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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 401, 403, and 404

USCG-2019-0736

RIN 1625-AC56

Great Lakes Pilotage Rates - 2020 Annual Review and Revisions to Methodology

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: In accordance with the Great Lakes Pilotage Act of 1960, the Coast Guard is establishing new base pilotage rates for the 2020 shipping season. This final rule will adjust the pilotage rates to account for changes in district operating expenses, an increase in the number of pilots, and anticipated inflation. The Coast Guard estimates that this final rule will result in a 1 percent net increase in pilotage costs, compared to the 2019 season. In addition, the Coast Guard is clarifying the rules related to the working capital fund.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to https://www.regulations.gov, type USCG-2019-0736 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email Mr. Brian Rogers, Commandant (CG-WWM-2), Coast Guard; telephone 202-372-1535, email *Brian.Rogers@uscg.mil,* or fax 202-372-1914**.**

SUPPLEMENTARY INFORMATION:

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I. Abbreviations

AMOU	American Maritime Officers Union
APA	American Pilots Association
BLS	Bureau of Labor Statistics
CAD	Canadian dollars
ECI	Employment Cost Index
CFR	Code of Federal Regulations
CPA	Certified public accountant
CPI	Consumer Price Index
DHS	Department of Homeland Security
FOMC	Federal Open Market Committee
FR	**Federal Register**
GAO	Government Accountability Office
GLPA	Great Lakes Pilotage Authority (Canadian)
GLPAC	Great Lakes Pilotage Advisory Committee
GLPMS	Great Lakes Pilotage Management System
GLPO	U.S. Coast Guard Great Lakes Pilotage Office
IRS	Internal Revenue Service
JTR	Joint Travel Rates
LPA	Lakes Pilots Association
NAICS	North American Industry Classification System
NPRM	Notice of proposed rulemaking
NTSB	National Transportation Safety Board
OMB	Office of Management and Budget
PCE	Personal Consumption Expenditures

RA	Regulatory analysis
REC	Record of Environmental Consideration
RFA	Regulatory Flexibility Act
SBA	Small Business Administration
§	Section symbol
SLSMC	Saint Lawrence Seaway Management Corporation
SLSPA	Saint Lawrence Seaway Pilots' Association
U.S.C.	United States Code
USD	United States dollars
WLPA	Western Great Lakes Pilot Association

II. Executive Summary

Pursuant to the Great Lakes Pilotage Act of 1960 ("the Act"),[1] the Coast Guard regulates pilotage for oceangoing vessels on the Great Lakes and St. Lawrence Seaway — including setting the rates for pilotage services and adjusting them on an annual basis. The rates, which currently range from $306 to $733 per pilot hour (depending on in which of the specific six areas pilotage service is provided), are paid by shippers to three U.S. pilot associations (each responsible for one of the three Districts). The three pilot associations, which are the exclusive U.S. source of registered pilots on the Great Lakes, use this revenue to cover operating expenses, maintain infrastructure, compensate working pilots, and train new pilots.

To compute the rate for pilotage services, we use a ratemaking methodology that we have developed since 2016, in accordance with our statutory requirements and regulations. Our ratemaking methodology calculates the revenue needed for each pilotage association (operating expenses, an increase in the number of pilots, and anticipated inflation), and then divides that amount by the expected shipping traffic over the course of the coming year, to produce an hourly rate. This process is currently

[1] Title 46 of the United States Code (U.S.C.) Chapter 93; Public Law 86-555, 74 Stat. 259, as amended.

effected through a 10-step methodology, which is explained in detail in section IV of the preamble to this final rule.

In this final rule, as part of our annual review, we are establishing new pilotage rates for 2020 based on the existing ratemaking methodology. The result is an increase in rates for five areas and a decrease in the rate for the one remaining area. These changes are due to a combination of four factors: (1) an increase in total operating expenses for the associations compared to the previous year[2], (2) an increase in the amount of money needed for the working capital fund, (3) inflation of pilot compensation by 2 percent, and (4) the net addition of one working pilot at the beginning of the 2020 shipping season in District Two. In addition, in this final rule, the Coast Guard made two adjustments to the operating expenses based on public comment, which increased the final rates from those published in the notice of proposed rulemaking (NPRM). In the final rule we adjusted the operating expenses to include the 3 percent shared council fee which we incorrectly deducted in the NPRM; and added a surcharge adjustment for District 2 and District 3 to account for the differences between their accrued training expenses and the amount of money they collected via the surcharge in 2017. Based on the ratemaking model discussed in this final rule, we are finalizing the rates shown in table 1.

Table 1 — Current and New Pilotage Rates on the Great Lakes

Area	Name	Final 2019 pilotage rate	Proposed 2020 pilotage rate	Final 2020 pilotage rate

[2] Operating expenses decreased for the District One: Undesignated area, the District Two: Undesignated area, and the District Three: Undesignated Lake Superior area. Operating expenses increased for the District One: Designated area, the District Two: Designated area, the District Three: Designated area, and the District Three: Undesignated Lakes Huron and Michigan area.

District One: Designated	St. Lawrence River	$733	$757	$758
District One: Undesignated	Lake Ontario	$493	$462	$463
District Two: Designated	Navigable waters from Southeast Shoal to Port Huron, MI	$603	$602	$618
District Two: Undesignated	Lake Erie	$531	$573	$586
District Three: Designated	St. Mary's River	$594	$621	$632
District Three: Undesignated	Lakes Huron, Michigan, and Superior	$306	$327	$337

This final rule will impact 52 U.S. Great Lakes pilots, the 3 pilot associations, and the owners and operators of an average of 266 oceangoing vessels that transit the Great Lakes annually. This final rule is not economically significant under Executive Order 12866 and will not affect the Coast Guard's budget or increase Federal spending. The estimated overall annual regulatory economic impact of this rate change is a net increase of $279,845, which is a 1 percent net increase in estimated payments made by shippers from the 2019 shipping season. Because the Coast Guard must review, and, if necessary, adjust rates each year, we analyze these as single-year costs and do not annualize them over 10 years. Section VIII of this preamble provides the regulatory impact analyses of this final rule.

III. Basis and Purpose

The legal basis of this rulemaking is the Great Lakes Pilotage Act of 1960 ("the Act"),[3] which requires foreign vessels and U.S. vessels operating "on register," meaning those U.S. vessels engaged in foreign trade to use U.S. or Canadian registered pilots while transiting the U.S. waters of the St. Lawrence Seaway and the Great Lakes system.[4] For the U.S. registered Great Lakes pilots ("pilots"), the Act requires the Secretary to "prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services."[5] The Act requires that rates be established or reviewed and adjusted each year, no later than March 1.[6] The Act requires that base rates be established by a full ratemaking at least once every 5 years, and in years when base rates are not established, they must be reviewed and, if necessary, adjusted.[7] The Secretary's duties and authority under the Act have been delegated to the Coast Guard.[8]

This final rule establishes new pilotage rates for the 2020 shipping season. The Coast Guard believes that the new rates will continue to promote pilot retention, ensure safe, efficient, and reliable pilotage services on the Great Lakes, and provide adequate funds to upgrade and maintain infrastructure.

IV. Background

Pursuant to the Act, the Coast Guard, in conjunction with the Canadian Great Lakes Pilotage Authority (GLPA), regulates shipping practices and rates on the Great Lakes and the St. Lawrence Seaway. Under Coast Guard regulations, all vessels engaged

[3] 46 U.S.C. Chapter 93; Public Law 86-555, 74 Stat. 259, as amended.
[4] 46 U.S.C. 9302(a)(1).
[5] 46 U.S.C. 9303(f).
[6] *Ibid.*
[7] *Ibid.*
[8] Department of Homeland Security (DHS) Delegation No. 0170.1, para. II (92.f).

in foreign trade (often referred to as "salties") are required to engage U.S. or Canadian pilots during their transit through the regulated waters.[9] U.S. and Canadian "lakers," which account for most commercial shipping on the Great Lakes, are not affected.[10] Generally, vessels are assigned a U.S. or Canadian pilot depending on the order in which they transit a particular area of the Great Lakes, and do not choose the pilot they receive. If a vessel is assigned a U.S. pilot, that pilot will be assigned by the pilotage association responsible for the particular district in which the vessel is operating, and the vessel operator will pay the pilotage association for the pilotage services. The Canadian GLPA establishes the rates for Canadian registered pilots.

The U.S. waters of the Great Lakes and the St. Lawrence Seaway are divided into three pilotage districts. Pilotage in each district is provided by an association certified by the Coast Guard's Director of the Great Lakes Pilotage ("the Director") to operate a pilotage pool. The Saint Lawrence Seaway Pilotage Association provides pilotage services in District One, which includes all U.S. waters of the St. Lawrence River and Lake Ontario. The Lakes Pilotage Association provides pilotage services in District Two, which includes all U.S. waters of Lake Erie, the Detroit River, Lake St. Clair, and the St. Clair River. Finally, the Western Great Lakes Pilotage Association provides pilotage services in District Three, which includes all U.S. waters of the St. Mary's River; Sault Ste. Marie Locks; and Lakes Huron, Michigan, and Superior.

Each pilotage district is further divided into "designated" and "undesignated" areas, which is depicted in table 2 below. Designated areas, classified as such by

[9] See title 46 of the Code of Federal Regulations (CFR) part 401.
[10] 46 U.S.C. 9302(f). A "laker" is a commercial cargo vessel especially designed for and generally limited to use on the Great Lakes.

Presidential Proclamation, are waters in which pilots must, at all times, be fully engaged in the navigation of vessels in their charge.[11] Undesignated areas, on the other hand, are open bodies of water not subject to the same pilotage requirements. While working in undesignated areas, pilots must "be on board and available to direct the navigation of the vessel at the discretion of and subject to the customary authority of the master."[12] For these reasons, pilotage rates in designated areas can be significantly higher than those in undesignated areas.

Table 2 — Areas of the Great Lakes and St. Lawrence Seaway

District	Pilotage Association	Designation	Area Number[13]	Area Name[14]
One	Saint Lawrence Seaway Pilotage Association	Designated	1	St. Lawrence River
		Undesignated	2	Lake Ontario
Two	Lake Pilotage Association	Designated	5	Navigable waters from Southeast Shoal to Port Huron, MI
		Undesignated	4	Lake Erie
Three	Western Great Lakes Pilotage Association	Designated	7	St. Mary's River
		Undesignated	6	Lakes Huron and Michigan
		Undesignated	8	Lake Superior

Each pilot association is an independent business and is the sole provider of pilotage services in the district in which it operates. Each pilot association is responsible for funding its own operating expenses, maintaining infrastructure, acquiring and implementing technological advances, training personnel or partners, and pilot compensation. Through a public rulemaking procedure, and with input from Great Lakes

[11] Presidential Proclamation 3385, *Designation of restricted waters under the Great Lakes Pilotage Act of 1960*, December 22, 1960. 25 FR 13681 (December 24, 1960).
[12] 46 U.S.C. 9302(a)(1)(B).
[13] Area 3 is the Welland Canal, which is serviced exclusively by the Canadian GLPA and, accordingly, is not included in the United States pilotage rate structure.
[14] The areas are listed by name, see 46 CFR 401.405.

Pilots Advisory Committee (GLPAC), the Coast Guard developed a 10-step ratemaking methodology, based on a historic 10-year average of actual traffic, to derive a pilotage rate that covers these expenses. The methodology is designed to measure how much revenue each pilotage association would need to cover expenses and provide competitive compensation to working pilots. We then divide that amount by the historic 10-year average for pilotage demand, as estimated by using historic pilotage work hours. We recognize that, in years where traffic is above average, pilot associations will accrue more revenue than projected, while in years where traffic is below average, they will take in less. We believe that over the long term, however, this system ensures that infrastructure will be maintained and that pilots will receive adequate compensation and work a reasonable number of hours, with adequate rest between assignments to ensure retention of highly trained personnel.

Over the past 4 years, the Coast Guard made several adjustments to the Great Lakes pilotage ratemaking methodology. In 2016, we made significant changes to the methodology, moving to an hourly billing rate for pilotage services and changing the compensation benchmark to a more transparent model. In 2017, we added additional steps to the ratemaking methodology, including new steps that better account for the additional revenue produced by the application of weighting factors (discussed in detail in Steps 7 through 9 below, in this section of the preamble). In 2018, we revised the methodology by which we develop the compensation benchmark, based upon U.S. mariners rather than Canadian registered pilots. The current methodology, which was finalized in the Great Lakes Pilotage Rates-2019 Annual Review and Revisions to Methodology final rule (84 (FR 20551, May 10, 2019) , is designed to accurately capture

all of the costs and revenues associated with Great Lakes pilotage requirements and produce an hourly rate that adequately and accurately compensates pilots and covers expenses. The current methodology is summarized in the section below.

Summary of Ratemaking Methodology

As stated above, the ratemaking methodology, outlined in 46 CFR sections 404.101 through 404.110, consists of 10 steps that are designed to account for the revenues needed and total traffic expected in each district. The result is an hourly rate, determined separately for each of the areas administered by the Coast Guard.

In Step 1, "Recognize previous operating expenses," (§ 404.101), the Director reviews audited operating expenses from each of the three pilotage associations. This number forms the baseline amount that each association is budgeted. Because of the time delay between when the association submits raw numbers and when the Coast Guard receives audited numbers, this number is 3 years behind the projected year of expenses. In calculating the 2020 rates in this proposal, the Coast Guard is beginning with the audited expenses from the 2017 shipping season.

While each pilotage association operates in an entire district, the Coast Guard determines costs by area. Thus, with regard to operating expenses, we allocate certain operating expenses to undesignated areas, and certain operating expenses to designated areas. In some cases (e.g., insurance for applicant pilots who operate in undesignated areas only), we can allocate the costs based on where they are actually accrued. In other situations (e.g., general legal expenses), expenses are distributed between designated and undesignated waters on a *pro rata* basis, based upon the proportion of income forecast from the respective portions of the district.

In Step 2, "Project operating expenses, adjusting for inflation or deflation," (§ 404.102), the Director develops the 2020 projected operating expenses. To do this, we apply inflation adjustors for 3 years to the operating expense baseline received in Step 1. The inflation factors used are from the Bureau of Labor Statistics' (BLS) Consumer Price Index (CPI) for the Midwest Region, or, if not available, the Federal Open Market Committee (FOMC) median economic projections for Personal Consumption Expenditures (PCE) inflation. This step produces the total operating expenses for each area and district.

In Step 3, "Estimate number of working pilots," (§ 404.103), the Director calculates how many pilots are needed for each district. To do this, we employ a "staffing model," described in § 401.220, paragraphs (a)(1) through (a)(3), to estimate how many pilots would be needed to handle shipping during the beginning and close of the season. This number is helpful in providing guidance to the Director in approving an appropriate number of credentials for pilots.

For the purpose of the ratemaking calculation, we determine the number of working pilots provided by the pilotage associations (see § 404.103), which is what we use to determine how many pilots need to be compensated via the pilotage fees collected.

In Step 4, "Determine target pilot compensation benchmark," (§ 404.104), the Director determines the revenue needed for pilot compensation in each area and District. This step contains two processes. In previous years, in the first process, we calculated the total compensation for each pilot using a "compensation benchmark." Next, we multiplied the individual pilot compensation by the number of working pilots for each area and district (from Step 3), producing a figure for total pilot compensation. Because

pilots are paid by the associations, but the costs of pilotage is divided by area for accounting purposes, we assigned a certain number of pilots for the designated areas and a certain number of pilots for the undesignated areas to determine the revenues needed for each area. To make the determination of how many pilots to assign, we used the staffing model designed to determine the total number of pilots described in Step 3, above.

In the past, as explained more fully below, the Coast Guard used two different benchmarks to calculate target pilot compensation: AMOU contract data and Canadian pilot compensation. The Coast Guard does not believe either benchmark is appropriate at this time. Instead, the Coast Guard has determined that the target compensation used in the 2019 ratemaking is an appropriate level of compensation for Great Lakes pilots because it serves the public interest and achieves the Coast Guard's goals of safety through rate and compensation stability while also promoting recruitment and retention of qualified United States registered pilots.

Prior to 2016, the Coast Guard based the compensation benchmark on data provided by the AMOU regarding its contract for first mates on the Great Lakes. However, in 2016 the AMOU elected to no longer provide this data to the Coast Guard, and thus, in the 2016 ratemaking (81 FR 11907, March 7, 2016) we used average compensation for a Canadian pilot plus a 10-percent adjustment. As a result of a legal challenge filed by the shipping industry, the court found that the Coast Guard did not adequately support the 10-percent addition to the Canadian GLPA benchmark, and thus its use was deemed arbitrary and capricious. *American Great Lakes Ports Association v. Zukunft*, 296 F.Supp 3d 27, 46-48 (D.D.C. 2017). The Coast Guard then based the 2018

benchmark on data provided by the AMOU regarding its contract for first mates on the Great Lakes in the 2011 to 2015 period, and adjusted it for inflation using FOMC median economic projections for PCE inflation. We used the information provided by the AMOU because it was the most recent publicly available information to which we had access.

For the 2019 ratemaking, the Coast Guard did not have access to current AMOU contract data and our research did not yield a better compensation benchmark; therefore, target pilot compensation was determined by taking the 2018 number and adjusting it for inflation.

