

require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

For these same reasons, the Agency has determined that this rule does not have any “tribal implications” as described in Executive Order 13175,

entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.” This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.”

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 2, 2001.

Janet L. Andersen,
Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.502 is amended by revising the Expiration/revocation date for the commodities Apples and Pears in the table in paragraph (a) to read as follows:

§ 180.502 Aminoethoxyvinylglycine; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/revocation date
Apples	0.08	12/21/03
Pears	0.08	12/21/03
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[FR Doc. 01-17472 Filed 7-11-01; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 401

[USCG 1999-6098]

RIN 2115-AF91

Great Lakes Pilotage Rates

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard amends the rates for pilotage on the Great Lakes.

The new rates rest on an independent audit of expenses, results of the 1999 rate review, comments received in response to a Notice and a Supplemental Notice of Proposed Rulemaking, and a public meeting held in Coast Guard Headquarters on October 12, 2000. On these basis, the rates for such services increase an average of 3%, with consequent effects on the incomes of pilots.

DATES: This rule is effective August 13, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket USCG 1999-6098 and are available for inspection or copying at the Docket Management Facility, U.S.

Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: If you have questions on this final rule, call Tom Lawler, Chief Economist, Office of Great Lakes Pilotage, Commandant (G-MW-1), U.S. Coast Guard, at 202-267-1241, by facsimile 202-267-4700, or by email at tlawler@comdt.uscg.mil. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-5149.

SUPPLEMENTARY INFORMATION:**Background and Purpose**

The Coast Guard is required by 46 CFR 404.1(b) to conduct an annual review of rates for pilotage in the Great Lakes. On the basis of this review the Director can adjust them or not.

Regulatory History

On May 9, 1996, the Department of Transportation published in the **Federal Register** [61 FR 21081] a final rule, explaining the methodology used to set the rates for pilotage on the Great Lakes.

On April 14, 2000, the Coast Guard published in the **Federal Register** [65 FR 20110] a Notice of Proposed Rulemaking (NPRM), announcing the results of the 1999 rate review and seeking comments. We received seven letters commenting on the proposed rule.

On September 13, 2000, in response to comments on the NPRM, the Coast Guard published in the **Federal Register** [65 FR 55206] a Supplemental Notice of Proposed Rulemaking (SNPRM), to allow all interested parties another 60 days for comment. On October 12, 2000, the Coast Guard conducted a public meeting at Coast Guard Headquarters, allowing interested parties an opportunity to directly present their views to the Director, Great Lakes Pilotage, and his staff.

This final rule implements the results of the 1999 rate review. It increases the rates for pilotage on the Great Lakes in Area 1 by 4%, in Area 2 by 17%, and in Area 4 by 3%; decreases them in Area 5 by 5%; increases them in Area 6 by 4% and in Area 7 by 9%; and leaves them unchanged in Area 8; and it increases average rates by 3%.

Discussion of Comments and Changes

We received, in response to the requests for comments contained in the SNPRM, 18 written comments. We received one comment from the Honorable David E. Bonior of Michigan. We also received one comment from American Great Lakes Ports, one from the United States Great Lakes Shipping Association, one from each of the three District Pilots' Associations, one from the accounting firm of the District 2 Pilots' Association, one from the lawyer for that Association, five from pilots in District 2, one from the chief dispatcher for District 2, one from the President of that Association, one from a pilot in District 1, one from the Grand Lodge, International Masters' Association, and one from the International Longshoremen's Association. All of the commenters address issues that pertained to the 1999 rate review, while

some went beyond the scope of the solicitation and dealt with such issues as the methodology used to determine pilots' compensation, the 2000 rate review, and the status of pilots' continuing-education programs. The discussion of comments here can only address issues raised in the 1999 rate review.

