

gasoline and coal. Nitrogen oxides react with volatile organic compounds to form ozone or smog and are also major components of acid rain.

#### What Areas in Texas Will This Action Affect?

The TERP will provide potential emission reductions in the following counties: Bastrop, Bexar, Brazoria, Caldwell, Chambers, Collin, Comal, Dallas, Denton, El Paso, Ellis, Fort Bend, Galveston, Gregg, Guadalupe, Harris, Hardin, Harrison, Hayes, Henderson, Hood, Hunt, Jefferson, Johnson, Kaufman, Liberty, Montgomery, Nueces, Orange, Parker, Rockwall, Rusk, San Patricio, Smith, Tarrant, Travis, Upshur, Victoria, Waller, Williamson, Wilson, and any other county located within an area of Texas designated as nonattainment for ground-level ozone.

#### Why Are We Proposing To Approve This Submittal?

TERP Division 3 is a measure relied upon in State Implementation Plans for the Early Action Compact areas of Austin, San Antonio, and Northeast Texas, as well as the Houston/Galveston Attainment Demonstration, and the Dallas/Fort Worth 5 percent Increment of Progress Plan. The amount of emission reductions projected for the TERP program is delineated in each of these plan revisions. These reductions are assisting areas to come into attainment with the National Ambient Air Quality Standard for ozone.

Diesel engines are targeted due to their relatively high NO<sub>x</sub> emissions and their long operational life, which makes the introduction of newer cleaner engines into a fleet a long term process with normal turnover. The TERP will offset the incremental cost of projects that will reduce oxides of nitrogen emissions from heavy duty diesel trucks and construction equipment in nonattainment areas. This is an incentive to owners and operators to upgrade their fleets at an expedited rate. The upgrade of these fleets will reduce the amount of NO<sub>x</sub> emissions to the atmosphere. We are proposing to approve these revisions to the Texas SIP because they will contribute to the attainment of the ozone standard, and therefore strengthen the SIP.

#### Proposed Action

TERP Division 3 is consistent with EPA guidance for an economic incentive program. See "Improving Air Quality With Economic Incentive Programs," EPA Office of Air and Radiation, EPA-452-/R-01-001 (Jan. 2001). Therefore, we propose to approve the TERP Division 3 rules.

#### Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review." This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has

the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it approves a state program.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 4, 2005.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

[FR Doc. 05-9480 Filed 5-11-05; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

#### 46 CFR Part 388

[Docket Number: MARAD-2005-21105]

RIN 2133-AB50

#### Application Fee Increase for Administrative Waivers of the Coastwise Trade Laws

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Maritime Administration (MARAD) proposes to increase the application fee for administrative waivers of the coastwise trade laws from \$300 to \$500. The increased fee would align the application fee with the actual cost of processing and issuing each waiver.

**DATES:** Comments are due June 13, 2005.

**ADDRESSES:** You may submit comments [identified by DOT DMS Docket Number MARAD-2005-21105] by 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, 400 7th St., SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 7th St., SW., 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 on the plaza level of the Nassif Building, 400 7th St., SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Sharon Cassidy, Office of Ports and Domestic Shipping, Maritime Administration, MAR-830, 400 7th St., SW., Rm. 7201 Washington, DC 20590; telephone: (202) 366-5506.

**SUPPLEMENTARY INFORMATION:** 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 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, section 6. 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.”

Pursuant to these directives, MARAD is proposing to increase the application fee for administrative waivers of the coastwise trade laws under 46 CFR part 388 for eligible small vessels. Under 46 CFR part 388, owners of small passenger vessels may apply for waivers of the U.S.-build requirements of the Passenger Vessel Services Act and section 27 of the Merchant Marine Act, 1920, to allow the carriage of no more than 12 passengers for hire in the coastwise trade. Because waivers under part 388 represent special benefits to identifiable recipients (*i.e.*, vessel owners) that are beyond the benefits and services normally received by the general public, the IOAA and Circular A-25 direct MARAD to assess user fees for providing this service. The current application fee for a waiver is \$300. MARAD proposes to increase this fee to \$500 as set forth below.

Following the principles embodied in Circular A-25, MARAD examined the costs associated with processing and issuing waivers under part 388 to determine if the current \$300 fee recovers the full costs of administering the program. The main cost components of the program include direct and indirect personnel costs and **Federal Register** publication costs. Our review of the program determined that average personnel costs for processing each uncontested application are \$204.50 and \$1,118.50 for each contested application (on average, 7% of all waiver applications are contested, based on the 236 applications sampled for our analysis). Thus, the total average personnel costs are \$268.48 for processing each application. The second main cost component of the program is the cost of publishing notices of waiver 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 1.5 columns. Thus, the total average publication cost is \$232.50. The sum total of personnel costs and **Federal Register** publication costs is \$500.98. Therefore, MARAD is proposing to raise the application fee from \$300 to \$500 in order to recover these costs.

