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Coast Guard

46 CFR Parts 401 and 404

Rates for Pilotage on the Great Lakes; Interim Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 401 and 404

[USCG–2002–11288]

RIN 1625–AA38 (Formerly RIN 2115–AG30)

Rates for Pilotage on the Great Lakes

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule provides a partial rate adjustment for pilotage on the Great Lakes. We last adjusted the rates for pilotage on the Great Lakes in July 2001. The partial rate adjustment is being implemented while the Coast Guard completes its evaluation of issues raised in response to the NPRM and calculates a full rate adjustment.

DATES: This interim rule is effective January 12, 2004. Comments and related material must reach the Docket Management Facility on or before February 10, 2004.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2002–11288 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) Delivery: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Paul Wasserman, Director, Office of Great Lakes Pilotage, (G-MW–1), Coast Guard, telephone 202–267–2856 or e-mail him at *Pwasserman@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2002–11288), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can 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 the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory History

On January 23, 2003, the Coast Guard published an NPRM in the **Federal Register** [68 FR 3202] proposing to set new rates for pilotage on the Great Lakes. A public meeting was held January 31, 2003, in Cleveland, OH.

On April 1, 2003, the Coast Guard published in the **Federal Register** [68 FR 15697] a correction to the NPRM and extended the NPRM comment period through May 1, 2003. This notice also announced another public meeting that was held April 14, 2003, in Washington, DC.

On May 14, 2003, the Coast Guard published in the **Federal Register** [68 FR 25899] a notice of availability and a request for public comment on a Review of Bridge-Hour Standards for American Pilots on the Great Lakes, dated March 4, 2003.

Program History

In 1996, we established the current methodology for setting rates for pilotage on the Great Lakes.

In July 2001, we last adjusted the rates for pilotage on the Great Lakes. A year later, as a result of litigation, we temporarily revised the rates in District Two, Area 5, until the current rulemaking is completed. That temporary rule expires on December 24, 2003, and this interim rule contains new rates for Area 5.

Discussion of Comments

General

During the comment periods, the Coast Guard received 149 comments mostly expressing concerns about the implementation of the proposed rates and the process used in determining the proposed rates. There were also a number of requests to extend the comment period. Comments were received from pilots, pilot associations, cruise ship and ferry operators, small businesses on the Great Lakes, port authorities from the U.S. and Canada, and domestic and foreign shipping corporations.

Some of these comments stated that a rate adjustment is long overdue. Some of these comments also asked that future rate reviews take place in a timely manner. Another comment stated that the Coast Guard has a legal and moral responsibility to move forward immediately on the 2003 rate adjustment.

One comment wanted more time to complete the Great Lakes Pilotage Advisory Committee's membership so that the committee could comment on the NPRM.

Schedule for Interim Rule Publication

Numerous comments stated that the Coast Guard should implement the proposed new rate immediately or at least by the start of the 2003 shipping season. Other comments stated if that was not possible, that the proposed rate should be implemented until corrections can be made.

Many other comments, however, expressed concern that our proposed interim rule publication date of February 14, 2003, was before the end of the comment period deadline. One stated because of the proximity of the NPRM's comment period deadline (March 10, 2003) to the planned IR publication date (February 14, 2003) that comments would not have been given full consideration. Several port authorities stated that implementing an interim rule would violate companies' ''right to have their views fairly considered.''

One comment stated that a ''hasty implementation'' of the proposed rate increases would violate the rulemaking provisions of the Administrative Procedures Act (APA; 5 U.S.C. 553) as well as the requirement that the Coast Guard consider the public's interest (46 U.S.C. 9303(f)).

One comment stated that the rush to institute an interim rule would result in significant defects in the ratemaking process.

Requests for Extension and Public Meetings. Some comments asked that the comment period be extended. One said the additional extension would provide time for ample scrutiny and the ability to make necessary adjustments before a final rate is established. Another comment stated that if the comment period is extended an interim rate is needed until the final rule is completed.

Another comment stated that placing the independent accountants' reports for Districts One, Two, and Three in the docket five days after the publication of the NPRM did not allow for an extensive review of those documents. Other comments stated that additional public meetings are needed to provide stakeholders sufficient time to analyze the rulemaking and to prepare and submit comments.

We understand the early concerns about not having enough time to respond to the NPRM. However, because two public meetings were held (January 31, 2003, and April 14, 2003), and the comment period was extended through May 1, 2003, the Coast Guard has provided an adequate opportunity for those wishing to respond to the NPRM and for those needing to review the independent accountant's reports. We do not plan on holding a public meeting on this interim rule.

Boundary Act Treaty

Several comments stated that the proposed rates violate the Boundary Act Treaty of 1910 that stipulates Canadian boundary waters are to be treated with fairness and equity. Comments from the Shipping Federation of Canada and the Thunder Bay Port Authority stated that the proposed rate violates the spirit of the Boundary Act Treaty of 1910. The Coast Guard disagrees. The treaty between Great Britain and the United States established boundaries and mandated free and open navigation for the vessels of both Canada and the U.S. The treaty further called upon national regulations to apply equally to the citizens and vessels of the other party. While the treaty was silent with respect to Great Lakes pilotage rates, the proposed rates, nonetheless, do not discriminate against Canadian vessels since they will apply equally across the board to all prospective carriers.

Beyond the Scope of the Rulemaking

Two comments asked that a surcharge be added as part of the final rule to allow pilots to recoup the portion of the rate that has been lost since the start of the 2003 shipping season.

One comment stated that pilotage should be returned to the auspices of the St. Lawrence Seaway Development Corporation (SLSDC).

One comment from a pilots' association stated that shipping companies should be required to open their books to give full and complete disclosure.

Two comments stated the delay in enacting the new rate before the start of the 2003 shipping season continues the ''essential punishment'' of Great Lakes pilots by denying them the compensation they are ''justly'' due.

All of these comments raise issues and concerns, resolution of which is beyond the scope of this rulemaking.

Classification of Rulemaking

Some comments questioned the appropriateness of the Coast Guard's characterizing this rulemaking as non-significant because the NPRM proposed to increase Great Lakes pilotage rates an average of 26 percent. Some comments claimed that the cost of pilotage could constitute over 30 percent of the total cost of a typical vessel transit into and out of the Great Lakes and thus, the Coast Guard's proposed rate increase was both significant and substantial. Other comments stated that the cost of pilotage is only 2 percent or less of the total cost of Great Lakes transits, and that pilotage fees are an insignificant portion of total vessel costs for operating in the Great Lakes. The Canadian Marine Pilots' Association commented that the cost of pilotage as a percentage cost of shipping in the Great Lakes is 2 percent or less.

