trade Act*.

3.3.1 Application, Offers and Related Pleadings

44. The applicant must file an application that contains all the information required in section 2.3.

45. The offeror must provide information and specifics with respect to the offered Canadian-registered ship(s). An offer must include, but not be limited to, the following information:

- a) name, description and specifications of the offered ship(s), including type, size, capacity, capability, on-board equipment, and all other relevant information justifying the offer in direct response to the suitability requirements of the proposed activity as described in the application, including the details of any proposed retrofitting (e.g., nature, cost, timing);
- b) comprehensive information to support how the offered ship(s) is/are going to perform the activity as described in the application;
- c) availability of the offered ship(s) with respect to the time period identified in the application, or the offeror's opinion with respect to another suitable period when the activity could be performed; and
- d) in the case of an application to transport passengers, all pertinent information to show that it is an identical or similar adequate marine service offered by one or more Canadian-registered ships. .

3.3.2 Applicant's Role

46. Faced with an offer of a Canadian-registered ship to perform the proposed activity described in the application that the applicant finds unacceptable, the applicant must prove to the Agency on a balance of probabilities that the offered ship is not technically or commercially suitable, or is not available to perform the activity described in the application; and, in the case of passenger services, is not an identical or similar adequate marine service available from any person operating one or more Canadian-registered ships. The ultimate burden of proof rests with the applicant to demonstrate that the offered ship is not suitable and available. This is a legal burden and it does not shift to the offeror. However, once an applicant has provided sufficient evidence to make its arguments persuasive, an evidentiary burden will shift to the offeror. This basically obligates the offeror to respond by adducing evidence to support its allegations.

47. Should the applicant fail to provide sufficient evidence to support its position that it is more likely than not that the offered ship is not suitable (technically and/or commercially) or available to perform the proposed work, the application will be denied by the Agency.

3.3.3 Offeror's Role

48. Where an applicant has submitted evidence to challenge the suitability and/or availability of the offered ship, **the evidentiary burden will shift to the offeror to produce evidence to counter the applicant's evidence.**

49. Should the offeror fail to provide sufficient evidence to support its position that the offered ship is suitable and available to perform the proposed work, the Agency will determine that there is no suitable Canadian ship available to perform the activity and, in the case of passenger services, that there is no identical or similar adequate marine service available from any person operating one or more Canadian ships.

3.3.4 Agency's Role

50. The Agency's role is to determine whether a suitable Canadian-registered ship or non-duty paid ship is available to perform the activity and, in the case of transporting passengers, if an identical or similar adequate marine service is available from an operator of a Canadian ship when an application is made for the use of a foreign ship to carry out an activity in Canadian waters.

51. Cases are normally processed by the Agency based on written pleadings and evidence submitted by the parties, which the Agency considers as a whole once pleadings are closed.

52. The Agency weighs the submissions made and the evidence filed by the parties to assess whether the applicant has met its burden of proof, or responsibility, to prove that a suitable Canadian ship is not available to perform the activity and, in the case of passenger services, there is not an identical or similar adequate marine service available from any person operating one or more Canadian-registered ships. The Agency will make its determination on a balance of probabilities assessment of the merits of the evidence submitted, meaning that the applicant must prove that its position is more likely than not.

53. As the Agency issues its determination based on the submissions filed by the parties, the parties should file complete submissions during the pleadings process, as the Agency will not advise the parties in advance of its determination. However, where the Agency considers it appropriate during pleadings, it may require either party to make a supplemental submission on a particular issue (e.g., technical suitability, commercial suitability, or availability) in its pleadings. In such instances, the other party would be provided with the opportunity to file a reply with the Agency on the supplemental submission.

3.4 Canadian-registered, Suitability, Availability, Identical or Similar Adequate Marine Service

54. The *Coasting Trade Act* does not define the terms "suitable", "available", or "identical or similar adequate marine service" as there are no unique criteria or standards to determine whether a Canadian-registered ship is suitable and

available and, in the case of passenger services, what is an identical or similar adequate marine service.

55. The Agency takes into consideration various factors to determine whether an offered Canadian-registered ship is suitable and available to perform the activity see sections 3.5.1 to 3.5.3 below.
56. A summary of examples of Agency determinations applying these factors is included under [Appendix B](#). The complete determinations, as well as other Agency rulings with respect to coasting trade licence applications, are listed on the Agency's [rulings](#) database.

3.4.1 Canadian-registered

57. It is the responsibility of the offeror to provide evidence that the offered ship is Canadian-registered. Satisfactory evidence of the Canadian-registered status of an offered ship is its name and proof that it is currently registered in the Transport Canada Register of Vessels database.
58. If the offered ship is a foreign ship that is undergoing a process of becoming a registered Canadian ship, an offeror must provide evidence that the offered ship will be registered by the time the proposed activity is to be performed.
59. Failure by the offeror to file evidence to demonstrate that the offered ship is a Canadian-registered ship, or will become a Canadian-registered ship by the time the proposed activity is to take place, will result in the Agency concluding that there is no Canadian registered ship available for the proposed activity.

3.4.2 Suitability

60. The *Coasting Trade Act* does not state that an offered Canadian-registered ship must be “identical” to the foreign ship proposed in an application. Furthermore, the suitability of the Canadian-registered ship is not assessed in relation to the technical specifications of the foreign ship. Rather, the Agency assesses the suitability of the Canadian-registered ship in relation to the technical and operational requirements of the activity and whether the Canadian-registered ship is capable of performing the activity. The suitability factors to be assessed may include:
 - a) technical and operational suitability – technical characteristics of the ship and equipment required to operationally perform the proposed marine service or activity; and
 - b) commercial and economic suitability – the commercial (e.g., financial) and economic implications of using the foreign ship versus the offered Canadian-registered ship.

