already been immunized during this time period; and

(ii) The resident or the resident's legal representative must be provided the opportunity to refuse immunization. If the resident or the resident's legal representative refuses immunization, the facility must ensure the resident or the resident's legal representative receives appropriate education and consultation regarding the benefits of influenza immunization.

(iii) The resident's immunization status is documented in the resident's medical record, including but not limited to; that the resident received an influenza immunization, or immunization was medically contraindicated, or immunization was refused. If the immunization was refused, documentation must include that the resident or the resident's legal representative received appropriate education and consultation regarding the benefits of influenza immunization.

(2) *Pneumococcal disease.* The facility must ensure that—

(i) Each resident is offered a *pneumococcal immunization,* unless the immunization is medically contraindicated or the resident has already been immunized; and

(ii) The resident or the resident's legal representative must be provided the opportunity to refuse immunization. If the resident or the resident's legal representative refuses immunization, the facility must ensure the resident or the resident's legal representative receives appropriate education and consultation regarding the benefits of *pneumococcal* immunization.

(iii) The resident's immunization status is documented in the resident's medical record, including but not limited to; that the resident received *pneumococcal immunization,* or immunization was medically contraindicated, or immunization was refused. If the immunization was refused, documention must include that the resident or the resident's legal representative received appropriate education and consultation regarding the benefits of *pneumococcal* immunization.

(iv) *Exception.* As an alternative, based on an assessment and practitioner recommendation, a second pneumococcal shot may be given after 5 years following the first pneumococcal immunization if the vaccine was administered before age 65, unless medically contraindicated or the resident or the resident's legal representative refuses the second shot.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 20, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: August 10, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–16160 Filed 8–12–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 389

[Docket No. MARAD–2005–22050]

RIN 2133–AB67

Determination of Availability of Coastwise-Qualified Launch Barges

AGENCY: Maritime Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Maritime Administration (MARAD, we, our, or us) is publishing this proposed rulemaking to establish regulations governing administrative determinations of availability of coastwise-qualified launch barges to be used in the transportation and launching of offshore oil drilling or production platform jackets in specified projects. This rulemaking implements provisions of the Coast Guard and Maritime Transportation Act of 2004, which, among other things, requires the Secretary of Transportation (acting through the Maritime Administrator) to adopt procedures to determine if coastwise-qualified vessels are available for platform jacket transport and launching, and, if not, to allow the use of non-coastwise qualified foreign built vessels.

DATES: Comments are due by October 14, 2005.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number MARAD–2005–22050] 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: Michael Hokana, Office of Ports and Domestic Shipping, Maritime Administration, MAR–830, Room 7201, 400 7th St., SW., Washington, DC 20590; telephone: (202) 366–0760; email: *Michael.Hokana@dot.gov.*

SUPPLEMENTARY INFORMATION: Section 27 of the Merchant Marine Act of 1920, commonly known as the Jones Act (46 App. U.S.C. 883), requires, with a few exceptions, that all cargo transported in the coastwise trade be carried on ships that are U.S.-owned and U.S.-built. The Jones Act has been amended over the years, and in 1988 a special technical proviso, known as the thirteenth proviso, was added to allow for the use of foreign-built platform jacket launch barges in the coastwise trade if no U.S.-built vessels were found to be available.

On August 9, 2004, the thirteenth proviso of the Jones Act was amended by section 417 of the Coast Guard and Maritime Transportation Act of 2004, Public Law 108–293 (the Act). Under the Act, the Secretary of Transportation is directed to establish procedures to issue determinations as to whether suitable U.S.-built barges are available for use in transportation and launching (i.e., installation) of offshore oil drilling or production structures. The Act directs that if the Secretary determines, upon application by the owner/operator of a foreign-built barge, that a suitable U.S.-built barge is not reasonably available for use in a specified launch project, then the foreign-built barge may be used. Because the Bureau of Customs and Border Protection (CBP) is responsible for enforcing violations of the coastwise laws, MARAD recommends that applicants that receive a determination from MARAD further

obtain a ruling regarding the use of the thirteenth proviso of the Jones Act from CBP before proceeding with their transportation and launch projects.

Program Description

In this rulemaking, MARAD is proposing procedures to be followed in order to apply for U.S.-flag availability determinations for the specialized ''platform jacket'' launch market. ''Platform jacket'' refers to a single physical component and includes any type of offshore exploration, development, or production structure or component thereof, including platform jackets, tension leg or SPAR platform superstructures (including the deck, drilling rig and support utilities, and supporting structure), hull (including vertical legs and connecting pontoons or vertical cylinder), tower and base sections of a platform jacket, jacket structures, and deck modules (known as ''topsides'').

