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he may agree to the extension of such agreement to some or all of the amounts in the old fund and transfer the amounts in the old fund to which the agreement is to apply from the old fund to the new fund. If an agreement to establish a new fund is extended to amounts from an old fund, each item in the old fund to which such agreement applies shall be considered to be transferred to the appropriate account in the manner provided for in §391.8(d) in the new fund in a nontaxable transaction which is in accordance with the provisions of the agreement under which such old fund was maintained. For purposes of determining the amount of interest under section 607(h)(3)(C) of the Act and §391.7(e), the date of deposit of any item so transferred shall be deemed to be July 1, 1971, or the date of the deposit in the old fund, whichever is the later.

§391.11 Definitions.

(a) As used in the regulations in this part and as defined in section 607(k) of the Act—

(1) The term *eligible vessel* means any vessel—

(i) Constructed in the United States, and if reconstructed, reconstructed in the United States,

(ii) Documented under the laws of the United States, and

(iii) Operated in the foreign or domestic commerce of the United States or in the fisheries of the United States. Any vessel which was constructed outside of the United States but documented under the laws of the United States on April 15, 1970, or constructed outside the United States for use in the

U.S. foreign trade pursuant to a contract entered into before April 15, 1970, shall be treated as satisfying the requirements of paragraph (a)(1) of this section and the requirements of paragraph (a)(2)(i) of this section.

(2) The term *qualified vessel* means any vessel—

(i) Constructed in the United States and, if reconstructed, reconstructed in the United States,

(ii) Documented under the laws of the United States, and

(iii) Which the person maintaining the fund agrees with the Secretary of Transportation will be operated in the U.S. foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States.

(3) The term *agreement vessel* means any eligible vessel or qualified vessel which is subject to an agreement entered into under section 607 of the Act.

(4) The term *vessel* includes cargo handling equipment which the Secretary of Transportation determines is intended for use primarily on the vessel. The term *vessel* also includes an ocean-going towing vessel or an ocean-going barge or comparable towing vessel or barge operated in the Great Lakes.

(b) Insofar as the computation and collection of taxes are concerned, other terms used in the regulation in this part, except as otherwise provided in the Act or this part, have the same meaning as in the Code and the regulations thereunder.

[29 FR 10464, July 28, 1964]

PARTS 392-399 [RESERVED]

CHAPTER III—COAST GUARD (GREAT LAKES
PILOTAGE),
DEPARTMENT OF TRANSPORTATION

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PART 400 [RESERVED]

PART 401—GREAT LAKES PILOTAGE REGULATIONS

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AUTHORITY: 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; 49 CFR 1.45, 1.46 (mmm); 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

Subpart A—General

§ 401.100 Purpose.

The purpose of this part is to carry out those provisions of the Great Lakes Pilotage Act of 1960 (74 Stat. 259, 46 U.S.C. 216) relating to the registration of United States pilots, the formation of pools by voluntary associations of United States registered pilots and the establishment of rates, charges, and other conditions or terms for services

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performed by registered pilots to meet the provisions of the Act.

[26 FR 951, Jan. 31, 1961. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

§ 401.105 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and record-keeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980, (44 U.S.C. 3501 et seq.). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f) which requires that agencies display a current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part of section where identified or described	Current OMB control No.
Part 404	2115-0022

[49 FR 38122, Sept. 27, 1984. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

§ 401.110 Definitions.

(a) As used in this chapter:

(1) *Act* means the Great Lakes Pilotage Act of 1960, as amended (Pub. L. 86-555, 74 Stat. 259-262; 46 U.S.C. 216 through 216i).

(2) *Commandant* means Commandant, U.S. Coast Guard, Washington, DC 20593-0001.

(3) *Canadian Registered Pilot* means a person, other than a member of the regular complement of a vessel, who holds an appropriate Canadian license issued by an agency of Canada, and is registered by a designated agency of Canada on substantially the same basis as registration under the provisions of Subpart B of this part.

(4) *Moveage* means the underway movement of a vessel in navigation from or to a dock, pier, wharf, dolphins, buoys, or anchorage other than a temporary anchorage for navigational

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or traffic purposes in such manner as to constitute a distinct separate movement not a substantive portion of a translake movement on arrival or departure, within the geographic confines of a harbor or port complex within such harbor.

(5) *Great Lakes* means Lakes Superior, Michigan, Huron, Erie, and Ontario, their connecting and tributary waters, the St. Lawrence River as far east as Saint Regis, and adjacent port areas.

(6) *Other officer* means the master or any other member of the regular complement of the vessel concerned who is qualified for the navigation of those United States waters of the Great Lakes which are not designated by the President in Proclamation No. 3385 dated December 22, 1960 and who is either licensed by the Secretary or certificated by an appropriate agency of Canada.

(7) *Secretary* means the Secretary of Transportation or any person to whom he has delegated his authority in the matter concerned.

(8) *United States registered pilot* means a person, other than a member of the regular complement of a vessel, who holds a license authorizing navigation on the Great Lakes and suitably endorsed for pilotage on routes specified therein, issued under the authority of the provisions of Title 52 of the Revised Statutes, and who is also registered under the provisions of Subpart B of this part.

(9) *Director* means Director, Great Lakes Pilotage. Communications with the Director may be sent to the following address: Commandant (G-MW-1), 2100 Second Street SW., Washington, DC 20593-0001, Attn: Director, Great Lakes Pilotage.

(10) Rate computation definitions:

(i) *Length* means the distance between the forward and after extremities of the ship.

(ii) *Breadth* means the maximum breadth to the outside of the shell plating of the ship.

(iii) *Depth* means the vertical distance at amidships from the top of the keel plate to the uppermost continuous deck, fore and aft, and which extends to the sides of the ship. The continuity of a deck shall not be considered to be

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affected by the existence of tonnage openings, engine spaces, or a step in the deck.

(11) *Person* includes an individual, registered pilot, partnership, corporation, association, voluntary association, authorized pool, or public or private organization, other than an agency.

(12) *Applicant Pilot* means a person who holds a license as a master, mate, or pilot issued under the authority of the provisions of Title 52 of the Revised Statutes, and has acquired at least twenty-four months licensed service or comparable experience on vessels or integrated tugs and tows, of 4,000 gross tons or over, operating on the Great Lakes or oceans, and who has applied for registration under the provisions of Subpart B of this part. Those persons qualifying with ocean service must have obtained at least six months of licensed service or comparable experience on the Great Lakes.

(13) *Applicant Trainee* means a person who is in training to become an Applicant Pilot with an organization authorized to provide pilotage services.

(14) *Pool* means an organization authorized to provide pilotage services.

(15) *Comparable experience* means experience that is similar to the experience obtained by serving as an officer on a vessel. Training and experience while participating in a pilot training program of an authorized pilot organization is considered equivalent on a day for day basis to experience as an officer on a vessel. The training program of the authorized pilot organization must, however, include regularly scheduled trips on vessels of 4,000 gross tons or over in the company of a registered pilot.

(16) *Association* means any organization that holds or held a Certificate of Authorization issued by the Director of

Great Lakes Pilotage to operate a pilotage pool on the Great Lakes.

[26 FR 951, Jan. 31, 1961, as amended at 31 FR 9064, July 1, 1966; 32 FR 14220, Oct. 13, 1967; CGFR 68-78, 33 FR 9823, July 9, 1968; CGFR 70-29a, 35 FR 10434, June 26, 1970; CGD 74-233, 40 FR 41526, Sept. 8, 1975; CGD 78-144a, 44 FR 19362, Apr. 2, 1979; CGD 78-1445, 44 FR 64837, Nov. 8, 1979; 53 FR 34538, Sept. 7, 1988; 60 FR 18369, Apr. 11, 1995; 61 FR 5721, Feb. 14, 1996. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, June 29, 1998; USCG-2001-10224, 66 FR 48621, Sept. 21, 2001; USCG-2002-13058, 67 FR 61279, Sept. 30, 2002]

§ 401.120 Federal reservation of pilotage regulations.

No state, municipal, or other local authority shall require the use of pilots or regulate any aspect of pilotage in any of the waters specified in the Act. Only those persons registered as United States Registered Pilots or Canadian Registered Pilots as defined in this subpart may render pilotage services on any vessel subject to the Act and the Memorandum of Arrangements, Great Lakes Pilotage.

[26 FR 951, Jan. 31, 1961. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

Subpart B—Registration of Pilots

§ 401.200 Application for registration.

(a) An application for registration as a U.S. Registered Pilot shall be made on Form CG-4509, which shall be submitted together with a completed fingerprint chart and two full-face photographs, 1½ inches by 2 inches, signed on the face. These forms may be obtained from the Director.

(b) [Reserved]

[32 FR 14220, Oct. 13, 1967, as amended by CGD 78-144b, 44 FR 64837, Nov. 8, 1979. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

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§ 401.210 Requirements and qualifications for registration.

(a) No person shall be registered as a United States Registered Pilot unless:

(1) The individual holds a license as a master, mate, or pilot, issued under the authority of the provisions of Title 52 of the Revised Statutes, and has acquired at least twenty-four months licensed service or comparable experience on vessels or integrated tugs and tows, of 4,000 gross tons, or over, operating on the Great Lakes or oceans. Those applicants qualifying with ocean service must have obtained at least six months of licensed service or comparable experience on the Great Lakes. Those applicants qualifying with comparable experience must have served a minimum of twelve months as a licensed deck officer.

(2) The individual is a citizen of the United States.

(3) The individual is of good moral character and temperate habits.

(4) The individual is physically competent to perform the duties of a U.S. Registered Pilot and meets the medical requirements prescribed by the Commandant.

(5) The individual has not reached the age of 70.

(6) The individual possesses a validated Merchant Mariner's Document issued by the Coast Guard.

(7) The individual agrees to be available for service under the terms and conditions as may be approved or prescribed by the Commandant.

(8) The individual has complied with the requirements set forth in § 401.220(b) for Applicant Pilots if applying for registration for waters in which a pilotage pool is authorized.

(9) The individual agrees to comply with all applicable provisions of this part and amendments thereto.

(b) Any person registered as a United States Registered Pilot pursuant to the provisions of this part whose application contains false or misleading statements furnished by the applicant in furtherance of his or her application shall be in violation of these regula-

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tions and may be proceeded against under § 401.250(a) or § 401.500.