One comment stated that the rulemaking should be a ''significant action'' under the regulatory procedures of DOT (now DHS) & OMB because it involves Canadian businesses and the Canadian government.

We disagree. This rulemaking is not ''OMB'' significant under Executive Order 12866 and is categorized as ''non-significant/substantive''. OMB and DHS have reviewed and agreed with the Coast Guard's determination that the rulemaking is substantive, but not significant.

Methodology Used in NPRM

Some comments suggested that the ''significant increase'' in the proposed rates was due to a change in the Coast Guard's interpretation of the ratemaking methodology. The Coast Guard's approach to conducting the rate review was consistent with that used in prior years and the proposed rate increase in the NPRM was not attributable to a change in application of the ratemaking methodology.

Difference in U.S. and Canadian Rates

Several comments suggested that the proposed 26 percent rate increase would further increase the difference between U.S. and Canadian pilotage rates and that the Memorandum of Arrangement (MOA) between the United States and Canada calls for identical rates.

The two countries are aware of the differences in pilotage rates and are working together to minimize and resolve these differences.

Economic Impact Analysis (EIA) of Great Lakes Pilotage

Some comments stated that the proposed increase in pilotage fees would ''chase'' vessels out of the Lakes. Another comment stated that the Coast Guard failed to examine how rate increases would affect users and the economy of the Great Lakes region. Several comments stated that a full regulatory evaluation should be done before issuing a rule.

The Coast Guard has contracted with Martin Associates to perform a full economic review of the Great Lakes basin. The report should be completed by February, 2004, and the results will be considered before we calculate the full rate adjustment. When completed, a copy of this EIA will be made part of the public docket.

The EIA will provide an economic overview of the Great Lakes. It will explore the value of maritime commerce, generally, and, more specifically, look at the foreign trade shipping industry on both sides of the Great Lakes. It will develop a demand elasticity curve for pilotage services on board foreign-trade vessels on the Great Lakes. It will explore how, and at what point, an increase in pilotage rates might have a negative impact on shippers' decisions to send vessels into the Great Lakes system. This EIA will also address pilotage fees as a percentage of the total costs incurred by vessels operating in the Great Lakes.

Expenses Allowed

Legal fees. Numerous comments raised concerns about the amount of legal fees approved by the Coast Guard as part of the pilots' expense base. Some stated that the expenses incurred by the pilots pursuing judicial review of the Coast Guard's 2001 rates were neither reasonable nor necessary and were not directly related to pilotage.

Some comments questioned whether the Coast Guard had properly assessed the reasonableness of pilots' legal expenses. Some comments stated that a formula used in the 1999 rate review to judge the reasonableness of the legal expenses should have been used in the NPRM. The Coast Guard did not use an industry standard index to determine the reasonableness of the legal fees. The only time a standard was used was in the 1999 rate review. That standard is not sufficiently related to the pilotage industry or a similar regulated industry and was not used in calculating the proposed rates in the NPRM or the rates contained in this interim rule.

One comment stated that it was inappropriate for the Coast Guard to have approved for inclusion in the expense base legal fees paid by District Three in connection with a labor dispute. This comment stated that by allowing this expense the Office of Great Lakes Pilotage is publicly supporting a party in a labor dispute. The comment also disagrees with the decision to approve a percentage of the legal fees paid by District Three to Preston and Gates, because that percentage represented lobbying fees. The Coast Guard disagrees that allowing legal fees paid by a pilotage association to a law firm in connection with a litigation which involves a labor issue, represents support for a party in a labor dispute. The existing ratemaking methodology recognizes all reasonable and necessary legal fees with the exception of lobbying fees.

If the expense is necessary to conduct pilotage business and is reasonable in amount, the regulations allow its inclusion. The regulation does not distinguish between litigated matters involving a labor issue or union and other matter related to pilotage. With respect to the issue of whether all lobbyist fees were removed from the expense base, the Coast Guard will re-examine all of the legal fees in accordance with the regulatory requirements to ensure that only appropriate fees were allowed.

One comment suggested that all legal fees be removed from the rate calculation. To do that, the Coast Guard first would need to change the ratemaking regulations. The Coast Guard disagrees with the suggestion and, in any event, such a change is not within the scope of this rulemaking.

The Coast Guard reviewed all legal fees using the guidelines of necessity and reasonableness contained in 46 CFR 404.5. Only reasonable and necessary legal fees were approved as part of the expense base. No legal fees were allowed in connection with lobbying. Legal fees for litigation against the Government were allowed as long as there was no court proceeding in which there had been a finding of bad faith on the part of the pilot organizations.

Recovery of Legal Fees Under Equal Access to Justice Act (EAJA). Some comments stated that the pilots recovered a portion of their legal fees under the Equal Access to Justice Act (EAJA) and that recovery was not taken into consideration by the Coast Guard.

With respect to the comments regarding recovery of legal fees under the EAJA, only the pilots in District 1 have recovered fees under the EAJA. They recovered approximately $14,000 and the Coast Guard did not allow that amount to be included in their expense base.

Other Expenses

One comment stated that the non-recurring costs of leasing equipment paid by District Two to Erie Leasing, Inc., should be disallowed because the District Two Association terminated many of these leases at the end of the season. During 2001, District Two paid Erie Leasing $62,950 in lease costs for the rental of two pilot boats. Under 46 CFR 404.5(a)(3), lease costs for both operating and capital leases are recognized for ratemaking purposes to the extent that they conform to market rates. In the absence of a comparable market, lease costs are recognized for ratemaking purposes to the extent that they conform to depreciation plus an allowance for return on investment (computed as if the asset had been purchased with equity capital). The portion of lease costs that exceed these standards is not recognized for ratemaking purposes. In this case, with the cost of the pilot boats being $315,000, a market return of 7.04 percent, and a depreciation amount of $9,450, the result is an allowable lease expense of $31,626 ($315,000 × 7.04% = $22,176 + $9,450 = $31,626). District Two's expense base was thus reduced by the excessive lease fee amount of $28,124 ($59,750 rental fee − $31,626 allowable fee = $28,124). The Coast Guard will review the issue of recurring and non-recurring costs before calculating a full rate adjustment.

One comment stated that the $14,289 for health insurance for retired pilots included in the District Two expense base should be disallowed. The Coast Guard is reviewing this issue and will make a determination before calculating the full rate adjustment. Because of its de minimus impact on the rate it was left in the expense base for calculating the partial rate adjustment.

This same comment stated that the augmentation of the District Two and District Three expense bases to allow for employer contributions to employee 401(k) plans was not calculated correctly. This comment stated that the employer should have to contribute based upon daily compensation only that would include no contribution for overtime or extra work days. Under the 2001 American Maritime Officers Union (AMOU) contract, employers are required to make matching contributions to employee 401(k) plans in an amount equal to 50 percent of the employee's contribution, to a maximum of 5 percent of a participating employee's compensation. The Coast Guard will review this issue before calculating the full rate adjustment, but the District Two and Three expense bases have not been changed for calculation of the partial rate adjustment.