61. **Technical/Operational Suitability:** Parties (applicants and offerors) are encouraged to review the Agency Decisions summarized in [Appendix B](#) that highlight precedents and issues that have arisen in previous cases.
62. **Commercial/Economic Suitability:** The Agency recognizes, as a general principle consistent with the overall intent of the *Coasting Trade Act*, that the operation of Canadian-registered and crewed ships implies costs and operating conditions that are not applicable to (and are usually higher than for) foreign ships. Therefore, allegations or evidence from the applicant that go solely to the “higher cost” of operating a Canadian ship are generally insufficient to establish that an offered Canadian-registered ship is not commercially/economically suitable.
63. Where commercial/economic suitability has been raised by the applicant, the applicant must produce evidence that clearly demonstrates:
- a) the necessity of using the foreign ship for the commercial viability of the proposed activity; and
 - b) that the higher costs of using an offered Canadian ship for the activity would render the activity commercially/economically unviable.
64. If the applicant produces this evidence, the offeror must then challenge the applicant’s evidence by, for example, producing evidence in its reply to demonstrate that the use of the Canadian-registered ship would not render the proposed activity commercially/economically unviable.
65. The Agency has the authority to require the parties to provide any additional information it deems necessary. In addition, the Agency may, on occasion, determine that additional information is necessary from an impartial third-party

3.4.3 Availability

66. The *Coasting Trade Act* does not state that an offered Canadian-registered ship must be available on the exact dates stipulated in an application. The Agency has determined on a number of occasions that the time period during which a proposed activity could take place could be reasonably flexible without affecting the parties’ interests. Therefore, the Agency may use the following factors to determine availability:
- the underlying rationale as to why the dates stipulated in the application are crucial and why alternatives could not be considered;
 - the capability of the offered ship to be at the required site on time;
 - location of the offered ship and repositioning delay;

- the normal, or usual, time-period for conducting a proposed activity; and
- the ability of the offered ship to perform the proposed activity by the end of the required period (or relevant shipping/activity season).

3.4.4 Passenger Services – Identical or Similar Adequate Marine Services

67. With respect to passenger services, and in addition to the suitability and availability tests above, the *Coasting Trade Act* requires the Agency to determine whether an identical or similar adequate marine service is available from any person operating one or more Canadian-registered ships. In determining “identical or similar adequate” passenger marine service, the Agency relies on factors such as:

- the offered ship’s characteristics (e.g., passenger capacity, level of service, vintage, quality of build, appointments, etc.) in relation to the proposed foreign ship for conducting the proposed activity or service; and
- the distinctness of the passenger or cruise market targeted (e.g., cost/luxury segment of packages/service, foreign versus domestic marketing) by the proposed activity in relation to the offered packages/services of the offeror.

3.5 Deadline for Agency Decisions

68. While the Agency is committed to the performance targets referred to in paragraph 17, subsection 29(1) of the *Canada Transportation Act*, provides that the Agency has up to 120 days after the originating documents are received by the Agency to make a decision.

69. The Agency is aware of the importance of the timing of coasting trade activities and is committed to process such applications in a timely and expeditious manner as per its performance targets. However, there may be instances where the Agency may need **the full 120 days to issue its determination due to the complexity of the application and/or if submissions do not contain sufficient evidence.**

70. Parties are reminded to submit clear and detailed information in an application or the offer of a Canadian-registered ship in order to minimize delays in the processing of applications, and to ensure that all correspondence related to pleadings are submitted to the Agency and copied to all parties to the pleadings.

Part 4 – General Information

4.1 Withdrawal or Modification of an Application or an Offer

71. An applicant may withdraw an application at any time before an Agency determination is issued.
72. An offer of a Canadian-registered ship may be withdrawn at any time before an Agency determination is issued.
73. Modifications to applications may be permitted by the Agency under certain circumstances. For example, modifications to applications may be considered by the Agency for the following elements:
 - the nature of the proposed activity;
 - the type and name of ship, characteristics, equipment etc.;
 - the area where the proposed activity will be performed; and
 - the starting/ending dates of the proposed activity.
74. The Agency considers the proposed modifications to an application to determine whether the changes do not materially vary the existing application, such that a new application and Notice of Application are required.
75. Similarly, modifications to offers may be permitted by the Agency where, for example, the dates of availability of the offered ship change.

4.2 Procedural Provisions for the Processing of Coasting Trade Licence Applications

76. The *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)* are not applicable to these proceedings. Parties should refer to these Guidelines, including [Appendix A](#), which contains supplemental provisions applying to all proceedings before the Agency related to coasting trade licence applications. For example, all information filed with the Agency is normally placed on the public record. However, Appendix A provides for a procedure to be followed for filing information under a claim for confidentiality, as well as requests for disclosure of such information.

4.3 Appeal and Review of Agency Decisions

77. Should a party disagree with an Agency determination, there are two avenues to contest the Decision:

1. under section 41 of the *Canada Transportation Act*, a party can apply to the Federal Court of Appeal within 30 days of the issuance of an Agency decision for leave to appeal the decision on a question of law or jurisdiction; and
2. under section 40 of the *Canada Transportation Act*, a party can petition the Governor in Council to vary or rescind any decision made by the Agency.

78. In addition, under section 32 of the *Canada Transportation Act*, the Agency may review, rescind or vary any decision made by it if, in its opinion, there has been a change in the facts or circumstances pertaining to the decision since it was made. The review contemplated by section 32 of the *Canada Transportation Act* is not an open-ended authority for the Agency to review its decisions. The Agency's jurisdiction under this section is limited and only arises if there has been a change in the facts or circumstances pertaining to the decision since its issuance. The Agency must first determine whether there has been a change in the facts or circumstances pertaining to the decision sufficient to trigger a review and, if so, then determine whether the new facts or circumstances warrant a review, rescission or variance of the decision. It should be noted that even though this may be done at anytime, the Agency may decline to do so if the Minister of Public Safety and Emergency Preparedness has already issued the coasting trade licence. In this case, the issue is moot because the Minister's power to revoke a licence is limited under the *Coasting Trade Act* and does not include rescission of the Agency's determination (i.e., the licence would not be revoked as a result of the variance or rescission of an Agency decision). However, if there is an application for review of an Agency decision before a licence has been issued, the Agency's determination could be rescinded by the Agency.

4.4 Official Languages

79. Written information may be submitted to the Agency in either **French or English**.

4.5 Agency Contact Information

80. Any information pertinent to the application for a coasting trade licence must be sent to:

Canadian Transportation Agency
Manager, Air and Marine Investigation Division

By Mail: Ottawa, Ontario
K1A 0N9

By Hand: 15 Eddy Street
Gatineau, Quebec
J8X 4B3

Telephone: 819-997-6542

E-mail: maritime@otc-cta.gc.ca

81. Filings in response to any Notice of Application must be sent to the Secretary of the Agency and copied to the applicant.