For the 2020 ratemaking, the situation with regard to compensation benchmarks has not changed. The Coast Guard still lacks access to current AMOU contract data and, as discussed in prior rulemakings, the Coast Guard does not believe that other American or Canadian pilot compensation data is appropriate to use as a benchmark at this time. The Coast Guard, however, has determined that based on its experience over the past two ratemakings that the level of target pilot compensation for those years provides an appropriate level of compensation for American Great Lakes pilots. The Coast Guard therefore, will not, at this time, seek alternative benchmarks for target compensation and for 2020 and future ratemakings will instead simply adjust the amount of target pilot compensation for inflation. This benchmark successfully achieves the Coast Guard's goals of safety through rate and compensation stability while also promoting recruitment and retention of qualified United States registered pilots. Therefore, the Coast Guard uses this as the compensation benchmark for future rates.

In the second process of Step 4, set forth in § 404.104(c), the Director determines the total compensation figure for each District. To do this, the Director multiplies the compensation benchmark by the number of working pilots for each area and district (from Step 3), producing a figure for total pilot compensation.

In Step 5, "Project working capital fund," (§ 404.105), the Director calculates a value that is added to pay for future unidentified expenses. For example, these expenses can be unforeseen facility repairs, infrastructure purchases, technology procurements, or training. This value is calculated by adding the total operating expenses (derived in Step 2) to the total pilot compensation (derived in Step 4), and multiplying that figure by the preceding year's average annual rate of return for new issues of high-grade corporate securities using Moody's Seasoned Aaa Corporate Bond Yield data. This figure constitutes the "working capital fund" for each area and district.

In Step 6, "Project needed revenue," (§ 404.106), the Director simply adds up the totals produced by the preceding steps. The projected operating expense for each area and district (from Step 2) is added to the total pilot compensation (from Step 4) and the working capital fund contribution (from Step 5). The total figure, calculated separately for each area and district, is the "needed revenue."

In Step 7, "Calculate initial base rates," (§ 404.107), the Director calculates an hourly pilotage rate to cover the needed revenue as calculated in Step 6. This step consists of first calculating the average hours of traffic over 10 years for each area. Next, the revenue needed in each area (calculated in Step 6) is divided by the average hours of traffic over 10 years to produce an initial base rate.

An additional element, the "weighting factor," is required under § 401.400. Pursuant to that section, ships pay a multiple of the "base rate" as calculated in Step 7 by a number ranging from 1.0 (for the smallest ships, or "Class I" vessels) to 1.45 (for the largest ships, or "Class IV" vessels). As this significantly increases the revenue collected, we account for the added revenue produced by the weighting factors to ensure that shippers are not overpaying for pilotage services.

In Step 8, "Calculate average weighting factors by Area," (§ 404.108), the Director calculates how much extra revenue, as a percentage of total revenue, has historically been produced by the weighting factors in each area. We do this by using a historical average of the applied weighting factors for each year since 2014 (the first year the current weighting factors were applied).

In Step 9, "Calculate revised base rates," (§ 404.109), the Director modifies the base rates by accounting for the extra revenue generated by the weighting factors. We do this by dividing the initial pilotage rate for each area (from Step 7) by the corresponding average weighting factor (from Step 8), to produce a revised rate.

In Step 10, "Review and finalize rates," (§ 404.110), often referred to informally as "Director's discretion," the Director reviews the revised base rates (from Step 9) to ensure that they meet the goals set forth in the Act and in 46 CFR 404.1(a), which include promoting efficient, safe, and reliable pilotage service on the Great Lakes; generating sufficient revenue for each pilotage association to reimburse necessary and reasonable operating expenses; compensating trained and rested pilots fairly; and providing appropriate profit for improvements. Because it is our goal to be as transparent as possible in our ratemaking procedure, we use this step sparingly to adjust rates.

After the base rates are set, § 401.401 permits the Coast Guard to apply surcharges. We previously used surcharges to pay for the training of new pilots, rather than incorporating training costs into the overall "needed revenue" used in the calculation of the base rates. The surcharge accelerates the reimbursement of certain necessary and reasonable expenses. Last year, we applied a surcharge to account for the associations' expenses for the Applicant Trainee and Apprentice Pilots, which included providing a stipend, lodging, training, transportation, and *per diem*. We implemented these surcharges for a few years because of a large number of pending pilot retirements, and a large amount of recruitment at the pilot associations. Without the surcharge, the associations would have been reimbursed for expenses associated with training new pilots 3 years later via the rate. However, any pilot who retired prior to that 3 year date would not have been reimbursed. Therefore, we applied a surcharge to facilitate the training of these replacements in last year's final rule. As the vast majority of registered pilots are not anticipated to reach the regulatory required retirement age of 70 in the next 20 years, we believe that pilot associations are now able to plan for the costs associated with retirements without relying on the Coast Guard to impose surcharges. Therefore, in this year's final rule we are not imposing surcharges.

V. Discussion of Methodological and Other Changes

For 2020, the Coast Guard implemented no new methodological changes to the ratemaking model. We believe that the methodology laid out in the 2019 Annual Review (84 FR 20551) will produce rates for the 2020 shipping season that will ensure safe, efficient, and reliable pilotage services are available on the Great Lakes in order to facilitate maritime commerce.

In previous years and in this current rulemaking, several commenters have raised issues regarding the working capital fund.[15] The purpose of the working capital fund is to ensure that associations have a way to set aside money to pay for high cost items and infrastructure improvements. The Coast Guard is making changes in this final rule to codify the procedures related to the use of funds and accounting requirements related to the working capital fund.

In this final rule, the Coast Guard is finalizing two changes to the regulatory text related to the working capital fund, formerly called "return on investment." In 46 CFR 404.106, we are changing the words "return on investment" to "working capital fund," as that is the current name for that fund. Prior to 2017, the working capital fund described in 46 CFR 404.105 was called "return on investment." In the Great Lakes Pilotage Rates 2017 Annual Review final rule (82 FR 41466, August 31, 2017), the Coast Guard changed the name of that fund to the "working capital fund," but the 2017 final rule did not change a reference to "return on investment" in 46 CFR 404.106. This change corrects that oversight, so both 46 CFR 404.105 and 46 CFR 404.106 will use consistent terminology.

In addition, the Coast Guard is incorporating into regulations the industry practice currently followed by the pilots associations regarding these funds. We are adding text to 46 CFR 403.110 requiring each pilot association set aside, in a separate account, an amount at least equal to the amount calculated in Step 5 of the ratemaking, and place restrictions on how those funds are expended. Under the final rule, pilot associations can only apply the funds in the working capital fund account to capital projects, infrastructure

[15] See the dockets for the 2019 ratemaking (https://www.regulations.gov/docket?D=USCG-2018-0665) and the 2018 ratemaking (https://www.regulations.gov/docket?D=USCG-2017-0903) for more information.

improvements, infrastructure maintenance, training, and non-recurring technology purchases that are necessary for providing pilotage services. The pilot associations may grow the working capital fund over successive shipping seasons for a future significant purchase, including for a down payment on a purchase that would also be financed in part. If needed, pilot associations could request a waiver from the requirements from the Director.

VI. Discussion of Comments

In response to the October 30, 2019 NPRM (84 FR 58099), the Coast Guard received six comment letters as well as a duplicate comment submission. These included one comment from the law firm K&L Gates (hereinafter "District Lawyers"), which represents the interests of the three Great Lake pilot associations; a comment from the Shipping Federation of Canada, the American Great Lakes Ports Association, and the United States Great Lakes Shipping Association (hereinafter "the User's Coalition" or "the Coalition"); a comment from the president of the St. Lawrence Seaway Pilots' Association (hereinafter "SLSPA"); a comment from the president of the Lakes Pilots Association (hereinafter "LPA"); a comment from the president of the Western Great Lakes Pilot Association (hereinafter "WLPA"); and a comment made by Captain John Swartout, a pilot working for District Three. As each of these commenters touched on numerous issues, for each response below we note which commenters raised the specific points addressed. In situations where multiple commenters raised similar issues, we attempt to provide one response to those issues.

A. Operating Expenses

The first step of the ratemaking process outlines the criteria for evaluating operating expenses. Each expense must be necessary for providing pilotage service and reasonable in amount. The allowable operating expenses must comply with both criteria to recoup any costs for a given pilotage association. To do so, pilotage associations submit financial statements to third party auditors contracted by the Coast Guard. The third party auditors create financial reports for the Coast Guard to determine the allowable operating expenses. We use these expenses to establish pilotage rates. We received several comments, discussed below, from pilot associations and persons representing such interests requesting changes to these adjustments.

1. Legal Fees

Commenters from pilots' associations and shipping and port interests addressed legal fees and, in particular, the 2016 rulemaking concerning the exclusion of legal expenses for suits against the U.S. government or its agents, and the subsequent case contesting that exclusion.

Two commenters contended that prior years' legal fees were improperly denied, and referred to *St. Lawrence Seaway Pilots Association v. U. S. Coast Guard*, 357 F.Supp 3d 30 (D.D.C. 2019). In that case, the court held that the Coast Guard improperly promulgated 46 CFR 404.2(b)(6) in the 2016 rulemaking that excluded any and all expenses associated with legal action against the U.S. government or its agents.

The Coast Guard disagrees with the commenters. In that case, the court went to great lengths to discuss the remedy for the pilots associations, and noted concerns about rates that were already paid. *St. Lawrence Seaway Pilots Association v. U. S. Coast Guard*, 357 F.Supp 3d 30, 38 (D.D.C. 2019), citing *Am. Great Lakes Ports Ass'n v.*

Zukunft, 301 F.Supp.3d 99, 103–04 (D.D.C. 2018) (noting disruptive effect of upending already-paid pilotage rates) and *St. Lawrence Seaway Pilots Ass'n*, 85 F.Supp.3d, 197, 208 (D.D.C. 2015) (noting remedial difficulty of ordering pilots' entitlement to future payments and recognizing that remedial decision regarding 2014 rates likely impacts the propriety and validity of the 2015 rates).

The court held the following: "At the hearing, Plaintiffs clarified they seek a *vacatur* of 46 C.F.R. § 404.2(b)(6) to prevent the Coast Guard from excluding legal fees in future rate settings, and do not seek to disturb any past rates. See Hr'g Tr. 12:7–13:3. With the benefit of this clarification, the remedial decision is simple: *Vacatur* is the presumptive remedy for arbitrary and capricious agency action, see 5 U.S.C. § 706(2) (A court shall "set aside agency action ... found to be ... arbitrary [and] capricious"), and there is no risk of disruption. The Court will therefore vacate 46 C.F.R. § 404.2(b)(6)." *St. Lawrence Seaway Pilots Association v. U. S. Coast Guard*, 357 F.Supp 3d 30, 38 (D.D.C. 2019).

The court's holding was prospective, not retroactive, based upon the clarification of the Pilots Association at the hearing on the matter. The regulation has been removed from the CFR, and the Coast Guard has not denied any legal fees based on that vacated rule since the court's decision was handed down. The Coast Guard will not disturb past rate setting, in accordance with the court's ruling.

One commenter stated that the Coast Guard had a meritorious position regarding the denial of legal fees against the U.S. government and suggested that a clarification of legal fees be included in the final rule. The Coast Guard presently takes no position on this comment. That part of the 2016 rule with respect to 46 CFR 404.2(b)(6) was vacated

because it was a change in policy that was not effected in accordance with the Administrative Procedure Act's notice and comment requirements and the court found the Coast Guard's actions were arbitrary and capricious. The court in the 2019 case stated, "The Court takes no position on the relative wisdom of the policy. A rule excluding legal fees incurred against the U.S. government may well be a rational policy. But the process by which the Coast Guard enacted it was arbitrary and capricious." *St. Lawrence Seaway Pilots Association v. U. S. Coast Guard*, 357 F.Supp 3d 30, 38 (D.D.C. 2019). The Coast Guard did not include any language regarding legal fees in the final rule as there was nothing in the NPRM proposing any change. Any change in policy regarding future legal fees will be accomplished in accordance with the legally required notice and comment procedures in order for all parties to be heard on the matter.

2. Housing Allowances

There were two comments regarding the housing allowance not being considered an operating expense. The first commenter stated that "[f]or the CG to determine that a mariner must live in the region where they work is unreasonable"[16], and that specifically in District Three there is a "tour de role" dispatch system to prevent a pilot from working all over the district. The same commenter stated that, in not allowing a housing allowance, "we [the pilot association] would be very severely handicapped on recruiting new Pilots into our District. Forcing a Pilot to move his family will undoubtedly cause some potential applicants to decide not to pursue a career in our District."[17] The Coast Guard disagrees with the first statement. Determining where to live is an individual's right and lifestyle decision. The Western Great Lakes Pilots association, the source of

[16] USCG-2019-0736-0002.
[17] Id.

this comment, has multiple tours-de-role and holds meetings before the season. During these meetings, each registered pilot determines which port to work out of for the season. We expect the registered pilot to pay for housing during the season, which is consistent with Internal Revenue Service (IRS) regulations as discussed below. For example, if a registered pilot chooses to live in Virginia but elects to be dispatched out of Chicago for the season, the registered pilot will not be reimbursed for any housing in Chicago during the season because this dwelling is not a necessary expense for the shippers to reimburse. However, if the pilot is dispatched out of Port Huron, reasonable travel costs from Chicago and hotel bills in Port Huron may be considered for inclusion in the operating expenses. The shippers do not have to fund lifestyle choices. Additionally, the commenter did not provide any evidence or data to support the claim that not allowing a housing allowance will cause a recruitment and retention crisis.

The same commenter also stated that the housing allowance provides a great savings to the industry and should be continued. Another commenter echoed this comment. "In the interests of efficient pilotage, Districts 2 and 3 have found that it is often more cost effective for pilots to lease an apartment or other dwelling rather than paying for a hotel."[18] The Coast Guard neither agrees nor disagrees with this comment, as the commenter provided no evidence to justify this claim. We suggest the commenter address this issue at a future GLPAC meeting and/or work with the stakeholders who pay for pilotage service to submit a joint letter for further consideration. In general, hotel bills should be 50 miles outside the pilot's tour-de-role port for the season in order to be

[18] USCG-2019-0736-0005.

considered reasonable and necessary and implemented into the rate. This 50-mile radius is per the IRS.[19]

B. Target Compensation

We received several comments on the Coast Guard's use of the Federal Reserve's projected Personal Consumption Expenditure (PCE) data in Step 4 of the ratemaking, as opposed to using historic Bureau of Labor Statics (BLS) Employment Cost Index (ECI) data. In Step 4, we adjust the existing target pilot compensation to account for inflation, following the procedures outlined in § 404.104(b), which require that PCE data only be used when ECI data is not available. In this ratemaking, we are inflating the 2019 pilot compensation to 2020 dollars, which requires forecasted inflation data for 2020. The BLS ECI only provides historic data. Consequently, no 2020 ECI data was available at the time we conducted the analysis to support this rulemaking, and no 2020 ECI data will be available until April 30th 2020, which is after the 2020 shipping season begins. Therefore, we used the PCE data, in accordance with § 404.104(b), as the PCE provides estimates of inflation for 2020. As noted by commenters, for the past several years, the PCE inflation value has been about 1 percent lower than the ECI value, resulting in a lower target compensation value than if we had used the ECI value. Two commenters suggested that Coast Guard should use the ECI to readjust previous target compensation values to account for the difference between the predicted PCE value and the actual ECI

[19] IRS Tax Topics, *Topic No. 511 Business Travel Expenses*, https://www.irs.gov/taxtopics/tc511. (last visited 2/28/2020Generally, your tax home is the entire city or general area where your main place of business or work is located, regardless of where you maintain your family home. For example, you live with your family in Chicago but work in Milwaukee where you stay in a hotel and eat in restaurants. You return to Chicago every weekend. You may not deduct any of your travel, meals or lodging in Milwaukee because that's your tax home. Your travel on weekends to your family home in Chicago isn't for your work, so these expenses are also not deductible. If you regularly work in more than one place, your tax home is the general area where your main place of business or work is located.

value that published. The commenters raised several concerns with the use of the PCE, which are discussed below.

Several commenters noted that, while a full calendar year worth of ECI data was not available for 2019,at the time the NPRM was published, some 2019 data was available, and they said this data should have been used in the 2020 ratemaking.[20,21,22] However, the commenters are missuderstanding the reason the Coast Guard uses the PCE data in the ratemaking instead of the most recent ECI data. The reason we did not use the ECI data is not because of a lack of a full year's worth of 2019 inflation data, but rather because the ECI did not have any 2020 inflation data available.

Another commenter stated that, while the PCE index is published more frequently than the ECI, this does not make it a better inflation index. The commenter also stated that data which "measure the wrong metrics" should not be used just because it is newer.[23] The Coast Guard disagrees with both points made by the commenter. We are using the PCE because it provides an estimate of forecasted 2020 inflation data. Using the most recent ECI data does not address the issue that the ECI does not provide an estimate of forecasted inflation, and as part of the ratemaking process under steps 2 and 4, the Coast Guard requires an estimate of future inflation. Again, we are not using the PCE because it is published more frequently than the ECI, but, rather, because it provides necessary information that the ECI does not.