Another comment stated that the independent accountant made two mistakes in identifying and classifying expenses—misstating by $23,000 the total reimbursement for meal expenses allowed pilots in District Three, and subtracting the cost of the employer's portion of taxes from pilot compensation and adding them to operating expenses. The comment stated the actual amount adjusted in each case does not correlate with the current rates and limitations for the calculations of FICA and Medicare. The Coast Guard is reviewing these issues, and adjustments, if appropriate, will be made in calculating the full rate adjustment. However, we have not made any changes in calculating the partial rate adjustment.

Another comment stated that the Coast Guard should have disallowed any payments by District Two to Erie Leasing, Inc., because that company refused to open up its books for the Coast Guard. The Coast Guard disagrees. There is no basis to deny expenses based upon another company's refusal to open its books, even when the service entity (Erie Leasing) is directly or indirectly related by beneficial ownership to the pilot association.

Some comments expressed the opinion that there is an insufficiency of accountability for continuing education training funds in the three districts. They recommended that training programs submitted by a pilot association and approved by the Coast Guard should be published as a part of this docket so that industry can assure itself that this money is spent appropriately and that the training plan meets ''certain criteria.'' They also suggested that a third party should hold the training funds instead of the pilot associations. The Coast Guard disagrees. The public docket used for this rulemaking is not an appropriate place for pilot associations to file their training plans. The Coast Guard does not see any benefit to placing the training funds in the hands of third parties, nor could such an action be properly included within the scope of this rulemaking.

Target Pilot Compensation Issues

With respect to determining target pilot compensation, several comments, including St. Lawrence Seaway Development Corporation, stated that the monthly multiplier should be reduced from its current level of 54 days to either 44 or 45 days to take into consideration vacation time actually taken by the pilots. They stated that pilots actually take vacation days and paying them for not doing so is a form of double dipping that makes a 44 or 45-day number more appropriate. For purposes of this interim rule, the Coast Guard has used a multiplier of 44 days. The Coast Guard is still reviewing this issue and a final determination on the appropriate multiplier will be made before we calculate the full rate adjustment. A proposed full rate adjustment will be subject to notice and comment in an SNPRM before implementation.

Numerous comments stated that the Coast Guard in the NPRM inappropriately increased the number of pilots needed. Some comments focused on the two pilots authorized for District One and the one pilot authorized for District Two. Another comment stated that the Coast Guard had made a mistake by rounding down the number of pilots in District Three, Area 7, to four pilots, and rounding down the total number of pilots required in the undesignated waters of Areas 6 and 8 to 17. The Coast Guard disagrees. The Coast Guard may increase or decrease the number of pilots authorized in the Districts as circumstances warrant. The number of pilots needed by each District is calculated each time the Coast Guard adjusts pilotage rates. The calculation shows the number of pilots needed in each Area to accommodate the projected vessel traffic. In the NPRM, where the calculated number was fractional, the Coast Guard rounded up or down to reflect ''a whole person.'' For purposes of this interim rule, the Coast Guard has not rounded up or down, but has used the actual calculated number, even if that number is fractional. For purposes of the interim rule, and for the sake of precision and accuracy in the computation, the Coast Guard has not rounded the fractionalized number of pilots required. It is up to each Association to determine how many pilots to employ to meet the actual shipping demand.

The Coast Guard will continue to review this step in the calculation and when the Coast Guard's review of the Bridge Hour Study is completed, we should have clearer guidance on this calculation.

Revenue Issues

Accounts receivable. One comment stated that the calculation of revenue was incorrect because it did not include accounts receivable. Before calculating a full rate adjustment, the Coast Guard will address inclusion of accounts receivable as part of revenues.

Target Pilot Compensation

Several comments stated that the Coast Guard had miscalculated the target pilot compensation. These comments stated that the target pilot compensation should be calculated by first adding all pilot wages and benefits together and then multiplying by 1.5, which is the multiplier for pilots working in designated waters. The Coast Guard disagrees. The Coast Guard has always calculated target pilot compensation in the same manner. During the first ratemaking under this methodology, in response to comments which provided detailed and persuasive information, including W–2 tax information, showing that the most accurate way to approximate the total compensation package of a master on the Great Lakes, under the union contract, is to take wages and multiply by 1.5 and then add benefits. See Seaway Regulations and Rules: Great Lakes Pilotage Rates, 62 FR 5917, 5920 (February 10, 1997). This interpretation was recently upheld. See *Lake Pilots Assoc., Inc.* v. *United States Coast Guard,* Civil Action No. 01–1721 (RBW) (D.D.C. April 4, 2003).

Other comments stated that the Coast Guard does not take into consideration all of the benefits received when calculating the total compensation package. One area of particular concern is credit for vacation pay because it is paid on a 1 for 2 basis. The Coast Guard will address this issue when proposing its full rate adjustment, but has not changed the calculation for the partial rate adjustment.

A number of comments from District Two discussed the independent accountant's treatment of reimbursed expenses (workers' compensation dividends), unrecognized expenses (a portion of the pilot boat leases), donations, business promotion, misclassified expenses, undocumented expenses, target pilot compensation, benefits, determination of the number of pilots, and calculation of the investment base. The Coast Guard will review these issues before calculating the full rate adjustment, but has not changed the District Two figures for the calculation of the partial rate adjustment.

One comment from a labor union objected to the Coast Guard requesting information concerning rates charged by longshoremen. The comment stated that the Coast Guard intended to use this, and similar other information, in an attempt to charge shippers as much as the market would bear for pilotage services. The Coast Guard did request public comment on a number of costs included in the total cost of shipping, to use as a comparison with the costs of pilotage services. In addition, the Coast Guard has contracted for an economic impact analysis of pilotage rates on shipping and on the regional economy of the Great Lakes basin.

Delay and Detention

Some comments stated that delay and detention should be included as bridge hours when calculating the number of pilots needed. As discussed elsewhere in this preamble, the Coast Guard's Bridge Hour Study is currently under review. This study specifically examines the issue of whether delay and detention should be included as bridge hours.

One comment stated that just as Districts Two and Three are being allowed added expenses for contributions to employees' 401(k) plans, so should District One. In the NPRM, because District One does not administer a 401(k) or other retirement program as do Districts Two and Three, no allowance was permitted. The Coast Guard is reviewing this issue, but for this partial rate calculation, we used the same figures as in the NPRM.