The Honorable Mr. Bonior emphasizes that the rates of pay for all pilots providing services on the Great Lakes need to increase at the same level. The rates of pay for all those pilots will increase 11% under the updated rates contained in this final rule. This is because pilots' compensation on the Great Lakes, as stated in the rate-making methodology, 46 CFR part 404, Appendix A, results from a calculation directly linked to the compensation of certain licensed officers serving on U.S.-flag vessels on the Great Lakes. The compensation of pilots providing services on the open and deep "undesignated" waters of the Great Lakes is calculated on the current union contract, to include wages and benefits, for first mates serving on such vessels. That of pilots providing services on the confined and shallow "designated" waters, perhaps approximating the annual average compensation for masters serving on such vessels, is calculated at 150% of that of first mates. As their compensation is tied directly to the current union contract for first mates, pilots will receive the cumulative increases that the mates (and incidentally the masters) will receive.

Four commenters—the District 2 Pilots' Association, the District 3 Pilots' Association, the accounting firm for District 2, and a pilot in District 2—argue that the methodology, especially in regard to the projection of operating expenses, was flawed because it used 1997 audited data for expenses with 1998 revenues and bridge-hours. 46 CFR part 404, Appendix A, states in Step 1:

"The Director projects the amount of vessel traffic annually. [On the basis of] that projection, he forecasts the amount of fair and reasonable operating expenses that pilotage rates should recover. This consists of the following phases:

- (a) Submission of financial [data] from each Association;
- (b) Determination of recognizable expenses;
- (c) Adjustment for inflation or deflation; and
- (d) Final projection of operating expenses."

The use of 1997 audited data for expenses in conjunction with 1998 data supplied by the Pilots' Associations is consistent with the above guidelines. In

1998, the actual bridge-hour data and revenues for 1998 in each of the pilotage areas became available to the Coast Guard in May, through the submission of an unqualified opinion on audited financial statements for 1998 by each of the Pilots' Associations as required by 46 CFR 403.300. A review of the financial and bridge-hour data indicated that, on average, revenues and bridge-hours throughout the Great Lakes increased 30% from 1997 to 1998. We combined the actual observed increase for each District in 1998 with the projected 5% decrease in traffic for 1999 to establish an overall change in traffic from 1997 to 1999. For example, District 1 experienced an average increase of 36% in bridge-hours from 1997 to 1998. Considering the projected reduction of 5% from 1998 to 1999, combined with an overall projected increase of 36% from 1997 to 1999, yields a net increase of 31% for District 1. For the 1999 rulemaking, each District's approved 1997 expenses were adjusted for inflation [Approved 1997 Expenses x (1+Inflation Factor)], then multiplied by the aggregate percentage change in traffic projected for each District from 1997 to 1999, and then factored for the percentage of the Associations' expenses that change with traffic (pilotage hours). Analysis indicates that 57% of Associations' expenses are affected by a change in pilotage hours. For instance, in District 1 pilotage hours are projected to increase 31% from 1997 to 1999, which is multiplied by 57% (.31 x .57 = .18) to project that the District's operating expenses should increase 18%. Therefore, in this instance, we used the following formula to project 1999 expenses [(Approved 1997 Expenses x (1+Inflation Factor) x (1+(.31 x .57))]. In this instance, to incorporate approved costs of transportation and training into the rate, we added \$86,000 to the District's expense base for the 1999 ratemaking.

The District 2 Pilots' Association, the accounting firm for District 2, and two pilots in District 2 disagree with the method used by our independent auditor to determine the cost per pilot-boat trip in District 2. They further insist that pilot-boat expenses in District 2 were not excessive, and disagree with our deduction of \$45,602 from the District's expense base to offset the high cost of pilot-boat trips. Our auditor used the following method to calculate the average cost of these trips (two-way). Total pilot-boat expenses were divided by total pilot-boat trips to compute the average cost per trip. 46 CFR 404.5 establishes the guidelines for the Director, Great Lakes Pilotage, in

determining whether to recognize expenses. It specifies that he should evaluate each item to determine whether it is necessary for the provision of pilotage service and, if so, whether it is reasonable—that is, comparable or similar to the expense paid by others in the maritime industry for the same item. Pilot-boat expenses in District 2 average \$176 per trip, whereas in District 1 they average \$110 and in District 3 they average \$83.