Email: secretariat@otc-cta.gc.ca

Facsimile: 819-953-5253

4.6 Other Agencies and Departments – Contact Information

82. Depending upon the type of activity that is contemplated in a coasting trade application, all or some of the following departments and agencies need to be contacted prior to the commencement of any activity with a foreign ship in Canadian waters. Contact should be made *prior* to any planned activity to find out the necessary lead time of each department or agency for their input into the overall process.

83. The following information may not be exhaustive, but is provided to assist parties in planning ahead for coasting trade applications. While the information is accurate as of the time of writing, contact and other information may change from year to year and the applicant should ascertain that it has the most recent accurate information.

4.6.1 Transport Canada

84. While it is a proponent's responsibility to obtain a coasting trade licence in respect of any foreign or Canadian registered non-duty paid ship engaged in coasting trade, Transport Canada may be contacted for guidance on the application of the *Coasting Trade Act* with respect to particular activities (i.e., whether an activity is or is not considered coasting trade). Transport Canada is also required to verify that ship certificates and documents are valid and in

force, and to conduct inspections under the *Canada Shipping Act, 2001* to ensure foreign ships meet all applicable safety and pollution prevention requirements, and to enforce the *Coasting Trade Act*.

85. Requests regarding what does or does not constitute coasting trade can be directed to [Transport Canada, Marine Policy](#).
86. Safety inspection of foreign ships that have received a letter of determination from CBSA can be coordinated through the [Transport Canada marine regional offices](#).

4.6.2 Canada Border Services Agency

87. Applications for a coasting trade licence must be made using the [Application for Vessel Temporary Admission to the Coasting Trade of Canada](#) and must be made by a person resident in Canada. Applications are to be sent to both the Agency and CBSA. The appropriate addresses and fax numbers are indicated in the application form.
88. When the Canadian Transportation Agency issues a determination that there are no suitable Canadian-registered ships available to perform a proposed activity, CBSA will send out a Letter of Determination (“Letter”) to the applicant. The letter outlines the remaining requirements to obtain a coasting trade licence.
89. When the applicant has the necessary documentation, they proceed to a specified Canada Border Services Agency office where a licence is issued on behalf of the Minister of Public Safety and Emergency Preparedness that authorizes the ship to commence its specified operations.

4.6.3 Employment and Social Development Canada (ESDC)/Service Canada and Citizenship and Immigration Canada (CIC)

90. In general, employers who wish to use temporary foreign workers aboard ships that plan to work in Canadian waters pursuant to the *Coasting Trade Act* must obtain a Labour Market Impact Assessment (LMIA) from ESDC/Service Canada. The temporary foreign worker must also obtain a work permit from CIC, and in some cases, a visa. Learn more about the [Temporary Foreign Worker Program](#).

4.6.4 Petroleum Boards

91. For companies that intend to carry out oil and gas activities in the Nova Scotia or Newfoundland and Labrador Offshore Areas, the relevant Board(s) must be contacted to obtain information and appropriate approvals for the proposed work activity:

- [Canada-Newfoundland and Labrador Offshore Petroleum Board](#)
- [Canada-Nova Scotia Offshore Petroleum Board](#)

Appendix A – Supplemental Provisions for the Processing of Coasting Trade Licence Applications

These provisions apply in respect of all proceedings before the Agency related to coasting trade licence applications under sections 4 and 5 of the *Coasting Trade Act*. In particular, the Guidelines and this appendix contain all the procedures applicable to these proceedings.

The *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)* are not applicable to these proceedings.

1. Originating Document

For purposes of section 29 of the *Canada Transportation Act*, an originating document is a complete application under paragraph 27 of the Guidelines and under whichever of paragraphs 28, 29 or 30 of the Guidelines is applicable to the particular application.

2. Interested persons

- (1) Any interested person who intends to make comments, including objections, to the Agency regarding the application, but does not intend to offer a suitable ship available to perform the activity described in the application, shall file with the Agency, and serve on the applicant and any offeror, a written submission that:
 - (a) describes the nature of the person's interest in the proceeding and, in particular, support for or objection or opposition to the application and/or any offer;
 - (b) provides any relevant information, including documents, that the person considers will explain or support the person's comments;
 - (c) states the date on which the person became aware of the application; and
 - (d) indicates the full name, address, telephone number and any other telecommunications numbers of the person or the person's representative.
- (2) A submission under subsection (1) above must be submitted to the Agency at the earliest possible time after the person becomes aware of the application, but no later than the close of pleadings.

- (3) The Agency may refuse a submission under subsection (1) if the person making the submission fails to demonstrate to the satisfaction of the Agency an interest in the proceeding.
- (4) A person who files a submission under subsection (1) is not a party to the proceeding and is not entitled to any further notice in the proceeding.
- (5) The Agency may direct or permit a party to the proceeding to file a reply to an interested person's submission where their interests are adversely affected by the submission.

3. Pleadings

- (1) The pleadings consist of at least an application and may include an offer, an answer, a reply, a submission by an interested person, and a reply to that submission.
- (2) No pleading may be filed after a reply or the deadline for a reply without leave of the Agency. Leave may be given at the request of a party if the Agency considers that it is appropriate.