This comment also stated that the adjustment for inflation should be approximately 5 to 6 percent instead of the 2 percent determined by the Coast Guard. The comment stated that because it will be almost two years from the measurement year (2001) before the rate goes into effect, the pilots should receive twice the inflation. The Coast Guard will calculate a new adjustment for inflation when it calculates the full rate adjustment.

The comment also stated that travel expenses for District One were incorrectly calculated. According to the comment, travel expenses were overstated by $25,380 for Area 1 and understated by $37,075 for Area 2. The Coast Guard will review the allocation of travel expenses before calculating the full rate adjustment.

The comment also stated that the Coast Guard's projection of bridge hours for 2003, which is similar to those of 2001, is too low. The Coast Guard disagrees. The economy has actually performed consistently with the projections in the NPRM.

Other Changes

This rule also corrects the equation used in step 6 of the methodology to compute Return on Investment. Currently in the CFR, the equation illustrating how to arrive at Return on Investment contains an error. The last step of the calculation ''adds'' the Investment Base to the Return Element to arrive at the Return on Investment. Adding would not produce the Return on Investment. To obtain the Return on Investment, it is necessary to divide the Return Element into the Investment Base. We have made the appropriate correction to the equation in this interim rule by removing the ''+'' and adding, in its place, the ''÷''.

Discussion of Interim Rule

This interim rule provides a partial rate adjustment using the methodology in 46 CFR part 404, the 2001 expenses and revenues, and the 2002 American Maritime Officers Union contract.

The Next Steps

Following the partial rate adjustment in this interim rule, the Coast Guard will resolve the remaining rate calculation issues raised by the January, 2003, NPRM. We will calculate a full rate adjustment using the methodology in 46 CFR Part 404.

We plan to publish a supplemental notice of proposed rulemaking (SNPRM) in February, 2004, with an opportunity to comment before effecting a proposed full permanent rate adjustment during the Spring, 2004.

In the full rate adjustment calculation, the Coast Guard is considering using the figures from the 2003 AMOU contract, to replace the 2002 AMOU contract figures that were used to determine the proposed rate in the NPRM. The calculations would also include the rate and revenue figures from each of the three districts for 2002. The Coast Guard specifically requests comments on whether we should use the newer figures to calculate the full rate adjustment.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Ratemaking Process and Methodology

This section is a description of the analyses performed, and the seven-step methodology followed, in the development of the interim partial rate adjustment. The first part summarizes the partial rate changes in this interim rule; the second part describes the ratemaking process, explaining the formulas that make up the methodology and the use of the numbers obtained from the report of the independent accountant for the year 2001 in the formulas to show how the partial rate adjustment was actually calculated; and the third part describes how the rate in this interim rule differs from the one proposed in the NPRM published in January, 2003.

Part I: Pilotage Rate Charges—Summarized

The pilotage rates for federal pilots on the Great Lakes contained in 46 CFR 401.405, 401.407, and 401.410 have been adjusted in accordance with the methodology appearing at 46 CFR part 404. The partial rate adjustment results in an average increase across all districts of 5 percent as set out in Figure 1:

FIGURE 1

[Rate in percent]

If you require pilotage service in:	The rate will:
Area 1 (Designated waters)	Increase by 4
Area 2	Decrease by 5
Area 4	Increase by 21
Area 5 (Designated waters)	Decrease by 5
Area 6	Increase by 20
Area 7 (Designated waters)	Decrease by 17
Area 8	Increase by 19

Pilotage rates for ''Cancellation, delay or interruption in rendering services'' and ''Basic rates and charges for carrying a U.S. pilot beyond [the] normal change point or for boarding at other than the normal boarding point,'' in 46 CFR 401.420 and 401.428, respectively, are increased by an average of 5 percent.

The seven-step calculation of the methodology is summarized in the table for each District. The actual calculations are then explained in more detail for each entry in the tables.

TABLE A.—DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Step 1, Projection of operating expenses	$359,704	$239,802	$599,506
Step 2, Projection of target pilot compensation	785,279	352,726	1,138,005
Step 3, Projection of revenue	1,105,233	629,149	1,734,382
Step 4, Calculation of investment base	50,000	50,000	100,000

TABLE A.—DISTRICT ONE—Continued

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Step 5, Determination of target return on investment	7.04%	7.04%	7.04%
	3,520	3,520	7,040
Step 6, Adjustment determination	1,148,503	596,048	1,744,551
Step 7, Adjustment of pilotage rates (Rate Multiplier)	1.04 (+4%)	.95 (−5%)	1.01 (+1%)

TABLE B.—DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Step 1, Projection of operating expenses	$365,292	$446,468	$811,760
Step 2, Projection of target pilot compensation	477,218	930,701	1,407,919
Step 3, Projection of revenue	705,015	1,461,069	2,166,084
Step 4, Calculation of investment base	89,734	140,353	230,087
Step 5, Determination of target return on investment	7.04%	7.04%	7.04%
	6,317	9,881	16,198
Step 6, Adjustment determination	854,237	1,392,460	2,246,697
Step 7, Adjustment of pilotage rates	1.21 (+21)	.95 (−5%)	1.04 (+4%)

TABLE C.—DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Step 1, Projection of operating expenses	$739,550	$292,739	$508,441	$1,540,730
Step 2, Projection of target pilot compensation	1,099,676	625,315	715,827	2,440,818
Step 3, Projection of revenue	1,540,306	1,119,819	1,030,693	3,690,818
Step 4, Calculation of investment base	111,668	83,752	83,752	279,172
Step 5, Determination of target return on investment	7.04%	7.04%	7.04%	7.04%
	7,861	5,896	5,896	19,654
Step 6, Adjustment determination	1,847,087	923,950	1,230,164	4,001,201
Step 7, Adjustment of pilotage rate	1.20 (+20%)	.83 (−17%)	1.19 (+19%)	1.08 (+8%)

Part 2: Calculating the Rate Multiplier

The authority to establish pilotage rates on the Great Lakes derives from 46 U.S.C. 9303(f), which states, in pertinent part, that: ''[t]he Secretary shall prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services.'' The pilotage regulations provide, at 46 CFR 404.1(b), that the pilotage rates ''shall be reviewed annually in accordance with the procedures detailed in Appendix C'' of the regulations and, ''the Director shall complete a thorough audit of pilot association expenses and establish pilotage rates in accordance with the procedures detailed in § 404.10 of this part at least once every five years.''

Appendix C to part 404 of title 46, CFR, provides the methodology used by the pilotage office in connection with annual reviews. The actual ratemaking methodology is contained in appendix A to part 404 of title 46, CFR, and is comprised of seven (7) steps. Those steps are:

(1) Projection of Operating Expenses;

(2) Projection of Target Pilot Compensation;

(3) Projection of Revenue;

(4) Calculation of Investment Base;

(5) Determination of Target Return on Investment;

(6) Adjustment Determination (Revenue Needed); and,

(7) Adjustment of the Rates.

