

the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders, as applicable, for the underlying rule is discussed in the July 1, 1998 **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States; however, in accordance with 5 U.S.C. 808(2), this rule is effective on November 4, 1998. This action is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date. Pursuant to section 307(b)(1) of the Clean Air Act, challenges to this amendment must be brought by January 4, 1999.

Dated: October 26, 1998.

Carol M. Browner,
Administrator.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 2

[CGD 96-067]

RIN 2115-AF40

Vessel Inspection User Fees

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting as final, with changes, the interim rule it published on April 21, 1997. The interim rule reduced annual vessel inspection user fees for small passenger vessels and exempted publicly owned ferries from payment of vessel inspection user fees as required by the Coast Guard Authorization Act of 1996. The rule also revised the discretionary exemption criteria for vessels owned or operated by non-profit organizations.

DATES: This final rule is effective December 4, 1998.

ADDRESSES: Documents, as indicated in this preamble, are available for inspection or copying at the office of the Executive Secretary, Marine Safety

Council (G-LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593-0001, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 1-800-842-8740, extension 7-1477 or 202-267-1477.

FOR FURTHER INFORMATION CONTACT: CDR Mark McEwen, Office of Planning and Resources, Budget and Resources Division (G-MRP-2), Marine Safety and Environmental Protection at 202-267-1409.

SUPPLEMENTARY INFORMATION:

Regulatory History

On April 21, 1997, the Coast Guard published an interim rule entitled Vessel Inspection User Fees in the **Federal Register** (62 FR 19229). The rule reduced the annual vessel inspection fees for small passenger vessels to the limits established under the Coast Guard Authorization Act of 1996 (the Act) (Pub. L. 104-324); exempted publicly owned ferries from annual vessel inspection fees, as mandated by Congress; and added definitions for the terms *publicly owned*, *ferry*, *political subdivision*, *State*, *youth*, and *non-profit organization*. The Coast Guard also revised the exemption criteria for vessels owned or operated by a non-profit organization to include some non-profit organizations that did not previously qualify for exemption from payment of fees.

The Coast Guard received 26 letters commenting on the interim rule. Twenty-five comments were from ferry owners or operators (21 "privately owned" ferries, 1 "publicly owned" ferry, and 3 "unspecified ownership" ferries). The remaining comment was from the Passenger Vessel Association (PVA). No public hearing was requested, and none was held.

Discussion of Comments and Changes

Fee Caps

As required by the Act, the interim rule capped the annual vessel inspection fees for small passenger vessels less than 65 feet in length at \$300 and for small passenger vessels 65 feet or over in length at \$600. The Coast Guard did not receive any comments on this issue and it has not been changed in the final rule.

Definitions

The interim rule added several definitions to 46 CFR 2.10-25. Only the definition of *ferry* was mentioned in the comments. The interim rule defined *ferry* as a vessel transporting passengers

or vehicles on a regular run, over the most direct route between a point of embarkation and a point of debarkation on lands separated by a body of water other than an ocean, or between a point of embarkation and an island within the same State.

The Coast Guard received two comments recommending that the rule use the definition of *ferry* in subchapter T, 46 CFR 175.10-9 (now 46 CFR 175.400) and subchapter H, 46 CFR 70.10-15. The Coast Guard agrees that the definition should be consistent with those in subchapters T and H. The definition has been changed in the final rule to conform with those in subchapters T and H.

The Coast Guard has also revised the definition of *youth* by raising the age limit in the definition from 18 to 21 so the exemption could apply to vessels owned by colleges and universities providing courses of marine environmental studies and meeting the other exemption requirements.

Exemption Criteria

The interim rule revised the exemption criteria in 46 CFR 2.10-5 to allow some non-profit organizations that did not previously meet the narrowly drawn criteria to qualify for exemption from payment of fees. The Coast Guard received no comments on this revision, but we have changed the language in this section concerning fundraising activities to clearly give owners and operators flexibility in scheduling these activities.

Publicly Owned Ferries

Small passenger vessels, passenger ships, and passenger barges operating as ferries pay the annual vessel inspection fee for the vessel category to which they belong, since there is no fee category established specifically for ferries. As required by the Act, the interim rule amended 46 CFR 2.10-25 to exempt publicly owned ferries from the user fee requirements of 46 CFR part 2.

All of the written comments discussed the issue of exempting publicly owned ferries and stated that owners or operators of privately owned ferries should receive the same exemption as publicly owned ferries.