[29 FR 10464, July 28, 1964, as amended at 31 FR 9065, July 1, 1966; 32 FR 14220, Oct. 13, 1967; CGD 78-144a, 44 FR 19363, Apr. 2, 1979; CGD 78-144b, 44 FR 64837, Nov. 8, 1979; 61 FR 5721, Feb. 14, 1996. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998; USCG-2002-13058, 67 FR 61279, Sept. 30, 2002]

§ 401.211 Requirements for training of Applicant Pilots.

(a) The Director shall determine the number of Applicant Pilots required to be in training by each Association authorized to form a pool in order to assure an adequate number of Registered Pilots. No Applicant Pilot shall be selected for training unless:

(1) The individual meets the requirements and qualifications set forth in paragraphs (a) (1) through (4), (6), (7), and (9) of § 401.210.

(2) The individual shall not have reached the age of 60.

(3) The individual possesses a radar observer competency certificate or equivalent U.S. Coast Guard endorsement.

(b) For purpose of determining whether an applicant meets the experience requirements contained in § 401.210(a)(1), not more than twelve months of "comparable experience" may be used in fulfilling the twenty-four month experience requirement.

(c) The Director shall approve the United States Registered Pilots that are designated by the authorized pilot organization to provide training to those pilots that are in training to be registered pilots.

(d) Persons desiring to be considered as an Applicant Pilot shall file with the Director a completed Application Form, CG-4509, in duplicate, together with two full-face photographs, 1½ inches by 2 inches, signed on the face, and a completed fingerprint chart.

(e) Individuals selected as Applicant Pilots by the Director shall be issued a U.S. Coast Guard Applicant Pilot Identification Card, which shall be valid until such time as (1) the applicant is registered as a pilot under § 401.210; (2) the applicant withdraws from the

training program, or (3) upon withdrawal by the Director.

[29 FR 10465, July 28, 1964, as amended at 31 FR 9065, July 1, 1966; 32 FR 14220, Oct. 13, 1967; CGD 78-144a, 44 FR 19363, Apr. 2, 1979; CGD 78-144b, 44 FR 64837, Nov. 9, 1979; 61 FR 5721, Feb. 14, 1996. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998; USCG-2002-13058, 67 FR 61279, Sept. 30, 2002]

§ 401.220 Registration of pilots.

(a) The Director shall determine the number of pilots required to be registered in order to assure adequate and efficient pilotage service in the United States waters of the Great Lakes and to provide for equitable participation of United States Registered Pilots with Canadian Registered Pilots in the rendering of pilotage services.

(b) Registration of pilots shall be made from among those Applicant Pilots who have (1) completed the minimum number of trips prescribed by the Commandant over the waters for which application is made on ocean-going vessels, in company with a Registered Pilot, within 1 year of date of application, (2) completed a course of instruction for Applicant Pilots prescribed by the association authorized to establish the pilotage pool, (3) satisfactorily completed a written examination prescribed by the Commandant, evidencing his knowledge and understanding of the Great Lakes Pilotage Regulations, Rules and Orders; the Memorandum of Arrangements, Great Lakes Pilotage, between the United States and Canada; and other related matters including the working rules and operating procedures of his district, given at such time and place as the Commandant may designate within the pilotage district of the Applicant Pilot.

(c) The Pilot Association authorized to establish a pool in which an Applicant Pilot has qualified for registration under paragraph (b) of this section shall submit to the Director in writing its recommendations together with its reasons for the registration of the Applicant.

(d) Subject to the provisions of paragraphs (a), (b), and (c) of this section, a pilot found to be qualified under this subpart shall be issued a Certificate of

Registration, valid for a term of five (5) years or until the expiration of his master's, mate's or pilot's license issued under the authority of Title 52 of the Revised Statutes or until the pilot reaches age 70, whichever occurs first.

(e) The Director may, when necessary to assure adequate and efficient pilotage service, issue a temporary certificate of registration for a period of less than 1 year to any person found qualified under this subpart regardless of age.

[29 FR 10465, July 28, 1964, as amended at 31 FR 9065, July 1, 1966; CGFR 67-64, 32 FR 14221, Oct. 13, 1967; CGFR 69-84, 34 FR 12583, Aug. 1, 1969; CGD 78-144a, 44 FR 19363, Apr. 2, 1979; CGD 78-144b, 44 FR 64837, Nov. 9, 1979; 61 FR 5721, Feb. 14, 1996. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

§ 401.230 Certificates of Registration.

(a) A Certificate of Registration shall describe the part or parts of the Great Lakes within which the pilot is authorized to perform pilotage services and such description shall not be inconsistent with the terms of the pilotage authorization in his or her master's, mate's, or pilot's license issued under the authority of Title 52 of the Revised Statutes.

(b) A Certificate of Registration shall not authorize the holder to board any vessel, or to serve as a pilot of any vessel, without the permission of the owner or master. A Certificate of Registration shall be in the possession of a pilot at all times when he or she is in the service of a vessel, and shall be displayed upon demand of the owner or master, any United States Coast Guard officer or inspector, or a representative of the Director.

(c) A Certificate of Registration evidencing registration of the holder is the property of the U.S. Coast Guard and it shall not be pledged, deposited, or surrendered to any person except as authorized by this part. A Certificate of Registration may not be photostated or copied. A Certificate which has expired without renewal, or renewal of which has been denied under the provisions of this section, shall be surrendered to the Director upon demand.

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(d) An application for a replacement of a lost, damaged, or defaced Certificate of Registration shall be made in writing to the Director together with two full-face photographs, 1½ inches by 2 inches, signed on the face. A replacement fee of five dollars (\$5) by check or money order, drawn to the order of the U.S. Coast Guard, shall accompany any such application. A Certificate issued as a replacement for a lost, damaged, or defaced Certificate shall be marked so as to indicate that it is a replacement. Upon receipt of a Certificate issued as a replacement, the damaged or defaced Certificate shall be surrendered to the Director.

(e) A Certificate of Registration may be voluntarily surrendered to the Director by a Registered Pilot at any time such pilot no longer desires to perform pilotage services; however, in the event such Registered Pilot has been served with a notice of hearing pursuant to § 401.250, a voluntary surrender of the Certificate of Registration shall be at the option of the Director.

[29 FR 10465, July 28, 1964, as amended at 31 FR 9065, July 1, 1966; 32 FR 14221, Oct. 13, 1967; CGD 78-144a, 44 FR 19363, Apr. 2, 1979; 61 FR 5721, Feb. 14, 1996. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998; USCG-2002-13058, 67 FR 61279, Sept. 30, 2002]

§ 401.240 Renewal of Certificates of Registration.

(a) An application for renewal of a Certificate of Registration shall be submitted to the Director together with two full-face photographs, 1½ inches by 2 inches, signed on the face, at least 15 days before the expiration date of the existing Certificate. The form for renewal of Certificates of Registration may be obtained from the Director. A renewal fee of 5 dollars by check or money order, drawn to the order of the U.S. Coast Guard, shall accompany an application for renewal of registration, which will be refunded if registration is not renewed. Failure of a Registered Pilot to comply with these requirements or file a complete and sufficient application may constitute cause for denying renewal of the Certificate of Registration.

(b) No Certificate of Registration shall be renewed unless the applicant for renewal thereof meets the requirements and qualifications set forth in § 401.210 for issuance of an original Certificate of Registration; excepting that compliance with § 401.210(a)(4) shall not be required if the examination was satisfactorily passed on a previous application for registration within six (6) months next preceding the date of application for renewal.

(c) If the Director determines that there is good cause for denying renewal of a Certificate of Registration, the applicant shall be notified in writing of such determination and the cause thereof. The applicant may thereupon apply within fifteen (15) days of the receipt of such notice for a hearing in regard to the cause for the denying of a renewal of the Certificate, which hearing shall be granted.

(d) In any case in which the applicant has made timely and sufficient application for renewal of his registration, no such registration shall expire until such application shall have been finally determined by the Commandant unless the public health, interest, or safety requires otherwise.

(e) Upon receipt of a renewal Certificate of Registration, the expired Certificate shall be surrendered to the Director.

[29 FR 10465, July 28, 1964, as amended at 32 FR 14221, Oct. 13, 1967; CGFR 68-57, 33 FR 6479, Apr. 27, 1968; 61 FR 5721, Feb. 14, 1996. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

§ 401.250 Suspension and revocation of Certificates of Registration.

(a) Certificate of Registration issued pursuant to the provisions of this part may be suspended or revoked upon a determination on the record, after opportunity for a hearing in accordance with the Administrative Procedure Act, as amended (5 U.S.C. 551 through 559), that the pilot (holder) has violated any provision of this chapter or is no longer eligible for registration.

(b) When a Certificate of Registration which is about to expire is suspended, the renewal of such certificate

may be withheld until the expiration of the period of suspension.

(c) Whenever the public health, interest, or safety requires, the Director may deny a Registered Pilot dispatch for a period not to exceed 30 days pending investigation by the U.S. Coast Guard or other agency having jurisdiction in the matter.

(d) Every U.S. Registered Pilot shall, whenever his or her license is revoked or suspended under the provisions of part 5 of this title, deliver his or her Certificate of Registration simultaneously with his or her license to the U.S. Coast Guard. If the license is suspended, the Certificate of Registration will be held with the suspended license and returned to the holder upon expiration of the suspension period.

[32 FR 14221, Oct. 13, 1967, as amended by CGFR 68-57, 33 FR 6478, Apr. 27, 1968; 61 FR 5721, Feb. 14, 1996. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998; USCG-2002-13058, 67 FR 61279, Sept. 30, 2002]

§ 401.260 Reports.

(a) A marine accident which occurs while a U.S. Registered Pilot is in the service of a vessel in U.S. or Canadian waters of the Great Lakes shall be reported by the Registered Pilot to the Director as soon as possible, but not later than 15 days after the accident. The report shall name and describe the vessel or vessels involved, and shall describe the accident, including type of accident, location, time, prevailing weather, damage to the vessel or vessels or property, and injury to persons or lives lost. This report does not relieve the pilot of responsibility for submitting any report required by other government agencies of the United States or Canada.

(b) Every U.S. Registered Pilot shall file with the Director any change of his or her mailing address within 15 days after the change.