The financial data used to calculate each of the seven steps comes from an independent accountant's review of the books and records of each association, which is provided the Coast Guard on an annual basis, and other documents and records provided to the Coast Guard by the pilotage associations. All documents and records relied upon in this ratemaking have been made part of the public record and may be found in the docket for this rulemaking.

The methodology is used to develop a multiplier to be used to adjust pilotage rates in each pilotage area. The following is an explanation of each step of the methodology and how the rate multiplier is derived.

Step 1: Projection of Operating Expenses

(1) The Coast Guard projects the amount of vessel traffic annually. Based upon that projection, the Coast Guard forecasts the amount of fair and reasonable operating expenses that pilotage rates should recover. This consists of the following phases:

(a) Submission of financial information from each association;

(b) Determination of recognizable expenses;

(c) Adjustment for inflation or deflation; and

(d) Final projection of operating expenses.

Step 1.A. Submission of Financial Information

(1) Each Association is responsible for providing detailed financial information to the Coast Guard, in accordance with part 403 of title 46, CFR. The information is collected and reviewed

by a Coast Guard-contracted independent accounting firm that compiles this information into financial reports for each District. The financial reports are reviewed by the Coast Guard in accordance with the requirements contained at Appendix C to Part 404, on an annual basis.

(2) Every five years, the Coast Guard is required by the regulations to complete a thorough audit of pilot association expenses and establish pilotage rates in accordance with the procedures detailed in § 404.10. Because we are issuing an interim rule that adjusts the current rate, we are following the methodology appearing at appendix A to part 404.

(3) All data used in this interim rule are taken from these reports. The reports reflect the period ending December 31, 2001. These reports may be found in the docket.

Step 1.B. Determination of Recognizable Expenses

(1) The Coast Guard determines which Association expenses will be recognized for ratemaking purposes, using the guidelines for the recognition of expenses contained in § 404.05.

(2) The following is a summary of the independent CPA's major findings and adjustments to the pilot associations' audited expenses, along with the Coast Guard's corresponding adjustments:

RECOGNIZED EXPENSES

	District One	District Two	District Three
Reported expenses for 2001	$687,591	$1,386,376	$1,336,710
Independent CPA Proposed Adjustments	*Equalization Between Districts*	*Equalization Between Districts*	*Equalization Between Districts*
	$10,120	None	$143,035
	$62,096		$152,535
	Reimbursed Expenses	Reimbursed Expenses	Reimbursed Expenses
	($13,000)	($83,376)	($163,207)
		($174,414)	
		($211,849)	
	Not Recognized or Allowed	Not Recognized or Allowed	Not Recognized or Allowed
	($782)	($74)	($995)
	($43,100)	($720)	($19,780)
		($28,124)	
	Misclassified Expenses	Misclassified Expenses	Misclassified Expenses
	($4,500)	(8,600)	($4,050)
	($11,740)	($20,470)	($23,100)
	($120,377)		
	Undocumented Expenses	Undocumented Expenses	Undocumented Expenses
	None	(125,559)	None
Total expenses 2001 +	$566,308	$733,190	$1,421,148
Inflation adjustment (2%)	$11,326	$14,664	$28,423
Coast Guard's Adjustments	$21,872	$20,500	$25,00
		$43,406	$66,159
Total projected expenses for 2003 pilotage season	$599,506	$811,760	$1,540,730

Step 1.C. Adjustment for Inflation or Deflation

(1) In making projections of future expenses, expenses that are subject to inflationary or deflationary pressures are adjusted. Costs not subject to inflation or deflation are not adjusted. Annual cost inflation or deflation will be projected to the succeeding navigation season, reflecting the gradual increase or decrease in costs throughout the year. The inflation adjustment is based on the year 2000 change in the Consumer Price Index for the North Central Region of the United States.

(2) Based upon the foregoing, a 2 percent inflation adjustment was made to the expense base. That adjustment appears in the table above.

Step 1.D. Projection of Operating Expenses

Once all adjustments are made to the recognized operating expenses, the Coast Guard projects these expenses for each pilotage area. In doing so, the Coast Guard takes into account foreseeable circumstances that could affect the accuracy of the projection. General and administrative expenses are apportioned to each area according to the number of pilots needed in that area. The results of Step 1.D for each district are displayed as follows:

DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Projection of operating expenses	$359,704	$239,802	$599,506

DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Projection of operating expenses	$365,292	$446,468	$811,760

DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Projection of operating expenses	$739,550	$292,739	$508,441	$1,540,730

Step 2: Projection of Target Pilot Compensation

(1) The second step in the ratemaking methodology is to project the amount of target pilot compensation that pilotage rates should provide in each area. This step consists of the following phases: a. Determination of the target rate of compensation; b. Determination of the number of pilots needed in each pilotage area; and

c. Multiplication of target compensation by the number of pilots needed to project target pilot compensation needed in each area. Each of these phases is detailed below.

Step 2.A. Determination of Target Rate of Compensation

(1) Target pilot compensation for pilots providing services in undesignated waters approximates the average annual compensation for first mates on U.S. Great Lakes vessels. The average annual compensation for first mates is determined based on the most current AMOU contract, and includes wages and benefits received by first mates.

(2) Target pilot compensation for pilots providing services in designated waters approximates the average annual compensation for masters on U.S. Great Lakes vessels. It is calculated as 150 percent of the compensation earned by first mates on U.S. Great Lakes vessels. Based on detailed information provided by commentators, the Great Lakes Pilotage Office has consistently calculated this by multiplying the first mates' salary by 150 percent and adding benefits since this is the best approximation of the average annual compensation for masters.

(3) The table below summarizes how total target pilot compensation is determined for undesignated and designated waters:

Monthly component	Monthly (First mate) pilots on undesignated waters	Monthly (master) pilots on designated waters
$207.70 (Daily Rate) × 44 (Days)	$9,139	N/A
$207.70 (Daily Rate) × 44 × 1.5	N/A	$13,709
Clerical	126	188
Health	1,748	1,748
Pension	513	513
Monthly total	11,526	16,158
Monthly total × 9 months	103,743	145,422

Step 2.B. Determination of Number of Pilots Needed

(1) The number of pilots needed in each area of designated waters is established by dividing the projected bridge hours for that area by 1,000. Bridge hours are the number of hours a pilot is aboard a vessel providing basic pilotage service.

(2) The number of pilots needed in each area of undesignated waters is established by dividing the projected bridge hours for that area by 1,800.