Two commenters stated that they believe the ECI is more appropriate to use to inflate pilot compensation than the PCE, because "[the ECI] is based on wage and benefit

[20] USCG-2019-0736-0003 p. 3
[21] USCG-2019-0736-0002 p. 5
[22] USCG-2019-0736-0002 p. 5
[23] USCG-2019-0736-0006, p.2

costs, rather than general goods and prices,"[24] and noted that the Coast Guard has previously acknowledged this point in the 2018 ratemaking rule (83 FR 26162).[25,26] The Coast Guard agrees that the ECI is a better index to use to inflate pilot compensation, which is why § 404.104(b) requires that PCE data be used only when ECI data is unavailable. It is also important to note that the statement in the 2018 ratemaking discussed differences between the ECI and the CPI,[27] not the ECI and the PCE, as stated by the commenter. The statement quoted by the commenter does not accurately reflect the components of the PCE which differ from the CPI, and include the cost of employer provided health insurance.[28]

One commenter stated that they believe the use of the "2019 ECI data to project 2020 [pilot compensation data] would be more accurate than using improperly low PCE data." The commenter provided no reasoning for why they believe historic ECI data is a better predictor of future inflation than the forecasted PCE data, nor did they provide any reasoning as to why only one year of historic data should be used. The forecasted PCE inflation data is generated by the Federal Reserve, which is responsible for setting monetary policy in the United States, and thus influencing inflation. The Federal Reserve bases these estimates on predictions of economic growth, the unemployment rate, other economic data, and the future policy path the Federal Reserve expects to take to meet its goals of maximizing employment and setting stable prices. The PCE is a reflection of the

[24] USCG-2019-0736-0005, p. 3.
[25] USCG-2019-0736-0005, p. 3.
[26] USCG-2019-0736-0003, p. 2
[27] As stated in the 2018 Final Ratemaking (83 FR 26162 at 26171), "[The Coast Guard] agree[s] with the commenters that, for the purposes of inflating compensation costs, the ECI provides a better gauge of compensation inflation than the CPI does".
[28] https://www.bls.gov/opub/btn/archive/differences-between-the-consumer-price-index-and-the-personal-consumption-expenditures-price-index.pdf, page 2.

government's best prediction of what will happen, whereas the ECI is a reflection of what has already happened.

As stated above, the Coast Guard is using the best available data, the PCE data to inflate target pilot compensation, as required by § 404.104(b), and is not changing how target pilot compensation is calculated for this final rule. However, we will review this issue, and if we determine that any changes are needed, we will propose them as part of a future rulemaking.

1. Inflation Calculation

One commenter stated they believe pilot compensation is significantly below the market rate when compared with the salaries of other pilots across the United States. The commenter also discussed a multi-year compensation study the Coast Guard mentioned in the 2018 rule, and that the 2020 NPRM makes no mention of this study. The commenter stated that, as this study continues, the pilots are continually being undercompensated.

While the Coast Guard commissioned a study to analyze methodologies to determine pilot compensation, we decided not to finalize this study. The compensation study was a backup in the event that we failed to identify a compensation standard that remedied the recruitment and retention issues identified in previous rulemakings, and discussed during previous GLPAC meetings. The current compensation benchmark addresses our goals of promoting the recruitment and retention of highly qualified mariners and experienced U.S. registered pilots. Therefore, completion of this compensation study is no longer necessary.

2. Staffing Model

The LPA, District Lawyers, and the SLSPA made comments regarding the staffing model and the fact that each District needs to have one pilot added to the staffing model to account for the president of the association's workload. Since 2016, when Coast Guard developed this staffing model, the duties and responsibilities of the pilot association presidents have expanded. For example, we expect the pilot president to attend numerous meetings and conferences throughout the year, provide additional financial and traffic information to increase transparency and accountability, oversee and ensure the integrity of the association training program, evaluate technology, and coordinate with the American Pilots Association (APA) to implement and share best practices. The Coast Guard agrees that if a pilot association president is spending half or more of their time on administrative issues that the staffing model should account for that time. Therefore, we will review this issue and any data supporting the amount of time the association presidents spend on administrative issues and tasks. If we determine that any changes should be made to the staffing model, we will propose them as part of a future rulemaking.

C. Target Pilot Compensation

The User's Coalition made several comments in regards to this step. They commented that "Since at least 2015, the GLPO's ratemaking activities have repeatedly yielded revenues far above the target revenues fixed as representing a level necessary to cover pilot compensation and other recognized expense items." The Coast Guard disagrees with this statement. The only way for the associations to generate additional revenue is from the increase in ship traffic going through the system. Although the Coast Guard has seen increased traffic volumes over what was estimated in recent years, this is

due to the Canadian domestic fleet using U.S. pilots, demand for global commodities (steel and grain), tankers shipping petroleum products, cruise ships, and winter demand (ordering pilots while the locks are closed for maintenance) on Lake Erie, Lake Huron, and Lake Michigan. The Coast Guard has no control or influence over any of the aforementioned activities. The variables in global commodities are complex and difficult to predict. Supply of many commodities can be forecasted from the analysis of data, but data regarding consumption is much more difficult to estimate. Some countries carefully guard commodities produced and stored within their borders, making certain market predictions even harder. Civil unrest and government sanctions can cause huge swings in the commodities markets. The use of the 10-year average may cause the average to lag short-term trends, but it reduces fluctuations in predicted traffic levels and results in a more stable rate on a year-to-year basis. This helps the associations and the shippers plan for upcoming years while reducing variables. The Coast Guard welcomes any validated information the commenter can provide as to the exact amount of pilotage demand each year, as well as the number of vessels that will be transporting commodities and needing pilotage service, along with the recent demand for pilots in the cruise industry.

The User's Coalition also made a comment regarding the figure for target pilot compensation, and stated that the 2019 compensation number was "adopted" and used as a benchmark. The Coast Guard used the 2019 number because it was clear that this number has had the desired effect of promoting recruitment of highly qualified mariners and retention of experienced U.S. registered pilots.

The Coalition also commented that this is the third year in which the U.S. Coast Guard Great Lakes Pilotage Office (GLPO) has set a benchmark compensation figure for

Great Lakes pilots by reference to available data concerning the compensation of U.S. first mates subject to negotiated contracts between vessel owners and the AMOU. The Coast Guard disagrees with this statement. As explained above in Summary of Ratemaking Methodology, Step 4, the Coast Guard does not have access to information from the AMOU contract. In 2018, the best available information that we had was the pre-2016 contract data and that was adjusted for inflation.Target compensation for the 2020 rate is not being calculated with regard to 2020 union contract data. We are using the 2019 figure as a base because we believe that this is the proper target compensation benchmark for Great Lakes pilots. This compensation benchmark enables the Coast Guard to meet its statutory requirement to set pilotage rates giving consideration to the public interest and the costs of providing pilotage services. We are ensuring the provision of safe, reliable, and efficient pilotage services by correcting the recruitment and retention issues discussed in previous rulemakings without increasing the costs of pilotage services to an unreasonable level.

D. Initial Base Rates

One commenter stated that, for several years, the Coast Guard's use of a 10-year average severely understates likely upcoming bridge hours because of low traffic volumes in the period of depressed international economic activity caused by the economic recession in 2008-12.

The Coast Guard disagrees that the 10-year average should not be used. We believe that the 10-year average in is the public interest, because this approach provides rate stability. These stable and predictable rates allows shippers and pilots to forecast revenues. In Step 7 of the ratemaking methodology, the Coast Guard calculates an hourly

pilotage rate to generate the revenue needed by each district. This step requires an estimate of the expected hours of traffic. To derive this estimate, the Coast Guard takes the average of the previous 10 years of traffic in each area on the Great Lakes. The use of the historical traffic figure was unanimously recommended by the GLPAC in 2014, and we believe that it is the best tool to estimate traffic. While in recent years, high levels of traffic have been greater than the historical average, we also note that in some years the level of traffic has been lower than average. The use of the 10-year average may cause the average to lag short-term trends, but it reduces fluctuations in predicted traffic levels and results in a more stable rate on a year-to-year basis. No commenter has suggested a different time period for calculating the historical average that would produce better predictions or prevent wildly fluctuating rates. While we are open to suggestions as to how to better predict total traffic, we would encourage the commenters to raise these suggestions at the GLPAC, as we are currently continuing to follow its recommendation on this subject.

The User's Coalition suggested that, to minimize the inflation effect on hourly rates that is caused by use of inaccurate bridge hour projections, the Coast Guard either base its projections on the most recent previous year actuals, or derive projections by collecting upcoming year forecast data from affected stakeholders, including the Seaway Authority, U.S. and Canadian pilots, vessel operators, ports and terminals, shipping agents and other knowledgeable sources. The Coast Guard disagrees. Although we have seen increased traffic volumes over what was estimated in recent years, this is mainly due to the Canadian domestic fleet using U.S registered pilots. If the Coast Guard only used the previous year's numbers, there would be large annual variations in the rates, which

would not be in the public's interest. We welcome any information or the suggested resources the commenter can provide as to the exact number of Canadian domestic vessels that will be using pilots each year, as well as the number of vessels that will be transporting commodities and requiring pilotage service. In addition, the Coast Guard has historically been unable to accurately forecast the international shipping trends that can be impacted by highly variable factors; e.g., global weather impacting the supply and demand for grain in the United States, Canada, and overseas, and the imposition or removal of tariffs on a global basis. This inability to accurately forecast demand led to the decision to rely on historical data instead. The User's Coalition has not proposed a specific source of forecasting the demand for pilotage services that would be consistently more accurate than using historical data.

E. Working Capital Fund

There were three comments made by the User's Coalition, the SLSPA, and the District Lawyers regarding the working capital fund. The User's Coalition stated that this fund is misnamed, and that it is a recognized expense. The Coast Guard disagrees with the statement that it is considered a recognized expense. The working capital fund is intended to provide the pilots associations with working capital for future expenses associated with capital improvements, technology investments, and future training needs, with the goal of eliminating the need for surcharges (as was accomplished this year). The fund is structured so that the pilots associations can demonstrate credit worthiness when seeking funds from a financial institution for needed infrastructure projects.

Recognized expenses are those operating expenses that are deemed necessary and reasonable. The working capital fund is meant to provide the associations with capital

that is in addition to the money needed to cover its standard operating expenses and pilot compensation. Its use is to fund infrastructure and technology improvement projects. Regarding the suggestion for renaming the working capital fund, the Coast Guard is willing to discuss an alternative name at a future GLPAC meeting.

The District Lawyers commented that the fund improperly fails to include a return on investment. The Coast Guard disagrees with this statement. In 2016, we created this fund to provide credit worthiness for pilot associations to have access to capital that would enable them to provide safe, efficient, and reliable service. In previous years, the goal of the precursor of the working capital fund, named the ‘‘return on investment’, was to provide a return to monies invested by the pilots in associations. The amount of the money invested (the investment base) by pilots was relatively small, and thus the return on that investment was small in absolute terms. However, when the Coast Guard recalibrated the return on investment (renamed the working capital fund) to be based on the total income of the associations, rather than simply the money invested in capital improvements (as was the case prior to 2016), the goal was to increase infrastructure spending by providing a more substantial pool of available funds. The goal of the working capital fund is not to provide a windfall for the associations, but to improve maritime safety. The working capital fund does this by supporting capital projects, infrastructure improvements and maintenance, non-recurring technology purchases, and training that is necessary for providing safe, efficient, and reliable pilotage. As with all other expenses, the funds applied must be reasonable in amount.

The SLSPA commented that the working capital fund provides a basis to reinvest into the system or make up for minor shortfalls in revenue. The Coast Guard agrees in

part. The working capital fund is a funding mechanism that allows for the associations to have cash on hand for future and/or unidentified expenses to improve pilotage service, and in some cases prevent delays that would occur from failing equipment, and for assets that are needed to continuously pilot vessels through the system. The Coast Guard disagrees that the working capital fund can make up for minor shortfalls in revenue. The fund cannot be used for the compensation of pilots during unexpected low traffic years.

F. Surcharge Offsets

The Coast Guard received two comments regarding the amount of surcharges[29] collected in 2017. The commenters stated that, because the 2017 rate did not take effect until October, the districts were only able to collect a small portion of the training surcharge approved for that year. The commenters requested that the difference between what was collected via the rate and the amount spent on training in 2017 be accounted for in this rule as operating expenses – specifically that $174,087 be added to the operating expenses for District 2 and $291,72 be added to the operating expenses for District 3.

The Coast Guard agrees that the difference between the amount collected via the surcharge in 2017 and the amount spent on training in 2017 needs to be included as an operating expenses. Therefore, we included a surcharge offset in the operating expenses for both Districts 2 and 3 in this final rule. Specifically, in 2017, District 3 spent $647,606 on the salary and benefits for 7 applicant pilots, and collected $382,297 via the surcharge. The Coast Guard added a surcharge adjustment of $265,309 for District 3 ($647,606 −$382,297) to account for the difference between training expense and

[29] Surcharge is money that is paid upfront by the shipper in addition to the rate in order to meet an immediate need for the pilots. When calculating the rate, Coast Guard uses the operating expenses from three years prior as one of the factors to determine how much the shippers will pay via the rate. The surcharge offset or adjustment is the money collected or not collected three years prior that is either taken out or added to the rate via the methodology.

training funds from the surcharge. District 2 spent $1,829,671 on the salary and benefits for 2 applicant pilots, and collected $141,692 in training surcharges. The Coast Guard does not believe that spending $914,836 per applicant pilot is a reasonable expense. Therefore, we are not reimbursing the entire difference to the District. Instead, we are including a surcharge offset of $158,308, which is the difference between the approved surcharge amount of $300,000 and the amount collected by the district of $141,692. For both Districts, the surcharge offset amount approved by the Coast Guard differs from the amount the commenters requested, as the commenters adjusted these differences to account for inflation and the working capital fund adjustments. However, these adjustments are already included as part of the 10-step ratemaking methodology and do not need to be completed for each individual operating expense.

G. Surcharges

We received several comments regarding the removal of surcharges. Beginning in 2016, the Coast Guard began implementing surcharges on shipping rates to encourage the recruitment and training of new pilots on the Great Lakes. Unlike pilot compensation, reasonable and necessary costs relating to the compensation and training of applicant pilots are fully reimbursable as operating expenses. However, the Coast Guard used surcharges so that pilot associations could receive the money needed to provide immediate funding for achieving the goal of hiring and training new pilots. This goal has been accomplished,[30] and currently the average pilot's age is under 50. In District One, 56 percent of registered pilots are under the age of 50. In District Two, 69 percent are under the age of 50, and in District Three, 44 percent are under the age of 50.

This is more than adequate for retirement planning purposes. One commenter specifically stated that District Three very much needs the surcharge. The Coast Guard disagrees. In 2015, District Three only had 5 out of 20 registered pilots under the age of 50. In 2019 that number doubled to 10 out of 19, which is more than enough to properly plan for applicant pilots and retirement via the rate.

H. Other Comments

The User's Coalition submitted several comments that we will address individually. The Coalition stated that the U.S. Great Lakes Pilot Associations are a government-sustained monopoly. The Coast Guard disagrees; the U.S. Great Lakes Pilot Associations are federally-regulated monopolies. It should be noted that all pilotage associations throughout the United States are government-regulated monopolies.

The User's Coalition stated that the rates are dictated by the Coast Guard. The Coast Guard disagrees. The rates are derived via a 10-step methodology outlined in the Code of Federal Regulations. We comply with notice and comment procedure outlined in the Administrative Procedure Act. In fact, in a recent report, the Government Accountability Office (GAO) statedthat while individual stakeholders may not agree with the specific inputs and assumptions used by the Coast Guard, the current process is generally transparent and provides an opportunity for informed stakeholder feedback.[31] The GAO report also stated that coupled with the rulemaking requirements that incorporate public review and comments, we found that the existing mechanisms

[31] https://www.gao.gov/products/GAO-19-493

represent a fairly transparent system of pilotage rate-setting as compared to the process used by some coastal states.[32]

The User's Coalition stated that, over the past five rate-setting cycles, the overall costs of U.S. pilotage to ratepayers (and, ultimately, to ports, cargo interests, and shore-based maritime interests) have risen substantially. The Coast Guard agrees that the overall cost of U.S. pilotage to ratepayers has risen. There are two primary reasons for this increase. The first reason is that, because of an error in the methodology and billing scheme from the mid 90's and up until 2016, shippers were provided an unintended 20-40% "discount." This discount prevented the pilot associations from generating and collecting the revenues we determined were necessary to provide safe, efficient, and reliable pilotage service. In 2016, we addressed this issue and removed the discount. The second reason is the cost of added pilots, which has increased needed revenues. Since 2016, we have added 18 working pilots to the System in order to preserve and promote maritime safety, minimize delays, and provide for recuperative rest.

The User's Coalition stated that there is an absence of current, reality-based (as opposed to speculative or theoretical) data in the ratemaking process for critical elements, such as pilotage expenses, traffic volume or bridge-hour forecasts, and pilot compensation. The Coast Guard disagrees with this statement. The Coast Guard employs a third party auditing firm to generate financial reports to evaluate pilotage expenses for the annual rulemaking. We include these reports with the appropriate rulemaking docket. Forecasts are predictions of future events and are by nature speculative or theoretical, but our forecasts are based on objective, historical data. In

[32] *Id.*

addition, our Bridge Hour Study examined the actual number of hours pilots spent completing all parts of a pilotage assignment in the various Areas to determine how many assignments a pilot could complete in a given time period. This audited and studied data[33] is empirical and reality based, not theoretical. The ability to use current data is somewhat limited by the time required to complete a full notice and comment ratemaking. The GAO report published June 2019, titled *Stakeholders' Views on Issues and Options for Managing the Great Lakes Pilotage Program,*[34] states "that the Coast Guard is currently performing this independent function as its rate-setting process includes many of the characteristics identified as a best practice, such as a defined methodology, clear data submission and review process, and the absence of any direct material interest in the outcome of the rate determinations." The report goes on to say that, "While individual stakeholders may not agree with the specific inputs and assumptions used by the Coast Guard, the current process is generally transparent and provides an opportunity for informed stakeholder feedback and identification of any grounds on which they can choose to take legal action."

