

requirements of this subpart will now be under the jurisdiction of Mississippi.

Since review of the pertinent Mississippi laws, rules, and regulations showed them to be adequate for the implementation and enforcement of the aforementioned category of NSPS, the EPA hereby notifies the public that it has delegated the authority for the source category listed above on October 30, 1995. The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Authority: This notice is issued under the authority of sections 101, 111, and 301 of the Clean Air Act, as Amended (42 U.S.C. 7401, 7411, and 7601).

Dated: April 24, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 96-11478 Filed 5-8-96; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

46 CFR Parts 403 and 404

[OST Docket No. 50248]

RIN 2105-AC21

Great Lakes Pilotage Rate Methodology

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation (the Department) is responding to comments to a final rule published April 11, 1995, establishing new procedures and methodology for determining Great Lakes pilotage rates and making corresponding changes to the financial reporting requirements required of Great Lakes pilot associations. Based on these comments, the Department has made minor changes to the rule. This final rule does not change the existing Great Lakes pilotage rates and charges.

EFFECTIVE DATE: This rule is effective on June 10, 1996.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Docket Clerk, OST Docket No. 50248, U.S. Department of Transportation, 400 7th St. SW., room PL-401, Washington, DC 20590 from 9 a.m. to 5:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Scott A. Poyer, Project Manager, St. Lawrence Seaway Development

Corporation, 400 Seventh St. SW, Room 5421, Washington, DC 20590, 1-800-785-2779, or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement, 400 7th St. SW., room 10424, Washington, DC 20590, (202) 366-9306.

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 7, 1988, the Department of Transportation published the Great Lakes Pilotage Study Final Report (1988 DOT Pilotage Study). The study revealed weaknesses in accounting for the expenses incurred by the pilot associations and the need to formally establish the factors used in establishing pilotage rates. On April 25, 1990, the Coast Guard published a final rule (55 FR 17580) establishing improved audit requirements and general guidelines and procedures to be followed in ratemaking (CGD 92-072).

In May 1990, the Inspector General (IG) for the Department of Transportation initiated an audit of Coast Guard oversight of Great Lakes pilotage. The final report of the audit (Audit of the U.S. Coast Guard's Oversight and Management of the Great Lakes Pilotage Program), detailing further issues affecting the basis for Great Lakes pilotage rates, was issued on December 14, 1990.

On August 2, 1991, a DOT Task Force was formed to: (1) Develop an interim rate adjustment; and (2) establish a new pilotage ratemaking methodology. On June 5, 1992, an interim rate increase was published (CGD 89-104). The DOT Task Force then developed a new pilotage ratemaking methodology, which the Coast Guard published in a notice of proposed rulemaking (NPRM) (59 FR 17303) dated April 12, 1994.

THE NPRM proposed to amend the Great Lakes pilotage regulations by establishing new procedures for determining Great Lakes pilotage rates and revising the financial reporting requirements mandated for Great Lakes pilot associations (CGD 92-072). The NPRM also announced a public hearing which was held in Cleveland, OH on May 20, 1994. The comment period for the NPRM ended on July 11, 1994.

In response to the NPRM and the public hearing, the Coast Guard received 31 comments and two requests for additional public meetings to explain the proposals contained in the NPRM. In the Federal Register (59 FR 18774) on April 20, 1994, the Coast Guard announced that it would conduct two public meetings. The first public meeting was held in Chicago, IL on May

3, 1994. The second public meeting was held in Massena, NY on May 5, 1994.

The Coast Guard also received one request to extend the comment period for the NPRM. Because the comment period for the NPRM was 90 days, the Coast Guard and the Department determined that there was sufficient time to submit comments. Therefore, the comment period was not extended.

On April 11, 1995, the Department published a final rule with request for comments (60 FR 18366) (1995 final rule) establishing improved procedures for determining Great Lakes pilotage rates, and revised financial reporting requirements mandated for Great Lakes pilot associations. The comment period ended on May 11, 1995. Although the Coast Guard issued the NPRM under authority delegated to the Commandant by the Secretary, the Secretary issued the 1995 final rule. On December 11, 1995, the Secretary transferred authority to administer the Great Lakes Pilotage Act of 1960 (Public Law 86-555, 46 U.S.C. 9301 *et seq.*) (the Act) to the Administrator of the SLSDC. Nevertheless, the Secretary is issuing this final rule. Under 49 CFR 1.43(a), the Secretary may exercise powers and duties delegated or assigned to officials other than the Secretary.