The treatment of leased goods and services matters greatly here because fees for leasing—if allowable—count in ratemaking. Fees are allowable if reasonable. District 3 contracts for all pilot-boat services while Districts 1 and 2 operate affiliated companies, owned wholly or partly by registered pilots, to provide these services. These affiliated companies reported net incomes for 1997 of \$4,520 in District 1 and \$70,506 in District 2. The latter figure represents a 19% return on total equipment and property, less land, at \$372,270. In 1997, District 2 paid Erie Leasing \$66,000 in fees for the rental of two pilot-boats. The Director considers these fees excessive. 46 CFR 404.5(a)(3) states:

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 * * * 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.

Using this methodology, with the reported cost of the pilot-boats at \$315,000 and using a market return of 6.9% and a depreciation amount of \$9,450, results in an allowable lease of \$31,185 ($\$315,000 \times 6.9\% = \$21,735 + \$9,450 = \$31,185$). To bring pilot-boat expenses for District 2 into line with those for Districts 1 and 3, the Director is reducing the expense base for District 2 by \$34,815 (\$66,000 rental fee – \$31,185 allowable fee = \$34,815 excessive fees). He is deducting \$34,815 instead of \$45,602 from the expense base for District 2.

A pilot from District 1 asserts that the Coast Guard, in the 1999 rate review, did not include 892 bridge-hours performed by pilots on the St. Lawrence River when it determined the requirement of pilots for Lake Ontario. The assertion is accurate. That Review originally determined a requirement of four pilots for Lake Ontario. A recalculation of the bridge-hours for 1999 runs as follows: Lake pilots performed 6,355 bridge-hours in 1998, while river pilots performed 892 bridge-

hours, for a total of 7,247 bridge-hours. We projected bridge-hours to decline 5% in 1999, so that the corrected projection for 1999 is 6,885 bridge-hours ($7,247 \times .95 = 6,885$). In accordance with 46 CFR part 404, we then divided 6,885 by 1800 ($6,885/1800 = 3.82$ pilots) and determined a requirement of four pilots for Lake Ontario for 1999. In view of the significant increase in traffic experienced there during 2000, the Director is authorizing a total of five pilots for Area 2. This total is also consistent with the Memorandum of Arrangements (MOA) with Canada, which states that traffic on Lake Ontario will be evenly divided between American pilots and Canadian. In 1997, total bridge-hours for the two countries approximated 17,254 hours. Fifty percent comes to 8,627 hours; those are the hours that American pilots should expect under the MOA. The 1999 rate review projected a 5% reduction in traffic for the following navigational season, down to 8,196 ($8,627 \times .95 = 8,196$). Dividing 8,196 by the bridge-hour standard of 1800 ($8,196 / 1800 = 4.55$), gives a figure of 4.55 pilots.

The District 2 Pilots' Association and its accounting firm disagree with the results of the calculation that determined the number of pilots required for their District. 46 CFR part 404 establishes the methodology in determining the number of pilots required for each area: "The basis for the number of pilots needed in each area of undesignated water is established by dividing the projected bridge-hours by 1800." The accounting firm disagreed with the standard of 1800 hours used to determine the number of pilots in undesignated waters; it combined delay, detention, and travel hours with bridge-hours to calculate the number of pilots required in District 2. Yet part 404 establishes 1800 bridge-hours (taking no account of detention, delay, and travel hours) as the standard, and it is the law.

The District 2 Pilots' Association and its accounting firm also disagree with the Director's reduction of \$4,800 a year in total rental expenses for a six-bedroom house, rented to the Association by Erie Leasing, an affiliated company. The house serves as temporary accommodations in Port Colburn. The auditor recommended an adjustment, in that similar accommodations in the area rent on average for \$400 a month less than the Association pays. However, District 2 pilots do save \$52 a night by using this facility instead of a hotel. In 1999, this yielded a saving of about \$15,000. In view of the above, the Director has put

the \$4,800 back into the expense base for District 2.