The User's Coalition stated that there is a lack of assertive Coast Guard supervision and control. The Coast Guard disagrees. The Coast Guard develops clear and timely regulations, policy, and direction to three U.S. pilot associations to provide safe, efficient, and reliable pilotage service to U.S. vessels operating under registry and foreign vessels transiting the Saint Lawrence and Great Lakes System. This regime of

[33] United States Coast Guard, *Bridge Hour Definition and Methology Study: Final Report*, (25 June 2013) https://www.dco.uscg.mil/Portals/9/DCO%20Documents/Office%20of%20Waterways%20and%20Ocean%20Policy/Pilotage%20Study%20Final%20Report%2028%20JUN%202013.pdf?ver=2017-06-08-082809-570

[34] https://www.gao.gov/products/GAO-19-493

regulation, policy, and direction provides supervision and control. The commenter also failed to provide specific examples or data to support this claim.

The User's Coalition raised questions about the difference between U.S. and Canadian pilotage cost structures. The commenter stated that "sample comparisons of the costs of U.S. versus Canadian pilotage on the same or similar voyages by the same or similar vessels show that U.S. pilotage costs are often nearly twice as high as those of the Canadian counterparts." The Coast Guard is aware that the United States and Canada do not charge for service in identical ways. One significant difference is that the United States has three different Districts that must each support themselves, whereas the Canadian GLPA operates as a unified whole. This means that there may be a level of cross-subsidization among Canadian pilots that is impossible to replicate on the American side, which could result in higher rates in some areas and lower rates in others. Comparisons on a single voyage, such as what the Users Coalition did in the comment, where one system uses ancillary fees such as docking, anchoring, short notice dispatching and the other system does not, cannot provide the Coast Guard with the comprehensive information needed to determine if there is a system-wide problem with rates or if we are merely seeing an atypical incident. Taken as a whole, the revenues earned by the U.S. system of pilotage across the Great Lakes are comparable to the revenues earned by the Canadian system. This is further complicated by the fact that Canadians provide the exclusive source of pilotage services in parts of the system.

The User's Coalition also stated that there is a failure to develop, obtain, and maintain accurate information on recruitment, retention, and attrition issues as they affect the availability and compensation of qualified pilots. The Coast Guard disagrees with

this statement. Coast Guard personnel in the Office of Waterways and Ocean Policy (CG-WWM) monitor recruitment, retention, and attrition issues by following the hiring and training of new pilots and conducting exit interviews with departing pilots. The commenter failed to articulate or provide any examples or data to support their statement.

The User's Coalition stated that the past record of significant, consistent revenue overruns justifies an adjustment in methodology. Failure to make this adjustment will once again result in an artificial increase in pilotage costs, in contravention of 46 U.S.C. 9303(f), and exacerbate the current misalignment of U.S. and Canadian pilotage costs. The Coast Guard disagrees with this comment. Consistent increases in pilotage demand does not justify an adjustment. Since the commenter provided no further evidence to justify the statement, no further action will be taken. The Coast Guard also disagrees that there is a current misalignment of U.S. and Canadian pilotage cost. As the commenter provided no evidence to support this claim, no further action will be taken. In addition, we note that these increases in demand do not equate to any increased cost to the User's Coalition, and, further, because the demand increases bridge hours, it could be argued that these "consistent revenue overruns" actually decrease the rate over the long run, due to the way bridge hours are used in the 10-Step ratemaking methodology. To estimate the initial base rate, we divide the total estimated revenue needed for each area by the total estimated bridge hours.

The User's Coalition stated that prior years' comments on this recurring issue have been dismissed without analysis or discussion by GLPO as "not a highly salient issue. . . ." (83 FR 26175), and the observation that pilotage rates had not reached ". . . levels that threaten the economic viability of Great Lakes shipping." Id. The Coast Guard

disagrees that issues have been dismissed without analysis or discussion. The User's Coalition comment lacks context. The Coast Guard noted that the over-realization was not a highly salient issue in the 2018 final rule because the over-realization was caused by two factors, one of which had been corrected previously. The lack of incorporation of weighting factor fees into the ratemaking methodology was revised per the suggestion of industry commenters in the 2018 rulemaking. The second factor was demand for pilotage services, which was higher than predicted—a point discussed at length in the sections entitled "Target Pilot Compensation" and "Initial Base Rate" above. The commenter's second quote is a reference to the conclusion of an independent study the Coast Guard commissioned analyzing the secondary economic impact of pilotage rates, hardly a dismissal without analysis. The GAO recently completed a comprehensive "stem-to-stern" review of the GLPO,[35] assessing a plethora of recurring issues, and decided not to recommend any changes to the GLPO. The court has settled some of the issues and is reviewing the legality of other issues. We have and will continue to comply with the court's decision(s).

The User's Coalition stated that revenue overruns are paid for in real money in a system that has yet to provide relief for overcharges to ratepayers or redress to other interests affected by non-service-related, government-dictated prices, and that the results of the past several navigation seasons on the Lakes describe a situation of considerable economic waste. The Coast Guard disagrees with this statement. All charges paid were for actual services provide by the pilots to vessels; there were no non-service-related charges. If vessel owners and operators believe they have been charged in error, we

[35] https://www.gao.gov/products/GAO-19-493

provide a billing dispute mechanism that allows shippers adequate time to submit billing disputes for consideration. As the commenter provided no evidence of an overcharge to ratepayers, nor any evidence of "considerable economic waste," no further action will be taken.

This commenter implies that the User's coalition has exclusive rights to the Great Lakes/Saint Lawrence River System. The User's Coalition is not entitled to revenues generated by the Canadian domestic fleet, cruise ships, and/or tankers shipping petroleum products that are not represented by the coalition. These waters are for all law abiding mariners to enjoy and utilize for commercial purposes. We will ensure that all modes of international and domestic traffic are treated fairly.

The Lakes Pilots Association (LPA) commented on changing the number of days in the season to 365 days. The Coast Guard disagrees. The 270 day season applies to the AMOU contracts. We are no longer utilizing those contracts to determine target pilot compensation. Therefore, the 365-day argument does not apply. We have identified a standard that corrected the historic recruitment and retention issues as previously discussed.

One commenter suggested that the Coast Guard did not adequately explain why we expect the total costs generated in 2020 to be less than the total pilotage revenue in 2019, despite proposing higher pilotage rates for 4 of the 6 areas in 2020. They stated that the NPRM did not provide any explanation for the reduction in pilotage services, and that we should not claim that the final rule will "result in an overall reduction in pilotage costs".[36]

[36] USCG-2019-0736-0007, p. 4

The Coast Guard disagrees. In the NPRM, we did not state that we expect a decrease in pilotage costs. Rather, we estimated the total expected revenue in 2020 and compared that value to the estimated 2019 revenue. This value is a reflection of the pilotage rates, as well as other factors, such as operating expenses and surcharges (if there are any). In the NPRM, we estimated that the total revenue generated in 2020 would be less than the total estimated revenue generated in 2019 for two reasons: 1) A reduction in operating expenses for some districts driven by large one-time capital purchases made in 2016, and 2) the removal of surcharges. The latter is the main driver in reducing the expected revenue between 2019 and 2020. Neither of these revenue components is a reflection of traffic or pilotage hours. In addition, the cost of the surcharges is not included in the rate, but is included in the total revenue calculations, meaning that the removal of the surcharges does not impact the rates, but does decrease the estimated total revenue. Table 44 in the preamble of this rule provides a comparison of the revenue components between 2019 and 2020, and demonstrates that these changes are mainly driven by the removal of the surcharges. It should be noted that, in this final rule, the Coast Guard modified operating expenses for all three districts based on public comment, and, as a result, we now estimate that revenues generated in 2020 will be $279,845 greater than those generated in 2019.

VII. Discussion of Rate Adjustments

In this final rule, based on the current methodology described in the previous section of this preamble, the Coast Guard is establishing new pilotage rates for 2020. We conducted the 2020 ratemaking as an "interim year," as was done in 2019, rather than a full ratemaking as was conducted in 2018. Thus, the Coast Guard is adjusting the

compensation benchmark pursuant to § 404.104(b) for this purpose, rather than § 404.104(a).

In this section, we discuss the rate changes using the ratemaking steps provided in 46 CFR part 404 detailing all ten steps of the ratemaking procedure for each of the three districts to show how we arrived at the new rates.

District One

A. Step 1: Recognize previous operating expenses.

Step 1 in our ratemaking methodology requires that the Coast Guard review and recognize the previous year's operating expenses (§ 404.101). To do so, we begin by reviewing the independent accountant's financial reports for each association's 2017 expenses and revenues.[37] For accounting purposes, the financial reports divide expenses into designated and undesignated areas. In certain instances, costs are applied to the designated or undesignated area based on where they were actually accrued. For example, costs for "Applicant pilot license insurance" in District One are assigned entirely to the undesignated areas, as applicant pilots work exclusively in those areas. For costs accrued by the pilot associations generally, such as employee benefits, the cost is divided between the designated and undesignated areas on a *pro rata* basis. The recognized operating expenses for District One are shown in table 3.

As noted above, in 2016 the Coast Guard began authorizing surcharges to cover the training costs of applicant pilots. The surcharges were intended to reimburse pilot associations for training applicants in a more timely fashion than if those costs were listed as operating expenses, which would have required 3 years to reimburse. The rationale for

[37] These reports are available in the docket for this rulemaking (see Docket # USCG-2019-0736).

using surcharges to cover these expenses rather than including the costs as operating expenses was so these non-recurring costs could be recovered in a more timely fashion and so that retiring pilots would not have to cover the costs of training their replacements. Because operating expenses incurred are not actually recouped for a period of 3 years, the Coast Guard added a $150,000 surcharge per applicant pilot beginning in 2016 to recoup those costs in the year incurred. Now that these issues are no longer a concern, we are not issuingany surcharges for the 2020 shipping season.

For District One, we are not implementing any Director's adjustments other than the lobbying expenses described above. Other adjustments have been made by the auditors and are explained in the auditor's reports, which are available in the docket for this rulemaking where indicated under the **ADDRESSES** portion of the preamble.

Table 3 — 2017 Recognized Expenses for District One

	District One		
	Designated	Undesignated	TOTAL
Reported Expenses for 2017	St. Lawrence River	Lake Ontario	
Operating Expenses			
Other Pilotage Costs			
Subsistence/Travel- Pilot	$440,456	$293,637	$734,093
Certified Public Accountant (CPA) Deduction	-$189	-$126	-$315
Subsistence/Travel- Trainee	$22,008	$14,672	$36,680
License Insurance- Pilots	$48,620	$32,413	$81,033
License Insurance-Trainee	$0	$0	$0
Payroll Taxes -Pilots	$137,788	$91,858	$229,646
Payroll Taxes - Trainee	$705	$470	$1,175
Training - Full Pilots Continuing Education	$32,197	$21,464	$53,661
Cell and Internet Allowance - Pilots	$24,312	$16,208	$40,520
Cell and Internet Allowance - Applicants	$2,210	$1,474	$3,684
Other	$675	$450	$1,125

Total Other Pilotage Costs	**$708,782**	**$472,520**	**$1,181,302**
Pilot Boat and Dispatch Costs			
Pilot Boat Expense	$297,942	$198,628	$496,570
Dispatch Expense	$50,100	$33,400	$83,500
Payroll Taxes	$19,706	$13,137	$32,843
Total Pilot and Dispatch Costs	**$367,748**	**$245,165**	**$612,913**
Administrative Expenses			
Legal - General Counsel	$2,098	$1,399	$3,497
Legal - Shared Counsel (K&L Gates)	$26,835	$17,890	$44,725
Office Rent	$0	$0	$0
Insurance	$21,593	$14,395	$35,988
Employee Benefits	$7,720	$5,146	$12,866
Payroll Taxes	$6,665	$4,444	$11,109
Other Taxes	$70,942	$47,294	$118,236
Travel	$4,091	$2,728	$6,819
Depreciation/Auto Leasing/other	$94,944	$63,296	$158,240
Interest	$35,143	$23,428	$58,571
Dues and Subscriptions	$19,471	$12,981	$32,452
Utilities	$18,479	$12,320	$30,799
Salaries	$69,953	$46,636	$116,589
Accounting/Professional Fees	$6,111	$4,074	$10,185
Pilot Training	$0	$0	$0
Applicant Pilot Training	$0	$0	$0
Other	$26,338	$17,559	$43,897
Total Administrative Expenses	**$410,383**	**$273,590**	**$683,973**
Total Operating Expenses (Other Costs + Pilot Boats + Admin)	**$1,486,913**	**$991,275**	**$2,478,188**
Adjustments (Director)			
Total Director's Adjustments	**$0**	**$0**	**$0**
Total Operating Expenses (OpEx + Adjustments)	**$1,486,913**	**$991,275**	**$2,478,188.00**

B. Step 2: Project operating expenses, adjusting for inflation or deflation.

Having identified the recognized 2017 operating expenses in Step 1, the next step is to estimate the current year's operating expenses by adjusting those expenses for

inflation over the 3-year period. We calculate inflation for 2017 to 2018 using the BLS data from the CPI for the Midwest Region of the United States.[38] Because the BLS does not provide forecasted inflation data, we use economic projections from the Federal Reserve for the 2019 and 2020 inflation modification.[39,40] Based on that information, the calculations for Step 2 are as follows:

Table 4 — Adjusted Operating Expenses for District One

	District One		
	Designated	**Undesignated**	**Total**
Total Operating Expenses (Step 1)	$1,486,913	$991,275	$2,478,188
2018 Inflation Modification (@1.9%)	$28,251	$18,834	$47,085
2019 Inflation Modification (@1.8%)	$27,273	$18,182	$45,455
2020 Inflation Modification (@2%)	$30,849	$20,566	$51,415
Adjusted 2020 Operating Expenses	**$1,573,286**	**$1,048,857**	**$2,622,143**

C. Step 3: Estimate number of working pilots.

In accordance with the text in § 404.103, we estimate the number of working pilots in each district. We determine the number of working pilots based on data provided by the Saint Lawrence Seaway Pilots Association (SLSPA). Using these numbers, we estimate there will be 17 working pilots in 2020 in District One. Furthermore, based on the seasonal staffing model discussed in the 2017 ratemaking (see 82 FR 41466), we assign a certain number of pilots to designated waters and a certain

[38] The 2018 inflation rate is available at https://www.bls.gov/regions/midwest/data/consumerpriceindexhistorical_midwest_table.pdf. Specifically the CPI is defined as "All Urban Consumers (CPI-U), All Items, 1982-4=100". Downloaded June 12, 2019.

[39] The 2019 CPI data was not available at the time of analysis, December 2019.

[40] The 2019 and 2020 inflation rates are available at https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20190320.pdf. We used the PCE median inflation value found in table 1. Downloaded June 12, 2019.

number to undesignated waters, as shown in table 5. These numbers are used to determine the amount of revenue needed in their respective areas.

Table 5 — Authorized Pilots

Item	**District One**
Maximum number of pilots (per § 401.220(a)) [41]	17
2020 Authorized pilots (total)	17
Pilots assigned to designated areas	10
Pilots assigned to undesignated areas	7

D. Step 4: Determine target pilot compensation benchmark.

In this step, we determine the total pilot compensation for each area. As we are conducting an interim ratemaking this year, we follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark by inflation. Because we do not have a value for the employment cost index for 2020, we multiply the 2019 compensation benchmark of $359,887 by the Median PCE Inflation value of 2.0 percent.[42] Based on the projected 2020 inflation estimate, the compensation benchmark for 2020 is $367,085 per pilot.

Next, we verify that the number of pilots estimated for 2020 is less than or equal to the number permitted under the staffing model in § 401.220(a). The staffing model suggests that the number of pilots needed is 17 pilots for District One, which is more than or equal to the numbers of working pilots provided by the pilot associations. In accordance with § 404.104(c), we use the revised target individual compensation level to derive the total pilot compensation by multiplying the individual target compensation by the estimated number of working pilots for District One, as shown in table 6.

[41] For a detailed calculation, refer to the Great Lakes Pilotage Rates - 2017 Annual Review final rule, which contains the staffing model. See 82 FR 41466, table 6 at 41480 (August 31, 2017).
[42] https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20190320.pdf.

Table 6 — Target Compensation for District One

	District One		
	Designated	Undesignated	Total
Target Pilot Compensation	$367,085	$367,085	$367,085
Number of Pilots	10	7	17
Total Target Pilot Compensation	**$3,670,850**	**$2,569,595**	**$6,240,445**

E. Step 5: Project working capital fund.

Next, we calculate the working capital fund revenues needed for each area. First, we add together the figures for projected operating expenses and total pilot compensation for each area. Next, we find the preceding year's average annual rate of return for new issues of high-grade corporate securities. Using Moody's data, the number is 3.93 percent.[43] By multiplying the two figures, we obtain the working capital fund contribution for each area, as shown in table 7.