(3) In determining the number of pilots needed in each pilotage area, the Coast Guard is guided by the results of the calculations in steps 2.A. and 2.B. However, the Coast Guard may also find it necessary to make adjustments to these numbers to ensure uninterrupted pilotage service in each area, or for other reasonable circumstances that the Coast Guard determines are appropriate.

(4) Projected bridge hours are based on the vessel traffic that pilots are expected to serve. The Coast Guard projects that bridge hours for the 2003 season will be the same as or comparable to the totals of 2001. Dividing the projected annual number of bridge hours per area by the target number of bridge hours per pilot determines the number of pilots required in each area to service vessel traffic.

(5) The following table shows the calculation of pilots needed:

Pilotage area	Projected 2003 bridge hours	Divided by bridge-hour target	Pilots required
AREA 1	5,407	1,000	5.4
AREA 2	6,130	1,800	3.4

Pilotage area	Projected 2003 bridge hours	Divided by bridge-hour target	Pilots required
AREA 4	8,298	1,800	4.6
AREA 5	6,395	1,000	6.4
AREA 6	19,016	1,800	10.6
AREA 7	4,320	1,000	4.3
AREA 8	12,354	1,800	6.9

Step 2.C. Projection of Target Pilot Compensation

(1) The projection of target pilot compensation is determined separately for each pilotage area by multiplying the number of pilots needed in an area by the target pilot compensation for pilots working in that area (*i.e.*, 5.4 pilots are required in Area 1, target compensation for the designated waters of Area 1 is $145,422, 5.4 × $145,422 = $785,279).

(2) The results for each pilotage area are summarized below:

DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Projection of target pilot compensation	$785,279	$352,726	$1,138,005

DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Projection of target pilot compensation	$477,218	$930,701	$1,407,919

DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Projection of target pilot compensation	$1,099,676	$625,315	$715,827	$2,440,818

Step 3: Projection of Revenue

(1) The third step in the ratemaking methodology is to project the revenue that would be received in each pilotage area if existing rates were left unchanged. This consists of a projection of both future vessel traffic and pilotage revenue.

Step 3.A. Projection of Revenue

(1) The Coast Guard projects the pilotage service that will be required by vessel traffic in each pilotage area. These projections are based on historical data and all other relevant data available. Projected demand for pilotage service is multiplied by the existing pilotage rates for that service, to arrive at the projection of revenue.

(2) The results of Step 3.A for each district are summarized below:

DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Projection of revenue	$1,105,233	$629,149	$1,734,382

DISTRICT

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Projection of revenue	$705,015	$1,461,069	$2,166,084

DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Projection of revenue	$1,540,306	$1,119,819	$1,030,693	$3,690,818

Step 4: Calculation of Investment Base

(1) The fourth step in the ratemaking methodology is the calculation of the investment base of each Association. The investment base is the recognized capital investment in the assets employed by each Association required to support pilotage operations. In general, it is the sum of available cash and the net value of real assets, less the value of land. The investment base has been established through the use of the balance sheet accounts, as amended by material supplied in the notes to the independent accountant's financial statements, which are in the public docket, and adjustments taken by the Coast Guard after consulting with the accountant.

(2) The formula for determining the investment base appears at appendix B to part 404. The calculation appears in the independent accountant's reports for each district. The Investment Base is the Recognized Assets times the ratio of Recognized Sources of Funds to Total Sources of Funds. The investment base (Step 4) as calculated for each district is displayed below:

DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Calculation of investment base	$50,000	$50,000	$100,000

DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Calculation of investment base	$89,734	$140,353	$230,087

DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Calculation of investment base	$111,660	$83,752	$83,752	$279,172

Step 5: Determination of Target Rate of Return on Investment

(1) The fifth step in the ratemaking methodology is to determine the Target Rate of Return on Investment. For each Association, a market-equivalent return-on-investment is allowed for the recognized net capital invested in the Association by its members.

(2) The allowed Return on Investment (ROI) is based on the preceding year's average annual rate of return for new issues of high-grade corporate securities.

(3) Assets subject to return on investment provisions must be reasonable in both purpose and amount. If an asset or other investment is not necessary for the provision of pilotage services, that portion of the return element is not allowed for ratemaking purposes.

(4) The target rate of return on investment for 2002 was set at 7.04 percent. This is based on the preceding year's (2001's) average annual rate of return of new issues of high-grade corporate securities (Moody's AAA rating, average return).

Step 6a: Adjustment Determination—Projected Return on Investment

(1) The next step in the ratemaking methodology is to insert the results from steps 1, 2, 3, and 4 into a formula that is based on a basic regulatory rate structure, and comparing the results to step 5. This basic regulatory rate structure takes into account revenues, expenses and return on investment, as set out below:

ADJUSTMENT DETERMINATION (PROJECTED RETURN ON INVESTMENT)

Line	Calculation
1	+ Revenue (from Step 3)
2	− Operating Expenses (from Step 1)
3	− Pilot Compensation (from Step 2)
4	= Operating Profit/Loss
5	− Interest Expense (from Audit reports)
6	= Earnings Before Tax
7	− Federal Tax Allowance
8	= Net Income
9	Return Element (Net Income + Interest)
10	÷ Investment Base (from Step 4)
11	= Projected Return on Investment

TABLE A.—DISTRICT ONE—PROJECTED RETURN ON INVESTMENT

Step	Area 1	Area 2	Total District One
1	$1,105,233	$629,149	$1,734,382
2	($359,704)	($239,802)	($599,506)
3	($785,279)	($352,726)	($1,138,005)
4	($39,750)	$36,621	($3,129)
5	0	0	0
6	($39,750)	$36,621	($3,129)
7	0	0	0
8	($39,750)	$36,621	($3,129)
9	($39,750)	$36,621	($3,129)
10	$50,000	$50,000	$10,000
11	(0.795)	0.732	(0.031)

TABLE B.—DISTRICT TWO—ADJUSTMENT DETERMINATION

Step	Area 4	Area 5	Total District Two
1	$854,237	$1,392,460	$2,246,697
2	($365,292)	($446,468)	($811,760)
3	($477,218)	($930,701)	($1,407,919)
4	$11,727	$15,291	$37,018
5	($734)	($734)	($1,468)
6	$10,993	$14,557	$25,550
7	($5,410)	($5,410)	($10,820)
8	$5,583	$9,147	$14,730
9	$6,317	$9,881	$16,198
10	$89,734	$140,353	$230,087
11	.0704	.0704	.0704

TABLE C.—DISTRICT THREE—ADJUSTMENT DETERMINATION

Step	Area 6	Area 7	Area 8	Total District
1	$1,847,087	$923,950	$1,230,164	$4,001,202
2	($739,550)	($292,739)	($508,441)	($1,540,730)
3	($1,099,676)	($625,315)	($715,827)	($2,440,818)
4	$7,861	$5,896	$5,896	$19,654
5	($1,909)	($1,909)	($1,909)	($5,727)
6	$5,952	$3,987	$3,987	$13,927
7	0	0	0	0
8	$5,952	$3,987	$3,987	$13,927
9	$7,861	$5,896	$5,896	$19,654
10	$111,668	$83,752	$83,752	$279,172
11	.0704	.0704	.0704	.0704

(2) The Coast Guard compares the projected return on investment (as calculated using the formula in Step 6a) to the target return on investment (from Step 5), to determine whether an adjustment to the base pilotage rates is necessary. If the projected return on investment is significantly different from the target return on investment, the revenues that would be generated by the current pilotage rates are not equal to the revenues that would need to be recovered by the pilotage rates.