Identical Services

Nineteen comments stated that privately owned ferries and publicly owned ferries provide identical services. Several of the comments stated that all ferries provide lifeline services, such as serving as the primary or sole means of transportation for residents and visitors; providing vital transportation services for passengers, autos, trucks, and buses

to islands, riverine, and coastal communities; providing transportation of mail, packages, ambulances, food, and other things needed to supply a thriving community; and breaking ice to remote locations when needed.

The majority of comments stated that all privately owned ferries contribute to local economies by paying taxes; providing commuter services; transporting a large number of tourists; or providing service for commercial vehicles. One comment from a privately owned ferry stated it enhanced commerce by providing an important link between two major interstates.

Many comments stated that ferries in general are important to the overall infrastructure of mass transit because they provide such services as an efficient and popular mode of transit; reduce the costs of constructing and maintaining costly infrastructure; meet the increasing interest of government and the DOT transportation goals to reduce energy use and air pollution, as well as provide safe, comfortable, cost-effective transportation; and reduce vehicular traffic. Many comments also stated that privately owned ferry companies provide at least half of the waterborne passenger transportation service in this nation.

Seventeen comments discussed the economic burden of vessel inspection user fees on privately owned ferries. Several of the comments stated that continuing user fees for privately owned ferries exaggerates an uneven playing field, particularly when their exempted, publicly owned counterparts operate in direct competition. Fourteen of the comments stated the fees are yet another cost to an industry already operating without any financial assistance or subsidies. Additionally, several comments stated that fares, schedules, routes, and insurance requirements of some privately owned ferries are regulated by other rules and regulations. The comments did not describe in detail how this affected them, other than as a limitation on their ability to pass these costs on to their passengers.

Congress did not include privately owned ferries in the exclusion provision of the Act and the legislative history of the Act does not explain why Congress exempted only publicly owned ferries. The Coast Guard is implementing the requirements in the Act and has not changed the final rule.

A comment from one owner of a privately owned ferry stated that he was one of eight ferry operations required to pay the annual vessel inspection user fee for a Passenger Ship. Currently, his fee is \$6,835.00. The comment requested the Coast Guard "eliminate

these user fees or at least provide this operation with the same break afforded to the other [small] passenger vessels" under the Act, reducing his user fee from \$6,835.00 to \$600.00.

The legislative history of the Act is silent on why Congress only capped the fees of small passenger vessels and not other types of passenger vessels. With no relief provided in the Act to reduce any other passenger vessel user fees, the Coast Guard has not changed the vessel inspection user fees for passenger ships or other types of passenger vessels that were not covered by the Act.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The Act placed a cap on fees charged for the inspection of small passenger vessels which reduced the economic burden imposed on small businesses. The Act also provided an exemption for publicly owned ferries from the payment of user fees, which eliminated costs to States, State agencies, and local governments. Implementation of these provisions began on November 1, 1996.

The exemption criteria in 46 CFR 2.10-5 allow additional exemptions from payments of fees for vessels owned or operated by non-profit organizations because the Coast Guard determined it is clearly within the public interest to do so.

User fee revenues will be reduced by approximately \$2.8 million dollars as a result of the Congressional cap on small passenger vessels and its exemption of the publicly owned ferries, and the Coast Guard's broadening of the exemption eligibility criteria for vessel owners or operators of non-profit organizations. The cap on small passenger vessels will affect 5,880 vessels; it reduces revenues to the government and provides savings to the small passenger vessel industry in the amount of \$2.25 million dollars. The exemption of publicly owned ferries affects 170 vessels; it reduces revenues to the government and provides a savings to the industry in the amount of

\$428,200 dollars. Broadening the exemption eligibility for non-profit organizations is estimated to affect 100 vessels; it will reduce revenues to the government and will provide savings to industry in the amount of \$67,000 dollars.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, governmental jurisdictions with populations of less than 50,000.

The Coast Guard has reviewed this rule for potential impact on small entities under the Regulatory Flexibility Act. This rule reduces an existing economic burden on small businesses owning inspected small passenger vessels or ferries specified by the Act, or that qualify for the revised exemption status by lowering or eliminating fees required for Coast Guard vessel inspection services. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), the Coast Guard offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. The interim rule informed individuals applying for an exemption under this rule that their local Officer in Charge, Marine Inspection (OCMI) could provide assistance, or they could call, toll free, 1-800-941-3337. Individuals seeking further assistance may still call, toll free, 1-800-941-3337.

During the interim rule comment period, assistance was provided to small entities by explaining the reasons for the annual user fee cap reduction for small passenger vessels and the revision of the discretionary exemption criteria for vessels owned or operated by non-profit organizations.