Table 7— Working Capital Fund Calculation for District One

	District One		
	Designated	Undesignated	Total
Adjusted Operating Expenses (Step 2)	$1,573,286	$1,048,857	$2,622,143
Total Target Pilot Compensation (Step 4)	$3,670,850	$2,569,595	$6,240,445
Total 2020 Expenses (Step 2 + Step 4)	$5,244,136	$3,618,452	$8,862,588
Working Capital Fund (Total Expenses × 3.93%)	$206,095	$142,205	$348,300

F. Step 6: Project needed revenue.

In this step, we add together all of the expenses accrued to derive the total revenue

[43] Moody's Seasoned Aaa Corporate Bond Yield, average of 2018 monthly data (2019 data was not available at the time of analysis, December 2019). The Coast Guard uses the most recent year of complete data. Moody's is taken from Moody's Investors Service, which is a bond credit rating business of Moody's Corporation. Bond ratings are based on creditworthiness and risk. The rating of "Aaa" is the highest bond rating assigned with the lowest credit risk. See https://fred.stlouisfed.org/series/AAA . (June 12, 2019)

needed for each area. These expenses include the projected operating expenses (from Step 2), the total pilot compensation (from Step 4), and the working capital fund contribution (from Step 5). We show these calculations in table 8.

Table 8 — Revenue Needed for District One

	District One		
	Designated	Undesignated	Total
Adjusted Operating Expenses (Step 2, See Table 4)	$1,573,286	$1,048,857	$2,622,143
Total Target Pilot Compensation (Step 4, See Table 6)	$3,670,850	$2,569,595	$6,240,445
Working Capital Fund (Step 5, See Table 7)	$206,095	$142,205	$348,300
Total Revenue Needed	$5,450,231	$3,760,657	$9,210,888

G. Step 7: Calculate initial base rates.

Having determined the revenue needed for each area in the previous six steps to develop an hourly rate, we divide that number by the expected number of hours of traffic. Step 7 is a two-part process. In the first part, we calculate the average hours of traffic over 10 years in District One, using the total time on task or pilot bridge hours.[44] Because we calculate separate figures for designated and undesignated waters, there are two parts for each calculation. We show these values in table 9.

Table 9 — Time on Task for District One (Hours)

	District One	
Year	**Designated**	**Undesignated**
2018	6,943	8,445
2017	7,605	8,679
2016	5,434	6,217

[44] To calculate the time on task for each district, the Coast Guard uses billing data from the Great Lakes Pilotage Management System (GLPMS). We pull the data from the system filtering by district, year, job status (we only include closed jobs), and flagging code (we only include U.S. jobs). After we have downloaded the data, we remove any overland transfers from the dataset, if necessary, and sum the total bridge hours, by area. We then subtract any non-billable delay hours from the total.

2015	5,743	6,667
2014	6,810	6,853
2013	5,864	5,529
2012	4,771	5,121
2011	5,045	5,377
2010	4,839	5,649
2009	3,511	3,947
Average	**5,657**	**6,248**

Next, we derive the initial hourly rate by dividing the revenue needed by the average number of hours for each area. This produces an initial rate, which is necessary to produce the revenue needed for each area, assuming the amount of traffic is as expected. We present the calculations for each area in table 10.

Table 10 — Initial Rate Calculations for District One

	Designated	Undesignated
Revenue needed (Step 6)	$5,450,231	$3,760,657
Average time on task (hours)	5,657	6,248
Initial rate (Step 6÷Average Time on Task)	$963	$602

H. Step 8: Calculate average weighting factors by Area.

In this step, we calculate the average weighting factor for each designated and undesignated area. We collect the weighting factors, set forth in 46 CFR 401.400, for each vessel trip. Using this database, we calculate the average weighting factor for each area using the data from each vessel transit from 2014 onward, as shown in tables 11 and 12.[45]

Table 11 — Average Weighting Factor for District One, Designated Areas

[45] To calculate the number of transits by vessel class, we use the billing data from GLPMS (2019 data was not available at the time of analysis, December 2019), filtering by district, year, job status (we only include closed jobs), and flagging code (we only include U.S. jobs). We then count the number of jobs by vessel class and area.

Vessel Class/Year	**Number of Transits (A)**	**Weighting factor (B)**	**Weighted Transits (A × B)**
Class 1 (2014)	31	1	31
Class 1 (2015)	41	1	41
Class 1 (2016)	31	1	31
Class 1 (2017)	28	1	28
Class 1 (2018)	54	1	54
Class 2 (2014)	285	1.15	327.75
Class 2 (2015)	295	1.15	339.25
Class 2 (2016)	185	1.15	212.75
Class 2 (2017)	352	1.15	404.8
Class 2 (2018)	559	1.15	642.85
Class 3 (2014)	50	1.3	65
Class 3 (2015)	28	1.3	36.4
Class 3 (2016)	50	1.3	65
Class 3 (2017)	67	1.3	87.1
Class 3 (2018)	86	1.3	111.8
Class 4 (2014)	271	1.45	392.95
Class 4 (2015)	251	1.45	363.95
Class 4 (2016)	214	1.45	310.3
Class 4 (2017)	285	1.45	413.25
Class 4 (2018)	393	1.45	569.85
Total	3,556	-	4,528
Average weighting factor (weighted transits/number of transits)	-	1.27	-

Table 12 — Average Weighting Factor for District One, Undesignated Areas

Vessel Class/Year	**Number of Transits (A)**	**Weighting factor (B)**	**Weighted Transits (A × B)**
Class 1 (2014)	25	1	25
Class 1 (2015)	28	1	28
Class 1 (2016)	18	1	18
Class 1 (2017)	19	1	19
Class 1 (2018)	22	1	22

Class 2 (2014)	238	1.15	273.7
Class 2 (2015)	263	1.15	302.45
Class 2 (2016)	169	1.15	194.35
Class 2 (2017)	290	1.15	333.5
Class 2 (2018)	352	1.15	404.8
Class 3 (2014)	60	1.3	78
Class 3 (2015)	42	1.3	54.6
Class 3 (2016)	28	1.3	36.4
Class 3 (2017)	45	1.3	58.5
Class 3 (2018)	63	1.3	81.9
Class 4 (2014)	289	1.45	419.05
Class 4 (2015)	269	1.45	390.05
Class 4 (2016)	222	1.45	321.9
Class 4 (2017)	285	1.45	413.25
Class 4 (2018)	382	1.45	553.9
Total	3,109	-	4,028
Average weighting factor (weighted transits/number of transits)	-	1.30	-

I. Step 9: Calculate revised base rates.

In this step, we revise the base rates so that once the impact of the weighting factors are considered; the total cost of pilotage would be equal to the revenue needed. To do this, we divide the initial base rates, calculated in Step 7, by the average weighting factors calculated in Step 8, as shown in table 13.

Table 13 — Revised Base Rates for District One

Area	Initial rate (Step 7)	Average weighting factor (Step 8)	Revised Rate (Initial rate ÷ Average weighting factor)
District One: Designated	$963	1.27	$758
District One: Undesignated	$602	1.30	$463

J. Step 10: Review and finalize rates.

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish that the rates do meet the goal of ensuring safe, efficient and reliable pilotage, the Director considers whether the rates incorporate appropriate compensation for pilots to handle heavy traffic periods and whether there is a sufficient number of pilots to handle those heavy traffic periods. The Director also considers whether the rates will cover operating expenses and infrastructure costs, and takes average traffic and weighting factors into consideration. Based on this information, the Director is not making any alterations to the rates in this step. We modified the text in § 401.405(a) to reflect the final rates shown in table 14.

Table 14 —Final Rates for District One

Area	Name	Final 2019 pilotage rate	Proposed 2020 pilotage rate	Final 2020 pilotage rate
District One: Designated	St. Lawrence River	$733	$757	$758
District One: Undesignated	Lake Ontario	$493	$462	$463

District Two

A. Step 1: Recognize previous operating expenses.

Step 1 in our ratemaking methodology requires that the Coast Guard review and recognize the previous year's operating expenses (§ 404.101). To do so, we begin by reviewing the independent accountant's financial reports for each association's 2017

expenses and revenues.[46] For accounting purposes, the financial reports divide expenses into designated and undesignated areas. In certain instances, costs are applied to the designated or undesignated area based on where they were actually incurred. For example, costs for "Applicant pilot license insurance" in District One are assigned entirely to the undesignated areas, as applicant pilots work exclusively in those areas. For costs accrued by the pilot associations generally, such as employee benefits, for example, the cost is divided between the designated and undesignated areas on a *pro rata* basis. The recognized operating expenses for District Two are shown in table 15, below.

In addition to the surcharge adjustment and lobbying expenses described for District One in Section VII A. of this preamble, *Step 1: Recognize previous operating expenses*, and the adjustments made by the auditor, as explained in the auditor's reports (available in the docket where indicated in the **ADDRESSES** portion of this document), the Director is finalizing two adjustments to District Two's operating expenses. The first is to disallow $120,350 in "housing allowance" expenses. The Coast Guard agrees with the IRS that an employer-provided housing allowance is a fringe benefit, and we consider it to be employee compensation. In addition, the Coast Guard expects those appointed as registered pilots to live in the region in which they are employed. We expect that, if a pilot chooses to live outside their region of employment, they should have to pay for their accommodations, and this cost should not be passed on to the shippers via the rate. Therefore, we are not including any housing allowance the district chooses to provide their pilots in the ratemaking calculation.

[46] These reports are available in the docket for this rulemaking (see Docket No. USCG-2019-0736).

The second Director's adjustment is a $158,308 surcharge adjustment to account for the difference between in the amount the district spent on applicant pilot wages and benefits in 2017 to cover the training costs for two applicant pilots, and the amount actually collected via the surcharge. In total, District Two spent $1,829,671 on applicant pilot compensation for two applicant pilots and received $141,692 via the surcharge in 2017. However, as stated in Section VI.F of this preamble, the Coast Guard does not believe that spending $914,836 per applicant pilot is fair and reasonable, and, therefore, we are only recognizing applicant pilot compensation of $150,000 per applicant pilot, or $300,000 in total for the district. As a result, the Coast Guard is including a $158,308 surcharge adjustment ($300,000 - $141,692) in the recognized expenses for District Two. We allocated this adjustment to each area based on their proportional bridge hours in 2017 (see table 21 for bridge hours)

Table 15 — 2017 Recognized Expenses for District Two

	District Two		
	Undesignated	Designated	TOTAL
Reported Expenses for 2017	Lake Erie	Southeast Shoal to Port Huron	
Operating Expenses			
Other Pilotage Costs			
Subsistence/Travel - Pilots	$116,402	$174,602	$291,004
Subsistence/Travel - Applicants	$52,212	$78,317	$130,529
Housing Allowance - Pilots	$30,212	$45,318	$75,530
Housing Allowance - Applicants	$17,928	$26,892	$44,820
Winter Meeting Allowance	$8,280	$12,420	$20,700
Telecommunication Allowance	$11,662	$17,493	$29,155
Payroll taxes -	$57,126	$85,688	$142,814

Pilots			
Payroll taxes - Applicants	$26,025	$39,038	$65,063
License Insurance	$8,326	$12,490	$20,816
Training	$2,079	$3,119	$5,198
Total Other Pilotage Costs	**$330,252**	**$495,377**	**$825,629**
Pilot Boat and Dispatch Costs			
Pilot Boat Cost	$217,514	$326,272	$543,786
CPA Adjustment	-$34,860	-$52,291	-$87,151
Dispatch Expense	$0	$0	$0
Employee Benefits	$78,680	$118,020	$196,700
Payroll Taxes	$12,230	$18,344	$30,574
Total Pilot and Dispatch Costs	**$273,564**	**$410,345**	**$683,909**
Cost Affiliated Entity Expenses			
Office Rent	$26,275	$39,413	$65,688
CPA Adjustment	-$4,742	-$7,113	-$11,855
Total Affiliated Entity Expense	**$21,533**	**$32,300**	**$53,833**
Administrative Expenses			
Legal - General Counsel	$3,505	$5,258	$8,763
Legal - Shared Counsel (K&L Gates)	$15,604	$23,405	$39,009
Employee benefits - Admin employees	$79,534	$119,301	$198,835
Workman's Compensation - Pilots	$48,663	$72,994	$121,657
Payroll taxes- Admin Employees	$6,872	$10,308	$17,180
Insurance	$10,844	$16,265	$27,109
Other Taxes	$12,065	$18,097	$30,162
Admin Travel	$6,316	$9,475	$15,791
Depreciation/Auto Lease/Other	$24,168	$36,251	$60,419
Interest	$21,526	$32,288	$53,814
CPA Adjustment	-$20,920	-$31,379	-$52,299
Dues and	$10,760	$16,140	$26,900

subscriptions			
CPA Adjustment	-$581	-$871	-$1,452
Utilities	$6,277	$9,415	$15,692
Salaries- Admin employees	$60,568	$90,852	$151,420
Accounting	$14,507	$21,761	$36,268
Other	$13,936	$20,904	$34,840
Total Administrative Expenses	**$313,644**	**$470,464**	**$784,108**
Total Operating Expenses (Other Costs + Pilot Boats + Admin)	**$938,993**	**$1,408,486**	**$2,347,479**
Adjustments (Director)			
Housing allowance for Pilots	-$30,212	-$45,318	-$75,530
Housing allowance for Applicants	-$17,928	-$26,892	-$44,820
Surcharge Adjustment	$72,554	$85,754	$158,308
Total Director's Adjustments	**$24,414**	**$13,544**	**$37,958**
Total Operating Expenses (OpEx + Adjustments)	**$963,407**	**$1,422,030**	**$2,385,437**

B. Step 2: Project operating expenses, adjusting for inflation or deflation.

Having identified the recognized 2017 operating expenses in Step 1, the next step is to estimate the current year's operating expenses by adjusting those expenses for inflation over the 3-year period. We calculate inflation for 2017 to 2018 using the BLS data from the CPI for the Midwest Region of the United States.[47] Because the BLS does not provide forecasted inflation data, we use economic projections from the Federal

[47] USCG-2019-0736-0003 p. 3

Reserve for the 2019 and 2020 inflation modification.[48,49] Based on that information, the calculations for Step 1 are as follows in table 16:

Table 16 — Adjusted Operating Expenses for District Two

Item	District Two		
	Undesignated	**Designated**	**Total**
Total Operating Expenses (Step 1)	$963,407	$1,422,030	$2,385,437
2018 Inflation Modification (@1.9%)	$18,305	$27,019	$45,324
2019 Inflation Modification (@1.8%)	$17,671	$26,083	$43,754
2020 Inflation Modification (@2%)	$19,988	$29,503	$49,491
Adjusted 2020 Operating Expenses	**$1,019,371**	**$1,504,635**	**$2,524,006**

C. Step 3: Estimate number of working pilots.

In accordance with the text in § 404.103, we estimate the number of working pilots in each district. We determine the number of working pilots based on input from the LPA. Using these numbers, we estimate that there will be 15 working pilots in 2020 in District Two. Furthermore, based on the seasonal staffing model discussed in the 2017 ratemaking (see 82 FR 41466), we assign a certain number of pilots to designated waters and a certain number to undesignated waters, as shown in table 17. These numbers are used to determine the amount of revenue needed in their respective areas.

Table 17— Authorized pilots

Item	**District Two**

[48] USCG-2019-0736-0002 p. 5
[49] USCG-2019-0736-0002 p. 5

Maximum number of pilots (per § 401.220(a))[50]	15
2020 Authorized pilots (total)	15
Pilots assigned to designated areas	7
Pilots assigned to undesignated areas	8

D. Step 4: Determine target pilot compensation benchmark.

In this step, we determine the total pilot compensation for each area. As we are conducting an interim ratemaking this year, , we follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark by inflation. Because we do not have a value for the employment cost index for 2020, we multiply the 2019 compensation benchmark of $359,887 by the Median PCE Inflation value of 2.0 percent.[51] Based on the projected 2020 inflation estimate, the compensation benchmark for 2020 is $367,085 per pilot.

Next, we verify that the number of pilots estimated for 2020 is less than or equal to the number permitted under the staffing model in § 401.220(a). The staffing model suggests that the number of pilots needed is 15 pilots for District Two, which is more than or equal to the numbers of working pilots provided by the pilot associations.[52]

Thus, in accordance with § 404.104(c), we use the revised target individual compensation level to derive the total pilot compensation by multiplying the individual target compensation by the estimated number of working pilots for District Two, as shown in table 18.

[50] For a detailed calculation refer to the Great Lakes Pilotage Rates - 2017 Annual Review final rule, which contains the staffing model. See 82 FR 41466, table 6 at 41480 (August 31, 2017).
[51] https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20190320.pdf.
[52] See table 6 of the Great Lakes Pilotage Rates - 2017 Annual Review final rule, 82 FR 41466 at 41480 (August 31, 2017). The methodology of the staffing model is discussed at length in the final rule (see pages 41476-41480 for a detailed analysis of the calculations).