4. Confidentiality

- (1) The Agency shall place on its public record any document filed with it in respect of any proceeding, unless the person filing the document makes a claim for confidentiality in compliance with this section.
- (2) No person shall refuse to file a document on the basis of a claim for confidentiality alone.
- (3) A person making a claim for confidentiality shall file:
 - (a) one version of the document from which the confidential information has been deleted, whether or not an objection has been made under paragraph (4)(b); and
 - (b) one version of the document that contains the confidential information marked "contains confidential information" on the top of each page and that identifies the portions that have been deleted from the version of the document referred to in paragraph (a).
- (4) A person making a claim for confidentiality shall indicate:
 - (a) the reasons for the claim, including, if any specific direct harm is asserted, the nature and extent of the harm that would likely result to the person making the claim for confidentiality if the document were disclosed; and

- (b) whether the person objects to having a version of the document from which the confidential information has been removed placed on the public record and, if so, shall state the reasons for objecting.
- (5) A claim for confidentiality shall be placed on the public record and a copy shall be provided to any party adverse in interest.
- (6) Within 48 hours following receipt of the claim for confidentiality, a person contesting a claim for confidentiality shall file with the Agency and serve on the person claiming confidentiality,
- (a) a request for the disclosure of the document, setting out the relevance of the document, the public interest in its disclosure and any other reason in support of the request; and
- (b) any material that may be useful in explaining or supporting those reasons.
- (7) The person making a claim for confidentiality may, within 48 hours after being served with a request for disclosure, file a reply with the Agency and serve a copy of the reply on the person who made the request for disclosure.
- (8) The Agency shall place a document in respect of which a claim for confidentiality has been made on the public record if the Agency finds that the document is relevant to the proceeding and that no specific direct harm would likely result from its disclosure or that any demonstrated specific direct harm is not sufficient to outweigh the public interest in having it disclosed.
- (9) If the Agency determines that a document in respect of which a claim for confidentiality has been made is not relevant to a proceeding, it will not form part of the record and the Agency will return the document.
- (10) If the Agency determines that a document in respect of which a claim for confidentiality has been made is relevant to a proceeding and that the specific direct harm likely to result from its disclosure justifies a claim for confidentiality, the Agency may:
- (a) order that the document not be placed on the public record, but that it be kept confidential;
- (b) order that a version or a part of the document from which the confidential information has been removed be placed on the public record;
- (c) order that the document or any part of it be provided to the parties to the proceeding, or only to their solicitors, and that the document not be placed on the public record; or
- (d) make any other order that it considers appropriate.

5. Filing of documents

- (1) A document shall be filed with the Agency by forwarding it in compliance with this section to the Agency's contact information as noted in paragraph 82 of the Guidelines.
- (2) Documents shall be filed or served by means of written communication, or by electronic means if the Agency or the person served has the necessary facilities for receiving documents in that manner.
- (3) A document filed or served by electronic means shall include the following information:
 - (a) the name, address and telephone and fax numbers of the person filing or serving the document;
 - (b) the date and time of the transmission; and
 - (c) if the document is served or filed by fax, the total number of pages transmitted, including the cover page and the name and telephone number of a contact person who may be reached if problems occur in the transmission of the document.
- (4) If a person files or serves a document by electronic means, the Agency may require the person to also file with the Agency the original document.
- (5) The filing or service of any document occurs when the document is received by the Agency or the person to be served, except where the document is received by the Agency or person to be served on a Saturday, a Sunday, a statutory holiday or after 17:00, local time, on a business day, in which case the document will be deemed to be received on the next business day.
- (6) The Agency may require any person who serves or files a document to provide the Agency with proof of its service or filing that identifies the document and the person served and establishes, to the satisfaction of the Agency, the manner and time of service or filing.

6. Affidavit

- (1) The Agency may require the whole or any part of a document filed with it to be verified by affidavit.
- (2) If an affidavit is made on belief, the grounds on which the belief is based shall be set out in the affidavit.
- (3) Where the Agency has required that a document be verified by affidavit and the party does not comply with this section within the time established by the Agency

for this, the Agency may strike out any document or part of it that has not been verified.

7. Document Request

- (1) If in any pleading, a party refers to a document on which the party intends to rely, any other party may make a request to that party that, as soon as is reasonably possible,
 - (a) the document be produced for inspection and copying by the party making the request; or
 - (b) a copy of the document be provided to the party.
- (2) The Agency may determine that a party who fails to comply with a request within 48 hours may not enter the document as evidence in the proceeding.
- (3) The person who produces a document shall also provide a copy of it to the Agency.

8. Notice to Produce

- (1) A party may give a notice in writing to any other party to produce, within 48 hours after receipt of the notice, a document that relates to any matter in dispute that is in the possession or control of the other party and shall specify the document to be produced.
- (2) Subject to a determination of confidentiality by the Agency, if a party fails to respond to the notice to produce a document within 48 hours, the Agency may
 - (a) direct the party to produce the document; or
 - (b) permit the party who gave the notice to submit other evidence supporting the contents of the document.

9. Notice to Admit

- (1) A party may give a notice in writing to any other party to, within 48 hours after receipt of the notice, admit the authenticity of a document relating to a proceeding.
- (2) A party who does not admit the authenticity of the document within 48 hours is deemed to admit the authenticity of the document.
- (3) If a party refuses to admit the authenticity of a document, the party shall pay the costs of proving it, regardless of the disposition of the proceeding, unless the Agency determines that the refusal was reasonable.

10. Direction to Produce

The Agency may:

- (a) require that a party provide any additional information, particulars or documents that the Agency considers necessary;
- (b) require that, subject to an Agency determination of confidentiality, any information, particulars or documents obtained under paragraph (a) be made available for inspection by, or be provided to, any other party to the proceeding; and
- (c) stay the application until the information, particulars or documents are filed with the Agency and until the Agency determines that the information, particulars or documents so filed constitute a reasonable response to the Agency's direction.

11. Interrogatories

- (1) A party to a proceeding may direct questions to any other party if the party files with the Agency, and serves on the other parties, a copy of the questions along with the reasons for them and their relevance to the proceeding.
- (2) A party to whom questions have been directed shall, within 48 hours,
 - (a) serve the party who directed the questions with a full and adequate response to each question;
 - (b) file a copy of the response with the Agency; and
 - (c) serve copies of the response on the other parties.
- (3) If a party to whom questions have been directed does not provide a complete and adequate response and contends that a question is not relevant or that the information requested is of a confidential nature or is not available, the party shall set out its reasons in support of that contention, and include any alternative available information that the party considers would be of assistance to the party who directed the questions.
- (4) If a party who directed questions is not satisfied that the response is complete or adequate, the party may request the Agency to direct that the questions be answered in full. The Agency may then direct that the questions be answered in full or in part, or not at all.