Several commenters requested that the comment period for the rulemaking be extended. Because all late-filed comments were considered, and because this rulemaking has already been the subject of extensive public comment, the Department determined that there was sufficient time to submit comments regarding this 1995 final rule. Therefore, the comment period was not extended.

Background and Purpose

Under the Act, vessels of the United States operating on register and foreign vessels must engage a U.S. or Canadian registered pilot when traversing the waters of the Great Lakes. The Act vests the Secretary of Transportation with responsibility for setting pilotage rates. Section 9303(f) of the Act provides that the Secretary shall prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services.

Currently, the navigable waters of the great Lakes are divided into eight pilotage areas. United States registered pilots, along with their Canadian counterparts, provide pilotage services in areas 1, 2, 4, 5, 6, 7, and 8. Pilotage area 3 (the Welland Canal) is currently a wholly-Canadian area where only Canadian pilots provide services. Pilotage areas 2, 4, 6, and 8 are

“undesigned waters.” Pilotage areas 1, 5, and 7 are “designated waters.” Pilots are required to direct the navigation of vessels in designated waters. Pilots are required to be on board and available to direct the navigation of vessels in undesigned waters. The seven U.S. pilotage areas are grouped together into three pilotage districts. District 1 consists of areas 1 and 2. District 2 consists of areas 4 and 5. District 3 consists of areas 6, 7, and 8. Each district has its own pilot association.

Section 9305 of the Act provides that the Secretary of Transportation, subject to the concurrence of the Secretary of State, may make arrangements with the appropriate agency of Canada to prescribe joint or identical rates and charges. The latest Memorandum of Arrangements between the United States and Canada, dated January 18, 1977, specifies that the Secretary of Transportation of the United States of America and the Minister of Transport of Canada will establish regulations imposing identical rates. A copy of this Memorandum of Arrangements is available in the docket and may also be obtained by writing to Scott A. Poyer, at the address listed under **FOR FURTHER INFORMATION CONTACT**, above. In the past, consultations between the United States and Canada resulted in nominally identical U.S. and Canadian rates.

However, there are differences in the cost bases and in the operating organizations of the U.S. and Canadian pilots, particularly with regard to pilot compensation. These differences need to be taken into account in reaching identical U.S. and Canadian rates. As a result, the ratemaking methodology contained in this final rule would not translate directly into new rates, but rather would form the basis for proposals to be negotiated with Canada.

Discussion of Comments and Changes

The Department received nine comments and thirteen endorsements of one of the nine comments. Comments came from one Great Lakes pilot association, three Great Lakes Registered Pilots, one professional association representing pilots, one professional association representing vessel operators and steamship agents on the Great Lakes, one labor organization, one professional auditor, and the comptroller of one Great Lakes pilot association with thirteen endorsements by individual members of that association. Some of the comments addressed issues that were not the subject of the 1995 final rule. The Department is responding only to those comments relating to this rulemaking.

Three comments were generally supportive of the 1995 final rule and characterized it as an improvement over the NPRM, but with some areas that still need improvement. These comments were made by one pilot group, one professional organization representing pilots, and one labor organization. Six comments objected to the 1995 final rule because it was considered to be confusing, not viable, or not in concurrence with the DOT IG's intentions. These comments were made by one professional organization representing vessel agents, one professional auditor, three Great Lakes Registered pilots, and one comptroller of a Great Lakes pilot association with thirteen endorsements. The Department believes most of the methodology presented in the 1995 final rule represents a workable compromise between the disparate interests involved. Therefore, the ratemaking methodology presented in the 1995 final rule is substantially retained in this final rule.

Four commenters objected to what they perceived as the 1995 final rule's “elimination of annual audits.” The two types of audits discussed in the Great Lakes pilotage regulations (i.e., audits by pilot associations, and audits by the Director) are discussed in 46 CFR §§ 403.300(b) and 404.1(b). Commenters believed that the amended wording of these sections eliminated a requirement that pilot associations and/or the Director conduct annual audits of the pilot associations. Commenters believed the elimination of these annual audit requirements would weaken financial oversight of pilot associations and encourage spending abuse.