The District 2 Pilots' Association and its accounting firm also disagree with the Director's decision to disallow legal expenses not directly related to the provision of pilotage services. In September 1999, the Director requested each of the Pilots' Associations to justify its legal expenses under this standard. District 1 justified its, to the extent of \$1,244. Districts 2 and 3 did not justify theirs, to any extent. The Director recognized that legal expenses are necessary in today's business environment. Therefore, he used the guidelines in 46 CFR 404.5(a)(2)(i), "Comparable or similar expenses paid by others in the maritime industry," and in 46 CFR 404.5(a)(2)(ii), "Comparable or similar expenses paid by other industries," to determine a fair and equitable allowance for legal expenses in each District. He compared the Association's legal expenses as a percentage of revenues with those of two firms that operate in relatively high-risk environments, an elevator company and an underwater-welding company. The elevator company had revenues between \$12 and \$18 million a year and legal expenses of \$12,000 to \$18,000 a year; the welding company had revenues in excess of \$15 million a year with legal expenses of less than \$10,000 a year. An analysis of the Association's legal expenses as a percentage of revenue since 1995 indicated that those expenses averaged \$23,326 or .9% of revenue. In view of today's complex legal climate, the Director views those expenses over the past five years as fair for a Pilots' Association, which also operates in a relatively high-risk environment. Using the .9% of revenue for 1997 as a guideline, he has approved \$22,815 in legal expenses for District 2, and \$13,258 and \$29,552 in legal expenses for Districts 1 and 3, respectively. He is returning these amounts to the Districts' expense bases for present purposes.

The District 2 Pilots' Association, its accounting firm, and one pilot in the District disagree on the disallowance of pilots' training expenses in the District. In summary, they indicate that, because the Director recognized these expenses in the past, he should recognize them now. They argue that until a temporarily registered pilot is permanently registered that person is, in fact, being trained and that during this time the Association has to compensate him. The approval of these expenses in the 1998 rate review was a mistake on the part of the Director. This is so because these expenses were not for instructional courses or material, which he should

have approved, but actually represented compensation or salary paid directly to temporarily registered pilots.

Compensation for such pilots is fully accounted for in the ratemaking methodology, as explained in 46 CFR Part 404, Appendix A. Accounting for such pilots' compensation as a training expense inflates the District's expense base by double-counting: The base already accounts for it otherwise.

The District 2 Pilots' Association and its accounting firm also disagree with the independent auditor's deductions from the expense base of \$947 for business promotion, \$400 in contributions, and \$1,988 as uniform expense. The deductions for the first two are justified in that those two are not directly related to the provision of pilotage, as they must be under 46 CFR 404.5. However the Director considers the \$1,988 in uniform expense a necessary investment in equipment that actually enhances service and safety. Accordingly he has returned \$1,988 to the District's expense base.

The District 2 and District 3 Pilots' Associations disagree with the Director's computation of investment base for calculating return on investment, urging that the Director take into account all assets employed in support of pilotage. 46 CFR part 404, Appendix A, Step 5(3), states that "Assets subject to return on investment * * * must be reasonable in 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." In calculating rate of return the Director considers property and equipment because cash assets held on deposit earn interest. A significant portion of the large cash balances that pilots' associations accumulate at the end of the calendar year they immediately distribute the next year as pilots' compensation during the months that the St. Lawrence Seaway is closed. The Director's including cash assets would encourage these associations to unnecessarily inflate their investment bases and provide a source of return available to few if any other private businesses. As we explained in the SNPRM, analysis of pilots' associations' investment bases indicates that, ever since the concept of return on investment was introduced into the ratemaking methodology, Districts 2 and 3 have greatly increased their bases. In District 2 the base went from \$265,488 in 1995 to \$413,998 in 1996, of which only \$116,041 represented property and equipment. In District 3 it went from \$119,823 in 1995 to \$994,896 in 1996,

of which only \$25,583 represented property and equipment.