Table 18 — Target Compensation for District Two

	Undesignated	Designated	Total
Target Pilot Compensation	$367,085	$367,085	$367,085
Number of Pilots	8	7	15
Total Target Pilot Compensation	**$2,936,680**	**$2,569,595**	**$5,506,275**

E. Step 5: Project working capital fund.

Next, we calculate the working capital fund revenues needed for each area. First, we add together the figures for projected operating expenses and total pilot compensation for each area. Next, we find the preceding year's average annual rate of return for new issues of high-grade corporate securities. Using Moody's data, the number is 3.93 percent.[53] By multiplying the two figures, we obtain the working capital fund contribution for each area, as shown in table 19.

Table 19— Working Capital Fund Calculation for District Two

	District Two		
Item	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2)	$1,019,371	$1,504,635	$2,524,006
Total Target Pilot Compensation (Step 4)	$2,936,680	$2,569,595	$5,506,275
Total 2020 Expenses (Step 2 + Step 4)	$3,956,051	$4,074,230	$8,030,281
Working Capital Fund (Total Expenses × 3.93%)	$155,473	$160,117	$315,590

F. Step 6: Project needed revenue.

In this step, we add together all of the expenses accrued to derive the total revenue needed for each area. These expenses include the projected operating expenses (from Step 2), the total pilot compensation (from Step 4), and the working capital fund

[53] USCG-2019-0736-0005, p. 3.

contribution (from Step 5). We show these calculations in table 20.

Table 20 — Revenue Needed for District Two

	District Two		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2, See Table 16)	$1,019,371	$1,504,635	$2,524,006
Total Target Pilot Compensation (Step 4, See Table 18)	$2,936,680	$2,569,595	$5,506,275
Working Capital Fund (Step 5, See Table 19)	$155,473	$160,117	$315,590
Total Revenue Needed	$4,111,524	$4,234,347	$8,345,871

G. Step 7: Calculate initial base rates.

Having determined the needed revenue for each area in the previous six steps to develop an hourly rate, we divide that number by the expected number of hours of traffic. Step 7 is a two-part process. In the first part, we calculate the average hours of traffic over 10 years in District Two, using the total time on task or pilot bridge hours.[54] Because we calculate separate figures for designated and undesignated waters, there are two parts for each calculation. We show these values in table 21.

Table 21— Time on Task for District Two (Hours)

Year	Undesignated	Designated
2018	6,150	6,655
2017	5,139	6,074
2016	6,425	5,615
2015	6,535	5,967
2014	7,856	7,001
2013	4,603	4,750
2012	3,848	3,922
2011	3,708	3,680
2010	5,565	5,235
2009	3,386	3,017

[54] USCG-2019-0736-0002 p. 5

Average	5,322	5,192

Next, we derive the initial hourly rate by dividing the revenue needed by the average number of hours for each area. This produces an initial rate, which is necessary to produce the revenue needed for each area, assuming the amount of traffic is as expected. The calculations for each area are set forth in table 22.

Table 22 — Initial Rate Calculations for District Two

Item	Undesignated	Designated
Revenue needed (Step 6)	$4,111,524	$4,234,347
Average time on task (hours)	5,322	5,192
Initial rate (Step 6÷Average Time on Task)	$773	$816

H. Step 8: Calculate average weighting factors by Area.

In this step, we calculate the average weighting factor for each designated and undesignated area. We collect the weighting factors, set forth in 46 CFR 401.400, for each vessel trip. Using this database, we calculated the average weighting factor for each area using the data from each vessel transit from 2014 onward, as shown in tables 23 and 24.[55]

Table 23 — Average Weighting Factor for District Two, Undesignated Areas

Vessel Class/Year	**Number of Transits (A)**	**Weighting factor (B)**	**Weighted Transits (A × B)**
Class 1 (2014)	31	1	31
Class 1 (2015)	35	1	35
Class 1 (2016)	32	1	32
Class 1 (2017)	21	1	21
Class 1 (2018)	37	1	37

[55] USCG-2019-0736-0006, p.2

Class 2 (2014)	356	1.15	409.4
Class 2 (2015)	354	1.15	407.1
Class 2 (2016)	380	1.15	437
Class 2 (2017)	222	1.15	255.3
Class 2 (2018)	123	1.15	141.45
Class 3 (2014)	20	1.3	26
Class 3 (2015)	0	1.3	0
Class 3 (2016)	9	1.3	11.7
Class 3 (2017)	12	1.3	15.6
Class 3 (2018)	3	1.3	3.9
Class 4 (2014)	636	1.45	922.2
Class 4 (2015)	560	1.45	812
Class 4 (2016)	468	1.45	678.6
Class 4 (2017)	319	1.45	462.55
Class 4 (2018)	196	1.45	284.20
Total	3,814	-	5,023
Average weighting factor (weighted transits/number of transits)	-	1.32	-

Table 24 — Average Weighting Factor for District Two, Designated Areas

Vessel Class/Year	**Number of Transits (A)**	**Weighting factor (B)**	**Weighted Transits (A × B)**
Class 1 (2014)	20	1	20
Class 1 (2015)	15	1	15
Class 1 (2016)	28	1	28
Class 1 (2017)	15	1	15
Class 1 (2018)	42	1	42
Class 2 (2014)	237	1.15	272.55
Class 2 (2015)	217	1.15	249.55
Class 2 (2016)	224	1.15	257.6
Class 2 (2017)	127	1.15	146.05
Class 2 (2018)	153	1.15	175.95
Class 3 (2014)	8	1.3	10.4
Class 3 (2015)	8	1.3	10.4
Class 3 (2016)	4	1.3	5.2

Class 3 (2017)	4	1.3	5.2
Class 3 (2018)	14	1.3	18.2
Class 4 (2014)	359	1.45	520.55
Class 4 (2015)	340	1.45	493
Class 4 (2016)	281	1.45	407.45
Class 4 (2017)	185	1.45	268.25
Class 4 (2018)	379	1.45	549.55
Total	2,660	-	3,510
Average weighting factor (weighted transits/number of transits)	-	1.32	-

I. Step 9: Calculate revised base rates.

In this step, we revise the base rates so that once the impact of the weighting factors are considered, the total cost of pilotage would be equal to the revenue needed. To do this, we divide the initial base rates, calculated in Step 7, by the average weighting factors calculated in Step 8, as shown in table 25.

Table 25 — Revised Base Rates for District Two

Area	Initial rate (Step 7)	Average weighting factor (Step 8)	Revised Rate (Initial rate ÷ Average weighting factor)
District Two: Designated	$816	1.32	$618
District Two: Undesignated	$773	1.32	$586

J. Step 10: Review and finalize rates.

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish that the rates do meet the goal of ensuring safe, efficient and reliable pilotage,

the Director considers whether the rates incorporate appropriate compensation for pilots to handle heavy traffic periods, and whether there is a sufficient number of pilots to handle those heavy traffic periods. The Director also considers whether the rates will cover operating expenses and infrastructure costs, and takes average traffic and weighting factors into consideration. Based on this information, the Director is not making any alterations to the rates in this step. We modified the text in § 401.405(a) to reflect the final rates shown in table 26.

Table 26 —Final Rates for District Two

Area	Name	Final 2019 pilotage rate	Proposed 2020 pilotage rate	Final 2020 pilotage rate
District Two: Designated	Navigable waters from Southeast Shoal to Port Huron, MI	$603	$602	$618
District Two: Undesignated	Lake Erie	$531	$573	$586

District Three

A. Step 1: Recognize previous operating expenses.

Step 1 in our ratemaking methodology requires that the Coast Guard review and recognize the previous year's operating expenses (§ 404.101). To do so, we begin by reviewing the independent accountant's financial reports for each association's 2017 expenses and revenues.[56] For accounting purposes, the financial reports divide expenses into designated and undesignated areas. In certain instances, costs are applied to the

[56] These reports are available in the docket for this rulemaking (see Docket # USCG-2019-0736).

undesignated or designated area based on where they were actually accrued. For example, costs for "Applicant pilot license insurance" in District One are assigned entirely to the undesignated areas, as applicant pilots work exclusively in those areas. For costs accrued by the pilot associations generally, for example, employee benefits, the cost is divided between the designated and undesignated areas on a *pro rata* basis. The recognized operating expenses for District Three are shown in table 27.

In addition to the surcharge adjustment and lobbying expenses described for District One in Section VII A. of this preamble, *Step 1: Recognize previous operating expenses* and the adjustments made by the auditor, as explained in the auditor's reports, which are available in the docket for this rulemaking where indicated in the **ADDRESSES** portion of this document, the Director is finalizing two adjustments to District Three's operating expenses, listed as Director's adjustments.

The first disallows $32,800 in "housing allowance" expenses. The Coast Guard agrees with the IRS that an employer-provided housing allowance is a fringe benefit, and we consider it to be employee compensation. In addition, we expect those appointed as registered pilots pilot to live in the region in which they are employed. We expect that, if a pilot chooses to live outside their region of employment, they should have to pay for their accommodations, and this cost should not be passed on to the shippers via the rate. Therefore, we are not including any housing allowance the district chooses to provide their pilots in the ratemaking calculation.

The second Director's adjustment is a $265,309 surcharge adjustment to account for the difference between the amount the district spent on applicant pilot wages and benefits in 2017 to cover the training costs for seven applicant pilots, and the amount

actually collected via the 2017 surcharge. In total, District Three spent $647,606 on applicant pilot compensation for seven applicant pilots and received $382,297 via the surcharge in 2017. As a result, we are including a $265,309 surcharge adjustment ($647,606 - $382,297) in the recognized expenses for District Three. We allocated this adjustment to each area based on their proportional bridge hours in 2017 (See table 33 for bridge hours).

Table 27 — 2017 Recognized Expenses for District Three

	District Three			
	Undesignated[57] (Area 6)	Designated (Area 7)	Undesignated[58] (Area 8)	TOTAL
Reported Expenses for 2017	Lakes Huron and Michigan	St. Mary's River	Lake Superior	
Operating Expenses				
Other Pilotage Costs				
Subsistence/Travel – Pilot	$237,036	$93,461	$92,458	$422,955
CPA Adjustment	-$11,178	-$4,407	-$4,360	-$19,945
Subsistence/Travel – Applicant	$90,123	$35,535	$35,154	$160,812
Payroll Taxes - Pilots	$124,088	$48,927	$48,402	$221,417
Payroll Taxes - Applicants	$25,553	$10,075	$9,967	$45,595
License Insurance - Pilots	$15,631	$6,163	$6,097	$27,891
Training - Pilots	$25,830	$10,185	$10,075	$46,090
Training - Applicants	$16,325	$6,437	$6,368	$29,130
Housing Allowance	$18,382	$7,248	$7,170	$32,800
Winter Meeting	$14,795	$ 5,834	$ 5,771	$26,400
Cell Phone Allowance	$26,186	$10,325	$ 10,214	$46,725
Other Pilotage Costs	$49,252	$19,420	$19,211	$87,883
CPA Adjustment	-$3,699	-$1,446	-$1,431	-$6,576
Total Other Pilotage Costs	**$628,324**	**$247,757**	**$245,096**	**$1,121,177**

[57] The undesignated areas in District Three (areas 6 and 8) are treated separately in table 27. In table 28 and subsequent tables, both undesignated areas are combined and analyzed as a single undesignated area.
[58] For a detailed calculation, refer to the Great Lakes Pilotage Rates - 2017 Annual Review final rule, which contains the staffing model. See 82 FR 41466, table 6 at 41480 (August 31, 2017).

Pilot Boat and Dispatch Costs				
Pilot boat costs	$397,610	$156,774	$155,092	$709,476
CPA Adjustment	-$27,756	-$10,944	-$10,826	-$49,526
Dispatch costs	$99,705	$39,313	$38,891	$177,909
Payroll taxes	$9,351	$3,687	$3,648	$16,686
Dispatch Employee Benefits	$3,927	$1,548	$1,532	$7,007
Total Pilot and Dispatch Costs	**$482,837**	**$190,378**	**$188,337**	**$861,552**
Administrative Expenses				
Legal - General Counsel	$32,149	$12,676	$12,540	$57,365
Legal – Shared Counsel	$18,730	$7,385	$7,306	$33,421
Office Rent	$4,733	$1,866	$1,846	$8,445
Insurance	$3,715	$1,465	$1,449	$6,629
Employee benefits	$76,093	$30,003	$29,681	$135,777
Workers Compensation	$1,513	$597	$590	$2,700
Payroll Taxes	$6,408	$2,527	$2,500	$11,435
Other Taxes	$1,034	$408	$403	$1,845
Admin Travel	$676	$267	$264	$1,207
Depreciation/Auto Leasing/Other	$50,959	$20,093	$19,877	$90,929
Interest	$2,262	$892	$882	$4,036
APA Dues	$20,544	$8,100	$8,013	$36,657
Utilities	$5,335	$2,103	$2,081	$9,519
Admin Salaries	$64,004	$25,236	$24,966	$114,206
Accounting/Professional Fees	$34,390	$13,560	$13,414	$61,364
Other	$6,170	$2,433	$2,407	$11,010
Total Administrative Expenses	**$328,715**	**$129,611**	**$128,219**	**$586,545**
Total Operating Expenses (Other Costs + Pilot Boats + Admin)	**$1,439,876**	**$567,746**	**$561,652**	**$2,569,274**
Adjustments (Director)				
Housing Allowance	-$18,382	-$7,248	-$7,170	-$32,800
Surcharge Adjustment	$116,056	$33,197	$116,056	$265,309
Total Director's Adjustments	**$97,674**	**$25,949**	**$108,886**	**$232,509**
Total Operating Expenses	**$1,537,550**	**$593,695**	**$670,538**	**$2,801,783**

(OpEx + Adjustments)				

B. Step 2: Project operating expenses, adjusting for inflation or deflation.

Having identified the recognized 2017 operating expenses in Step 1, the next step is to estimate the current year's operating expenses by adjusting those expenses for inflation over the 3-year period. We calculate inflation for 2017 to 2018 using the BLS data from the CPI for the Midwest Region of the United States.[59] Because the BLS does not provide forecast inflation data, we use economic projections from the Federal Reserve for the 2019 and 2020 inflation modification.[60,61] Based on that information, the calculations for Step 1 are as follows:

Table 28—Adjusted Operating Expenses for District Three

	District Three		
	Undesignated	**Designated**	**Total**
Total Operating Expenses (Step 1)	$2,208,088	$593,695	$2,801,783
2018 Inflation Modification (@1.9%)	$41,954	$11,280	$53,234
2019 Inflation Modification (@1.8%)	$40,501	$10,890	$51,391
2020 Inflation Modification (@2%)	$45,811	$12,317	$58,128
Adjusted 2020 Operating Expenses	**$2,336,354**	**$628,182**	**$2,964,536**

C. Step 3: Estimate number of working pilots.

In accordance with the text in § 404.103, we estimate the number of working pilots in each district. We determine the number of working pilots based on input from the Western Great Lakes Pilots Association. Using these numbers, we estimate that there

[59] USCG-2019-0736-0003 p. 3
[60] USCG-2019-0736-0002 p. 5
[61] USCG-2019-0736-0002 p. 5

will be 20 working pilots in 2020 in District Three. Furthermore, based on the seasonal staffing model discussed in the 2017 ratemaking (see 82 FR 41466), we assign a certain number of pilots to designated waters and a certain number to undesignated waters, as shown in table 29. These numbers are used to determine the amount of revenue needed in their respective areas.

Table 29 — Authorized Pilots

	District Three
Maximum number of pilots (per § 401.220(a)) [62]	22
2020 Authorized pilots (total)	20
Pilots assigned to designated areas	4
Pilots assigned to undesignated areas	16

D. Step 4: Determine target pilot compensation benchmark.

In this step, we determine the total pilot compensation for each area. As we are conducting an "interim" ratemaking this year, we are following the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark by inflation. Because we do not have a value for the employment cost index for 2020, we multiply the 2019 compensation benchmark of $359,887 by the Median PCE Inflation value of 2.0 percent.[63] Based on the projected 2020 inflation estimate, the compensation benchmark for 2020 is $367,085 per pilot.

Next, we verify that the number of pilots estimated for 2020 is less than or equal to the number permitted under the staffing model in § 401.220(a). The staffing model

[62] For a detailed calculation refer to the Great Lakes Pilotage Rates - 2017 Annual Review final rule, which contains the staffing model. See 82 FR 41466, table 6 at 41480 (August 31, 2017).
[63] https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20190320.pdf.

suggests that the number of pilots needed for District Three is 22 pilots,[64] which is more than or equal to the numbers of working pilots provided by the pilot associations.

Thus, in accordance with § 404.104(c), we use the revised target individual compensation level to derive the total pilot compensation by multiplying the individual target compensation by the estimated number of working pilots for District Three, as shown in table 30.

Table 30 — Target Compensation for District Three

	District Three		
	Undesignated	Designated	Total
Target Pilot Compensation	$367,085	$367,085	$367,085
Number of Pilots	16	4	20
Total Target Pilot Compensation	**$5,873,360**	**$1,468,340**	**$7,341,700**

E. Step 5: Project working capital fund.

Next, we calculate the working capital fund revenues needed for each area. First, we add together the figures for projected operating expenses and total pilot compensation for each area. Next, we find the preceding year's average annual rate of return for new issues of high grade corporate securities. Using Moody's data, the number is 3.93 percent.[65] By multiplying the two figures, we obtain the working capital fund contribution for each area, as shown in table 31.