12. Formulation of issues

The Agency may formulate the issues to be considered in any proceeding or direct the parties to propose the issues for its consideration if

- (a) the documents filed do not sufficiently raise or disclose the issues;

- (b) the formulation would assist the Agency in the proceeding; or
- (c) the formulation would assist the parties to participate more effectively in the proceeding

13. Preliminary issue

- (1) If the Agency determines that an issue should be decided before continuing a proceeding, or if a party requests it, the Agency may direct that the issue be decided in any manner that it considers appropriate.
- (2) The Agency may, pending its decision on the issue, stay the whole or any part of the proceeding.

14. Stay

- (1) At any time before a coasting trade licence is issued to the applicant by the Minister of Public Safety and Emergency Preparedness, the Agency may, at the request of a party, grant a stay of a determination under paragraphs 4(1)(a) or (b) or 5(a) or (b) of the *Coasting Trade Act* pending the disposition of:
 - (a) an application for re-hearing or a review in respect of that determination under section 32 of the *Canada Transportation Act*,
 - (b) a petition to the Governor in Council in respect of that determination under section 40 of the *Canada Transportation Act*,
 - (c) an application for leave to appeal and, if leave is granted, an appeal to the Federal Court of Appeal in respect of that determination under section 41 of the *Canada Transportation Act*.
- (2) A person who files a request for stay shall serve a copy of the request on the other parties to the proceeding.
- (3) On granting the stay, the Agency may impose any terms and conditions that it considers just and reasonable in the circumstances.

15. Withdrawal

- (1) A party may, on notice filed with the Agency, withdraw an application, offer or other pleading, or discontinue participation in a proceeding, at any time before its final determination under paragraphs 4(1)(a) or (b) or 5(a) or (b) of the *Coasting Trade Act*.
- (2) The party shall serve a copy of the notice of withdrawal or discontinuance on the other parties.

- (3) On receipt of a notice of withdrawal or discontinuance, the Agency may fix any terms and conditions, including costs, to the withdrawal or discontinuance that it considers appropriate.

16. Hearing

The Agency will generally make its determinations based on the written pleadings. In exceptional cases, the Agency may find it necessary to convene an oral hearing to further its investigation in an application and, in that case, specific procedures for the conduct of oral hearings will be established and applied by the Agency.

17. Discretionary powers

- (1) The Agency shall exercise all discretion under the Guidelines and in these supplemental provisions (provisions) in a fair and expeditious manner.
- (2) The Agency may, with or without notice,
 - (a) do whatever is necessary to deal with anything that is not covered by the Guidelines or these provisions; or
 - (b) do anything prescribed in the Guidelines or in these provisions on its own, even if the Guidelines or these provisions state that a party must make a request to the Agency.
- (3) In any proceeding, the Agency may dispense with or vary any of the provisions of the Guidelines or these provisions. In particular, failing to follow a requirement of the Guidelines or these provisions does not, of itself, make a proceeding invalid, and the Agency may make all necessary amendments or grant other relief on any terms that it deems appropriate or dispense with compliance with any provision of the Guidelines or these provisions at any time.
- (4) In any proceeding, the Agency may extend or abridge the time limits set by the Guidelines or these provisions, or otherwise set by the Agency, either before or after the expiry of the time limits.

Appendix B – Summary of Agency Decisions

Examples of Agency Decisions on Canadian status, technical and commercial suitability, availability, and identical or similar adequate marine (passenger) service

Updated as of day/month/year

The following is a summary of some of the Agency's Decisions pertaining to coasting trade licence applications.

It should be noted that the Agency is not bound by its previous decisions and makes its determinations on a case by case basis in consideration of the specific facts and evidence of each case. Accordingly, these decisions are not determinative of issues in current cases before the Agency.

Prior to the Canada Border Services Agency (CBSA) issuance of a coasting trade licence for the temporary importation of a foreign ship, the Agency must determine, within the specific context of the application and the nature of the proposed work to be undertaken, whether:

1. a Canadian-registered ship;
2. is suitable in terms of technical suitability as well as in terms of financial/commercial suitability **where the applicant raises this issue in response to an offer of a Canadian ship;**
3. is available; and
4. (for the transportation of passengers) an identical or similar adequate marine service is available from any person operating one or more Canadian ships.

Agency decisions with respect to each of these matters are described below.

1. Canadian-Registered

[Decision No. 107-W-2004](#) – Application for a foreign vessel to conduct exploratory drilling off Nova Scotia from April to December 2004. A foreign ship in the process of being reflagged as Canadian was offered to perform the proposed drilling activity. The Agency stated that the *Coasting Trade Act* is forward looking and the issue was whether the offered vessel would be Canadian at the time the activity is to be performed. The

Agency determined that uncertainty existed as to whether the offered vessel would be Canadian as of the date the activity was to be performed and, therefore, there was no suitable Canadian vessel available to perform the activity.

[Decision No. 314-W-2008](#) – Application for a foreign vessel to conduct Arctic cargo supply from June to November 2008. One offeror offered the services of three Canadian vessels and a fourth foreign vessel in the process of being reflagged as Canadian to perform the proposed cargo activity. The Agency determined that no evidence had been provided that the offered foreign vessel would be Canadian as of the date the activity was to be performed, and did not take into account the cargo volume of the foreign vessel in its analysis of the technical suitability of the offeror's offer. The applicant claimed that the offeror had not filed evidence regarding the Canadian status of the remaining three vessels. The Agency checked with the Transport Canada – Register of Vessels and received confirmation that these vessels were Canadian. The cargo volume of the three offered Canadian vessels was used in determining the technical suitability of the offeror's offer.

2. Suitability

Technical and Operational

[Decision No. 298-W-2002](#) – Application for a foreign vessel to conduct a pipeline route survey off the east coast of Canada from May to November 2002. A Canadian ship was offered to perform the proposed survey. The Agency stated that the *Coasting Trade Act* does not require an offered Canadian vessel to be necessarily identical to the proposed foreign vessel, but rather that the Canadian vessel be suitable to perform the activity described in the application. The Agency determined that there was a suitable Canadian vessel available to perform the activity.