In fact, the 1995 final rule did not eliminate annual audits. Pilot associations were still required to obtain an annual audit by an independent certified public accountant.

However, the Department agrees that the wording of the audit requirements was not as clear as it could have been. To make this requirement more clear, the language of section 403.300(b) has been amended to reinforce the requirement that pilot associations be audited by an independent CPA every year, and to require that the audit results be forwarded to the Director every year. Section 404.1(b) has been amended to reinforce the requirement that the Director review the annual association audits every year, and conduct a thorough audit of pilot association expenses at a minimum of once every five years.

One commenter stated that certification of financial reports by an association officer, as required by 46

CFR § 403.300(a)(3), is redundant and “prejudicial” to the association's regular financial reporting. The Department does not understand how certification of financial documents could in any way be “prejudicial,” and the commenter did not elaborate on this point. The Department agrees that there is a certain amount of redundancy in requiring an association officer such as a Treasurer, to review the work of a bookkeeper or accountant who prepares the financial reports. However, this redundancy is standard procedure in most well-managed businesses, and is an important safeguard against waste, fraud, and abuse. For these reasons, section 403.300(a)(3) is retained.

One commenter objected to section 404.5(a)(2) which requires the Director to determine the reasonableness of pilot association expenses by comparing them to comparable expenses paid by others in the maritime industry. The commenter believes that there are no industries on the Great Lakes comparable to Great Lakes pilotage, as pilotage is “vastly different” from other industries. The department disagrees. The commenter did not elaborate on how pilotage was different from all other industries. Pilots operate in the same marketplace as other maritime industries on the Great Lakes, and incur many of the same types of expenses. The Department does not believe there is any basis for the claim that pilotage expenses cannot be compared with anything else; therefore section 404.5(a)(2) is retained.

One commenter stated that the provisions of 46 CFR § 404.5(a)(5) are unclear, inappropriate, and unfair. This section requires that profits, but not losses, from non-pilotage transactions be included in ratemaking calculations. The Department designed this section as a disincentive to pilot association speculation in non-pilotage related businesses, since the Department does not consider these types of transactions to be in the public interest. As such, section 404.5(a)(5) accomplishes its intended objective, and is therefore retained.

One commenter objected to 46 CFR § 404.5(a)(8)(ii), which provides that lobbying expenses will not be allowed for ratemaking purposes. The Department has no objection to pilot associations who wish to expend money for lobbying purposes. However, it does not seem reasonable to make others, i.e., those members of the public who pay pilotage rates, pay for these expenses. Therefore, section 404.5(a)(8)(ii) is retained.

Four sets of comments from pilots and their representatives questioned the

methods used to compute pilot compensation targets and pilot work hour targets, which are used to set the number of pilots for ratemaking purposes. These methods are contained in Step 2 of Appendix A to Part 404, and section 404.5(a). This section continues the Department policy of maintaining income comparability between Great Lakes Registered Pilots, and masters/chief mates on Great Lakes vessels, and the Department's pilot work hour targets of 1000 hours in designated waters and 1800 hours in undesignated waters. These policies were established as a result of the 1988 DOT Pilotage Study, which examined many alternatives and selected the master/ chief mate targets and the work hour targets. Commenters believed pilots should earn more than masters/ chief mates, and/or pilots should work fewer hours. Commenters proposed several alternatives including income comparability with State pilots, and inclusion of travel time in the calculation of pilot work hours. After considering all the alternatives, the Department is keeping this section of the final rule unchanged. This is fully consistent with the recommendation in the 1988 DOT Pilotage Study, which states, "The study team believes that pilot compensation should be tied to the local economy. The use of local masters and mates pay scales has the important impact of tying pilot compensation to the regional industry pay levels. Salaries of pilots, like those of teachers, physicians, lawyers, and other professionals, are tied to the fluctuations of supply and demand for their services in their particular locality. In this fashion, Great Lakes pilots share in the fortunes of the Great Lakes." Commenters offered no new information that alters this assessment. Therefore Step 2 of Appendix A to Part 404, and section 404.5(a) are retained.