Collection of Information

This final rule contains no new collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard analyzed this rule under the principles and criteria contained in Executive Order 12612 and determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule amends user fees for vessel inspection and examination services to cap fees paid for services related to small passenger vessels, and exempts publicly owned ferries from payment of the fees.

Unfunded Mandates

Under the Unfunded Mandates Reform Act (Pub. L. 104-4), the Coast Guard considered whether this final rule will result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million (adjusted annually for inflation). Section 205 of the Unfunded Mandates Reform Act requires the Coast Guard to identify and to consider a reasonable number of regulatory alternates, and from those alternatives, select the least costly, most cost-effective, or least burdensome alternative that achieves the objective of this final rule. This rule does not impose additional costs upon any State, local, and tribal governments as a result of a mandate imposed upon them as a government agency. The completed analysis estimates that this final rule will provide a total savings to vessel owners and operators of approximately \$2.8 million dollars. Publicly owned ferries will no longer have to pay a total of \$428,200 in annual inspection user fees. This rule will, therefore, result in the reduction or elimination of fees paid by State, local, and tribal governments for inspection services provided to the applicable vessels owned by such entities.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (34)(a) of Commandant Instruction M16475.IC, this rule is categorically excluded from further environmental documentation. Paragraph (34)(a) of that instruction excludes editorial or procedural regulations that clearly do not have any environmental impacts. "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 46 CFR Part 2

Fees, Marine safety, Vessels.

Accordingly, the interim rule amending 46 CFR part 2 which was

published in 62 FR 19229 on April 21, 1997, is adopted as a final rule with the following changes and amendments:

PART 2—VESSELS INSPECTIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 33 U.S.C. 1903; 43 U.S.C. 1333, 1356; 46 U.S.C. 2110, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; 49 CFR 1.46; Subpart 2.45 also issued under the authority of Act Dec 27, 1950, Ch 1155, sections 1, 2, 64 Stat. 1120 [see 46 U.S.C. App. Note prec. 1].

2. In § 2.10-5, revise paragraph (c)(2) to read as follows:

§ 2.10-5 Exemptions.

* * * * *

(c) * * *

(2) The vessel's use for fundraising activities without regard to the age of the participants aboard the vessel, provided revenues raised are for the operation and maintenance of the vessel and that such fundraising activities do not exceed one day of fundraising for each month of the vessel's operating season.

* * * * *

3. In § 2.10-25, revise the definitions of *ferry* and *youth* to read as follows:

§ 2.10-25 Definitions.

* * * * *

Ferry means a vessel that:

(1) Operates in other than ocean or coastwise service;

(2) Has provisions only for deck passengers or vehicles, or both;

(3) Operates on a short run on a frequent schedule between two points over the most direct water route; and

(4) Offers a public service of a type normally attributed to a bridge or tunnel.

* * * * *

Youth means an individual 21 years of age or younger.

Dated: September 28, 1998.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-296]

Organization and Delegation of Powers and Duties; Delegation to the Commandant, United States Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation is delegating to the Commandant, United States Coast Guard, authority pertaining to the enforcement of various conservation statutes. These statutes include the Atlantic Coastal Fisheries Cooperative Management Act of 1993, Lacey Act Amendments of 1981, Endangered Species Act of 1973, Atlantic Tunas Convention Act of 1975, Eastern Pacific Tuna Licensing Act of 1984, North Pacific Anadromous Stocks Convention Act of 1992, Pacific Salmon Treaty Act of 1985, Fur Seal Act of 1966, Antarctic Conservation Act of 1978, Antarctic Living Marine Resources Convention Act of 1984, North Pacific Halibut Act of 1982, High Seas Fishing Compliance Act of 1995, and the Northwest Atlantic Fisheries Compliance Act of 1995. In order that the Code of Federal Regulations reflect this delegation, a change is necessary.

EFFECTIVE DATE: November 4, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Gwyneth Radloff, Office of the General Counsel, C-50, (202) 366-9305, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The Secretary of Transportation, as Secretary of the Department in which the Coast Guard is operating, is authorized to enforce each of the above Acts. The Secretary of Transportation is delegating this authority under these Acts to the Commandant of the Coast Guard. Delegation of authority to enforce these statutes is necessary to allow the Coast Guard to enter into cooperative fishery enforcement agreements with the National Marine Fisheries Service and state agencies.

In order to improve the speed and efficiency with which the Coast Guard can meet enforcement obligations, the Secretary is delegating authority to consult with other federal agencies or departments concerning the promulgation of regulations under the authority of the Eastern Pacific Tuna