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(c) By April 1 of each year, each association must obtain an unqualified audit report for the preceding year, audited and prepared in accordance with generally accepted accounting standards by an independent certified public accountant, and electronically submit that report with any associated settlement statements to the Director by April 7.

[USCG–2015–0497, 81 FR 11941, Mar. 7, 2016]

Subpart D—Source Forms

§ 403.400 Uniform pilot’s source form.

(a) Each association must record pilotage transactions using the system currently approved by the Director.

(b) Each pilot must complete a source form in detail as soon as possible after completion of an assignment, with adequate support for reimbursable travel expenses.

(c) Upon receipt, each association must complete the source form by inserting the rates and charges specified in 46 CFR part 401.

[USCG–2015–0497, 81 FR 11941, Mar. 7, 2016]

PART 404—GREAT LAKES PILOTAGE RATEMAKING

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AUTHORITY: 46 U.S.C. 2103, 2104(a), 9303, 9304; DHS Delegation 00170.1, Revision No. 01.2, paragraphs (II)(92)(a), (f).

SOURCE: USCG–2015–0497, 81 FR 11941, Mar. 7, 2016, unless otherwise noted.

§ 404.1 General ratemaking provisions.

(a) The goal of ratemaking is to promote safe, efficient, and reliable pilotage service on the Great Lakes, by generating for each pilotage association sufficient revenue to reimburse its necessary and reasonable operating expenses, fairly compensate trained and rested pilots, and provide an appropriate profit to use for improvements.

(b) Annual reviews of pilotage association expenses and revenue will be conducted in conjunction with an independent party, and data from completed reviews will be used in rate-making under this part.

(c) Full ratemakings to establish multi-year base rates and interim year reviews and adjustments will be conducted in accordance with § 404.100 of this part.

§ 404.2 Procedure and criteria for recognizing association expenses.

(a) A pilotage association must report each expense item for which it seeks reimbursement through the charging of pilotage rates, and make supporting information available to the Director. The Director must recognize the item as both necessary for providing pilotage service, and reasonable as to its amount when compared to similar expenses paid by others in the maritime or other comparable industry, or when compared with Internal Revenue Service guidelines. The association will be given an opportunity to contest any preliminary determination that a reported item should not be recognized.

(b) The Director applies the following criteria to recognize an expense item as necessary and reasonable within the meaning of paragraph (a) of this section:

(1) *Operating or capital lease costs.* Conformity to market rates, or in the

absence of a comparable market, conformity to depreciation plus an allowance for return on investment, computed as if the asset had been purchased with equity capital.

(2) *Return-on-investment.* A market equivalent return-on-investment is allowed for the net capital invested in the association by its members, if that investment is necessary for providing pilotage service.

(3) *Transactions not directly related to providing pilotage services.* Revenues and expenses generated from these transactions are included in ratemaking calculations as long as the revenues exceed the expenses. If these transactions adversely affect providing pilotage services, the Director may make rate adjustments or take other steps to ensure pilotage service is provided.

(4) *Pilot benefits.* Association-paid benefits, including medical and pension benefits and profit sharing, are treated as pilot compensation.

(5) *Profit sharing for non-pilot association employees.* These association expenses are recognizable.

(6) *Legal expenses.* These association expenses are recognizable except for any and all expenses associated with legal action against the U.S. Coast Guard or its agents in relation to the ratemaking and oversight requirements in 46 U.S.C. 9303, 9304 and 9305.

(7) *Apprentice Pilot expenses.* The association's expenses for Apprentice Pilots and Apprentice Pilots with Limited Registrations, such as health care, travel expenses, training, and other expenses are recognizable when determined to be necessary and reasonable.

(c) The Director does not recognize the following expense items as necessary and reasonable within the meaning of paragraph (a) of this section:

(1) Unreported or undocumented expenses, and expenses that are not reasonable in their amounts or not reasonably related to providing safe, efficient, and reliable pilotage service;

(2) Revenues and expenses from Canadian pilots that are commingled with revenues and expenses from U.S. pilots;

(3) Lobbying expenses; or

(4) Expenses for personal matters.

[USCG-2015-0497, 81 FR 11941, Mar. 7, 2016, as amended by USCG-2018-0665, 84 FR 20578, May 10, 2019; USCG-2020-0457, 86 FR 14220, Mar. 12, 2021; USCG-2021-0431, 87 FR 18524, Mar. 30, 2022]

§§ 404.3–404.99 [Reserved]

§ 404.100 Ratemaking and annual reviews in general.

(a) The Director establishes base pilotage rates by a full ratemaking pursuant to §§ 404.101 through 404.110, which is conducted at least once every 5 years and completed by March 1 of the first year for which the base rates will be in effect. Base rates will be set to meet the goal specified in § 404.1(a).

(b) In the interim years preceding the next scheduled full rate review, the Director will adjust base pilotage rates by an interim ratemaking pursuant to §§ 404.101 through 404.110.

(c) Each year, the Director will announce whether the Coast Guard will conduct a full ratemaking or interim ratemaking procedure.

[USCG-2017-0903, 83 FR 26193, June 5, 2018]

§ 404.101 Ratemaking step 1: Recognize previous operating expenses.

The Director uses an independent third party to review each pilotage association's expenses, as reported and audited for the last full year for which figures are available, and determines which expense items to recognize for base ratemaking purposes in accordance with § 404.2 of this part.

§ 404.102 Ratemaking step 2: Project operating expenses, adjusting for inflation or deflation.