One commenter objected to the Return on Investment (ROI) provisions detailed in Step 5 of Appendix A to Part 404. The commenter believed a ROI is not applicable or feasible for Great Lakes pilot associations because: (a) Pilot associations have no inventory, or investment in inventory, and accounts receivable are systematically collected within a 12 month period; (b) the value of fixed assets on the organizations' balance sheets is immaterial and all equipment is leased from related parties; (c) there is no stockholder's equity in two associations and in the third association it is not owned by all the pilots; and (d) the ROI would not have a significant impact on pilotage rates. As stated by the Department in the

1995 final rule, a return element is an important component of cost-based rate methodologies. Rates that have been set without a return element have been vulnerable to legal challenge and do not meet the goals of the investigations and audits that underlie this rulemaking. Also, in order to negotiate with the Canadians we must have rates that can withstand scrutiny as to their conformity to sound ratemaking principles. The Department believes it is only fair to allow pilots a return on the capital they invest. If, as the commenter asserts, it is true that pilot associations have little or no capital investments, then it is true that the return on these investments will be small. However, this does not invalidate the principle that pilots should receive a return on the capital they invest. Whether their capital be small or large, individuals who invest in a business have a right to expect a return on that capital. Therefore the ROI provisions of section 404.5(a)(4), step 5 of appendix A, and the formulas contained in appendix B are retained.

Two commenters believe the 1995 final rule should address the business structure of pilot associations. Currently two pilot associations are structured as partnerships and one pilot association is structured as a corporation. One commenter believes that the rule should better equalize for the differences in association structure. The other commenter recommends that the 1995 final rule require all associations to adopt the same business structure. At the present time, it is Department policy that each pilot association should be permitted to adopt the business structure that best suits its needs, and it is incumbent on each association to live with the costs and benefits inherent in its choice. This policy allows pilots the freedom to run their own businesses to the maximum extent practicable, with no discernably negative consequences for the public. The Department is not aware of any abuses of this policy at the present time. However, if it becomes necessary to reverse this policy, this matter would be the subject of a future rulemaking, subject to public input and comment.

One commenter recommends that the Great Lakes pilotage ratemaking methodology should be clear and easy to implement, and any future changes to the methodology should be made with the participation of the pilot associations and a committee of independent and professional individuals. The Department agrees. The Department has endeavored to make the ratemaking methodology contained in this rule as clear and easy

as practical. In that regard, three commenters agree that the methodology contained in the 1995 final rule is an improvement over the methodology proposed in the NPRM. Any changes to the Great Lakes pilotage ratemaking methodology that may be the subject of future rulemakings will involve input and comments from the pilot associations and other members of the public.

Four commenters believe the 1995 final rule granted the Director of Great Lakes Pilotage too much authority and would allow the Director to micro-manage activities of the pilot associations of which the Director is not sufficiently knowledgeable. The Department disagrees. The incumbent Director of Great Lakes Pilotage is extremely knowledgeable of pilotage and other maritime activities. He has been involved in the performance of Great Lakes Pilotage Act functions for approximately 11 years. He is a licensed merchant mariner, and the former Head of the Navigation Department at the Maritime Institute of Technology and Graduate Studies, the advanced training facility of the International Organization of Masters, Mates and Pilots. Moreover, every previous Director of Great Lakes Pilotage has had an extensive maritime background, as well as experience in dealing with merchant mariners and pilots. The position description for the Director of Great Lakes Pilotage position requires a substantial maritime background. In addition, the remaining pilotage staff have extensive maritime backgrounds and their positions require maritime, economic, and ratesetting knowledge and experience. Therefore, the sections of the 1995 final rule related to the Director's authority and discretion are retained.

Two commenters believe the U.S. Government should cease oversight of Great Lakes Pilotage, including the ratemaking and financial oversight regulations contained in this rulemaking. The Department is making no changes pursuant to this comment. As stated earlier, the Act requires the Secretary to prescribe by regulation rates and charges for pilotage services.

Executive Order 12866

This rule is a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget under that order. It is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979) because rulemaking affecting the setting of pilotage rates has been controversial and of significant interest to the public.