[Decision No. 392-W-2002](#) – Application for a foreign vessel to carry a special cargo shipment between Montréal, Quebec and Trail, British Columbia, during a one-month period commencing August 2002. A number of Canadian vessels were offered in response to the application. The Agency stated that the *Coasting Trade Act* does not require an offered Canadian vessel to be necessarily identical to the proposed foreign vessel, but rather that the Canadian vessel be suitable to perform the activity described in the application. The Agency therefore determined that there was a suitable Canadian vessel available to perform the activity.

[Decision No. 134-W-2004](#) – Application for a foreign vessel to conduct oilfield construction support activities off Newfoundland from May to June 2004. A Canadian ship was offered to perform the proposed work, but the applicant and offeror disagreed

on the ability of the vessel to be refitted so as to be technically suitable. The Agency contracted a third-party expert to assess technical suitability evidence. After the expert report was shared with parties, the objection to the application was withdrawn.

[Decision No. 297-W-2004](#) – Application for two foreign vessels to conduct 3-D seismic surveys off Newfoundland and Nova Scotia from May to November 2004. A Canadian vessel was offered in response to the application, but the technical suitability of the vessel was challenged by the applicant on the basis of specific technical requirements (e.g. 8-16 streamers per vessel, real-time quality control processing of data etc.). The Agency noted that the offeror did not address these technical requirements and, therefore, determined that there was no suitable Canadian vessel available to perform the activity.

[Decision No. 298-W-2004](#) – Application for a foreign vessel to conduct 3-D seismic surveys off Nova Scotia from May to November 2004. A Canadian vessel was offered in response to the application, but the technical and commercial suitability and availability of the vessel was challenged by the applicant. In response to the applicant's specific technical requirements (e.g. streamers per vessel, vessel downtime, days required to complete work), the offeror argued that its offered vessel was industry standard and more appropriate for North Atlantic conditions and could complete the required survey work within the 2004 season. The Agency noted that the applicant had failed to demonstrate that the offered vessel was not technically or commercially suitable, and was not available for the specified period. With respect to the matter of contractual payment (e.g. 'on spec') the Agency noted that commercial terms were a contractual matter not relevant to the finding of vessel availability. The Agency determined that there was a suitable Canadian vessel available to perform the activity.

[Decision No. 261-W-2007](#) – Application for a foreign vessel to conduct "as required" cable repair activity on 24-hour notice off Nova Scotia from April 2007 to March 2008. Several Canadian vessels were offered in response to the application, but the technical and commercial suitability and availability of the vessels were challenged by the applicant on the basis of specific technical requirements (e.g. ROV deployment/recovery, on-board software for cable planning etc.), financial requirements (e.g. single repair cost using offered vessels was 167 percent of the annual cost for the applicant for four repairs), and the 24-hour notice availability requirement (e.g. offered vessels were used elsewhere and there was uncertainty regarding their 365-day availability). The Agency found that the offeror failed to provide evidence (i.e. response to applicant's technical questionnaire) on the offered vessels' technical suitability, as well as cost information in response to the applicant's statement regarding cost disadvantage. The Agency determined that there was no suitable Canadian vessel available to perform the activity.

[Decision No. 304-W-2007](#) – Application for a foreign vessel to perform bridge construction service in the St. Croix River at St. Stephen, New Brunswick from April to December 2007. Several Canadian vessels were offered in response to the application, but the technical and commercial suitability of the vessels were challenged by the applicant on the basis of specific technical requirements (e.g. sectional barges, flexifloat section, access from US side of the river) and commercial requirements (applicant had existing equipment deployed for US-side work; had not factored in Canadian vessel/equipment rental in project cost/bid). The Agency found: that Canadian operators possessed technically suitable vessels that could be imported into the US by truck for launch from the US-side of the river; that the applicant had not provided cost information to substantiate its allegation that the use of two sets of barges/equipment was expensive or would place it at a competitive disadvantage; and that the applicant should have taken into consideration the availability of Canadian vessels/equipment to perform the part of the project to be undertaken in Canadian waters. The Agency determined that there was a suitable Canadian vessel available to perform the activity.

[Decision No. 127-W-2008](#) – Application for a foreign vessel to perform barge transport off Delta, British Columbia from February to June 2008. Several Canadian vessels were offered in response to the application, but the technical suitability of the vessels was challenged by the applicant on the basis of vessel sea-worthiness (e.g. marine surveyor report for two vessels, allegation for two vessels). The Agency requested the offeror to provide sea-worthiness and insurance coverage documentation for the proposed vessels. The offeror submitted current insurance certificates and a letter from a marine surveyor confirming that two vessels would be seaworthy after repairs.

The Agency determined that there was a suitable Canadian vessel available to perform the activity.

[Decision No. 274-W-2008](#) – Application for a foreign vessel to perform survey dive-support activities off British Columbia from May to September 2008. Several Canadian vessels were offered in response to the application, but the technical suitability of the vessels was challenged by the applicant on the basis of specific technical requirements (e.g. inverter capacity to operate a ROV, length of vessel). The offeror asserted that it could provide the required power and inverter capacity, and that the greater length of the offered vessel was more appropriate in meeting other requirements. The Agency requested the applicant to justify its assertion regarding the offered vessel's length as too long. The applicant did not respond. The Agency noted the onus on the applicant to demonstrate that the offered vessel is not technically suitable, and to provide evidence in support of statements/allegations to the contrary. The Agency determined that there was a suitable Canadian vessel available to perform the activity.

[Decision No. 549-W-2008](#) – Application for a foreign tanker to deliver asphalt/oil from Saint John, New Brunswick to various East Coast ports from October to November 2008. A Canadian vessel was offered in response to the application, but the technical suitability of the vessel was challenged by the applicant on the basis of specific technical requirements (e.g. company policy requiring tankers calling at its terminal to be 15 years or younger and double-hulled, or 20 years and under, with a certain condition assessment rating). The offeror noted that the applicant's sole basis for contesting technical suitability was vessel age (32 years). The Agency noted that Canadian vessel requirements do not restrict tankers to be of a certain age to operate in Canadian waters, and company policy cannot supersede Canadian law and give effect that is contrary to the intent of the *Coasting Trade Act*. Therefore, the applicant's policy was not relevant to the Agency's assessment of vessel suitability. The Agency determined that there was a suitable Canadian vessel available to perform the activity.