(3) It is clear from the table below that the difference between the projected and target Returns on Investment are significant, indicating that a rate adjustment is necessary.

TABLE D.—COMPARISON OF PROJECTED RETURNS ON INVESTMENT VERSUS TARGET RETURNS ON INVESTMENT

	Projected ROI	Target ROI
District 1	(0.031)	.0704
District 2	(0.280)	.0704
District 3	(1.041)	.0704

(4) The base pilotage revenues that are needed are calculated by determining what change in projected revenue will make the target return on investment equal to the projected return on investment. This projection of revenue needed is used in determining the basis for proposed adjustments to the base pilotage rates. The mechanism for adjusting the base pilotage rates is discussed in Step 7 below. The required return, tax, and interest elements may be considered additions to the operating expenses and pilot compensation components of the base pilotage rates.

Step 6b: Revenue Needed Determination

The same formula used in Step 6a, above, is used to calculate the Adjustment Determination. To find the proper adjustment determination, Projected Revenue as determined in Step 3, is adjusted in each area until the formula in Step 6a yields a Projected Return on Investment equal to the Target Return on Investment from Step

5. The following tables show the results of these calculations.

TABLE A.—DISTRICT ONE—ADJUSTMENT DETERMINATION

Step	Area 1	Area 2	Total District One
1	$1,148,503	$629,149	$1,744,551
2	($359,704)	($239,802)	($599,506)
3	($785,279)	($352,726)	($1,138,005)
4	$3,520	$3,520	$7,040
5	0	0	0
6	$3,520	$3,520	$7,040
7	0	0	0
8	$3,520	$3,520	$7,040
9	$3,520	$3,520	$7040
10	$50,000	$50,000	$100,000
11	.0704	.0704	.0704

TABLE B.—DISTRICT TWO ADJUSTMENT DETERMINATION

Step	Area 4	Area 5	Total District Two
1	$854,237	$1,392,460	$2,246,697
2	($365,292)	($446,468)	($811,760)
3	($477,218)	($930,701)	($1,407,919)
4	$11,727	$15,291	$37,018
5	($734)	($734)	($1,468)
6	$10,993	$14,557	$25,550
7	($5,410)	($5,410)	($10,820)
8	$5,583	$9,147	$14,730
9	$6,317	$9,881	$16,198
10	$89,734	$140,353	$230,087
11	.0704	.0704	.0704

TABLE C.—DISTRICT THREE ADJUSTMENT DETERMINATION

Step	Area 6	Area 7	Area 8	Total District
1	$1,847,087	$923,950	$1,230,164	$4,001,202
2	($739,550)	($292,739)	($508,441)	($1,540,730)
3	($1,099,676)	($625,315)	($715,827)	($2,440,818)
4	$7,861	$5,896	$5,896	$19,654
5	($1,909)	($1,909)	($1,909)	($5,727)
6	$5,952	$3,987	$3,987	$13,927
7	0	0	0	0
8	$5,952	$3,987	$3,987	$13,927
9	$7,861	$5,896	$5,896	$19,654
10	$111,668	$83,752	$83,752	$279,172
11	.0704	.0704	.0704	.0704

Step 7: Adjustment of Pilotage Rates

(1) As previously indicated, the final step in the ratemaking methodology is to adjust base pilotage rates if the calculations from Step 6 show that pilotage rates in a pilotage area should be adjusted, and if the Coast Guard determines that it is appropriate to go forward with a rate adjustment. Rate adjustments are calculated in accordance with the procedures found in this step.

(2) Pilotage rate adjustments are calculated for each area by multiplying the existing pilotage rates in each area by the rate multiplier. The rate multiplier is calculated by inserting the result from the steps detailed above into the following formula:

Line	Rate multiplier
1	Revenue Needed (from Step 6(C)).
2	÷ Projected Revenue (from Step 3).
3	= Rate multiplier

(1) Using the formula above, the following are the calculations for the rate multiplier by District and Area:

TABLE A.—DISTRICT 1—RATE MULTIPLIER

[Revenue Needed ÷ Projected Revenue = Rate Multiplier]

Area 1	$1,148,503 ÷ $1,105,233	1.04
Area 2	$596,048 ÷ $629,149	0.95
Total	$1,744,551 ÷ $1,734,382	1.01

TABLE B.—DISTRICT 2—RATE MULTIPLIER

[Revenue Needed ÷ Projected Revenue = Rate Multiplier]

Area 4	$854,237 ÷ $705,015	1.21
Area 5	$1,392,460 ÷ $1,461,069	0.95
Total	$2,246,697 ÷ $2,166,084	1.04

TABLE C.—DISTRICT 3—RATE MULTIPLIER

[Revenue Needed ÷ Projected Revenue = Rate Multiplier]

Area 6	$1,847,087 ÷ $1,540,306	1.20
Area 7	$923,950 ÷ $1,119,819	0.83
Area 8	$1,230,164 ÷ $1,030,693	1.19
Total	$4,001,202 ÷ $3,690,818	1.08

TOTAL ACROSS ALL DISTRICTS—RATE MULTIPLIER

[Revenue Needed ÷ Projected Revenue = Rate Multiplier]

All Districts	$7,992,450 ÷ $7,591,284	1.05

(2) The Coast Guard amends the pilotage rates for the waters treated in 46 CFR 401.405 through 46 CFR 401.410 by multiplying the current pilotage rates by the rate multiplier for each pilotage area. The following table shows the percentage changes in rates by Area.

If you require pilotage service in:	The rate will:
Area 1 (Designated waters).	Increase by 4%.
Area 2	Decrease by 5%.
Area 4	Increase by 21%.
Area 5 (Designated waters).	Decrease by 5%.
Area 6	Increase by 20%.
Area 7 (Designated waters).	Decrease by 17%.
Area 8	Increase by 19%.

The total change across all Districts is 5 percent.