The Department expects the economic impact of this rule to be minimal. This rule does not represent a significant departure from the current ratemaking process, and there are no expected increases in costs. Therefore, a full regulatory evaluation is not necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Department must consider whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). One commenter believes that this rule will have a significant economic impact on a substantial number of small entities. However, the commenter did not elaborate on why this impact would occur. Since this rule is not a major change from past rulemaking practices, and only three pilot associations with a total of approximately 40 members will be directly affected by this rule, this final rule should have little or no impact on small entities that pay pilotage rates or that receive income from pilotage rates. Because it expects the impact of this proposal to be minimal, the Department certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains collection-of-information requirements. The Department has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has approved them. The part numbers are parts 401 and 403 and the corresponding OMB approval number is OMB Control Number 2115-0616.

Federalism

The Department has analyzed this final rule under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. State action addressing pilotage regulation is preempted by 46 U.S.C. 9306, which provides that a State or political subdivision of a State may not regulate

or impose any requirement on pilotage on the Great Lakes.

Environment

The Department considered the environmental impact of this final rule and concluded that this rule is categorically excluded from further environmental documentation under section 2.B.2 of Commandant Instruction M16475.1B. The rule is procedural in nature because it deals exclusively with ratemaking and accounting procedures. Therefore, this is included in the categorical exclusion in subsection 2.B.2.1.—Administrative actions or procedural regulations and policies which clearly do not have any environmental impact. A Categorical Exclusion Determination has been placed in the docket.

List of Subjects in 46 CFR Parts 403 and 404

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

For reasons set out in the preamble, the Department proposes to amend Parts 403 and 404 of Title 46 of the Code of Federal Regulations as follows:

PART 403—[AMENDED]

1. The authority citation for part 403 continues to read as follows:

Authority: 46 U.S.C. 8105, 9303, 9304; 49 CFR 1.46.

2. Section 403.300(b) is revised to read as follows:

§ 403.300 Financial reporting requirements.

* * * * *

(b) Required Reports:

(1) By April 1 of each year, each Association shall obtain an annual unqualified long form audit report for the preceding year, audited and prepared in accordance with generally accepted auditing standards by an independent certified public accountant.

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

PART 404—[AMENDED]

3. Section 404.1(b) is revised to read as follows:

Authority: 46 U.S.C. 8105, 9303, 9304, 49 CFR 1.46.

§ 404.1 General ratemaking provisions.

* * * * *

(b) Great Lakes pilotage rates shall be reviewed annually in accordance with the procedures detailed in Appendix C to this part. The Director shall review Association audit reports annually and, at a minimum, the Director shall complete a thorough audit of pilot association expenses and establish pilotage rates in accordance with the procedures detailed in § 404.10 of this part at least once every five years. An interested party or parties may also petition the Director for a review at any time. The petition must present a reasonable basis for concluding that a review may be warranted. If the Director determines, from the information contained in the petition, that the existing rates may no longer be reasonable, a full review of the pilotage rates will be conducted. If the full review shows that pilotage rates are within a reasonable range of their target, no adjustment to the rates will be initiated.

Issued at Washington, DC this 2nd day of May, 1996.

Federico Peña,

Secretary of Transportation.

[FR Doc. 96-11499 Filed 5-8-96; 8:45 am]

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Research and Special Programs Administration

49 CFR Parts 107, 171, 173 and 178

[Docket No. HM-207C, Amdt. Nos. 107-38, 171-141, 173-249, and 178-113]

RIN 2137-AC63

Exemption, Approval, Registration and Reporting Procedures; Miscellaneous Provisions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: In this final rule, RSPA revises procedures for applying for exemptions and establishes procedures for applying for approvals, and registering and filing reports with RSPA. In addition, RSPA amends certain provisions, mostly procedural, in the Hazardous Materials Regulations. This rulemaking action is intended to expedite processing of applications and to promote clarity and program consistency. It is part of the President's Regulatory Reinvention Initiative to revise all agency regulations that are in need of reform.

DATES: *Effective date:* The effective date of these amendments is October 1, 1996.

Compliance date: Voluntary compliance with the regulations, as