The President of the District 2 Pilots' Association observes that pilots' compensation for designated waters of the Great Lakes, under the NPRM, would have come to exactly 1.5 times that of their compensation for undesignated waters of the Lakes. The President indicates that this was not the case in past rulemakings. But target pilots' compensation for designated waters should at least approximate 1.5 times that for undesignated waters. This is so because the former should be 1.5 times first mates' salary plus first mates' benefits, as explained in a final rule published in the **Federal Register** on February 10, 1997 [62 FR 5217].

The daily contractual rate of wages for first mates is multiplied by 54 to determine the monthly rate for undesignated waters. This monthly rate is then multiplied by 1.5 to determine the monthly rate for designated waters (monthly rate for undesignated waters x 1.5 = monthly rate for designated waters). Only then is the cost of benefits (pensions, medical care, and clerical support) added to the monthly rates for both undesignated and designated waters. These figures are then multiplied by 9 to yield total yearly target pilots' compensation. A recalculation of this compensation for designated waters revealed that the figure of \$155,466, used in the SNRPM for those waters was in error. The corrected figure is \$147,540. The calculation goes as follows: The daily rate of wages specified in the first mates' union contract, effective August 1, 1999, was \$179.42. As also specified there, the daily rate is then multiplied by 54 days (30.5 work days, 15 vacation days, 4 weekend days, 1.5 holidays, and 3 bonus days.) to determine the monthly rate, \$9,689. Added to this figure are the monthly costs of first mates' pensions, of \$1,246; their medical care, of \$426, and their clerical support, of \$126. The monthly total of wages and benefits comes to \$11,487. This figure is then multiplied by 9 to yield total target pilots' compensation for undesignated waters, of \$103,383.

For designated waters the monthly rate of wages, calculated above, is multiplied by 1.5, totaling \$14,534. To this figure we add the monthly cost of a mates' pension benefits, \$1,246; the monthly cost of health benefits, \$426; and the monthly cost of clerical support, \$188. The monthly total of wages and benefits now comes to \$16,395. This figure is then multiplied by 9, to yield total target pilots' compensation for designated waters of \$147,540.

Because this final rule may be effective for a portion of the 2001 navigational season on the Great Lakes, we have updated the rates in it to reflect the daily rate of wages in the current first mates' union contract, of \$188.39, that became effective August 1, 2000. For those reasons the revised target pilots' compensation for undesignated waters and designated waters are \$107,735, and \$154,079, respectively.

One commenter, the District 1 Pilots' Association, states that the District's expense base should be adjusted for inflation to reflect the average change in the Consumer Price Index (CPI) until mid-year 2000, not December 1999. The Director agrees and has adjusted the base of each District to reflect the average change in the CPI from the close of the 1997 season to mid-year 2000. This equates to an inflation factor of 4.8%.

The District 2 Pilots' Association and its accounting firm disagree with the deduction of amounts for daily subsistence that did not conform to guidelines of the Internal Revenue Service. 46 CFR Part 404.5 establishes those guidelines as one of the tests used to determine the reasonableness of an expense. For 1997 those guidelines fix \$36 a day as the maximum allowable amount of daily subsistence. Pilots in District 2 were paid \$40, as stated in the Pilot Association's accounting handbook and confirmed by the District's chief dispatcher during the independent auditor's 1999 audit of the District. The amount in excess of \$36, \$2,484, we have deducted from the expense base of the District.