(c) Every authorized pilotage pool of U.S. Registered Pilots rendering pilotage service shall submit, by the 10th day of the month following, a monthly report of availability, on a form provided by the Director, of all U.S. Registered Pilots and Applicant Pilots of that pool. The report shall include the

availability of Canadian Registered Pilots who are assigned to that pool for administrative purposes. The report shall list the name of each pilot and show his or her availability status for each day of the month as: available, unavailable due to illness or injury, unavailable with advance notice for personal reasons, unavailability authorized by the pool for business reasons, unavailable without advance notice or unaccounted for, unavailable for disciplinary reasons. The report shall be maintained on a daily basis by an officer or employee of the pool, who shall be responsible for the completeness and accuracy of the report.

[31 FR 9065, July 1, 1966; 32 FR 14221, Oct. 13, 1967. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998; USCG-2002-13058, 67 FR 61279, Sept. 30, 2002]

Subpart C—Establishment of Pools by Voluntary Associations of United States Registered Pilots

§ 401.300 Authorization for establishment of pools.

(a) Voluntary associations of U.S. registered pilots will be authorized to establish a pool or pools in the following areas of the U.S. waters of the Great Lakes designated by the President in Proclamation No. 3385 of December 22, 1960, as amended by Proclamation No. 3855 of June 10, 1968, or in such other areas as the Director may deem necessary to assure adequate and efficient pilotage services for the U.S. waters of the Great Lakes:

(1) *District No. 1.* All United States waters of the St. Lawrence River between the international boundary at St. Regis and a line at the head of the river running (at approximately 127° True) between Carruthers Point Light and South Side Light extended to the New York shore.

(2) *District No. 2.* All United States waters of Lake Erie westward of a line running (at approximately 026° True) from Sandusky Pierhead Light at Cedar Point to Southeast Shoal Light; all waters contained within the arc of a circle of one mile radius eastward of Sandusky Pierhead Light; the Detroit River; Lake St. Clair; the St. Clair

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River, and Northern approaches there-to south of latitude 43°05'30" N.

(3) *District No. 3.* All U.S. waters of the St. Marys River, Sault Sainte Marie Locks and approaches thereto between latitude 45°59' N. at the southern approach and longitude 84°33' W. at the northern approach.

(b) The Director shall determine the number of pools that will be authorized for establishment by voluntary associations of United States registered pilots in order to assure adequate and efficient pilotage services for the United States waters of the Great Lakes.

[26 FR 952, Jan. 31, 1961, as amended at 32 FR 14221, Oct. 13, 1967; CGFR 68-78, 33 FR 9823, July 9, 1968. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

§ 401.310 Application for establishment of pools.

An application by a voluntary association for authorization to establish a pool shall be filed on the form to be obtained from the Director. The form shall require, among other things, furnishing of the following information:

(a) The name and address of the association.

(b) The names and addresses of all officers of the association.

(c) Type of organization (partnership, corporation, etc.).

(d) Copies of articles of incorporation, bylaws, partnership agreements, etc.

(e) The names and addresses of all stockholders or partners, together with the extent of their financial interest.

(f) A copy of the financial statements of the association.

(g) The names, addresses, and Certificates of Registration numbers of all member pilots.

(h) The District or area in which members of the association desire to render pilotage services.

(i) An inventory of owned or leased boats, launches, radio equipment, vehicles, etc., which may be used in the performance of pilotage services.

[26 FR 952, Jan. 31, 1961, as amended at 32 FR 14221, Oct. 13, 1967. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

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§ 401.320 Requirements and qualifications for authorization to establish pools.

No voluntary association shall be authorized to establish a pool unless:

(a) The Director determines that a pool is necessary for the efficient dispatching of vessels and the providing of pilotage services in the area concerned.

(b) The stock, equity, or other financial interests coupled with voting rights or exercise of any right of control in the management of the voluntary association is held only by member Registered Pilots registered pursuant to § 401.200, § 401.210, or § 401.220(e), excluding Applicant Pilots.

(c) The voluntary association establishes that it possesses the ability, experience, financial resources, and other qualifications necessary to enable it to operate and maintain an efficient and effective pilotage service.

(d) The voluntary association agrees that:

(1) Pilotage services will be provided on a first-come, first-serve basis to vessels giving proper notice of arrival time or pilotage service requirements, to the pilotage station, except that pilots will not be required to board vessels which do not provide safe boarding facilities;

(2) It will submit working rules for approval of the Commandant;

(3) It will adopt and use the Uniform System of Accounts, part 403 of this chapter, and such other accounting procedures and reports as may be prescribed by the Commandant;

(4) It will be subject to audit and inspection by the U.S. Coast Guard and will submit by April 1 of each year an unqualified long form audit report for the preceding year prepared by an Independent Certified Public Accountant, performed in accordance with Generally Accepted Auditing Standards promulgated by the American Institute of Certified Public Accountants.

(5) It will be subject to such other provisions as may be prescribed by the Director governing the operation of and the costs which may be charged in connection with the pools;

(6) It will coordinate on a reciprocal basis its pool operations with similar pool arrangements established by the Canadian Government and pursuant to

the provisions of the United States-Canada Memorandum of Arrangements, Great Lakes Pilotage, or any other arrangements established by the United States and Canadian Governments.

[29 FR 10466, July 28, 1964, as amended at 31 FR 9066, July 1, 1966; 32 FR 14221, Oct. 13, 1967; CGD 81-088, 47 FR 13808, Apr. 1, 1982; CGD 88-111, 55 FR 17581, Apr. 25, 1990; 61 FR 5721, Feb. 14, 1996. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

§ 401.330 Certificates of Authorization.

(a) Subject to § 401.300(b), an association that is qualified to establish a pool in a District or area is issued a Certificate of Authorization that is valid until suspended or revoked under the procedures in § 401.335.

(b) A Certificate of Authorization shall be in such form as the Director may prescribe, but shall describe the area of the Great Lakes in which the pool will perform pilotage services. A Certificate of Authorization shall be posted in the principal place of business of an association in such manner so as to be available for examination by members of the association and the public.

[26 FR 953, Jan. 31, 1961, as amended at 32 FR 14221, Oct. 13, 1967; CG 74-233, 40 FR 41527, Sept. 8, 1975. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

§ 401.335 Suspension or revocation of a Certificate of Authorization.

(a) The Director may issue an order to suspend or revoke a Certificate of Authorization if—

(1) The holder of a Certificate of Authorization does not continue to meet the requirements under § 401.320; or

(2) The holder of a Certificate of Authorization does not comply with the requirements of this part.

(b) Before issuing an order to suspend or revoke, the Director notifies the holder of a Certificate of Authorization of the reasons for the proposed suspension or revocation and gives the holder an opportunity to be heard or to comply with the requirements of this part.

(c) If the Director finds that the violation of a requirement of this part involves public health, interest, or safe-

ty, or that the violation is willful, the Director may issue an order to suspend the Certificate of Authorization without giving notice under paragraph (b) of this section. The order shall contain the reasons for the Director's action.

(d) A holder who has its Certificate of Authorization suspended under paragraph (c) of this section shall have an opportunity to be heard by notifying the Director in writing.

(e) The Director shall reinstate a Certificate of Authorization that has been suspended under paragraph (b) or (c) of this section when he determines that the holder is complying with this part.

[CGD 74-233, 40 FR 41527, Sept. 8, 1975. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

§ 401.340 Compliance with working rules of pools.

(a) United States or Canadian registered pilots utilizing the facilities and dispatching services of any authorized pool shall comply with its working rules approved under § 402.320, except to the extent inconsistent with the dispatch orders of the Director under § 401.720(b), and with other rules of the pool that are related to those facilities and services.

(b) The voluntary associations of U.S. Registered Pilots authorized to establish a pilotage pool may require a U.S. Registered Pilot to execute a written authorization for the pool to bill for services, deduct authorized expenses, and to comply with the working rules and other rules of the pool relating to such facilities and services. Facilities and services of the pool may be denied to any U.S. Registered Pilot who fails or refuses to execute such authorizations.

(c) U.S. Registered Pilots who fail to execute such an authorization shall not be considered members of the U.S. pool, and shall not be entitled to reciprocal dispatching and related services by United States and Canadian pilotage pools as provided for by the Memorandum of Arrangements. A U.S. Registered Pilot who fails or refuses to avail himself of the established facilities and services shall be considered as not being continuously available for

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service pursuant to section 4(a) of the Great Lakes Pilotage Act of 1960 (46 U.S.C. 216 through 216i) and his agreement executed on the Application for Registration as a U.S. Registered Pilot, and may be subject to suspension or revocation proceedings as prescribed by § 401.250.

[26 FR 9647, Oct. 12, 1961, as amended at 31 FR 9066, July 1, 1966; 32 FR 14221, Oct. 13, 1967; CGD 74-233, 40 FR 41527, Sept. 8, 1975. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

Subpart D—Rates, Charges, and Conditions for Pilotage Services

§ 401.400 Calculation of pilotage units and determination of weighting factor.

The equivalent pilotage unit number and appropriate weighting factor for each ship shall be computed by utilizing the following formula and table:

(a) Pilotage unit computation:

Pilot Unit=(Length×Breadth×Depth)/283.17 (measured in meters)

Pilot Unit=(Length×Breadth×Depth)/10,000 (measured in feet)

(b) Weighting factor table:

Range of pilotage units	Weighting factor
0 to 129	1.00
130 to 159	1.15
160 to 189	1.30
190 and over	1.45

(c) The charge for pilotage service is obtained by multiplying the weighting factor, obtained from paragraph (b) of this section by the appropriate basic rate specified in §§ 401.405, 401.407, 401.410, 401.420 and 401.425.

[CGFR 70-29a, 35 FR 10434, June 26, 1970, as amended by CGD 81-088; 47 FR 13808, Apr. 1, 1982; CGD 84-089, 50 FR 7178, Feb. 27, 1985. Redesignated and amended at 61 FR 32655, June 25, 1996; 62 FR 5922, Feb. 10, 1997. Redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

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 South-East Shoal	\$939	\$554	\$1,218	\$939	N/A

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

Except as provided in § 401.420, the following basic rates are payable for all services and assignments performed by U.S. registered pilots in the St. Lawrence River and Lake Ontario.

(a) Area 1 (Designated Waters):

Service	St. Lawrence River
Basic Pilotage	\$8 per kilometer or \$14 per mile. ¹
Each Lock Transited	\$178. ¹
Harbor Movage	\$584. ¹

¹ The minimum basic rate for assignment of a pilot in the St. Lawrence River is \$389, and the maximum basic rate for a through trip is \$1709.