For each proposed project, MARAD will publish a notice of application in the **Federal Register** and will provide the appropriate references to the DOT Docket Management System where applications will be available for public review and comment. Each application must include the engineering details (specifying the need for a vessel with a launch capacity of 12,000 long tons or more) and the timing requirements (establishing an approximate date and time window for the launch). MARAD will request that comments and information on the availability of coastwise-qualified vessels be submitted within thirty (30) days after publication of the initial notice of application. If MARAD does not receive information within the thirty (30) day comment period indicating that a suitable coastwise-qualified vessel is available for the project, or if MARAD receives such information, but determines that the vessel is not suitable or is not reasonably available for the project, then MARAD will issue a determination indicating the non-availability of a coastwise-qualified barge. Determinations will be issued within ninety (90) days from the date the initial notice of application is published in the **Federal Register.**

Because launch barges have long lead times for construction, applicants are encouraged to provide the Maritime Administration and the public with as much notice as possible in advance of their projects. Early notification will help ensure the maximum utilization of coastwise-qualified vessels, and will assist the Maritime Administration in its review process. The ideal time for providing notification is when the need for the installation of a platform jacket is identified. For instance, transportation plans for launch projects are typically arranged when application is made to the Minerals Management Service for use of an offshore portion of the outer continental shelf, which is typically years in advance of a launch project.

The Maritime Administration recognizes that advance notice of projects may increase the U.S. presence in the launch barge industry, as companies would be more likely to build barges to meet known market demands. MARAD welcomes suggestions, in addition to comments on the proposed regulation, regarding how to increase the utilization of U.S.-flag launch barges and is interested in hearing from the public on how it may facilitate the flow of information regarding early notification of projects so that the U.S. launch barge industry may effectively respond to projected needs.

Application Fee

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

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

Pursuant to these directives, MARAD is proposing to set the application fee for administrative determination of availability at $16,460.00. Because determinations of availability under part 389 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.

Following the principles embodied in Circular A–25, MARAD estimates the costs associated with processing and issuing determinations under part 389 as follows. The main cost components of the program include direct and indirect personnel costs and **Federal Register** publication costs. MARAD estimates that average personnel costs for processing each application will be $15,995.00. The second main cost component of the program will be the cost of publishing notices of applications in the **Federal Register.** The current **Federal Register** publication cost is $155 per column and the average length of a public notice published for this program is estimated to be three columns. Thus, the total average publication cost will be $465.00. The total of personnel costs and **Federal Register** publication costs is estimated to be $16,460.00.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

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

Executive Order 13132

We analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism'') and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The regulations herein have no substantial effects on the States, the current Federal-State relationship, or the current distribution of power and responsibilities among local officials. Therefore, MARAD did not consult with State and local officials because it was not necessary.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires MARAD to assess the impact that regulations will have on small entities. After analysis of this proposed rule, the Maritime Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. We anticipate that few, if any, small entities will participate in this process due to the nature of the shipping industry and the capital costs associated with vessels that fall under this program.

Environmental Assessment

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

Paperwork Reduction Act

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

Unfunded Mandates Reform Act

This rulemaking does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves this objective of U.S. policy.

Executive Order 13175

MARAD believes that these regulations will have no significant or unique effect on the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects in 46 CFR Part 389

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

Accordingly, the Maritime Administration proposes to amend 46 CFR chapter II, subchapter J, by adding Part 389 to read as follows:

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

Sec.
389.1 Purpose.
389.2 Definitions.
389.3 Application and fee.
389.4 Review; Issuance of determinations.

Authority: 46 App. U.S.C. 1114(b); 46 App. U.S.C. 883; Pub. L. 108–293, 118 Stat 1028; 49 CFR 1.66.

§ 389.1 Purpose.

This part prescribes regulations implementing the provisions of section 417 of Public Law 108–293, which grants the Secretary, acting through the Maritime Administration, the authority to review and approve applications for determinations of availability of coastwise-qualified launch barges. Owners or operators of non-coastwise qualified launch barges may submit information regarding a specific platform jacket transport and launch project in order for MARAD to determine whether a suitable coastwise-qualified barge is available for the project. If a suitable coastwise-qualified launch barge is not available, a non-coastwise qualified foreign built vessel may be used subject to applicable laws and approval from the Bureau of Customs and Border Protection.

§ 389.2 Definitions.

For the purposes of this part:

(a) *Administrator* means the Maritime Administrator.

(b) *Coastwise-qualified Vessel* means a vessel that has been issued a certificate of documentation with a coastwise endorsement under 46 U.S.C. 12106.

(c) *Coastwise Trade Laws* include:

(1) The Coastwise Endorsement Provision of the Vessel Documentation Laws, (46 U.S.C. 12106);

(2) The Passenger Services Act, section 8 of the Act of June 19, 1886 (46 App. U.S.C. 289);

(3) The Jones Act, section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883); and

(4) Section 2(c) of the Shipping Act of 1916 (46 App. U.S.C. 802).

(d) *Eligible Vessel* means a Launch Barge that:

(1) Is technically capable of transporting and launching an offshore drilling or production platform jacket;

(2) Is available to load the jacket structure, transport the jacket and launch the jacket (in a timely manner or within 7 calendar days of projected loading date); and

(3) Was built before December 31, 2000.

(e) *Launch Barge* means a non-self-propelled barge (or vessel) that is capable of:

(1) Carrying an offshore drilling and/or production platform jacket structure of 12,000 long tons or more; and

(2) Stern launching the offshore drilling or production platform jacket structure in an offshore environment.