The District 2 Pilots' Association and its accounting firm indicate that they do not understand how pilots in District 2 exceeded their target pilots' compensation by 16% in 1998, as the SNPRM stated they did. The 16% is an error; the corrected figure is 5%. In 1998, District 2 was authorized 5 pilots in Area 4 and 9 pilots in Area 5. Target pilots' compensation in the undesignated waters of Area 4 was \$97,524 for a subtotal of \$487,620 (5 x \$97,524), while in designated waters of Area 5 it was \$138,762 for a subtotal of \$1,248,858 (9 x \$138,762). Target pilots' compensation for District 2, then, was a total of \$1,736,478 (\$487,620 + \$1,248,858). The independent audit by the certified public accountant showed that the actual total compensation paid to pilots in District 2 during 1998 was \$1,826,905. This means those pilots' compensation exceeded the total target pilots' compensation by 5%.

Summary of Changes

The changes just discussed are summarized in Tables A, B, and C, which follow:

TABLE A.—DISTRICT 1

	Area 1—St. Lawrence River	Area 2—Lake Ontario	Total District 1
Step 1, Projection of operating expenses	\$309,479	\$263,630	\$573,109
Step 2, Projection of target pilot compensation	\$1,078,553	\$538,675	\$1,617,228
Step 3, Projection of revenue	\$1,333,991	\$687,207	\$2,021,198
Step 4, Calculation of investment base	\$0	\$0	\$0
Step 5, Determination of target return on investment	7.04%	7.04%	7.04%
Step 6, Adjustment determination	\$1,388,032	\$802,305	\$2,190,337
Step 7, Adjustment of pilotage rates	1.04	1.17	1.08

TABLE B.—DISTRICT 2

Methodology	Area 4—Lake Erie	Area 5—South East Shoal to Port Huron Michigan	Total District 2
Step 1, Projection of operating expenses	\$647,029	\$551,174	\$1,198,203
Step 2, Projection of target pilot compensation	\$538,675	\$1,232,632	\$1,771,307
Step 3, Projection of revenue	\$1,156,057	\$1,886,198	\$3,042,255
Step 4, Calculation of investment base	\$45,397	\$71,006	\$116,403
Step 5, Determination of target return on investment	7.04%	7.04%	7.04%
Step 6, Adjustment determination	\$1,188,901	\$1,788,804	\$2,975,455
Step 7, Adjustment of pilotage rates	1.03	.95	.98

TABLE C.—DISTRICT 3

Methodology	Area 6—Lakes Huron and Michigan	Area 7—St. Mary's River	Area 8—Lake Superior	Total District 3
Step 1, Projection of operating expenses	\$692,430	\$131,178	\$476,862	\$1,306,471
Step 2, Projection of target pilot compensation	\$1,185,085	\$616,316	\$861,880	\$2,591,100
Step 3, Projection of revenue	\$1,797,967	\$688,583	\$1,338,912	\$3,825,462
Step 4, Calculation of investment base	\$11,997	\$4,595	\$8,934	\$25,526
Step 5, Determination of target return on investment	7.04%	7.04%	7.04%	7.04%
Step 6, Adjustment determination	\$1,878,359	\$753,819	\$1,339,371	\$3,971,549
Step 7, Adjustment of pilotage rate	1.04	1.09	1.00	1.04

As summarized in Tables A, B, and C, the Coast Guard amends the pilotage rates dictated by 46 CFR, §§ 401.405, 401.407, and 401.410, by increasing the rates for pilotage on the Great Lakes in Area 1 by 4%, in Area 2 by 17%, and in Area 4 by 3%; decreasing them in Area 5 by 5%; increasing them in Area 6 by 4% and in Area 7 by 9%; and leaving them unchanged in Area 8; and by increasing average rates by 3%.

Regulatory Evaluation

This final rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not “significant” under the

regulatory policies and procedures of the Department of Transportation (DOT) [44 FR 11040, (February 26, 1979)].