[Decision No. 584-W-2008](#) – Application for a foreign vessel to conduct dredging work at Magdalen Islands, Quebec from October to November 2008. Several Canadian vessels were offered in response to the application, but the technical suitability of the vessels was challenged by the applicant on the basis of specific technical requirements (e.g. environmental permit issued by Environment Canada indicated that the activity must be performed by a trailing suction hopper dredge). The Agency reiterated that it is not involved in any manner with environmental permits and their conditions, but that it cannot ignore the conditions that another federal department or provincial government may attach to an environmental permit. None of the offered vessels were of the required type. The Agency determined that there was no suitable Canadian vessel available to perform the activity.

[Decision No. 257-W-2009](#) – Application for a foreign vessel to transport passengers, vehicles and freight between North Sydney, Nova Scotia and Port Aux Basques, Newfoundland and Labrador from July 2009 to June 2010. One Canadian vessel was offered in response to the application, but the technical suitability of the vessel was challenged by the applicant since the vessel was not licensed to carry passengers which was the main proposed activity (e.g. the transportation of passengers and passenger vehicles) while the other activity (e.g. unaccompanied trailers and their freight) was only to take place when the total capacity of the foreign vessel was not reached. The Agency decided that the proposed service had two distinct activities: a passenger and passenger vehicle ferry service activity, and a freight transportation service activity; and that these two activities would be addressed separately. With respect to the passenger and passenger vehicle ferry service activity, the Agency found that the carriage of passengers with their cars or commercial vehicles is an integrated service and it would not be logical to have a passenger travelling by car or commercial vehicles separated from their vehicles. The Agency determined that there was no

suitable Canadian vessel available to perform the passenger and passenger vehicle ferry service activity. With respect to the freight transportation service activity, the Agency determined that it was missing critical information and requested that the applicant and the offeror provide specific information on this activity (refer to [Decision No. 326-W-2009](#)).

Commercial and Economic

[Decision No. 606-W-1996](#) – Application for three foreign-registered tugs to carry out assembly work of the Hibernia Production Platform from February to April 1997. In response to an offer of three Canadian tugs, the applicant stated the Canadian vessels were technically suitable, but their costs were excessive and not commercially acceptable. The Agency noted that the primary purpose of the *Coasting Trade Act* is to protect the interests of Canadian shipowners who have made significant investments through having Canadian-built, -registered and -crewed vessels. The Agency noted that Canadian operators are subjected to costs and operating conditions that are not applicable to foreign vessels, but are standards for operating in Canada. Based on its consideration of all the relevant information filed during the pleadings, the Agency found the rates of the Canadian vessels offered were not excessive and compared favourably with any other similar vessels. In light of the above, the Agency determined that there were suitable Canadian ships available to perform the activity.

[Decision No. 461-W-2001](#) – Application for a foreign oil tanker to rapidly transfer oil products between a refinery in Saint John, New Brunswick and a terminal at Point Tupper, Nova Scotia from June to November 2001 for maintenance purposes. A smaller Canadian tanker was offered to perform the transfer. The Agency found that the smaller tanker would not provide sufficient capacity to suitably transfer the oil products between the refinery and the terminal and that its smaller capacity would require the lowering of the refinery output (i.e. throughput). The Agency therefore determined that there was no suitable Canadian ship available to perform the activity.

[Decision No. 352-W-2005](#) – Application for a foreign vessel to conduct a seismic survey off Newfoundland from March to November 2005. A Canadian vessel was offered in response to the application, but the commercial suitability and availability of the vessel was challenged by the applicant. Allegations were made with respect to the vessel's assumed costs and productivity and the requirement for a mobilization fee to reposition the offered vessel from abroad. The Agency noted that there are higher costs of operating vessels in Canada, and the applicant failed to submit evidence (in support of its allegations) as to the negative impact that such differences in cost would have on the commercial viability of the project. The Agency determined that there was a suitable Canadian vessel available to perform the activity.

[Decision No. 285-W-2007](#) – Application for a foreign vessel to provide short-sea feeder container service on a scheduled basis between Halifax, Nova Scotia and Montréal, Quebec and (on seasonal basis) Hamilton, Ontario from August 2007 to July 2008. A Canadian vessel was offered in response to the application, but the technical and commercial suitability and availability of the vessel were challenged by the applicant on the basis of specific technical requirements (e.g. container sizes and capacity, crane capacity, ice class rating, vessel crewing), financial requirements (e.g. cost per TEU threshold for financial viability), and year-round availability requirement (e.g. offered vessels under long-term cargo commitment elsewhere). The Agency found that the offered vessel was technically suitable based on evidence provided. The Agency reiterated that its consideration of commercial suitability was limited to factors that were raised and substantiated during the pleadings, and found that the commercial suitability requirements in the case were necessary for the proposed container feeder service. The offered vessel was unable to meet the cost threshold necessary for commercial viability and the proposed service could only be implemented with a purpose-built (foreign) modern vessel. The Agency determined that there was no suitable Canadian vessel available to perform the activity.

Several other decisions covered in other sections also dealt with commercial suitability in conjunction with technical suitability (e.g. Decision Nos. [298-W-2004](#), [261-W-2007](#), [304-W-2007](#)) or availability (e.g. Decision No. [314-W-2008](#))

3. Availability

[Decision No. 447-W-2001](#) – Application for a foreign-registered seismic research vessel to conduct 2-D seismic survey on the east coast of Canada from June to November 2001. In response to an offer of a Canadian vessel, the applicant submitted that the Canadian vessel was not technically suitable and that it would not be available for the proposed dates of the activity. The Agency found that the offered Canadian vessel was technically suitable and did not have to be identical to the proposed foreign vessel. With respect to availability, the Agency ruled that the applicant had failed to provide evidence substantiating its claim that the offered Canadian vessel was not available at the dates of the proposed activity. In light of the above, the Agency determined that there was a suitable Canadian vessel available to perform the activity.

[Decision No. 250-W-2001](#) – Application for a foreign vessel to conduct 2-D seismic survey off the east coast of Canada from April to August 2001. A Canadian vessel was offered to perform the activity starting around May 25, 2001. The Agency found the time period set in the application was not crucial and that the proposed activity could be performed by a Canadian vessel at another date. The Agency therefore determined that a suitable Canadian vessel was available to perform the activity.