Part 3: Differences Between This Interim Ratemaking Regulation and the NPRM Published in January 2003

(1) Pending an opportunity to finish reviewing certain comments that were received in connection with the NPRM published in the **Federal Register** on January 23, 2003 (68 FR 3202), the Coast Guard has concluded that while many of these comments raised important points to be further explored, it was also equally important to establish at least a partial rate adjustment pending that review. We adopted a number of suggestions raised by comments, which has had the effect of reducing the rates proposed in the NPRM.

(2) Calculations to determine pilot target compensation for undesignated and designated waters of the Great Lakes differs from the calculations published in the NPRM (68 FR 3202). Comments received in response to the NPRM stated that the Coast Guard should credit only 5 days a month as vacations days vice 15 days to determine pilots' target compensation. The Coast Guard, in previous rulemakings, has included 15 days a month in its calculation of pilots' target compensation. For purposes of this interim rule, the Coast Guard has used the figures of those favoring a 44-day multiplier over a 54-day multiplier. This change has decreased the rate proposed in the NPRM. The Coast Guard continues to review this issue and expects to make a determination before calculating the full rate adjustment for the supplemental notice of proposed rulemaking (SNPRM).

(3) Many comments suggested that the needs of pilotage on the Great Lakes could be met with fewer than the total number of pilots recommended in the NPRM. This season's decline in shipping indicates that for the near term the rounding up of pilotage numbers, which is frequently performed in the course of determining the number of pilots needed, is not necessary, pending a full economic review of the Great Lakes basin. This, too, has resulted in a reduction to rates proposed in the NPRM.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

There are no small entities that will be directly affected by this interim rule. The businesses directly affected will be owners and operators of vessels who generally are large companies or are affiliated with large companies. Indirectly affected entities, such as shippers of major commodities like steel, iron ore, and grain will be affected only to the extent that these changes cause owners and operators of vessels to adjust shipping charges.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule will economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Paul Wasserman, Director, Office of Great Lakes Pilotage, (G-MWP–1), Coast Guard, telephone (202) 267–2856 or send him e-mail at *Pwasserman@comdt.uscg.mil*.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This interim rule calls for no new collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520].

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(a), of the Instruction, from further environmental documentation. An ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are available in the docket where indicated under the section of this preamble on ''Public Participation and Request for Comments''. We will consider comments on this section before we make the final decision on whether this rule should be categorically excluded from further environmental review.

List of Subjects

46 CFR Part 401

Administrative practice and procedures, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 404

Great Lakes, Navigation (water), Seamen.

■ For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 401 and 404 as follows:

PART 401—GREAT LAKES PILOTAGE REGULATIONS

■ 1. Revise the authority citation for part 401 to read as follows:

Authority: 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1; 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

■ 2. In § 401.405, revise paragraphs (a) and (b), to read as follows:

§ 401.405 Basic rates and charges on the St. Lawrence River and Lake Ontario.

* * * * *

(a) *Area 1 (Designated Waters):*

Service	St. Lawrence River
Basic Pilotage	$8 per kilometer or $15 per mile[1]
Each Lock Transited	[1]$185
Harbor Movage	[1]$607

[1] The minimum basic rate for assignment of a pilot in the St. Lawrence River is $405, and the maximum basic rate for a through trip is $1,777.

(b) *Area 2 (Undesignated Waters):*

Service	Lake Ontario
Six-Hour Period	$327
Docking or Undocking	$312

■ 3. In § 401.407, revise paragraphs (a) and (b) to read as follows:

§ 401.407 Basic rates and charges on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI.

* * * * *

(a) *Area 4 (Undesignated Waters):*

Service	Lake Erie (East of southeast shoal)	Buffalo
Six-Hour Period	$405	$405
Docking or Undocking	$312	$312
Any Point on the Niagara River below the Black Rock Lock	N/A	$796

(b) *Area 5 (Designated Waters):*

Any point on or in	Southeast Shoal	Toledo or any Point on Lake Erie west of Southeast Shoal	Detroit River	Detroit Pilot Boat	St. Clair River
Toledo or any port on Lake Erie west of Southeast Shoal	$939	$554	$1,218	$939	N/A
Port Huron Change Point	[1] $1,634	[1] $1,893	$1,228	$955	$679
St. Clair River	[1] $1,634	N/A	$1,228	$1,228	$554
Detroit or Windsor or the Detroit River	$939	$1,218	$554	N/A	$1,228
Detroit Pilot Boat	$679	$939	N/A	N/A	$1,228

[1] When pilots are not changed at the Detroit Pilot Boat.

■ 4. In § 401.410, revise paragraphs (a), (b), and (c) to read as follows:

§ 401.410 Basic rates and charges on Lakes Huron, Michigan, and Superior, and the St Mary's River.

* * * * *

(a) *Area 6 (Undesignated Waters):*

Service	Lakes Huron and Michigan
Six-Hour Period	$336
Docking or Undocking	$319

(b) *Area 7 (Designated Waters):*

Area	Detour	Gros Cap	Any harbor
Gros Cap	$1,192	N/A	N/A
Algoma Steel Corporation Wharf at Sault Ste. Marie Ontario	$1,192	$449	N/A
Any point in Sault Ste. Marie, Ontario, except the Algoma Steel Corporation Wharf	$999	$449	N/A
Sault Ste. Marie, MI	$999	$449	N/A
Harbor Movage	N/A	N/A	$449

(c) *Area 8 (Undesignated Waters):*

Service	Lake Superior
Six-Hour Period	$311
Docking or Undocking	$296

§ 401.420 [Amended]

■ 5. In § 401.420—

■ a. In paragraph (a), remove the number ''$53'' and add, in its place, the number ''$56''; and remove the number ''$831'' and add, in its place, the number ''$873''.

■ b. In paragraph (b), remove the number ''$53'' and add, in its place, the number ''$56''; and remove the number ''$831'' and add, in its place, the number ''$873''.

■ c. In paragraph (c)(1), remove the number ''$314'' and add, in its place, the number ''$330''; in paragraph (c)(3), remove the number ''$53'' and add, in its place, the number ''$56''; and, also in paragraph (c)(3), remove the number ''$831'' and add, in its place, the number ''$873''.

§ 401.428 [Amended]

■ 6. In § 401.428, remove the number ''$321'' and add, in its place, the number ''$337''.

PART 404—GREAT LAKES PILOTAGE RATEMAKING

■ 7. Revise the authority citation for part 404 to read as follows:

Authority: 46 U.S.C. 2104(a), 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1.

Appendix A to Part 404 [Amended]

■ 8. In Appendix A to part 404, in Step 6, paragraph 1, line 10 of the table, remove the symbol ''+'' and add, in its place, the symbol ''÷''.

Dated: December 8, 2003.

T.H. Gilmour,

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

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