(f) A *long ton* equals 2,240 pounds.

(g) *MARAD* means the Maritime Administration, U.S. Department of Transportation.

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

(i) Secretary means the Secretary of Transportation.

§ 389.3 Application and fee.

(a) *General.* Owners and operators must submit the information described in paragraphs (b) and (c) of this section to the Maritime Administration, Office of Ports and Domestic Shipping, MAR–

830, Room 7201, 400 7th St., SW., Washington, DC 20590. Written applications must be signed by the submitting party and accompanied by a check in the amount of $16,460.00 made payable to the ''Maritime Administration.''

(b) *Required transport and launch project information.* (1) Applications must include a general description of the launch project, including:

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

(ii) The projected loading date and site,

(iii) The projected launching date and site, and

(iv) The launch barges considered, their technical merits and availability studies.

(2) Characteristics of the desired Launch Barge, including, at a minimum, the following information:

(i) Name of the Launch Barge,

(ii) Registered owner of the barge,

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

(iv) Hull girder stress study, with supporting documentation, for the proposed launching scenario, and with American Bureau of Shipping (ABS) or United States Coast Guard (USCG) approval,

(v) Hull girder stress study, with supporting documentation, for the proposed transit scenario, and with ABS or USCG approval,

(vi) Vessel intact stability study, with supporting documentation, for the transit condition with a 100-year storm, and with USCG approval, and

(vii) Vessel intact stability study, with supporting documentation, for the launching operation in calm sea condition, and with USCG approval.

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

(4) Name, address, and telephone number of the vessel owner.

(5) A statement that the applicant represents that the information in this paragraph (b) is true to the best of the applicant's knowledge.

(c) MARAD may require additional information from the applicant as part of the review process.

§ 389.4 Review; Issuance of determinations.

(a) *Initial process; Completeness.* MARAD will review each application for completeness as received. Applications will not be processed until deemed complete by MARAD. We will notify the applicant if additional information is necessary. MARAD encourages the submission of applications well in advance of projects dates in order to allow sufficient time for review under this part. All applications will be available for public inspection electronically in the Department of Transportation Docket at *http://dot.dms.gov.*

(b) *Technical reviews.* (1) MARAD technical personnel will review the technical data stated in § 389.3. The data must be complete and current. The submitted data will not be returned to the applicant and will be retained by MARAD on file for a period of time. The review will not substitute the review and approval by either the ABS or USCG . The review will not verify the accuracy or correctness of the applicant's engineering proposal. The review only pertains to the general reasonableness and soundness of the technical approach.

(2) If a previously reviewed and approved Launch Barge is to be used for carrying a jacket that in all aspects is similar to the last loading and launching operation, the applicant may state so in writing, and submit only the Jacket information for verification and no in-depth vessel stability or hull girder stress studies will be required.

(c) *Administrative review; Public comment.* (1) Notice of applications under review will be published in the **Federal Register**. Interested parties will have thirty (30) days from the date of publication to submit information regarding the availability of eligible coastwise-qualified vessels. Such information should include the technical data outlined in § 389.3(b)(2).

(2) If MARAD does not receive information within the thirty (30) day comment period indicating that a suitable coastwise-qualified vessel is available for the transportation of the platform jacket, or if MARAD receives such information, but determines that the vessel is not suitable or is not reasonably available for the transportation, then MARAD will issue a determination indicating the non-availability of a coastwise-qualified barge.

(3) Determinations will be issued within ninety (90) days from the date the initial notice of application is published in the **Federal Register**.

(4) Upon issuance of a determination, MARAD recommends that applicants contact the Bureau of Customs and Border Protection to ensure that all other requirements of the coastwise laws are satisfied.

(5) Determinations of availability expire one hundred twenty (120) days after the date of issuance, unless extended for good cause, as determined by the Maritime Administrator.

Dated: August 9, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 05–16096 Filed 8–12–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 060719189–5189–01; I.D. 071405C]

RIN 0648–AT33

International Fisheries; Pacific Tuna Fisheries; Restrictions for 2005 and 2006 Purse Seine and Longline Fisheries in the Eastern Tropical Pacific Ocean

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes this rule to implement the 2005 and 2006 management measures to prevent overfishing of the eastern tropical Pacific Ocean (ETP) tuna stocks, consistent with recommendations by the Inter-American Tropical Tuna Commission (IATTC) that have been approved by the Department of State (DOS) under the Tuna Conventions Act. The purse seine fishery for tuna in the Convention Area would be closed for a 6-week period beginning November 20, 2005, through December 31, 2005, and beginning November 20, 2006, through December 31, 2006. A closure later in the fishing year minimizes the disruption of planned fishery operations, which are not traditionally active during the winter, while meeting the conservation goals for tunas in the ETP. This proposed rule would also close the U.S. longline fishery in the IATTC Convention Area in 2005 and 2006 if the catch reaches the estimated level of 2001. For 2001, the estimated catch of longline caught bigeye tuna was 150 metric tons (mt). This action is taken to limit fishing mortality caused by purse seine fishing and longline fishing in the Convention Area and