**Regulatory Analyses and Notices**

*Executive Order 12866 and DOT Regulatory Policies and Procedures*

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This proposed rule is not likely to result in an annual effect on the economy of \$100 million or more. This proposed rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and economic impact associated with this rulemaking are considered to be so minimal that no further analysis is necessary.

*Regulatory Flexibility Act*

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Maritime Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. While this proposed rule, if promulgated, will affect businesses that qualify as small entities under Small Business Administration guidelines, MARAD does not believe that the modest increase in this one-time, non-recurring fee (unless an applicant must reapply due to a revocation) will result in a significant economic impact on small entities. Further, MARAD is required under Federal directives to assess recipients of special governmental services reasonable charges to recover the costs of providing such services.

*Federalism*

We have analyzed this proposed rule 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. These regulations have no substantial effects on the States, the current Federal-State relationship, or the current distribution of power and responsibilities among local officials. Therefore, consultation with State and local officials is not necessary.

*Executive Order 13175*

MARAD does not believe that this proposed rule will significantly or uniquely affect 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.

#### *Environmental Impact Statement*

We have analyzed this proposed rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions 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 proposed rule is required.

#### *Unfunded Mandates Reform Act of 1995*

This proposed rule does not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This proposed rule is the least burdensome alternative that achieves this objective of U.S. policy.

#### *Paperwork Reduction Act*

This proposed rule contains information collection requirements covered by the Office of Management and Budget approval number 2133-0529. The changes have no impact on the reporting burden.

#### *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 388**

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

Accordingly, the Maritime Administration amends 46 CFR chapter II, subchapter J, by revising part 388 as follows:

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

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

**Authority:** 46 App. U.S.C. 1114(b); Public Law 105-383, 112 Stat. 3445 (46 U.S.C. 12106 note); 49 CFR 1.66.

2. Amend § 388.3 by revising paragraph (a)(1) and the introductory text of paragraph (a)(2) to read as follows:

#### **§ 388.3 Application and fee.**

(a) \* \* \*

(1) The application form contained on MARAD's Web site at <http://www.marad.dot.gov> may be submitted electronically with credit card or Automated Clearinghouse (ACH) payment of the \$500 application fee.

(2) Alternatively, applicants may send written applications to Small Vessel Waiver Applications, Office of Ports and Domestic Shipping, MAR-830, Room 7201, 400 7th St., SW., Washington, DC 20590. Written applications need not be in any particular format, but must be signed, be accompanied by a check for \$500 made out to the order of "Maritime Administration", and contain the following information:

\* \* \* \* \*

Dated: May 6, 2005.

By Order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 05-9433 Filed 5-11-05; 8:45 am]

**BILLING CODE 4910-81-P**

### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 622**

[I.D. 050405E]

#### **Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Receipt of petition for emergency regulations or interim measures; request for comments.

**SUMMARY:** NOAA announces receipt of a petition for emergency regulations or interim measures, filed by The Coastal Conservation Association (CCA) under authority of the Magnuson-Stevens

Fishery Conservation and Management Act and the Administrative Procedure Act. CCA has petitioned the U.S. Department of Commerce to promulgate emergency regulations or interim measures to address overfishing of red snapper in the Gulf of Mexico primarily by further reducing bycatch of juvenile red snapper in the Gulf shrimp fishery. NMFS is soliciting public comment on this petition to help determine whether NMFS should proceed with the development of regulations suggested by the petitioner.

**DATES:** Comments will be accepted through 5 p.m. eastern time July 11, 2005.

**ADDRESSES:** You may submit comments on this petition for rulemaking, including its objectives, the need for such regulation, alternative approaches, and any other comments by any of the following methods:

- E-mail: [RSPetition@noaa.gov](mailto:RSPetition@noaa.gov). Include in the subject line the following document identifier: RSPetition.

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail: Phil Steele, Southeast Regional Office, NMFS, 263 13<sup>th</sup> Avenue South, St. Petersburg, FL 33701.

- Fax: 727-824-5308; Attention: Phil Steele.

Copies of the petition are available from NMFS at the address above.

**FOR FURTHER INFORMATION CONTACT:** Phil Steele, telephone 727-551-5784, fax 727-824-5308, e-mail [Phil.steele@noaa.gov](mailto:Phil.steele@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The petition filed by CCA states the red snapper stock in the Gulf of Mexico is overfished and undergoing overfishing. Although the petition acknowledges the directed red snapper commercial and recreational sectors share responsibility for rebuilding the stock, the petition asserts failure of bycatch reduction devices (BRDs), required in the Gulf shrimp fishery to meet established bycatch reduction standards, makes recovery of the Gulf red snapper fishery unlikely and ensures years of continued overfishing of red snapper. The petition seeks emergency regulations or interim measures primarily to stop the overfishing resulting from excessive bycatch of juvenile red snapper in the Gulf shrimp fishery.

The CCA petition states that the prevention of overfishing and recovery of the red snapper stock is predicated on at least a 44-percent reduction in bycatch of juvenile red snapper by the Gulf shrimp fishery. Further, because recent research indicates current BRD