

## PART 400 [RESERVED]

## PART 401—GREAT LAKES PILOTAGE REGULATIONS

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AUTHORITY: 46 U.S.C. 2103, 2104(a), 6101, 7701, 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1(II)(92.a), (92.d), (92.e), (92.f).

### 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 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**

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**§ 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 .....	1625–0086

[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; USCG–2004–18884, 69 FR 58352, Sept. 30, 2004]

**§ 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 (CG–00), Attn: Commandant, U.S. Coast Guard Stop 7000, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7000.

(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 or traffic purposes in such manner as to constitute a distinct separate movement not a substantive portion of a translake movement on arrival or de-

parture, 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 Homeland Security or any person to whom he or she has delegated his or her 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 or merchant mariner credential 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 (CG–WWM–2), Attn: Great Lakes Pilotage Branch, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509.

(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 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 or merchant mariner credential endorsed 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 Great Lakes Pilotage Branch (CG-WWM-2) to operate a pilotage pool on the Great Lakes.

(17) *Merchant mariner credential or MMC* means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner's document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single cre-

dential that serves as the mariner's qualification document, certificate of identification, and certificate of service.

[26 FR 951, Jan. 31, 1961]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 401.110, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

#### § 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 with 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; USCG-2008-0906, 73 FR 56511, Sept. 29, 2008]

#### § 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 or MMC endorsed 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

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twenty-four months service as a licensed or credentialed officer 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 service as a licensed or credentialed officer or comparable experience on the Great Lakes. Those applicants qualifying with comparable experience must have served a minimum of twelve months as a deck officer under the authority of their license or MMC.

(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) Until April 15, 2009, the individual possesses a validated Merchant Mariner's Document issued by the Coast Guard or a valid Transportation Worker Identification Credential (TWIC). After April 15, 2009, the individual must possess a valid TWIC.

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

[29 FR 10464, July 28, 1964]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 401.210, see the List of CFR Sections Affected, which appears in the

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Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

### § 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, with two full-face photographs, 1½ inches by 2 inches, signed on the face.

(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]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 401.211, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

**§ 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. The Director determines the number of pilots needed as follows:

(1) The Director determines the base number of pilots needed by dividing each area's peak pilotage demand data by its pilot work cycle. The pilot work cycle standard includes any time that the Director finds to be a necessary and reasonable component of ensuring that a pilotage assignment is carried out safely, efficiently, and reliably for each area. These components may include, but are not limited to—

(i) Amount of time a pilot provides pilotage service or is available to a vessel's master to provide pilotage service;

(ii) Pilot travel time, measured from the pilot's base, to and from an assignment's starting and ending points;

(iii) Assignment delays and detentions;

(iv) Administrative time for a pilot who serves as a pilotage association's president;

(v) Rest between assignments, as required by § 401.451;

(vi) Ten days' recuperative rest per month from April 15 through November 15 each year, provided that lesser rest allowances are approved by the Director at the pilotage association's request, if necessary to provide pilotage without interruption through that period; and

(vii) Pilotage-related training.

(2) Pilotage demand and the base seasonal work standard are based on available and reliable data, as so deemed by the Director, for a multi-year base period. The multi-year period is the 10 most recent full shipping seasons, and the data source is a system approved under 46 CFR 403.300. Where such data are not available or reliable, the Director also may use data, from additional past full shipping seasons or other sources, that the Director determines to be available and reliable.

(3) The number of pilots needed in each district is calculated by totaling the area results by district and rounding them to the nearest whole integer. For supportable circumstances, the Director may make reasonable and necessary adjustments to the rounded result to provide for changes that the Director anticipates will affect the need for pilots in the district over the period for which base rates are being established.

(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 endorsement issued under the authority of Title 52 of the Revised Statutes or until the pilot reaches age 70, whichever occurs first.

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(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]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 401.220, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

### § 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 endorsement 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.

(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

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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; USCG–2006–24371, 74 FR 11267, Mar. 16, 2009]

### § 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 or MMC of-

ficer endorsement 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 and/or MMC to the U.S. Coast Guard. If the license or officer endorsement is suspended, the Certificate of Registration will be held with the suspended license or officer endorsement 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; USCG-2006-24371, 74 FR 11267, Mar. 16, 2009]

#### § 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,

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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 River, and Northern approaches thereto 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 south-

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ern 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]

#### § 401.320 Requirements and qualifications for authorization to establish pools.

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



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(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 ar-

rangements 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 safety, or that the violation is willful, the Director may issue an order to suspend

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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 service pursuant to section 4(a) of the Great Lakes Pilotage Act of 1960 (46

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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:

$$\text{Pilot Unit} = (\text{Length} \times \text{Breadth} \times \text{Depth}) / 283.17 \text{ (measured in meters)}$$

$$\text{Pilot Unit} = (\text{Length} \times \text{Breadth} \times \text{Depth}) / 10,000 \text{ (measured in feet)}$$

(b) Weighting factor table:

Range of pilotage units	Weighting factor
0-49 .....	1.0
50-159 .....	1.15
160-189 .....	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; USCG-2013-0534, 79 FR 12107, Mar. 4, 2014]

**§ 401.401 Surcharges.**

To facilitate safe, efficient, and reliable pilotage, and for good cause, the Director may authorize surcharges on any rate or charge authorized by this subpart. Surcharges must be proposed

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for prior public comment and may not be authorized for more than 1 year. Once the approved amount has been received, the pilot association is not authorized to collect any additional funds under the surcharge authority and must cease such collections for the remainder of that shipping season.

[USCG-2016-0268, 82 FR 41495, Aug. 31, 2017]

### § 401.405 Pilotage rates and charges.

(a) The hourly rate for pilotage service on—

(1) The St. Lawrence River is \$758;

(2) Lake Ontario is \$463;

(3) Lake Erie is \$586;

(4) The navigable waters from Southeast Shoal to Port Huron, MI is \$618;

(5) Lakes Huron, Michigan, and Superior is \$337; and

(6) The St. Mary's River is \$632.

(b) The pilotage charge is calculated by multiplying the hourly rate by the hours or fraction thereof (rounded to the nearest 15 minutes) that the registered pilot is on the bridge or available to the master of the vessel, multiplied by the weighting factor shown in § 401.400 of this part.

[USCG-2015-0497, 81 FR 11940, Mar. 7, 2016, as amended by USCG-2018-0665, 84 FR 20578, May 10, 2019; USCG-2019-0736, 85 FR 20120, Apr. 9, 2020]

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

(a) Except as otherwise provided in this section, a vessel can be charged as authorized in § 401.405 of this part for the waters in which the event takes place, if—

(1) A U.S. pilot is retained on board while a vessel's passage is interrupted;

(2) A U.S. pilot's departure from the vessel after the end of an assignment is delayed, and the pilot is detained on board, for the vessel's convenience; or

(3) A vessel's departure or movage is delayed, for the vessel's convenience, beyond the time that a U.S. pilot is scheduled to report for duty, or reports for duty as ordered, whichever is later.

(b) When an order for a U.S. pilot's service is cancelled, the vessel can be charged for the pilot's reasonable travel expenses for travel that occurred to and from the pilot's base, and the greater of—

(1) Four hours; or

(2) The time of cancellation and the time of the pilot's scheduled arrival, or the pilot's reporting for duty as ordered, whichever is later.

(c) Between May 1 and November 30, a vessel is not liable for charges under paragraphs (a)(1) or (2) of this section, if the interruption or detention was caused by ice, weather, or traffic.

(d) A pilotage charge made under this section takes the place and precludes payment of any charge that otherwise could be made under § 401.405 of this part.

[USCG-2015-0497, 81 FR 11940, Mar. 7, 2016, as amended by USCG-2016-0268, 82 FR 41495, Aug. 31, 2017; 82 FR 43864, Sept. 20, 2017]

### § 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 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

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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 Boarding or discharging a pilot other than at designated points.

For a situation in which a vessel boards or discharges a U.S. pilot at a point not designated in § 401.450 of this part, it could incur additional charges as follows:

(a) Charges for the pilot's reasonable travel expenses to or from the pilot's base, if the situation occurs for reasons outside of the vessel's control, for example for a reason listed in § 401.420(c) of this part; or

(b) Charges for associated hourly charges under § 401.405 of this part, as well as the pilot's travel expenses as described in paragraph (a), if the situation takes place for the convenience of the vessel.

[USCG-2015-0497, 81 FR 11940, Mar. 7, 2016]

### § 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.

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(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

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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) The Saint Lawrence River between Iroquois Lock and the area of Ogdensburg, NY, beginning October 2, 2017;
- (c) Cape Vincent;
- (d) Port Weller;
- (e) Port Colborne;
- (f) Detroit/Windsor, other than assignments originating or terminating at a point on the Detroit River;
- (g) Port Huron/Sarnia;
- (h) Detour;
- (i) Gros Cap;
- (j) Chicago with respect to assignments originating at Detour or Port Huron/Sarnia; and
- (k) 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; USCG-2008-0906, 73 FR 56511, Sept. 29, 2008; USCG-2016-0268, 82 FR 41495, Aug. 31, 2017; 82 FR 43864, Sept. 20, 2017]

### § 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 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]

### § 401.510 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 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

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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.

(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, 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

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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

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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 fifteen (15) days after expiration of the time prescribed for filing a reply thereto 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—

(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-

## § 401.720

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. 9304 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; USCG-2008-0906, 73 FR 56511, Sept. 29, 2008]

## 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.

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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.

### 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 to 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