(b) Area 2 (Undesignated Waters):

Service	Lake Ontario
Six-Hour Period	\$344
Docking or Undocking	328

[62 FR 5922, Feb. 10, 1997. Redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998; USCG 1999-6098, 66 FR 36489, July 12, 2001]

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

Except as provided in § 404.420, the following basic rates are payable for all services and assignments performed by U.S. registered pilots on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI.

(a) Area 4 (Undesignated Waters):

Service	Lake Erie (east of South-east Shoal)	Buffalo
Six-Hour Period	\$335	\$335
Docking or Undocking	258	258
Any Point on the Niagara River below the Black Rock Lock	N/A	658

(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 South-East Shoal	\$939	\$554	\$1,218	\$939	N/A

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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
Port Huron Change Point	1,634	1,893	1,228	955	\$679
St. Clair River	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

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

(c) 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	\$988	\$583	\$1,282	\$988	N/A
Port Huron Change Point	¹ 1,720	¹ 1,993	1,293	1,005	\$715
St. Clair River	¹ 1,720	N/A	1,293	1,293	583
Detroit or Windsor Or the Detroit River	988	1,282	583	N/A	1,293
Detroit Pilot Boat	715	988	N/A	N/A	1,293

¹When pilots are not changed at the Detroit pilot boat.

[62 FR 5922, Feb. 10, 1997. Redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998; USCG 1999-6098, 66 FR 36489, July 12, 2001; USCG-2002-12840, 67 FR 47466, July 19, 2002]

EFFECTIVE DATE NOTE: By USCG-2002-12840, 67 FR 47466, July 19, 2002, §401.407 was amended by suspending paragraph (b) and adding paragraph (c), effective from July 19, 2002, to July 21, 2003.

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

Except as provided in §401.420, the following basic rates are payable for all services and assignments performed by U.S. registered pilots on Lakes Huron, Michigan, and Superior and the St. Mary's River.

(a) Area 6 (Undesignated Waters):

Service	Lake Superior
Six-Hour Period	\$280
Docking or Undocking	266

(b) Area 7 (Designated Waters):

Area	Detour	Gros cap	Any harbor
Gros Cap	\$1,436	N/A	N/A
Wharf of Algoma Steel Corporation at Sault Ste. Marie, Ontario	1,436	\$541	N/A

Area	Detour	Gros cap	Any harbor
Any point in Sault Ste. Marie, Ontario, except the Wharf of Algoma Steel Corporation	1,204	541	N/A
Sault Ste. Marie, Michigan ..	1,204	541	N/A
Harbor Movage	N/A	N/A	\$541

(c) Area 8 (Undesignated Waters):

Service	Lakes Superior
Six Hour Period	\$261
Docking/Undocking	249

[62 FR 5923, Feb. 10, 1997. Redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998; USCG 1999-6098, 66 FR 36490, July 12, 2001]

§ 401.420 Cancellation, delay or interruption in rendition of services.

(a) Except as provided in this section, whenever the passage of a ship is interrupted and the services of a U.S. pilot are retained during the period of the interruption or when a U.S. pilot is detained on board a ship after the end of an assignment for the convenience of the ship, the ship shall pay an additional charge calculated on a basic rate of \$53 for each hour or part of an hour during which each interruption or detention lasts with a maximum basic

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rate of \$831 for each continuous 24-hour period during which the interruption or detention continues. There is no charge for an interruption or detention caused by ice, weather or traffic, except during the period beginning the 1st of December and ending on the 8th of the following April. No charge may be made for an interruption or detention if the total interruption or detention ends during the 6-hour period for which a charge has been made under §§ 401.405 through 401.410.

(b) When the departure or moorage of a ship for which a U.S. pilot has been ordered is delayed for the convenience of the ship for more than one hour after the U.S. pilot reports for duty at the designated boarding point or after the time for which the pilot is ordered, whichever is later, the ship shall pay an additional charge calculated on a basic rate of \$53 for each hour or part of an hour including the first hour of the delay, with a maximum basic rate of \$831 for each continuous 24-hour period of the delay.

(c) When a U.S. pilot reports for duty as ordered and the order is cancelled, the ship shall pay:

(1) A cancellation charge calculated on a basic rate of \$314;

(2) A charge for reasonable travel expenses if the cancellation occurs after the pilot has commenced travel; and

(3) If the cancellation is more than one hour after the pilot reports for duty at the designated boarding point or after the time for which the pilot is ordered, whichever is later, a charge calculated on a basic rate of \$53 for each hour or part of an hour including the first hour, with a maximum basic rate of \$831 for each 24-hour period.

[62 FR 5923, Feb. 10, 1997. Redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998; USCG 1999-6098, 66 FR 36490, July 12, 2001]

§ 401.425 Provision for additional pilot.

The Director, Great Lakes Pilotage Staff, U.S. Coast Guard, or the General Manager, Great Lakes Pilotage Authority, Ltd., Canada, may require the assignment of two pilots to a ship upon request of the ship or when in his judgment, because of anticipated long transit, uncommon ship size, adverse

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weather or sea conditions or other abnormal circumstances, the assignment of two pilots is considered necessary for the safe navigation of the ship. The Director or General Manager shall direct which of the pilots is to be in charge, as circumstances require. The charge to the ship shall be twice the appropriate charge provided for in §§ 401.405, 401.407, 401.410, and 401.420. This section does not apply to a ship in a direct transit of the undesignated waters of Lake Erie between Southeast Shoal and Port Colborne unless the ship is required by law to have a registered pilot on board in these waters.

[CGD 80-148, 46 FR 18717, Mar. 26, 1981, as amended at 61 FR 5721, Feb. 14, 1996. Redesignated and amended at 61 FR 32655, June 25, 1996; 62 FR 5923, Feb. 10, 1997, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

§ 401.427 Charge on past due accounts.

A charge of two percent (2%) per month shall be paid on the opening monthly balance on accounts remaining unpaid over thirty (30) days after the billing date.

[CGD 79-138, 45 FR 13078, Feb. 28, 1980. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

§ 401.428 Basic rates and charges for carrying a U.S. pilot beyond normal change point or for boarding at other than the normal boarding point.

If a U.S. pilot is carried beyond the normal change point or is unable to board at the normal boarding point, the ship shall pay at the rate of \$321 per day or part thereof, plus reasonable travel expenses to or from the pilot's base. These charges are not applicable if the ship utilizes the services of the pilot beyond the normal change point and the ship is billed for these services. The change points to which this section applies are designated in § 401.450.

[62 FR 5923, Feb. 10, 1997. Redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998; USCG 1999-6098, 66 FR 36490, July 12, 2001]

§ 401.430 Prohibited charges.

No rate or charge shall be applied against any vessel, owner or master

thereof, by a registered pilot which differs from the rates and charges set forth in this part, nor shall any rates or charges be made for services performed by a registered pilot, or for support services directly related to the provision of pilotage that a registered pilot requires a vessel to utilize, other than those for which a rate is prescribed in this part, without the approval of the Director.

[CGD 88-111, 55 FR 17581, Apr. 25, 1990. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

§ 401.431 Disputed charges.

(a) Any rate or charge applied against any vessel, owner, or master thereof by a registered pilot which the owner or master disputes as a charge prohibited by § 401.430, may be appealed to the Director for an advisory opinion as to whether such rate or charge is a prohibited charge.

(b) The appeal shall be in writing and set forth the amounts and description of the rates and charges disputed. The appeal must be supported by evidence that a reasonable attempt has been made to resolve the matter between the parties and that a bona fide controversy exists.

(c) The respondent shall be furnished a copy of the appeal and be notified by the appellant that the matter has been appealed for an advisory opinion.

(d) The respondent shall be allowed a reasonable time, not less than twenty (20) days, in which to file with the Director and the appellant any data or arguments desired to be submitted in further defense of the disputed rates and charges.

(e) The Administration shall consider all relevant matter presented and issue an advisory opinion which shall be accompanied by an express recital that all relevant material received has been considered. The advisory opinion shall set forth the rates and charges in dispute, a discussion of the facts and relevant material considered, and a statement of opinion.

(f) When it is found that the disputed rates and charges, in the opinion of the Director, are charges prohibited by § 401.430, the respondent shall have a reasonable time, but not more than

thirty (30) days in which to refund moneys, adjust invoices, and otherwise conform to the advisory opinion.

(g) Failure or refusal to comply with the advisory opinion within the time allowed may form a basis for a determination that there is a violation of the Great Lakes Pilotage Regulations subject to the provisions of § 401.500.

[29 FR 10467, July 28, 1964, as amended at 32 FR 14221, Oct. 13, 1967; 61 FR 5721, Feb. 14, 1996. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

§ 401.432 Certification of support services.

Each association holding a Certificate of Authorization shall certify each year whether any support service entity is directly or indirectly related by beneficial ownership to that association or to a United States registered pilot who is also a member of that association.

[CGD 88-111, 55 FR 17581, Apr. 25, 1990. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

§ 401.440 Advance payment of charges.

Subject to the approval of the Director, a United States or Canadian Registered Pilot performing pilotage services in accordance with the rates and charges set forth in this subpart may require advance payment of such rates or charges or a suitable bond securing payment.

[29 FR 10467, July 28, 1964, as amended at 32 FR 14221, Oct. 13, 1967. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

§ 401.450 Pilot change points.

A Registered Pilot's assignment is completed when the vessel to which he is assigned completes its arrival at or, in the case of a through trip, passes any of the following places:

- (a) Snell Lock;
- (b) Cape Vincent;
- (c) Port Weller;
- (d) Lock No. 7, Welland Canal;
- (e) Detroit/Windsor, other than assignments originating or terminating at a point on the Detroit River;
- (f) Port Huron/Sarnia;

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- (g) Detour;
- (h) Gros Cap;
- (i) Chicago with respect to assignments originating at Detour or Port Huron/Sarnia; and
- (j) Duluth/Superior and Fort William/Port Arthur with respect to assignments originating at Gros Cap.

[CGFR 68-57, 33 FR 6479, Apr. 27, 1968. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

§ 401.451 Pilot rest periods.

- (a) Except as provided in paragraph (b) of this section:

(1) Each Registered Pilot upon completing an assignment at a change point designated in § 401.450, and

(2) Each Registered Pilot upon completing a series of assignments totaling more than 10 hours with no more than 2 hours rest between assignments, shall not perform pilotage services for at least 10 hours.

(b) In the event of an emergency or other compelling circumstances a pilotage pool may assign a Registered Pilot for service before his 10-hour rest period required under paragraph (a) of this section is completed. Pilotage pools shall advise the Director of each assignment made under this paragraph.

[CGFR 68-57, 33 FR 6479, Apr. 27, 1968. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

Subpart E—Penalties; Operations Without Registered Pilots

§ 401.500 Penalties for violations.

Any person, including a pilot, master, owner, or agent, who violates any provision of this part shall be liable to the United States for a civil penalty as set forth in 46 U.S.C. 9308.

[CGD 88-111, 55 FR Apr. 25, 1990. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

§ 401.510 Operation without Registered Pilots.

(a) A vessel may be navigated in the U.S. waters of the Great Lakes without a United States or Canadian Registered

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Pilot when the vessel or its cargo is in distress or jeopardy.

(b) A vessel may be navigated in the U.S. waters of the Great Lakes without a United States or Canadian Registered Pilot when the Director, with the concurrence of the Commander, 9th Coast Guard District, notifies the master that a United States or Canadian Registered Pilot is not available.

(1) Notification to the master that a pilot is not available will be made by the Director, either directly to the vessel or through the appropriate pilotage pool, orally or in writing as the circumstances admit, and shall not be deemed given until the notice is actually received by the vessel.

(2) The determination that a pilot is not available will be made on an individual basis and only when a vessel has given proper notice of its pilotage service requirements to the pilotage pool having dispatching jurisdiction at the time. The vessel has no obligation or responsibility with respect to such notification other than properly informing the pilotage pool of its pilotage requirements. However, the failure or delay by the pool in processing a pilotage service request, or refusal or delay by the U.S. Coast Guard in notifying the vessel that a pilot is not available, does not constitute constructive notice that a pilot is not available, and the vessel is not relieved by such failure or delay from compliance with the Great Lakes Pilotage Act of 1960.

(3) Upon receipt of proper notice of a vessel's pilotage requirements, the pilotage pool shall then determine from the tour de role the availability of a pilot to render the service required. If no pilot is reasonably expected to be available for service within 6 hours of the time the pilotage services are required by the vessel, the pilotage pool shall promptly inform the Commandant through the U.S. Coast Guard communications system in the manner as may be prescribed from time to time by the Commandant. The Commandant shall be informed of:

- (i) Name and flag of the vessel;
- (ii) Route of vessel for which a pilot is not available;
- (iii) Time elapsing before a pilot is reasonably expected to become available;

(iv) Whether vessel has an "other officer" on board;

(v) Familiarity of master with route to be transited by the vessel;

(vi) Draft of vessel; and

(vii) Any circumstances of traffic or weather, or condition of the vessel or its cargo which would adversely affect the safety of the vessel in transiting without a pilot.

(4) When a pilot is expected to become available within 6 hours of the time pilot services are required, the vessel shall be informed that a pilot is available and the approximate time the pilot will report on duty. However, should any unusual circumstance or condition exist which may justify notification that a pilot is not available in less than 6 hours, the pilotage pool shall inform the Director as in paragraph (b)(3) of this section, along with the circumstances involved. Additionally, the vessel may contact the Director directly to request notification under paragraph (b)(1) of this section if a notice of pilot availability is not received from the appropriate pilotage pool within two hours of providing its pilotage requirements to the pool.

(5) Any vessel which requires the services of a pilot and is navigated without a pilot or proceeds prior to receipt of a message that a pilot is not available pursuant to paragraph (b)(1) of this section shall be reported as in violation of section 7 of the Great Lakes Pilotage Act of 1960 by the pilotage pool to the local Coast Guard unit having jurisdiction. If the message is received after the vessel proceeds, such message shall not be delivered without concurrence of the Coast Guard officer to whom the violation was reported.

(6) U.S. pilotage pools informing the Director that a pilot is not available for a vessel shall also obtain notice that a pilot is not available from the appropriate Canadian Supervisor of Pilots for those portions of the route which are in Canadian waters in the manner prescribed by them. The notice for Canadian District No. 1 waters shall be obtained from the Supervisor of Pilots, Department of Transport, Cornwall, Ontario, and the notice for Canadian District No. 2 waters shall be obtained from the Supervisor of Pilots, Department of Transport, Port Weller,

Ontario. Authority to issue notice for Canadian waters of District No. 3 has been granted to the Director by the Department of Transport, Ottawa, and separate notice from Canada for this District is not required until such time as separate Canadian pilotage dispatch facilities may be established.

(7) Notice that a pilot is not available shall not be delivered to any vessel unless the message contains the concurrence of the Commander, 9th Coast Guard District, and notice for Canadian waters of Districts No. 1 and No. 2, if required, has been obtained from the appropriate Canadian authority.

(8) In the event of an emergency or any other compelling circumstance, the Director may issue, without the specific request for service as provided under paragraph (b)(2) of this section, individual or general notification that a pilot or pilots are not available. Pilotage pools shall advise the Director of any condition or circumstance coming to their attention which may warrant such a determination.

[32 FR 14221, Oct. 13, 1967, as amended by CGD 88-111, 55 FR 17582, Apr. 25, 1990; 55 FR 19145, May 8, 1990; 61 FR 5721, Feb. 14, 1996. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

Subpart F—Procedure Governing Revocation or Suspension of Registration and Refusal To Renew Registration

§ 401.600 Right to hearing.

(a) A United States Registered Pilot, on receipt of notice from the U.S. Coast Guard that he or she has violated any regulation made pursuant to the Act, which violation the Director determines is grounds for suspension or revocation of the pilot's Certificate of Registration, shall have fifteen (15) days from the receipt of such notice in which to notify the Director that he or she elects to exercise his or her right to a hearing as to the grounds for the proposed suspension or revocation. A pilot failing to notify the Director within the prescribed period is deemed to have waived his or her right to a hearing.

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(b) A United States Registered Pilot whose application was timely filed, on receipt of notice that renewal of his or her Certificate of Registration has been denied pursuant to § 401.240(c), who fails to notify the Director within fifteen (15) days of the receipt of such notice that he or she desires a hearing, is deemed to have waived his or her right to a hearing.

[29 FR 11595, Aug. 13, 1964, as amended at 32 FR 14222, Oct. 13, 1967; 61 FR 5721, Feb. 14, 1996. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998; USCG-2002-13058, 67 FR 61279, Sept. 30, 2002]

§ 401.605 Notice.

(a) The Director, upon receipt of notice that a U.S. Registered Pilot elects to exercise his rights to a hearing, shall arrange for a hearing and notify the pilot of the time, date and place it is to be held.

[32 FR 14222, Oct. 13, 1967. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

§ 401.610 Hearing.

(a) The hearing shall be held at the time and place designated with due regard to the convenience and necessity of the parties.

(b) The hearing shall be held on the record before an Administrative Law Judge appointed as provided by section 11 of the Administrative Procedure Act (5 U.S.C. 3105). Hearings shall be conducted in accordance with sections 5, 7, and 8 of the Administrative Procedure Act, as amended (5 U.S.C. 554, 556, 557).

[32 FR 14222, Oct. 13, 1967. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

§ 401.615 Representation.

(a) The U.S. Registered Pilot, designated "respondent" in a suspension or revocation hearing or "applicant" in a refusal-to-renew-registration hearing, may be represented before the Administrative Law Judge by any person who is a member in good standing of the bar of the highest court of any State, Commonwealth, Territory, Possession, or the District of Columbia,

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upon filing with the Administrative Law Judge a written declaration that he is currently qualified and is authorized to represent the particular party in whose behalf he acts.

(b) Whenever a person acting in a representative capacity appears in person or signs a paper in practice before the Administrative Law Judge, Director, Commandant, the Administrator, or other official of the U.S. Coast Guard, his personal appearance or signature shall constitute a representation that under the provisions of this subpart and applicable law he is authorized and qualified to represent the particular person in whose behalf he acts.

(c) When any Registered Pilot is represented by an attorney at law, any notice or other written communication required or permitted to be given to or by such a U.S. Registered Pilot shall be given to or by such attorney. If a U.S. Registered Pilot is represented by more than one attorney, service by or upon any one of such attorneys shall be sufficient.

[32 FR 14222, Oct. 13, 1967, as amended at 61 FR 5721, Feb. 14, 1996. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

§ 401.620 Burden of proof.

(a) In a suspension or revocation hearing, the Director shall have the burden of establishing, by substantial evidence, the grounds for a suspension or revocation of a Certificate of Registration held by a pilot, as stated in the letter addressed to such pilot notifying him of the U.S. Coast Guard intention to suspend or revoke the pilot's registration.

(b) In a refusal-to-renew-registration hearing, the Director shall have the burden of establishing the grounds for the Director's determination under § 401.240(c) to deny renewal of the Certificate of Registration.

[32 FR 14222, Oct. 13, 1967, as amended at 61 FR 5721, Feb. 14, 1996. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

§ 401.630 Appearance, testimony, and cross-examination.

(a) The U.S. Registered Pilot may appear in person or by counsel and may testify at the hearing, call witnesses in his own behalf, and cross-examine witnesses appearing in behalf of the Director.

(1) In any case in which the U.S. Registered Pilot, after being duly served with the notice of the time and place of the hearing, fails to appear at the time and place specified for the hearing, a notation to that effect shall be made in the record and the hearing may then be conducted "in absentia."

(2) The Administrative Law Judge shall also cause to be placed in the record all the facts concerning the issuance and service of the notice of hearing and the allegations against the U.S. Registered Pilot.

(b) The Director through counsel shall appear, present evidence, call witnesses, and cross-examine the witnesses called on behalf of the U.S. Registered Pilot.

(c) In the discretion of the Administrative Law Judge, other witnesses may testify at the hearing.

[32 FR 14222, Oct. 13, 1967. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

§ 401.635 Evidence which shall be excluded.

The Administrative Law Judge presiding at the hearing shall exclude irrelevant, immaterial, or unduly repetitious evidence.

[29 FR 11595, Aug. 13, 1964. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

§ 401.640 Record for decision.