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This rule makes minimal adjustments to the pilotage rates for the Great Lakes’ 2001 shipping season. The Coast Guard has used the ratemaking methodology found in 46 CFR Part 404, Appendix A, to identify adjustments necessary to achieve target pilots’ compensation by establishing these new rates for pilotage. This methodology is designed to review pilotage rates every year so as to avoid large changes in them and ultimately avoid large fluctuations in pilots’ compensation. This rule provides a step-by-step economic guide to show

how the methodology works. This rulemaking will help accomplish the Coast Guard’s desire for a safe, reliable, and efficient pilotage system.

Small Entities

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

For the Great Lakes, small entities potentially affected by this rule include shippers, Great Lakes ports, carriers, and shipping agents. The overall

increase in pilotage rates on the lakes should not significantly affect small businesses. This is true because the overall average increase in rates, of 3%, is less than the approximate increase in the CPI, of 5%, since the rates were last changed, in 1997. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Tom Lawler, Chief Economist, Great Lakes Pilotage (G-MW-1), U.S. Coast Guard, at 202-267-1241, by facsimile 202-267-4700, or by email at *tlawler@comdt.uscg.mil*.

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

Collection of Information

This final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria in Executive Order 13132 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

It is well settled that States are precluded from regulation in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703(a), 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels) are within the field foreclosed

from regulation by States. [See the decision of the Supreme Court in the consolidated cases of *United States v. Locke* and *Intertanko v. Locke*, 120 S. Ct. 1135, 2000 U.S. LEXIS 1895 (March 6, 2000).] Since this rule involves the numbers and compensation for pilots on vessels transiting the Great Lakes, it is a matter of manning, and so precludes States from regulation. Because States may not promulgate rules within this category, preemption is not an issue under Executive Order 13132.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

We have considered the environmental impact of this final rule and concluded that under figure 2-1, paragraph 34(a), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule is procedural in nature because it deals exclusively with adjusting pilotage rates for the Great Lakes. A "Categorical Exclusion Determination" is available in the docket where indicated under

ADDRESSES.

List of Subjects in 46 CFR Part 401

46 CFR Part 401

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

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR Part 401 as follows:

PART 401—GREAT LAKES PILOTAGE REGULATIONS

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

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

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

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

* * * * *

(a) Area 1 (Designated Waters):

Service	St. Lawrence River
Basic Pilotage	\$8 per kilometer or \$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

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

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

* * * * *

(a) Area 4 (Undesignated Waters):

Service	Lake Erie (east of 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
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

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

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

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

* * * * *

(a) Area 6 (Undesignated Waters):

Service	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
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 Morage	N/A	N/A	\$541

* * * * *

§ 401.420 [Amended]

5. Amend § 401.420 as follows: a. In paragraph (a), remove the number "\$51" and add, in its place, the number "\$53"; and remove the number "\$807" and add, in its place, the number "\$831".

b. In paragraph (b), remove the number "\$51" and add, in its place, the number "\$53"; and remove the number "\$807" and add, in its place, the number "\$831".

c. In paragraph (c)(1), remove the number "\$305" and add, in its place, the number "\$314"; and, in paragraph (c)(3), remove the number "\$51" and add, in its place, the number "\$53" and, also in paragraph (c)(3), remove the number "\$807", and add, in its place, the number "\$831".

§ 401.428 [Amended]

6. In § 401.428, remove the number "\$312" and add, in its place, the number "\$321".

Dated: May 25, 2001.

Paul J. Pluta,

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

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804 and 1852

Security Requirements for Unclassified Information Technology Resources

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: This interim rule amends the NASA FAR Supplement (NFS) to clarify the information technology (IT) security requirements for sensitive information contained in unclassified automated information resources

DATES: *Effective Date:* This interim rule is effective July 12, 2001.

Applicability Date: This amendment applies to all contracts awarded on or after the effective date.

Comment Date: Comments should be submitted to NASA at the address below on or before September 10, 2001.

FOR FURTHER INFORMATION CONTACT: Karl Beisel, NASA Headquarters, Code HC, Washington, DC 20546, (202) 358-0416 kbeisel@mail.hq.nasa.gov.

SUPPLEMENTARY INFORMATION: