

improvements for their electrical energy customers.

Jacklyn J. Stephenson,

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings: Agreements Filed During the Week Ending August 4, 2000

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST-2000-7720.

Date Filed: August 1, 2000.

Parties: Members of the International Air Transport Association.

Subject:

PAC/Reso/409 dated July 21, 2000
Finally Adopted Resos (r-1 to r-19)
Minutes—PAC/Meet/167 dated July
21, 2000

Intended effective date: October 1,
2000

Docket Number: OST-2000-7722.

Date Filed: August 2, 2000.

Parties: Members of the International Air Transport Association.

Subject:

PTC12 CAN-EUR 0063 dated 2
August 2000

Canada-Europe Expedited Resolutions
002bb and 076ii

Intended effective date: 1 September
2000.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00-20451 Filed 8-10-00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2000-7742]

Interpretation of "Intra-Port Transit" in the States of New York and New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Notice of interpretation.

SUMMARY: The Coast Guard is issuing its interpretation of "intra-port transit" as used respecting the Port of New York. The Coast Guard defines the term as it has always defined it: to mean any

transit between any two points within any of the areas designated in the rule. It is issuing this interpretation to ensure that every self-propelled vessel engaged in foreign commerce employs a pilot holding a properly endorsed Federal First Class Pilot's license while the vessel makes an "intra-port transit" on waters designated in that rule.

DATES: This notice is effective on August 11, 2000.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Lieutenant Alan Blume, Waterway Safety Program Manager, Office of Waterways Management Policy and Planning, U.S. Coast Guard Headquarters, telephone 202-267-0550, e-mail ablume@comdt.uscg.mil. For questions on viewing the docket, call Ms. Dorothy Beard, Chief of Dockets, Department of Transportation, telephone 202-366-9329.

SUPPLEMENTARY INFORMATION:

Regulatory Background

On May 10, 1995, the Coast Guard published in the **Federal Register** [60 FR 24793] a Final Rule entitled: "Federal Pilotage * * * for Foreign Trade Vessels." This rule designated areas in the States of New York and New Jersey where every self-propelled vessel engaged in foreign commerce must use a pilot holding a properly endorsed Federal First Class Pilot's license while making an "intra-port transit." The purpose was to enhance the safety of vessels performing difficult mooring maneuvers, or transiting congested or restricted waters, by prescribing rules for pilotage in waters not subject to States' pilotage requirements.

Discussion

The pilotage system of the United States is in fact parallel systems of complementary Federal and State laws on pilotage. Since 1789 the States have had primary responsibility for regulating the pilotage of foreign-flag and U.S.-flag vessels sailing under register (foreign-trade vessels). [See 46 U.S.C. 8501(a).] Governance of the pilotage of coastwise seagoing vessels is a Federal responsibility. [See 46 U.S.C. 8502(a).] The Federal government may regulate pilotage of foreign-trade vessels only when a State does not. [See 46 U.S.C. 8503(a).]

New York and New Jersey do not require State-licensed pilots aboard vessels engaged in foreign trade making intra-port transits in New York Harbor. The New Jersey statute states:

All masters of foreign vessels and vessels from a foreign port, and all vessels sailing

under register, bound in or over the bar of Sandy Hook * * * shall take a licensed pilot * * * [N.J. Stat. Ann. § 12:8-35 (West 1992).]

The New York statute states:

Every foreign vessel and every American vessel under register entering or departing from the Port of New York by the way of Sandy Hook or by the way of Sands Point or Execution Rocks, shall take a Sandy Hook pilot licensed under the authority of this article or the laws of the State of New Jersey or a person heretofore licensed as a Hell Gate pilot. [N.Y. Nav. Law § 88(1) (McKinney 1993).]

These statutes, according to the courts, mean that the States require pilots only when foreign-trade vessels are entering, or departing from, New York Harbor. [See *Baeszler v. Mobile Oil Corp.*, 375 F.Supp. 1220 (1973).] Neither New York nor New Jersey requires State-licensed pilots for intra-port transits. [*Id.*] The court in *Baeszler* recognized that a "gap" existed between Federal and State law insofar as neither law mandated pilotage for foreign-trade vessels making intra-port transits within New York Harbor. [*Id.*]

Precisely in response to this gap, the Coast Guard implemented 46 CFR 15.1030. That rule remains effective until the States having jurisdiction, New York and New Jersey, implement superseding requirements for State-licensed pilots and notify the Coast Guard of that fact. [See 46 U.S.C. 8503(b).] When the Coast Guard implemented 46 CFR 15.1030, it considered implications for federalism and determined that there was no conflict between State and Federal law. The Notice of Proposed Rulemaking (NPRM) had stated: "Since this [rule aims] primarily at requiring the use of Federal pilots in instances where State pilots are not required, the Coast Guard does not believe that the preparation of a Federalism Assessment is warranted." [58 FR 36917] The NPRM had also stated: "This rule would not [impair] existing [S]tate laws." [58 FR 36917] A review of the NPRM and the Final Rule [60 FR 24793] makes clear that the purpose of the rule is to fill the gap.

46 C.F.R. 15.1001 requires a pilot, who holds a Federal First Class Pilot's license, to be on board a foreign-trade vessel when transiting waters identified in area-specific rules—such as 46 CFR 15.1030, which applies to New York and New Jersey. The latter rule covers

The following U.S. navigable waters located within the States of New York and New Jersey when the vessel is making an intra-port transit, to include, but not limited to, a movement from a dock to a dock, from a dock to an anchorage, from an anchorage to a dock, or from an anchorage to an