The transcript of testimony and oral argument at the hearing, together with any exhibits received, shall be made part of the record for decision, and the record shall be available to the respondent or applicant on payment of costs thereof.

[29 FR 11595, Aug. 13, 1964. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

§ 401.645 Administrative Law Judge's decision; exceptions thereto.

At the conclusion of the hearing, the parties may submit briefs and recommended conclusions and findings within such time as the Administrative Law Judge shall determine appropriate. The Administrative Law Judge shall thereafter issue a written initial decision in the case, which decision shall be final and binding upon the Director, except as provided in § 401.650.

[29 FR 11595, Aug. 13, 1964, as amended at 32 FR 14222, Oct. 13, 1967. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

§ 401.650 Review of Administrative Law Judge's initial decision.

(a) The Commandant may, on his own motion, or on the basis of a petition filed by the U.S. Registered Pilot in the proceedings or the Commandant, review any initial decision of the Administrative Law Judge by entering a written order stating that he elects to review the action of the Administrative Law Judge. Copies of all orders for review, replies, and decisions shall be served on all parties.

(b) A petition for review shall be in writing and shall state the grounds upon which the petition relies. A petition for review shall be limited to the record before the Administrative Law Judge. Five (5) copies of such a petition for review, together with proof of service on all parties, shall be filed with the Commandant (CL) within fifteen (15) days after the date of service of the initial decision of the Administrative Law Judge. Parties may file replies, in writing, to a petition for review, with proof of service on other parties in the same manner and number of copies as is provided for filing of a petition for review and within ten (10) days after the date the petition for review is timely filed. A reply shall be limited to the record before the Administrative Law Judge and the petition for review.

(c) If a petition for review is filed within the time prescribed, the initial decision of the Administrative Law Judge shall be final fifteen (15) days after expiration of the time prescribed for filing a reply thereto unless the Commandant prior to expiration of the

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fifteen (15) days after expiration of the time prescribed for filing a reply there-to enters a written order granting the petition for review. If no petition for review is filed within the time prescribed and the Commandant does not elect to review on his own motion, the initial decision of the Administrative Law Judge shall be final twenty (20) days after the date of service of the decision.

(d) If the Commandant reviews the initial decision as provided in this section, he shall issue a written order affirming, amending, overruling, or remanding the initial decision of the Administrative Law Judge within thirty (30) days after the date on which he takes review. There is no other administrative remedy within the Department of Transportation.

(e) When the Commandant has sustained an order of suspension or revocation of a registration, the respondent may appeal to the National Transportation Safety Board under 49 CFR 825.5 within ten (10) days after service of the Commandant decision.

[32 FR 14222, Oct. 13, 1967, as amended by CGD 76-189, 42 FR 31160, June 20, 1977; 61 FR 5721, Feb. 14, 1996. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

Subpart G—Operating Requirements for U.S. Registered Pilots and Holders of Certificates of Authorization; Authority of the Director Over Operations

§ 401.700 Operating requirements for U.S. registered pilots.

Each U.S. registered pilot shall—

(a) Provide pilotage service when dispatched by his pool; and

(b) Comply with the dispatching orders of the Director under § 401.720 (b).

[CGD 74-233, 40 FR 41527, Sept. 8, 1975. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

§ 401.710 Operating requirements for holders of Certificates of Authorization.

Each holder of a Certificate of Authorization shall—

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(a) Comply with the terms of any agreement for services by registered pilots on the Great Lakes between an appropriate agency of Canada and the Secretary, his designated agent, or the Director;

(b) Coordinate on a reciprocal basis its pool operations with pool operations of the Canadian Government, under the “Memorandum of Arrangements, Great Lakes Pilotage, Between the Secretary of Transportation of the United States of America and the Minister of Transport of Canada”, effective July 7, 1970, as amended;

(c) Provide continuous arrangements and facilities for the efficient dispatching of pilotage service on a first-come, first-serve basis to vessels that give notice of pilotage service requirements to the pilotage dispatch station, except pilots are not required to board a vessel that does not furnish safe boarding facilities;

(d) Dispatch pilotage service under the terms of its approved working rules as referenced in § 402.320;

(e) Comply with its working rules approved under § 402.320, except to the extent inconsistent with the dispatch orders of the Director under § 401.720(b);

(f) Comply with all accounting procedures and the reporting requirements in this chapter; and

(g) Make available to the Commandant all of its financial and operating records.

[CGD 74-233, 40 FR 41527, Sept. 8, 1975, as amended at 61 FR 5721, Feb. 14, 1996. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

§ 401.720 Authority of the Director over operations.

(a) This section does not limit the authority of the Director under any other section in this chapter.

(b) When pilotage service is not provided by the association authorized under 46 U.S.C. 216b(e) because of a physical or economic inability to do so, or when the Certificate of Authorization is under suspension or revocation under § 401.335, the Director may order

any U.S. registered pilot to provide pilotage service.

[CGD 74-233, 40 FR 41527, Sept. 8, 1975, as amended by CGD 75-228, 40 FR 57673, Dec. 11, 1975. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

PART 402—GREAT LAKES PILOTAGE RULES AND ORDERS

Subpart A—General

Sec.

402.100 Purpose.

Subpart B—Registration of Pilots

402.210 Requirements and qualifications for registration.

402.220 Registration of pilots.

Subpart C—Establishment of Pools by Voluntary Associations of United States Registered Pilots

402.320 Working rules.

AUTHORITY: 46 U.S.C. 2104(a), 8105, 9303, 9304; 49 CFR 1.46 (mmm).

Subpart A—General

§ 402.100 Purpose.

The purpose of this part is to implement those provisions of the Great Lakes Pilotage Regulations (part 401 of this chapter) which authorize or require the Commandant to issue supplementary rules and orders.

[27 FR 11947, Dec. 4, 1962, as amended at 32 FR 14223, Oct. 13, 1967; 61 FR 5721, Feb. 14, 1996. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

Subpart B—Registration of Pilots

§ 402.210 Requirements and qualifications for registration.

(a) Pursuant to § 401.210(a)(4), each applicant for an original registration at the time of application and each Registered Pilot annually is required to pass a physical examination given by a licensed medical doctor and reported on the form furnished by the Director. The examination report shall describe the applicant's or Registered

Pilot's visual acuity, color sense, physical condition, and competency or perform the duties of a U.S. Registered Pilot.

(b) Any disease, physical or mental defect, or impairment to hearing or visual acuity, such as epilepsy, insanity, senility, acute venereal disease, neurosyphilis, hemiplegia, paralysis or missing arm, leg, or eye, muteness or pronounced speech impairment, acute kidney or gastro-enteritis disease, extreme obesity, addiction of alcohol or narcotics, acute varicosity of the legs, cardiovascular disease or other disorder which would impair the applicant's ability to be available for service when required and to withstand the rigors of boarding vessels, climbing ladders or great heights, standing for long periods of time, and performing his duties under prolonged periods of nervous strain are causes for determination of physical incompetency.

(c) An applicant for original registration must have a visual acuity either with or without glasses of at least 20/20 vision in one eye and at least 20/40 in the other. An applicant who wears glasses or contact lenses must also pass a test without glasses or lens of at least 20/40 in one eye and at least 20/70 in the other. Registered Pilots, however, must have either with or without glasses or lens visual acuity of at least 20/30 in one eye and at least 20/50 in the other. A Registered Pilot who wears glasses or lens must also pass a test without glasses or lens of at least 20/50 in one eye and at least 20/100 in the other. The color sense of original applicants and Registered Pilots shall be tested by a pseudoisochromatic plate test. Passage of the Williams lantern test or its equivalent is an acceptable substitute for a pseudoisochromatic plate test.

[CGFR 68-57, 33 FR 6479, Apr. 27, 1968. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

§ 402.220 Registration of pilots.

(a) Each applicant pilot must complete the number of round trips specified in this section prior to registration as a U.S. registered pilot. The round trips must be made in company with a

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registered pilot, on oceangoing vessels of 4,000 gross tons or over, and must be within one year of the date of application.

(1) If the applicant pilot holds a master's license, a minimum of five round trips are required over the waters for which registration is desired.

(2) If the applicant pilot holds a chief mate's license or a second mate's license, or, holds a first class pilot's license with service in the capacity of first mate or second mate, a minimum of eight round trips are required over the waters for which registration is desired.

(3) If the applicant pilot holds a first class pilot's license or a third mate's license, a minimum of twelve round trips are required over the waters for which registration is desired.

(b) No course of instruction prescribed by a pilot association shall be approved unless it includes the following minimum criteria:

(1) Instruction in the maneuvering characteristics of various types of vessels and propulsion machinery including the characteristics of direct-drive motor, geared-drive motor, turbo-electric, steam turbine and steam reciprocating drives. Study of maneuvering characteristics to include turning radius, times and distances to stop, time to back, etc.

(2) Instruction in the effects of oceangoing vessels in restricted waters.

(3) Instruction in the use of tugs, docking procedures in locks and piers, and transiting bridges.

(4) Instruction in search and rescue and civil defense procedures as issued by the U.S. Coast Guard, Federal, State, and local port authorities.

(5) Instruction in basic helm and engine telegraph orders in the Greek, Spanish, German, and Italian languages.

(6) Instruction in communication, security, and signal procedures applicable to U.S. registered and foreign vessels on the Great Lakes as prescribed by the U.S. Coast Guard, St. Lawrence Seaway Development Corporation, U.S. Corps of Army Engineers, and port authorities.

(7) Instruction in Customs, Immigration, Quarantine, Department of Agriculture, and Coast Guard regulations

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applicable to U.S. registered and foreign vessels on the Great Lakes.

(8) Instruction in the Great Lakes Pilotage Act of 1960; Great Lakes Pilotage Regulations; Presidential Proclamation of December 22, 1960; and Memorandum of Arrangements, Great Lakes Pilotage, between the Secretary of Commerce of the United States and the Minister of Transport, Canada, of May 1, 1961.

(9) Instruction in miscellaneous subjects including man-overboard recovery (i.e. Williamson turn); collision, fire, and explosion procedures; and maneuvering in ice.

(10) Instruction in radar plotting and use of foreign made navigational equipment.

(Secs. 4 and 5, 74 Stat. 260 (46 U.S.C. 216b, 216c), as amended by Pub. L. 95-455; sec. 6(a)(4), 80 Stat. 937, as amended (49 U.S.C. 1655(a)(4)); 49 CFR 1.46(a))

[27 FR 11947, Dec. 4, 1962, as amended at 28 FR 4758, May 11, 1963; 31 9067, FR July 1, 1966; CGD 78-144b, 44 FR 64838, Nov. 8, 1979. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

Subpart C—Establishment of Pools by Voluntary Associations of United States Registered Pilots

§ 402.320 Working rules.

(a) Section 401.320(d) (2) and (6) of this chapter require that voluntary associations of U.S. Registered Pilots authorized to establish pilotage pools agree to submit Working Rules for approval of the Director and that they will coordinate their pool operations with Canada on a reciprocal basis. The following approved Working Rules are on file in the office of the Director and are available for public inspection by any person properly and directly concerned:

(1) The Working Rules and Dispatching Procedures for District No. 1, amended and adopted by the St. Lawrence Seaway Pilots Association, Inc., Cape Vincent, N.Y., dated February 1, 1965, amended to April 25, 1972.

(2) The joint (interpool) working rules for United States and Canadian Districts No. 1 and No. 2 adopted by the St. Lawrence Seaway Pilots Association, Cape Vincent, N.Y.; Lakes Pilots

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Association, Inc., Port Huron, Mich.; and the Supervising Pilot, Department of Transport, Port Weller, Ontario, Canada, approved as of October 14, 1970.

(3) The Working Rules for District No. 2, amended and adopted by the Lakes Pilots Association, Inc., Port Huron, Mich., approved as of May 15, 1967.

[28 FR 12852, Dec. 4, 1963, as amended at 30 FR 5512, Apr. 17, 1965; 30 FR 12680, Oct. 5, 1965; CGFR 67-39, 32 FR 8590, June 15, 1967; 32 FR 14223, Oct. 23, 1967; CGD 74-233, 40 FR 41527, Sept. 8, 1975. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

PART 403—GREAT LAKES PILOTAGE UNIFORM ACCOUNTING SYSTEM

Subpart A—General

Sec.

- 403.100 Applicability of system of accounts and reports.
- 403.105 Records.
- 403.110 Accounting entities.
- 403.115 Accounting period.
- 403.120 Notes to financial statements.

Subpart B—Inter-Association Settlements

- 403.200 General.

Subpart C—Reporting Requirements

- 403.300 Financial reporting requirements.

Subpart D—Source Forms

- 403.400 Uniform pilot's source form.

AUTHORITY: 46 U.S.C. 2104(a), 8105, 9303, 9304; 49 CFR 1.46 (mmm).

SOURCE: 60 FR 18369, Apr. 11, 1995, unless otherwise noted. Redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998.

Subpart A—General

SOURCE: 60 FR 18369, Apr. 11, 1995 unless otherwise noted. Redesignated at 61 FR 32655, June 25, 1996.

§ 403.100 Applicability of system of accounts and reports.

Each Association shall keep its books of account, records and memoranda, and make reports to the Director in accordance with the guidelines of the Generally Accepted Accounting Principles (GAAP) issued by the Financial

Accounting Standards Board. These guidelines are available by writing to the Director, Great Lakes Pilotage at the address listed in §401.110(a)(9) of this chapter.

[60 FR 18369, Apr. 11, 1995. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

§ 403.105 Records.

(a) Each Association shall maintain the general books of account and all books, records, and supporting memoranda in such manner as to provide, at any time, full information relating to any account. Supporting memoranda must provide sufficient information to verify the nature and character of each entry and its proper classification.

(b) Each Association shall maintain all books, records and memoranda in a manner that will readily permit audit and examination by the Director or the Director's representatives. All books, records and memoranda shall be protected from loss, theft, or damage by fire, flood or otherwise, and shall be retained for 10 years unless otherwise authorized by the Director.

§ 403.110 Accounting entities.

Each Association shall be a separate accounting entity. However, the records shall be maintained with sufficient particularity to allocate items to each pilotage pool operation or nonpool operation and to support the equitable proration of items that are common to two or more pilotage pools.

§ 403.115 Accounting period.

Each Association subject to this part shall maintain its accounts on a calendar year basis unless otherwise approved by the Director.

§ 403.120 Notes to financial statements.

(a) All matters that are not clearly identified in the body of the financial statements of the Association, but which may materially influence interpretations or conclusions that may reasonably be drawn in regard to financial condition or earnings of the Association, shall be clearly and completely stated as footnotes to the financial statements.

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(b) Financial items that are not otherwise required to be reported in the Association financial statements, but which may affect ratemaking calculations, are required to be reported to the Director in the notes to the financial statements. Any financial items that are not reported to the Director will not be considered by the Director during ratemaking procedures contained in part 404 of this chapter.

[60 FR 18369, Apr. 11, 1995. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

Subpart B—Inter-Association Settlements

SOURCE: 60 FR 18369, Apr. 11, 1995 unless otherwise noted. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998.

§ 403.200 General.

Each Association that shares revenues and expenses with the Canadian Great Lakes Pilotage Authority (GLPA) shall submit settlement statements regarding these activities. The settlement statements shall be completed in accordance with the terms of agreements between the United States and Canada and guidance from the Director of Great Lakes Pilotage.

Subpart C—Reporting Requirements

§ 403.300 Financial reporting requirements.

(a) General:

(1) The financial statements shall list each active account, including subsidiary accounts.

(2) The financial statements, together with any other required statistical data, shall be submitted to the Director within 30 days of the end of the reporting period, unless otherwise authorized by the Director.

(3) An officer of the Association shall certify the accuracy of the financial statements.

(b) Required Reports:

(1) By April 1 of each year, each Association shall obtain an annual unqualified long form audit report for the pre-

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ceding year, audited and prepared in accordance with generally accepted auditing standards by an independent certified public accountant.

(2) Each Association shall forward their annual unqualified long form audit report, and any associated settlement statements, to the Director no later than April 7 of each year.

[60 FR 18369, Apr. 11, 1995, as amended at 61 FR 21084, May 9, 1996. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

Subpart D—Source Forms

§ 403.400 Uniform pilot's source form.

(a) Each Association shall record pilotage transactions on a form approved by the Director. The approved form shall be issued to pilots by authorized United States pilotage pools.

(b) Pilots shall complete forms in detail as soon as possible after completion of assignment and return the entire set to the dispatching office, together with adequate support for reimbursable travel expenses.

(c) Upon receipt by the Association, the forms shall be completed by insertion of rates and charges as specified in part 401 of this chapter.

(d) Copies of the form shall be distributed as follows:

(1) Original to accompany invoice;

(2) First copy to Director;

(3) Second copy to billing office for accounting record;

(4) Third copy to pilot's own Association for pilot's personal record;

(5) Fourth copy to corresponding Canadian Association or agency for office use.

(e) Associations shall account by number for all pilot source forms issued.

[60 FR 18369, Apr. 11, 1995. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

PART 404—GREAT LAKES PILOTAGE RATEMAKING

Sec.

404.1 General ratemaking provisions.

404.5 Guidelines for the recognition of expenses.

404.10 Ratemaking procedures and guidelines.

APPENDIX A TO PART 404—RATEMAKING ANALYSES AND METHODOLOGY

APPENDIX B TO PART 404—RATEMAKING DEFINITIONS AND FORMULAS

APPENDIX C TO PART 404—PROCEDURES FOR ANNUAL REVIEW OF BASE PILOTAGE RATES

AUTHORITY: 46 U.S.C. 2104(a), 8105, 9303, 9304; 49 CFR 1.46 (mmm).

§ 404.1 General ratemaking provisions.

(a) The purpose of this part is to provide guidelines and procedures for Great Lakes pilotage ratemaking. Included in this part are explanations of the steps followed in developing a pilotage rate adjustment, the analysis used, and the guidelines followed in arriving at the pilotage rates contained in part 401 of this chapter.

(b) Great Lakes pilotage rates shall be reviewed annually in accordance with the procedures detailed in Appendix C to this part. The Director shall review Association audit reports annually and, at a minimum, 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. An interested party or parties may also petition the Director for a review at any time. The petition must present a reasonable basis for concluding that a review may be warranted. If the Director determines, from the information contained in the petition, that the existing rates may no longer be reasonable, a full review of the pilotage rates will be conducted. If the full review shows that pilotage rates are within a reasonable range of their target, no adjustment to the rates will be initiated.

[60 FR 18370, Apr. 11, 1995, as amended at 61 FR 21084, May 9, 1996. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

§ 404.5 Guidelines for the recognition of expenses.

(a) The following is a listing of the principal guidelines followed by the Director when determining whether expenses will be recognized in the ratemaking process:

(1) Each expense item included in the rate base is evaluated to determine if it

is necessary for the provision of pilotage service, and if so, what dollar amount is reasonable for that expense item. Each Association is responsible for providing the Director with sufficient information to show the reasonableness of all expense items. The Director will give the Association the opportunity to defend any expenses that are questioned. However, subject to the terms and conditions contained in other provisions of this part, expense items that the Director determines are not reasonable and necessary for the provision of pilotage services will not be recognized for ratemaking purposes.

(2) In determining reasonableness, each expense item is measured against one or more of the following:

(i) Comparable or similar expenses paid by others in the maritime industry,

(ii) Comparable or similar expenses paid by other industries, or

(iii) U.S. Internal Revenue Service guidelines.

(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.

(4) For each Association, a market-equivalent return-on-investment is allowed for the net capital invested in the Association by its members. Assets subject to return on investment provisions are subject to reasonableness provisions. If an asset or other investment is not necessary for the provision of pilotage services, the return element is not allowed for ratemaking purposes.

(5) For ratemaking purposes, the revenues and expenses generated from Association transactions that are not directly related to the provision of pilotage services are included in ratemaking calculations as long as the revenues exceed the expenses from these transactions. For non-pilotage transactions that result in a net financial

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loss for the Association, the amount of the loss is not recognized for ratemaking purposes. The Director reviews non-pilotage activities to determine if any adversely impact the provision of pilotage service, and may make ratemaking adjustments or take other steps to ensure the provision of pilotage service.

(6) Medical, pension, and other benefits paid to pilots, or for the benefit of pilots, by the Association are treated as pilot compensation. The amount recognized for each of these benefits is the cost of these benefits in the most recent union contract for first mates on Great Lakes vessels. Any expenses in excess of this amount are not recognized for ratemaking purposes.