The Director projects the base year's non-compensation operating expenses for each pilotage association, using recognized operating expense items from § 404.101. Recognized operating expense items subject to inflation or deflation factors are adjusted for those factors based on the subsequent year's U.S. government consumer price index data for the Midwest, projected through the year in which the new base rates take effect, or if that is unavailable, the Federal Open Market Committee median economic projections

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for Personal Consumption Expenditures inflation.

[USCG-2017-0903, 83 FR 26193, June 5, 2018]

§ 404.103 Ratemaking step 3: Estimate number of registered pilots and apprentice pilots.

(a) The Director projects, based on the number of persons applying under 46 CFR part 401 to become U.S. Great Lakes registered pilots, and on information provided by the district's pilotage association, the number of pilots expected to be fully working and compensated.

(b) The Director projects, based on the number of persons applying under 46 CFR part 401 to become Apprentice Pilots, traffic projections, information provided by the pilotage association regarding upcoming retirements, and any other relevant data, the number of Apprentice Pilots and Apprentice Pilots with Limited Registrations expected to be in training and compensated.

[USCG-2017-0903, 83 FR 26193, June 5, 2018, as amended by USCG-2021-0431, 87 FR 18524, Mar. 30, 2022]

§ 404.104 Ratemaking step 4: Determine target pilot compensation benchmark and apprentice pilot wage benchmark.

(a) In a full ratemaking year, the Director determines base individual target pilot compensation using a compensation benchmark, set after considering the most relevant currently available non-proprietary information. For supportable circumstances, the Director may make necessary and reasonable adjustments to the benchmark.

(b) In an interim year, the Director adjusts the previous year's individual target pilot compensation level by the Bureau of Labor Statistics' Employment Cost Index for the Transportation and Materials sector, or if that is unavailable, the Director adjusts the previous year's individual target pilot compensation level using a two-step process:

(1) First, the Director adjusts the previous year's individual target pilot compensation by the difference between the previous year's Bureau of Labor Statistics' Employment Cost Index for the Transportation and Materials sector and the Federal Open Mar-

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ket Committee median economic projections for Personal Consumption Expenditures inflation value used to inflate the previous year's target pilot compensation.

(2) Second, the Director then adjusts that value by the Federal Open Market Committee median economic projections for Personal Consumption Expenditures inflation for the upcoming year.

(c) The Director determines each pilotage association's total target pilot compensation by multiplying individual target pilot compensation computed in paragraph (a) or (b) of this section by the number of pilots projected under § 404.103 or § 401.220(a) of this chapter, whichever is lower.

(d) The Director determines the individual Apprentice Pilot wage benchmark at the rate of 36 percent of the individual target pilot compensation, as calculated according to paragraphs (a) or (b) of this section.

(e) The Director determines each pilot association's total Apprentice Pilot wage benchmark by multiplying the Apprentice Pilot compensation computed in paragraph (d) of this section by the number of Apprentice Pilots and Apprentice Pilots with Limited Registrations projected under § 404.103(b).

[USCG-2017-0903, 83 FR 26193, June 5, 2018, as amended by USCG-2018-0665, 84 FR 20578, May 10, 2019; USCG-2020-0457, 86 FR 14220, Mar. 12, 2021; USCG-2021-0431, 87 FR 18525, Mar. 30, 2022]

§ 404.105 Ratemaking step 5: Project working capital fund.

The Director calculates each pilotage association's allowed base working capital fund by adding the projected adjusted operating expenses from § 404.102 and the total target pilot compensation from § 404.104 of this part, multiplied by the preceding year's average annual rate of return for new issues of high grade corporate securities.

[USCG-2015-0497, 81 FR 11941, Mar. 7, 2016, as amended by USCG-2016-0268, 82 FR 41496, Aug. 31, 2017; 82 FR 43864, Sept. 20, 2017]

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§ 404.106 Ratemaking step 6: Project needed revenue.

The Director calculates each pilotage association's base projected needed revenue by adding the projected adjusted operating expenses from § 404.102 of this part, the total target pilot compensation from § 404.104 of this part, and the projected working capital fund from § 404.105 of this part.

[USCG-2015-0497, 81 FR 11941, Mar. 7, 2016, as amended by USCG-2019-0736, 85 FR 20120, Apr. 9, 2020]

§ 404.107 Ratemaking step 7: Calculate initial base rates.

(a) The Director calculates initial base hourly rates by dividing the projected needed revenue from § 404.106 by averages of past hours worked in each district's designated and undesignated waters, using available and reliable data for a multi-year period set in accordance with § 401.220(a) of this chapter.

(b) [Reserved]

[USCG-2017-0903, 83 FR 26193, June 5, 2018]

§ 404.108 Ratemaking step 8: Calculate average weighting factors by Area.

The Director calculates the average weighting factor for each area by computing the 10-year rolling average of weighting factors applied in that area,

beginning with the year 2014. If less than 10 years of data are available, the Director calculates the average weighting factor using data from each year beginning with 2014.

[USCG-2016-0268, 82 FR 41496, Aug. 31, 2017]

§ 404.109 Ratemaking step 9: Calculate revised base rates.

The Director calculates revised base rates for each area by dividing the initial base rate (from Step 7) by the average weighting factor (from Step 8) to produce a revised base rate for each area.

[USCG-2016-0268, 82 FR 41496, Aug. 31, 2017]

§ 404.110 Ratemaking step 10: Review and finalize rates.

The Director reviews the base pilotage rates calculated in § 404.109 of this part to ensure they meet the goal set in § 404.1(a) of this part, and either finalizes them or first makes necessary and reasonable adjustments to them based on requirements of Great Lakes pilotage agreements between the United States and Canada, or other supportable circumstances.

[USCG-2016-0268, 82 FR 41496, Aug. 31, 2017]

PARTS 405-499 [RESERVED]