Table 31 — Working Capital Fund Calculation for District Three

	District Three		
	Undesignated	Designated	Total
Adjusted Operating	$2,336,354	$628,182	$2,964,536

[64] See table 6 of the Great Lakes Pilotage Rates - 2017 Annual Review final rule, 82 FR 41466 at 41480 (August 31, 2017). The methodology of the staffing model is discussed at length in the final rule (see pages 41476-41480 for a detailed analysis of the calculations).
[65] USCG-2019-0736-0005, p. 3.

Expenses (Step 2)			
Total Target Pilot Compensation (Step 4)	$5,873,360	$1,468,340	$7,341,700
Total 2020 Expenses (Step 2 + Step 4)	$8,209,714	$2,096,522	$10,306,236
Working Capital Fund (Total Expenses × 3.93%)	$322,642	$82,393	$405,035

F. Step 6: Project needed revenue.

In this step, we add together all of the expenses accrued to derive the total revenue needed for each area. These expenses include the projected operating expenses (from Step 2), the total pilot compensation (from Step 4), and the working capital fund contribution (from Step 5). We show these calculations in table 32.

Table 32 — Revenue Needed for District Three

	District Three		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2, See Table 28)	$2,336,354	$628,182	$2,964,536
Total Target Pilot Compensation (Step 4, See Table 30)	$5,873,360	$1,468,340	$7,341,700
Working Capital Fund (Step 5, See Table 31)	$322,642	$82,393	$405,035
Total Revenue Needed	$8,532,356	$2,178,915	$10,711,271

G. Step 7: Calculate initial base rates.

Having determined the revenue needed for each area in the previous six steps to develop an hourly rate, we divide that number by the expected number of hours of traffic. Step 7 is a two-part process. In the first part, we calculate the average hours of traffic over 10 years in District Three, using the total time on task or pilot bridge hours.[66] Because we calculate separate figures for designated and undesignated waters, there are

[66] USCG-2019-0736-0002 p. 5

two parts for each calculation. We show these values in table 33.

Table 33 — Time on task for District Three (Hours)

	District Three	
Year	Undesignated	Designated
2018	19,967	3,455
2017	20,955	2,997
2016	23,421	2,769
2015	22,824	2,696
2014	25,833	3,835
2013	17,115	2,631
2012	15,906	2,163
2011	16,012	1,678
2010	20,211	2,461
2009	12,520	1,820
Average	19,476	2,651

Next, we derive the initial hourly rate by dividing the revenue needed by the average number of hours for each area. This produces an initial rate, which is necessary to produce the revenue needed for each area, assuming the amount of traffic is as expected. The calculations for each area are set forth in table 34.

Table 34 — Initial Rate Calculations for District Three

	Undesignated	Designated
Revenue needed (Step 6)	$8,532,356	$2,178,915
Average time on task (hours)	19,476	2,651
Initial rate	$438	$822

H. Step 8: Calculate average weighting factors by Area.

In this step, we calculate the average weighting factor for each designated and undesignated area. We collect the weighting factors, set forth in 46 CFR 401.400, for each vessel trip. Using this database, we calculate the average weighting factor for each area using the data from each vessel transit from 2014 onward, as shown in tables 35 and

36.[67]

Table 35— Average Weighting Factor for District Three, Undesignated Areas

Vessel Class/Year	Number of Transits (A)	Weighting factor (B)	Weighted Transits (A × B)
Area 6			
Class 1 (2014)	45	1	45
Class 1 (2015)	56	1	56
Class 1 (2016)	136	1	136
Class 1 (2017)	148	1	148
Class 1 (2018)	103	1	103
Class 2 (2014)	274	1.15	315.1
Class 2 (2015)	207	1.15	238.05
Class 2 (2016)	236	1.15	271.4
Class 2 (2017)	264	1.15	303.6
Class 2 (2018)	169	1.15	194.35
Class 3 (2014)	15	1.3	19.5
Class 3 (2015)	8	1.3	10.4
Class 3 (2016)	10	1.3	13
Class 3 (2017)	19	1.3	24.7
Class 3 (2018)	9	1.3	11.7
Class 4 (2014)	394	1.45	571.3
Class 4 (2015)	375	1.45	543.75
Class 4 (2016)	332	1.45	481.4
Class 4 (2017)	367	1.45	532.15
Class 4 (2018)	337	1.45	488.65
Total for Area 6	3,504		4,507.05
Area 8			
Class 1 (2014)	3	1	3
Class 1 (2015)	0	1	0
Class 1 (2016)	4	1	4
Class 1 (2017)	4	1	4
Class 1 (2018)	0	1	0
Class 2 (2014)	177	1.15	203.55
Class 2 (2015)	169	1.15	194.35
Class 2 (2016)	174	1.15	200.1

[67] USCG-2019-0736-0006, p.2

Class 2 (2017)	151	1.15	173.65
Class 2 (2018)	102	1.15	117.3
Class 3 (2014)	3	1.3	3.9
Class 3 (2015)	0	1.3	0
Class 3 (2016)	7	1.3	9.1
Class 3 (2017)	18	1.3	23.4
Class 3 (2018)	7	1.3	9.1
Class 4 (2014)	243	1.45	352.35
Class 4 (2015)	253	1.45	366.85
Class 4 (2016)	204	1.45	295.8
Class 4 (2017)	269	1.45	390.05
Class 4 (2018)	188	1.45	272.6
Total for Area 8	1,976	-	2623.1
Combined total	5,480	-	7,130.15
Average weighting factor (weighted transits/number of transits)	-	1.30	-

Table 36 — Average Weighting Factor for District Three, Designated Areas

Vessel Class per Year	**Number of Transits (A)**	**Weighting factor (B)**	**Weighted Transits (A × B)**
Class 1 (2014)	27	1	27
Class 1 (2015)	23	1	23
Class 1 (2016)	55	1	55
Class 1 (2017)	62	1	62
Class 1 (2018)	47	1	47
Class 2 (2014)	221	1.15	254.15
Class 2 (2015)	145	1.15	166.75
Class 2 (2016)	174	1.15	200.1
Class 2 (2017)	170	1.15	195.5
Class 2 (2018)	126	1.15	144.9
Class 3 (2014)	4	1.3	5.2
Class 3 (2015)	0	1.3	0
Class 3 (2016)	6	1.3	7.8
Class 3 (2017)	14	1.3	18.2
Class 3 (2018)	6	1.3	7.8
Class 4 (2014)	321	1.45	465.45

Class 4 (2015)	245	1.45	355.25
Class 4 (2016)	191	1.45	276.95
Class 4 (2017)	234	1.45	339.3
Class 4 (2018)	225	1.45	326.25
Total	2,296	-	2,977
Average weighting factor (weighted transits per number of transits)	-	1.30	-

I. Step 9: Calculate revised base rates.

In this step, we revise the base rates so that once the impact of the weighting factors are considered, the total cost of pilotage would be equal to the revenue needed. To do this, we divide the initial base rates, calculated in Step 7, by the average weighting factors calculated in Step 8, as shown in table 37.

Table 37 — Revised Base Rates for District Three

Area	Initial rate (Step 7)	Average weighting factor (Step 8)	Revised Rate (Initial rate ÷ Average weighting factor)
District Three: Designated	$822	1.30	$632
District Three: Undesignated	$438	1.30	$337

J. Step 10: Review and finalize rates

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish that the rates do meet the goal of ensuring safe, efficient, and reliable pilotage, the Director considers whether the rates incorporate appropriate compensation for pilots

to handle heavy traffic periods and whether there is a sufficient number of pilots to handle those heavy traffic periods. The Director also considers whether the rates will cover operating expenses and infrastructure costs, and takes average traffic and weighting factors into consideration. Based on this information, the Director is not making any alterations to the rates in this step. We modified the text in § 401.405(a) to reflect the final rates shown in table 38.

Table 38 —Final Rates for District Three

Area	Name	Final 2019 pilotage rate	Proposed 2020 pilotage rate	Final 2020 pilotage rate
District Three: Designated	St. Mary's River	$594	$621	$632
District Three: Undesignated	Lakes Huron, Michigan, and Superior	$306	$327	$337

K. Surcharges

The Coast Guard is not implementing any surcharges in this ratemaking. As stated earlier, we previously used surcharges to pay for the training of new pilots, rather than incorporating training costs into the overall "needed revenue" that is used in the calculation of the base rate, because the surcharge accelerates the reimbursement of certain necessary and reasonable expense. For the 2019 ratemaking, this reimbursement needed to be accelerated because of the large number of registered pilots retiring, and the large number of new pilots being trained to replace them. As the vast majority of registered pilots are not anticipated to retire in the next 20 years, the Coast Guard

believes that pilot associations are now able to plan for the costs associated with retirements without relying on the Coast Guard to impose surcharges.

VIII. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes or Executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that "for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process."

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. Because this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* the OMB

Memorandum titled "Guidance Implementing Executive Order 13771, titled 'Reducing Regulation and Controlling Regulatory Costs'" (April 5, 2017). A regulatory analysis (RA) follows.

The purpose of this final rule is to establish new base pilotage rates. The Great Lakes Pilotage Act of 1960 requires that rates be established or reviewed and adjusted each year. The Act requires that base rates be established by a full ratemaking at least once every five years, and in years when base rates are not established, they must be reviewed and, if necessary, adjusted. The last full ratemaking was concluded in June of 2018.[68] The Coast Guard estimates an increase in cost of approximately $279,845 to industry as a result of the change in revenue needed in 2020 compared to the revenue needed in 2019. This is a 1 percent net increase in estimated payments made by shippers from the 2019 shipping season. Table 39 summarizes changes with no cost impacts or where the cost impacts are captured in the final rate change. Table 40 summarizes the affected population, costs, and benefits of the final rate change. The Coast Guard estimates an increase in cost of approximately $279,845 to industry as a result of the change in revenue needed in 2020 compared to the revenue needed in 2019. This is a 1 percent net increase in estimated payments made by shippers from the 2019 shipping season.

Table 39—Changes with No Costs or Cost Captured in the Final Rate

Change	Description	Affected Population	Basis for No Cost	Benefits

[68] Great Lakes Pilotage Rates-2018 Annual Review and Revisions to Methodology (83 FR 26162), published June 5, 2018

Working capital fund requirements.	The Coast Guard is adding regulatory text to § 403.110 requiring the pilotage associations keep money allocated to the working capital fund in a separate account and limit the use of the funds to infrastructure expenses.	The 3 pilotage associations.	All three districts opened accounts for the working capital fund in response to a policy letter sent by the Coast Guard in November, 2018; therefore, there is no additional cost as a result of this rulemaking. In addition, based on discussion with the associations, the cost to open these accounts was negligible, as each association was able to open a bank account online with their existing financial institutions with minimal effort. Recordkeeping associated with the new bank accounts may be conducted simultaneously with the recordkeeping for the existing accounts, as all accounts are with the same financial institution. In addition, the associations must already report and keep records on their infrastructure expense as part of their reporting requirements under § 403.105.	Provides increased transparency and oversight of how the money in the working capital fund is spent and how much each association has allocated for infrastructure expenses.
Address inconsistent terms.	The Coast Guard is replacing the text in § 404.106, "return on investment" with "working capital fund".	The 3 pilotage associations.	The Coast Guard previously renamed the "return on investment" as the "working capital fund" in the Great Lakes Pilotage Rates 2017 Annual Review final rule (82 FR 41466); however, this text was not modified in that rulemaking.	Creates consistency across the CFR and reduces confusion.

Target pilot compensation.	The Coast Guard is changing the base pilot compensation benchmark in § 401.405(a) to the 2019 compensation benchmark after adjusting for inflation.	Owners and operators of 266 vessels journeying the Great Lakes system annually, 52 U.S. Great Lakes pilots, and 3 pilotage associations.	Pilot compensation costs are accounted for in the base pilotage rates.	This compensation target achieves the Coast Guard's goals of safety through rate and compensation stability, while promoting recruitment and retention of qualified U.S. registered pilots.

Table 40— Economic Impacts Due to Rate Changes

Change	Description	Affected Population	Costs	Benefits
Rate and surcharge changes.	Under the Great Lakes Pilotage Act of 1960, the Coast Guard is required to review and adjust base pilotage rates annually.	Owners and operators of 266 vessels transiting the Great Lakes system annually, 52 U.S. Great Lakes pilots, and 3 pilotage associations.	Increase of $279,845 due to change in revenue needed for 2020 ($28, 268,030) from revenue needed for 2019 ($27,988,185) as shown in Table 41 below.	Promotes safe, efficient, and reliable pilotage service on the Great Lakes. Provides fair compensation, adequate training, and sufficient rest periods for pilots. New rates cover an association's necessary and reasonable operating expenses. Ensures the association receives sufficient revenues to fund future improvements.

Table 41 summarizes the changes in the regulatory analysis from the NPRM to the final rule. The Coast Guard made these changes as a result of public comments received after publication of the NPRM. The Coast Guard did not receive any comments on the regulatory analysis itself, but did receive comments on the operating expenses that affected the calculation of projected revenues. In the final rule, the Coast Guard made two adjustments to the operating expenses based on public comment: (1) we adjusted the operating expenses to include the 3 percent shared council fee which we incorrectly

deducted in the NPRM; and (2) we added a surcharge adjustment for District 2 and District 3 to account for the differences between their accrued training expenses and the amount of money they collected via the surcharge. An in-depth discussion of these comments is located in Section VI of the preamble, Discussion of Comments.

Table 41— Summary of Changes from NPRM to Final Rule

Element of the Analysis	NPRM	Final rule	Resulting change in RA
Operating Expenses (Step 1)	Incorrectly deducted 3% shared council expenses from the operating expenses for all districts	Removes deduction for all three districts	Data affects the calculation of projected revenues.
	Did not include required surcharge adjustments for District 2 and District 3	Includes a $158,308 surcharge adjustment for District 2 and a $265,309 surcharge adjustment for District 3	

The Coast Guard is required to review and adjust pilotage rates on the Great Lakes annually. See Sections III and IV of this preamble for detailed discussions of the legal basis and purpose for this rulemaking and for background information on Great Lakes pilotage ratemaking. Based on our annual review for this rulemaking, we adjusted the pilotage rates for the 2020 shipping season to generate sufficient revenues for each district to reimburse its necessary and reasonable operating expenses, fairly compensate trained and rested pilots, and provide an appropriate working capital fund to use for improvements. The rate changes in this final rule will increase the rates for five areas (District One: Designated, all of District Two, and all of District Three), and decrease the rates for the remaining area (District One: Undesignated). In addition, the final rule will not implement a surcharge. These changes lead to a net increase in the cost of service to shippers. However, because the rates will increase for most areas and decrease for one,

the change in per unit cost to each individual shipper will be dependent on their area of operation, and if they previously paid a surcharge.

A detailed discussion of our economic impact analysis follows.

Affected Population

This final rule will impact U.S. Great Lakes pilots, the three pilot associations, the Saint Lawrence Seaway Pilotage Association, the Lakes Pilotage Association, and the Western Great Lakes Pilotage, and the owners and operators of oceangoing vessels that transit the Great Lakes annually. We estimate that there will be 52 pilots working during the 2020 shipping season. The shippers affected by these rate changes are the owners and operators of domestic vessels operating "on register" (engaged in foreign trade) and owners and operators of non-Canadian foreign vessels on routes within the Great Lakes system. These owners and operators must have pilots or pilotage service as required by 46 U.S.C. 9302. There is no minimum tonnage limit or exemption for these vessels. The statute applies only to commercial vessels and not to recreational vessels. U.S.-flagged vessels not operating on register and Canadian "lakers," which account for most commercial shipping on the Great Lakes, are not required by 46 U.S.C. 9302 to have pilots. However, these U.S.- and Canadian-flagged lakers may voluntarily choose to engage a Great Lakes registered pilot. Vessels that are U.S.-flagged may opt to have a pilot for varying reasons, such as unfamiliarity with designated waters and ports, or for insurance purposes.

The Coast Guard used billing information from the years 2016 through 2018 from the Great Lakes Pilotage Management System (GLPMS) to estimate the average annual

number of vessels affected by the rate adjustment.[69] The GLPMS tracks data related to managing and coordinating the dispatch of pilots on the Great Lakes, and billing in accordance with the services. As described in Step 7 of the methodology, we use a 10-year average to estimate the traffic. However, when we reviewed 10 years of the most recent billing data, we found that the data included vessels that have not used pilotage services in recent years. Therefore, we used 3 years of the most recent billing data to estimate the affected population. Using 3 years of billing data is a better representation of the vessel population currently using pilotage services and, therefore, mostly likely be impacted by this rulemaking. We found that 457 unique vessels used pilotage services during the years 2016 through 2018. That is, these vessels had a pilot dispatched to the vessel, and billing information was recorded in the GLPMS. Of these vessels, 420 were foreign-flagged vessels and 37 were U.S.-flagged vessels. As previously stated, U.S.-flagged vessels not operating on register are not required to have a registered pilot per 46 U.S.C. 9302, but can voluntarily choose to have one.

Numerous factors affect vessel traffic, which varies from year to year. Therefore, rather than using the total number of vessels over the time period, we took an average of the unique vessels using pilotage services from the years 2016 through 2018 as the best representation of vessels estimated to be affected by the rates in this rulemaking. From 2016 through 2018, an average of 266 vessels used pilotage services annually.[70] On average, 248 of these vessels were foreign-flagged vessels and 18 were U.S.-flagged vessels that voluntarily opted into the pilotage service.