(7) Expense items that are not reported to the Director by the Association are not considered by the Director in ratemaking calculations.

(8) Expenses are appropriate and allowable if they are reasonable, and directly related to pilotage. Each Association must substantiate its expenses, including legal expenses. In general, the following are not recognized as reasonable expenses for ratemaking purposes:

- (i) Undocumented expenses;
- (ii) Expenses for lobbying;
- (iii) Expenses for personal matters;
- (iv) Expenses that are not commensurate with the work performed; and
- (v) Any other expenses not directly related to pilotage.

(9) In any Great Lakes pilotage district where revenues and expenses from Canadian pilots are commingled with revenues and expenses from U.S. pilots, Canadian revenues and expenses are not included in the U.S. calculations for setting pilotage rates.

(10) Reasonable profit sharing for non-pilot employees of pilot associations will be allowed as an expense for ratemaking purposes. Profit sharing that benefits pilots will be treated as part of pilot compensation.

[60 FR 18370, Apr. 11, 1995. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

§ 404.10 Ratemaking procedures and guidelines.

(a) Appendix A to this part is a description of the types of analyses performed and the methodology followed in the development of a base pilotage rate. Ratemaking calculations in appendix A of this part are made using the definitions and formulas contained in appendix B of this part. Appendix C of this part is a description of the methodology followed in the development of annual reviews to base pilotage rates. Pilotage rates actually implemented may vary from the results of the calculations in appendices A, B and C of this part, because of agreements with Canada requiring identical rates, or because of other circumstances to be determined by the Director. Additional analysis may also be performed as circumstances require. The guidelines contained in § 404.05 are applied in the steps identified in appendix A to this part.

(b) A separate ratemaking calculation is made for each of the following U.S. pilotage areas:

- Area 1—the St. Lawrence River;
- Area 2—Lake Ontario;
- Area 4—Lake Erie;
- Area 5—the navigable waters from South East Shoal to Port Huron, MI;
- Area 6—Lakes Huron and Michigan;
- Area 7—the St. Mary’s River; and
- Area 8—Lake Superior.

[60 FR 18370, Apr. 11, 1995. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

APPENDIX A TO PART 404—RATEMAKING ANALYSES AND METHODOLOGY

Step 1: Projection of Operating Expenses

(1) The Director projects the amount of vessel traffic annually. Based upon that projection, the Director 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. Each of these phases is detailed below.

Step 1.A.—Submission of Financial Information

(1) Each Association is responsible for providing detailed financial information to the Director, in accordance with part 403 of this chapter.

Step 1.B.—Determination of Recognizable Expenses

(1) The Director determines which Association expenses will be recognized for rate-making purposes, using the guidelines for the recognition of expenses contained in § 404.05. Each Association is responsible for providing sufficient data for the Director to make this determination.

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 rates will be projected to the succeeding navigation season, reflecting the gradual increase or decrease in costs throughout the year. The inflation adjustment will be based on the preceding year's change in the Consumer Price Index for the North Central Region of the United States.

Step 1.D.—Projection of Operating Expenses

(1) Once all adjustments are made to the recognized operating expenses, the Director projects these expenses for each pilotage area. In doing so, the Director takes into account foreseeable circumstances that could affect the accuracy of the projection. The Director will determine, as accurately as reasonably practicable, the "projection of operating expenses."

Step 2: Projection of Target Pilot Compensation

(1) The second step in the Great Lakes pilotage 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 target rate of compensation;
- (b) determination of number of pilots needed in each pilotage area; and
- (c) multiplication of the 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 ves-

sels. The average annual compensation for first mates is determined based on the most current union contracts, 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% of the compensation earned by first mates on U.S. Great Lakes vessels.

Step 2.B.—Determination of Number of Pilots Needed

(1) The basis for 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 basis for 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 Director is guided by the results of the calculations in steps 2.A. and 2.B. However, the Director may also find it necessary to make adjustments to these numbers in order to ensure uninterrupted pilotage service in each area, or for other reasonable circumstances that the Director determines are appropriate.

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 that area by the target pilot compensation for pilots working in that area.

Step 3: Projection of Revenue

(1) The third step in the Great Lakes pilotage 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 future vessel traffic and pilotage revenue.

Step 3.A.—Projection of Revenue

(1) The Director generates the most accurate projections reasonably possible of 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."

Step 4: Calculation of Investment Base

(1) The fourth step in the Great Lakes pilotage 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 will be established through the use of the balance sheet accounts, as amended by material supplied in the Notes to the Financial Statement. The formula used in calculating the investment base is detailed in Appendix B to this part.

Step 5: Determination of Target Rate of Return on Investment

(1) The fifth step in the Great Lakes pilotage ratemaking methodology is to determine the Target Rate of Return on Investment. For each Association, a market-equivalent return-on-investment (ROI) 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.

Step 6: Adjustment Determination

(1) The next step in the Great Lakes pilotage 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, and is of the following form:

Line	Ratemaking projections for basic pilotage
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.	= Return on Investment

(2) The Director will compare the projected return on investment (as calculated using

the formula above) 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) 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 7: Adjustment of Pilotage Rates

The final step in the Great Lakes pilotage 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 Director 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. However, pilotage rates calculated in this step are subject to adjustment based on requirements of the Memorandum of Arrangements between the United States and Canada, and other supportable circumstances that may be appropriate.

(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	Ratemaking projections
1.	+ Revenue Needed (from step 6)
2.	+ Revenue (from step 3)
3.	= Rate multiplier

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APPENDIX B TO PART 404—RATEMAKING DEFINITIONS AND FORMULAS

The following definitions apply to the ratemaking formula contained in this appendix.

(1) Operating Revenue—means the sum of all operating revenues received by the Association for pilotage services, including revenues such as docking, moveage, delay, detention, cancellation, and lock transit.

(2) Operating Expense—means the sum of all operating expenses incurred by the Association for pilotage services, less the sum of disallowed expenses.

(3) Target Pilot Compensation—means the compensation that pilots are intended to receive for full time employment. For pilots providing services in undesignated waters, the target pilot compensation is the average annual compensation for first mates on U.S. Great Lakes vessels. For pilots providing services in designated waters, the target pilot compensation is 150% of the average annual compensation for first mates on U.S. Great Lakes vessels.

(4) Operating Profit/(Loss)—means Operating Revenue less Operating Expense and Target Pilot Compensation.

(5) Interest Expense—means the reported Association interest expense on operations, as adjusted to exclude any interest expense attributable to losses from non-pilotage operations.

(6) Earnings Before Tax—means Operating Profit/(Loss), less the Interest Expense.

(7) Federal Tax Allowance—means the Federal statutory tax on Earnings Before Tax, for those Associations subject to Federal tax.

(8) Net Income—means the Earnings Before Tax, less the Federal Tax Allowance.

(9) Return Element (Net Income plus Interest Expense)—means the Net Income, plus Interest Expense. The return element can be considered the sum of the return to equity capital (the Net Income), and the return to debt (the Interest Expense).

(10) Investment Base (separately determined)—means the net recognized capital invested in the Association, including both equity and debt. Should capital be invested in other than pilotage operations, that capital is excluded from the rate base.

(11) Return on Investment—means the Return element, divided by the Investment Base, and expressed as a percent.

Investment Base Formula

(1) Regulatory Investment (Investment Base) is the recognized capital investment in the useful assets employed by the pilot groups. In general, it is the sum of available cash and the net value of real assets, less the value of land. The investment base is established through the use of the balance sheet accounts, as amended by material supplied in the Notes to the Financial Statement.

(2) The Investment Base is calculated using financial data from the Great Lakes pilot associations, as audited and approved by the Director. The Investment Base would be calculated as follows:

	<i>Description</i>
Recognized Assets:	+ Total Current Assets
	– Total Current Liabilities
	+ Current Notes Payable
	+ Total Property and Equipment (Net)
	– Land
	+ Total Other Assets
	<hr/>
	= Total Recognized Assets
Non-Recognized Assets	+ Total Investments and Special Funds
	<hr/>
	= Total Non-Recognized Assets
Total Assets	+ Total Recognized Assets
	+ Total Non-Recognized Assets
	<hr/>
	= Total Assets
Recognized Sources of Funds	+ Total Stockholders' Equity
	+ Long-Term Debt
	+ Current Notes Payable
	+ Advances from Affiliated Companies
	+ Long-Term Obligations-Capital Leases
	<hr/>
	= Total Recognized Sources
Non-Recognized Sources of Funds	+ Pension Liability
	+ Other Non-Current Liabilities
	+ Deferred Federal Income Taxes
	+ Other Deferred Credits
	<hr/>
	= Total Non-Recognized Sources
Total Sources of Funds	+ Total Recognized Sources
	+ Total Non-Recognized Sources
	<hr/>
	= Total Sources of Funds

(3) Using the figures developed above, the Investment Base is the Recognized Assets times the ratio of Recognized Sources of Funds to Total Sources of Funds.

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APPENDIX C TO PART 404—PROCEDURES FOR ANNUAL REVIEW OF BASE PILOTAGE RATES

The ratemaking methodology detailed in appendix A is used by the Director to determine base pilotage rates at least once every five years, as required by § 404.1. In the intervening years the Director will review, if warranted by cost changes, recalculate base pilotage rates proposed for coordination with Canada using the following procedures:

Step 1: Calculate the total economic costs for the base period (i.e. pilot compensation expense plus all other recognized expenses

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plus the return element) and divide by the total bridge hours used in setting the base period rates;

Step 2: Calculate the “expense multiplier,” the ratio of other expenses and the return element to pilot compensation for the base period;

Step 3: Calculate an annual “projection of target pilot compensation” using the same procedures found in Step 2 of appendix A;

Step 4: Increase the projected pilot compensation in Step 3 by the expense multiplier in Step 2;

Step 5: Adjust the result in Step 4, as required, for inflation or deflation;

Step 6: Divide the result in Step 5 by projected bridge hours to determine total unit costs;

Step 7: Divide prospective unit costs in Step 6 by the base period unit costs in Step 1;

Step 8: Adjust the base period rates by the percentage change in unit costs in Step 7. For example if the total economic costs per bridge hour is \$30.00 for the base period and \$33.00 for the prospective rate period, then the rates established for the base period would be increased by 10% to determine the proposed rates for the prospective rate period, which would then be subject to negotiation with Canada.

[60 FR 18370, Apr. 11, 1995. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]