[Decision No. 500-W-2002](#) – Application for a foreign vessel to conduct maintenance dredging activities at the Magdalen Islands, Quebec from July to September 2002. A Canadian vessel was offered to perform part of the activity from September 15 to October 31, 2002. The Agency determined that the specific dredging activities could be performed during the period of August 5 to October 31, 2002, and that a suitable Canadian vessel was available during part of that period to perform the activity. The Agency also concluded that no suitable Canadian vessel was available for a part of the required period, from August 5 to September 14, 2002.

[Decision No. 441-W-2004](#) – Application for a foreign vessel to conduct scheduled ro-ro container service between Halifax, Nova Scotia and Argentinia, Newfoundland and Labrador with a port call at Saint-Pierre (France) from June 2004 to May 2005. Some aspects of technical suitability related to the international port of call and offerors disputed that such requirements were irrelevant. The Agency determined that the proposed carriage of cargo to/from Saint-Pierre was international carriage, but that it was relevant to the overall service described in the coasting trade licence application. The applicant provided evidence with respect to specific technical requirements (e.g. various container sizes; reefer plugs; deck cranes, etc) and one offeror provided evidence that two of its offered Canadian vessels could be equipped and/or refitted to meet those requirements. The applicant communicated its willingness to amend its application to import a foreign vessel to the early part of the proposed period of activity (when the Canadian vessels were unavailable) and to enter into contract negotiation for vessel charter for the later part of the proposed period of activity.

[Decision No. 473-W-2006](#) – Application for a foreign vessel to conduct ‘as required’ cable repair activity on 24-hour notice off Canada’s West Coast from June 2006 to June 2007. Several Canadian vessels were offered in response to the application, but the technical suitability and availability of the vessels were challenged by the applicant on the basis of specific technical requirements (e.g. stern ramp, access to cable repair equipment, on-board software for cable planning, etc.) and the 24-hour notice availability requirement. The offeror noted that its vessels had done similar work off Canada’s East Coast, had access to specialized equipment at Canadian ports, and could be retained under charter at a West Coast port. The Agency noted that the cost of mobilization/demobilization of the offered vessels to/from Canada’s West Coast would be considerable. The Agency considered the evidence and circumstances of the case and found that the offered Canadian vessels were not available to perform the activity and, therefore, determined that no suitable Canadian vessel was available to perform the activity.

[Decision No. 314-W-2008](#) – Application for two foreign vessels to perform Arctic cargo supply from June to November 2008. Several Canadian vessels were offered in

response to the application, but the technical suitability and availability of the vessels were challenged by the applicant on the basis of specific technical requirements (e.g. total size of load, number of required trips, ice), and availability requirement (e.g. requirement to deliver some cargo at the beginning of the construction season, completion of trips within Arctic shipping season). The Agency found that the offered vessels of one offeror would be unable to meet the overall cargo capacity even if their full capacity were devoted to the activity, and that the offeror had not provided information on how it was able to meet early delivery requirements for certain cargo. The Agency affirmed that it is the offering party's responsibility to establish that the offered vessels can carry out the required work, and that there was insufficient evidence in this case that the offered vessels could meet the technical and availability requirements of the application. The Agency determined that there was no suitable Canadian vessel available to perform the activity.

[Decision No. 326-W-2009](#) – Application for a foreign vessel to transport passengers, vehicles and freight between North Sydney, Nova Scotia and Port aux Basques, Newfoundland and Labrador from July 2009 to June 2010. One Canadian vessel was offered in response to the application and the Agency determined by [Decision No. 257-W-2009](#) that there was no suitable Canadian vessel available to perform the passenger and passenger vehicle ferry activity. With respect to the freight transportation service activity, the Agency found that the Canadian vessel was committed to a service between Halifax and Saint-Pierre and Miquelon which was executed over a four day period and that the vessel could not provide daily sailing between Sydney and Port aux Basques as proposed by the applicant. The Agency concluded that the Canadian vessel was not available to perform the freight transportation activity.

4. Identical or Similar Adequate Marine Service (Passenger)

[Decision No. 230-W-1997](#) – Application for a foreign sailing vessel to conduct training and excursion activities. Many operators of Canadian vessels objected to the proposed service. After consideration of the information filed during the pleadings, the Agency found many of the activities to be performed by the foreign sailing vessel, including sail training and excursions, were available from Canadian operators who provide identical or similar adequate marine services. The Agency therefore determined that there were Canadian vessels available to perform the activities and provide the service and that there were identical or similar adequate marine services available from operators of one or more Canadian vessels, with the exception of certain activities and services described in the application.

[Decision No. 255-W-1998](#) – Application for a foreign vessel able to carry 12 passengers for excursions and thrill rides. The Agency found that an operator of Canadian vessels was operating a service similar, if not identical in most aspects, to the service described in the application and, therefore, determined that there was a similar adequate marine service available from a person operating one or more Canadian vessels.

[Decision No. 63-W-1998](#) – Application for a foreign traditionally-rigged schooner to provide excursions along the east coast of Canada from May 1998 to October 1998. In the presence of a number of under-utilised services offered with different Canadian vessels, the Agency found that the existing services, if not identical to those described in the application, were similar in scope. The Agency determined that there were similar adequate marine services available from persons operating one or more Canadian vessels.

[Decision No. 462-W-1999](#) – Application for a foreign luxury cruise ship to carry 100 passengers. A Canadian vessel was offered with a capacity of 49 passengers which was not capable of providing the same level of service. The Agency therefore determined that there was no Canadian ship suitable and available and that there was no identical or similar adequate marine service available from any person operating one or more Canadian ships.

[Decision No. 1-W-2006](#) – Application for a foreign heritage, luxury vessel to carry passengers on various cruise packages. A Canadian heritage vessel was offered which provided eco-tours and served as a base for kayak tours. The applicant provided evidence that its proposed activities were different from the offeror's (e.g. vessel size, vintage, quality of build, appointments) and that its market was different (e.g. more expensive, foreign-targeted). The Agency found that the proposed service constituted a distinct activity from the services offered by the offeror, and determined that there was no Canadian ship suitable and available and that there was no identical or similar adequate marine service available from any person operating one or more Canadian ships.