[69] 2019 GLPMS was not available at the time of analysis, December 2019.
[70] Some vessels entered the Great Lakes multiple times in a single year, affecting the average number of unique vessels utilizing pilotage services in any given year.

Total Cost to Shippers

The rate changes from this final rule will result in a net increase in the cost of service to shippers. However, because the rates will increase for five areas and decrease for one, the change in per unit cost to each individual shipper is dependent on their area of operation, and if they previously paid a surcharge.

The Coast Guard estimates the effect of the rate changes on shippers by comparing the total projected revenues needed to cover costs in 2019 with the total projected revenues to cover costs in 2020, including any temporary surcharges we have authorized.[71] We set pilotage rates so that pilot associations receive enough revenue to cover their necessary and reasonable expenses. Shippers pay these rates when they have a pilot, as required by 46 U.S.C. 9302. Therefore, the aggregate payments of shippers to pilot associations are equal to the projected necessary revenues for pilot associations. The revenues each year represent the total costs that shippers must pay for pilotage services. The change in revenue from the previous year is the additional cost to shippers discussed in this rule.

The impacts of the rate changes on shippers are estimated from the district pilotage projected revenues (shown in tables 8, 20, and 32 of this preamble). The Coast Guard estimates that for the 2020 shipping season, the projected revenue needed for all three districts is $28,268,030

To estimate the change in cost to shippers from this rule, the Coast Guard compared the 2020 total projected revenues to the 2019 projected revenues. Because we review and prescribe rates for the Great Lakes Pilotage annually, the effects are estimated

[71] While the Coast Guard implemented a surcharge in 2019, we are not implementing any surcharges for 2020.

as a single-year cost rather than annualized over a 10-year period. In the 2019 rulemaking, we estimated the total projected revenue needed for 2019, including surcharges, as $27,988,185.[72] This is the best approximation of 2019 revenues, as, at the time of this publication, we do not have enough audited data available for the 2019 shipping season to revise these projections. Table 42 shows the revenue projections for 2019 and 2020 and details the additional cost increases to shippers by area and district as a result of the rate changes on traffic in Districts One, Two, and Three.

[72] 84 FR 20551, see table 36.

Table 42 — Effect of the Rule by Area and District ($U.S.; Non-discounted)

Area	Revenue Needed in 2019	2019 Temporary Surcharge	Total 2019 Projected Revenue	Revenue Needed in 2020	2020 Temporary Surcharge	Total 2020 Projected Revenue	Change in Costs of this Rule	Percentage Change from Previous Year
Total, District One	$9,271,852	$300,000	$9,571,852	$9,210,888	$0	$9,210,888	-$360,964	-4%
Total, District Two	$7,864,224	$150,000	$8,014,224	$8,345,871	$0	$8,345,871	$331,647	4%
Total, District Three	$9,802,109	$600,000	$10,402,109	$10,711,271	$0	$10,711,271	$309,162	3%
System Total	**$26,938,185**	**$1,050,000**	**$27,988,185**	**$28,268,030**	**$0**	**$28,268,030**	**$279,845**	**1%**

The resulting difference between the projected revenue in 2019 and the projected revenue in 2020 is the annual change in payments from shippers to pilots as a result of the rate change imposed by this rule. The effect of the rate change to shippers varies by area and district. The rate changes, after taking into account the change in pilotage rates, will lead to affected shippers operating in District One experiencing a decrease in payments of $360,964 over the previous year. District Two and District Three will experience an increase in payments of $331,647 and $309,162 respectively, when compared with 2019. The overall adjustment in payments will be an increase in payments by shippers of $279,845 across all three districts (a 1-percent increase when compared with 2019). Again, because the Coast Guard reviews and sets rates for Great Lakes Pilotage annually, we estimate the impacts as single-year costs rather than annualizing them over a 10-year period.

Table 43 shows the difference in revenue by revenue-component from 2019 to 2020, and presents each revenue-component as a percentage of the total revenue needed. In both 2019 and 2020, the largest revenue-component was pilotage compensation (66 percent of total revenue needed in 2019 and 68 percent of total revenue needed in 2020), followed by operating expenses (27 percent of total revenue needed in 2019 and 29 percent of total revenue 2020).

Table 43 — Difference in Revenue by Component

Revenue-Component	Revenue Needed in 2019	Percentage of Total Revenue Needed in 2019	Revenue Needed in 2020	Percentage of Total Revenue Needed in 2020	Difference (2020 Revenue - 2019 Revenue)	Percentage Change from Previous Year
Adjusted Operating Expenses	$7,565,310	27%	$8,110,685	29%	$545,375	7%
Total Target Pilot Compensation	$18,354,237	66%	$19,088,420	68%	$734,183	4%
Working Capital Fund	$1,018,638	4%	$1,068,925	4%	$50,287	5%
Total Revenue Needed, without Surcharge	$26,938,185	96%	$28,268,030	100%	$1,329,845	5%
Surcharge	$1,050,000	4%	$0	0%	-$1,050,000	-100%
Total Revenue Needed, with Surcharge	$27,988,185	100%	$28,268,030	100%	$279,845	1%

Note: Totals may not sum due to rounding

Table 44 presents the percentage change in revenue by area and revenue-component, excluding surcharges, as they are applied at the district level.[73] The majority of the increase in revenue is due to inflation of operating expenses, and the net addition of one additional pilot. The target compensation for each pilot is $367,085; therefore, the net addition of this pilot to full working status accounts for $367,085 of the increase in the revenue needed. The change in revenue also accounts for the inflation of pilotage compensation and the removal of surcharges to cover the cost of applicant pilot training expenses. The total difference in the revenues needed in 2019 compared to the revenues needed in 2020 is $279,845, which takes into account the effect of increasing compensation for the other 51 pilots. The remaining amount is attributed to increases in the working capital fund.

[73] The 2019 projected revenues are from the Great Lakes Pilotage Rates - 2019 Annual Review and Revisions to Methodology final rule (84 FR 20551) tables 15 – 17. The 2020 projected revenues are from tables 8, 20, and 32 of this final rule.

Table 44 — Difference in Revenue by Component and Area

Area	Adjusted Operating Expenses			Total Target Pilot Compensation			Working Capital Fund			Total Revenue Needed		
	2019 (A)	2020 (B)	Percentage Change (B−A)÷B	2019 (C)	2020 (D)	Percentage Change (D−C)÷D	2019 (E)	2020 (F)	Percentage Change (F−E)÷F	2019 (G = A+C+E)	2020 (H = B+D+F)	Percentage Change (H−G)÷H
District One: Designated	$1,467,171	$1,573,286	7%	$3,598,870	$3,670,850	2%	$199,095	$206,095	3%	$5,265,136	$5,450,231	3%
District One: Undesignated	$1,335,997	$1,048,857	-27%	$2,519,209	$2,569,595	2%	$151,510	$142,205	-7%	$4,006,716	$3,760,657	-7%
District Two: Undesignated	$1,072,441	$1,019,371	-5%	$2,519,209	$2,936,680	14%	$141,152	$155,473	9%	$3,732,802	$4,111,524	9%
District Two: Designated	$1,455,988	$1,504,635	3%	$2,519,209	$2,569,595	2%	$156,225	$160,117	2%	$4,131,422	$4,234,347	2%
District Three: Undesignated	$1,703,896	$2,336,354	27%	$5,758,192	$5,873,360	2%	$293,260	$322,642	9%	$7,755,348	$8,532,356	9%
District Three: Designated	$529,817	$628,182	16%	$1,439,548	$1,468,340	2%	$77,396	$82,393	6%	$2,046,761	$2,178,915	6%

Benefits

This final rule allows the Coast Guard to meet the requirements in 46 U.S.C. 9303 to review the rates for pilotage services on the Great Lakes. The rate changes will promote safe, efficient, and reliable pilotage service on the Great Lakes by: (1) ensuring that rates cover an association's operating expenses; (2) providing fair pilot compensation, adequate training, and sufficient rest periods for pilots; and (3) ensuring pilot associations produce enough revenue to fund future improvements. The rate changes will also help recruit and retain pilots, which will ensure a sufficient number of pilots to meet peak shipping demand, helping reduce delays caused by pilot shortages.

B. 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 this rule, the Coast Guard considered the potential impact to vessel owners and operators, the three pilotage associations, as well as any other entities that may be impacted by the rule, such as not-for-profit organizations and governmental jurisdictions. First, we reviewed recent company ownership data for the vessels identified in the GLPMS, and then reviewed their business revenue and employment size data provided by publicly available sources such as Manta[74] and ReferenceUSA.[75] As described in Section VIII.A of this preamble, Regulatory Planning and Review, we found that a total

[74] See https://www.manta.com/.
[75] See http://resource.referenceusa.com/.

of 457 unique vessels used pilotage services from 2016 through 2018. These vessels are owned by 55 entities. We found that, of the 55 entities that own or operate vessels engaged in trade on the Great Lakes that would be affected by this rule, 43 are foreign entities that operate primarily outside the United States, and we do not consider the impact on these entities under the Regulatory Flexibility Act (RFA).[76] The remaining 12 entities are U.S. entities. For each entity, we compared the revenue and employee data found in the company search described above to the Small Business Administration's (SBA) small business threshold as defined in the SBA's "Table of Size Standards" for small businesses to determine how many of these companies are small entities.[77] Table 45 shows the North American Industry Classification System (NAICS) codes of the U.S. entities and the small entity standard size established by the SBA.

Table 45 — NAICS Codes and Small Entities Size Standards

NAICS	Description	Small Entity Size Standard
211120	Crude Petroleum Extraction	1,250 employees
238910	Site Preparation Contractors	$15.0 million
488330	Navigational Services to Shipping	$38.5 million
523910	Miscellaneous Intermediation	$38.5 million

[76] The RFA (5 U.S.C. 601(3)) refers to the Small Business Act for the definition of a small business. The Small Business Act in turn allows the SBA Administrator to specify detailed definitions or standards by which a business may be determined to be small, under 15 U.S.C. 632(a)(2)(A). Under this authority, the SBA defines a small business at 13 CFR 121.105(a)(1), which states that, "Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor." Therefore, we do not include impact on foreign entities in our impact analysis under the RFA.

[77] See: https://www.sba.gov/document/support--table-size-standards. SBA has established a "Table of Size Standards" for small businesses that sets small business size standards by NAICS code. A size standard, which is usually stated in number of employees or average annual receipts ("revenues"), represents the largest size that a business (including its subsidiaries and affiliates) may be in order to remain classified as a small business for SBA and Federal contracting programs.

532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing	$32.5 million
551111	Offices of Bank Holding Companies	$20.5 million
561510	Travel Agencies	$20.5 million
928110	National Security	Population of 50,000 People

Of the 12 U.S. entities, 10 exceed the SBA's small business standards for small entities. To estimate the potential impact on the 2 small entities, the Coast Guard used their 2018 invoice data to estimate their pilotage costs in 2020. We increased their 2018 costs to account for the changes in pilotage rates resulting from this rule and the Great Lakes Pilotage Rates – 2019 Annual Review and Revisions to Methodology final rule (84 FR 20551). We estimated the change in cost to these entities resulting from this rule by subtracting their estimated 2019 costs from their estimated 2020 costs. We then compared the estimated change in pilotage costs between 2019 and 2020 with each firm's annual revenue and compared their total estimated 2020 pilotage costs to their annual revenue. In both cases, the change in their estimated pilotage expenses were below 1 percent of their annual revenue. Table 46 presents the calculation of these cost estimates for both entities.

Table 46 — Estimated 2020 Pilotage Costs for Small Entities

Entity	2018 Pilotage Expenses	Estimated Change in Pilotage Costs Between 2018 and 2019[78]	Estimated 2019 Pilotage Expenses	Estimated Change in Pilotage Costs Between 2019 and 2020	Estimated 2020 Pilotage Expenses	Estimated Change in Pilotage Expenses from 2019 to 2020
	(a)	(b)	(c)=(a)×(1+(b))	(d)	(e)=(c)×(1+(d))	(f)=(e)−(c)
Small Entity A	$4,754	11%	$5,277	1%	$5,330	$53
Small Entity B	$148,389	11%	$164,712	1%	$166,359	$1,647

In addition to the owners and operators discussed above, three U.S. entities that receive revenue from pilotage services will be affected by this final rule: the three pilot associations that provide and manage pilotage services within the Great Lakes districts. Two of the associations operate as partnerships, and one operates as a corporation. These associations are designated with the same NAICS code and small-entity size standards described above, but have fewer than 500 employees. Combined, they have approximately 65 employees in total and, therefore, are designated as small entities. The Coast Guard expects no adverse effect on these entities from this final rule because the three pilot associations will receive enough revenue to balance the projected expenses associated with the projected number of bridge hours (time on task) and pilots.

Finally, the Coast Guard did not find any small not-for-profit organizations that are independently owned and operated and are not dominant in their fields that will be

[78] 84 FR 20551, see table 37

impacted by this rule. We did not find any small governmental jurisdictions with populations of fewer than 50,000 people that will be impacted by this rule. Based on this analysis, we conclude this rulemaking will not affect a substantial number of small entities, nor have a significant economic impact on any of the affected entities.

Based on our analysis, this rule will have a less-than 1 percent annual impact on 2 small entities; 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.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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).

D. 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). This rule will not change the burden in the collection currently approved by OMB under OMB Control Number 1625-0086,

Great Lakes Pilotage Methodology.

E. Federalism

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has 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. We have analyzed this rule under Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis follows.

Congress directed the Coast Guard to establish ''rates and charges for pilotage services.'' See 46 U.S.C. 9303(f). This regulation is issued pursuant to that statute and is preemptive of State law as specified in 46 U.S.C. 9306. Under 46 U.S.C. 9306, a ''State or political subdivision of a State may not regulate or impose any requirement on pilotage on the Great Lakes.'' As a result, States or local governments are expressly prohibited from regulating within this category. Therefore, this final rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

F. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531-1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. 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 (adjusted for inflation) or more in any one year. Although this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

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

H. Civil Justice Reform

This 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.

I. Protection of Children

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

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it will 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.

K. Energy Effects

We have analyzed this rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a "significant energy action" under that order because it is not a

"significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A Record of Environmental Consideration (REC) supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES portion of this preamble.

This rule is categorically excluded under paragraphs A3 and L54 of Appendix A, Table 1 of DHS Instruction Manual 023-01, Rev. 1.[79] Paragraph A3 pertains to the promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, advisory circulars, and other guidance documents of the following nature: (a) those of a strictly administrative or procedural nature; (b) those that implement, without substantive change, statutory or regulatory requirements; or (c) those that implement, without substantive change, procedures, manuals, and other guidance documents; and d) those that interpret or amend an existing regulation without changing its environmental effect. Paragraph L54 pertains to regulations which are editorial or procedural. This rule involves: (1) clarifying the rules related to the working capital fund, (2) adjusting the base pilotage rates, and (3) eliminating surcharges for administering the 2020 shipping season in accordance with applicable statutory and regulatory mandates pursuant to the Great Lakes Pilotage Act of 1960.

List of Subjects

46 CFR Part 401

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

46 CFR Part 403

Great Lakes, Navigation (water), Reporting and recordkeeping requirements, Seamen, Uniform System of Accounts

[79] https://www.dhs.gov/sites/default/files/publications/DHS_Instruction Manual 023-01-001-01 Rev 01_508compliantversion.pdf

46 CFR Part 404

Great Lakes, Navigation (water), Seamen

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 401, 403, and 404 as follows:

PART 401—GREAT LAKES PILOTAGE REGULATIONS

1. The authority citation for part 401 continues to read as follows:

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).

2. Amend §401.405 by revising paragraph (a) to read as follows:

§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.

* * * * *

PART 403—GREAT LAKES PILOTAGE UNIFORM ACCOUNTING SYSTEM

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

Authority: 46 U.S.C. 2103, 2104(a), 9303, 9304; Department of Homeland Security Delegation No. 0170.1(II)(92.a), (92.f).

4. Amend §403.110 by:

a. Designating the text as paragraph (a); and

b. Adding paragraph (b).

The addition reads as follows:

§ 403.110 Accounting entities

* * * * *

(b) Each Association will maintain a separate account called the "Working Capital Fund." Each Association will deposit into the working capital fund an amount each year at least equal to the amount calculated in Step 5, 46 CFR 404.105. Working capital funds may only be used for infrastructure improvements and infrastructure maintenance necessary to provide safe, efficient, and reliable pilot service such as pilot boat replacements, major repairs to pilot boats, non-recurring technology purchases necessary for providing pilot services, or for the acquisition of real property for use as a dispatch center, office space, or pilot lodging. The Director may grant exceptions to the requirements of this paragraph (403.110(b)) upon request by an Association.

PART 404 –GREAT LAKES PILOTAGE RATEMAKING

5. The authority citation for part 404 continues to read as follows:

Authority: 46 U.S.C. 2103, 2104(a), 9303, 9304; Department of Homeland Security Delegation No. 0170.1(II)(92.a), (92.f).

§ 404.106 [Amended]

6. Amend § 404.106 by removing the words "return on investment" and adding their place "working capital fund".

Dated: Monday, March 30, 2020

R.V. Timme,
Rear Admiral, U.S. Coast Guard
Assistant Commandant for Prevention Policy

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