9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 401, 403, and 404

[USCG-2016-0268]

RIN 1625-AC34

Great Lakes Pilotage Rates - 2017 Annual Review

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify its calculations for hourly pilotage rates on the Great Lakes by accounting for the "weighting factor," which is a multiplier that can increase the pilotage costs for larger vessels traversing areas in the Great Lakes by a factor of up to 1.45. While the weighting factor has existed for decades, it has never been included in any of the previous ratemaking calculations. We propose to add steps to our rate-setting methodology to adjust hourly rates downwards by an amount equal to the average weighting factor, so that when the weighting factor is applied, the cost to the shippers and the corresponding revenue generated for the pilot associations will adjust to what was originally intended. We note that until a final rule is produced, the 2016 rates will stay in effect, even if a final rule is not published by the start of the 2017 season.

DATES: Comments and related material must be submitted to the online docket via www.regulations.gov on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number USCG-2016-

0268 using the Federal eRulemaking Portal at http://www.regulations.gov. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email Mr. Todd Haviland, Director, Great Lakes Pilotage, Commandant (CG-WWM-2), Coast Guard; telephone 202-372-2037, email Todd.A.Haviland@uscg.mil, or fax 202-372-1914**.**

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We note that, in this supplemental notice of proposed rulemaking (SNPRM), we are only soliciting comments regarding the addition of the weighting factor adjustment into the Coast Guard's Great Lakes pilotage methodology. The Coast Guard is neither soliciting, nor are we considering, comments relating to any other part of the Great Lakes Pilotage rate setting methodology. Although we left all other items in the proposed October 2016 notice of proposed rulemaking (NPRM) as if they were unchanged, we note that those items are still under consideration by the Coast Guard and may be amended in the final rule. Any changes in the final rule will be based only on (1) comments submitted prior to the December 19, 2016 deadline for the NPRM comment period, and (2) comments submitted in response to this SNPRM regarding the weighting factor adjustment.

We encourage you to submit comments through the Federal eRulemaking Portal at http://www.regulations.gov. If your material cannot be submitted using http://www.regulations.gov, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at http://www.regulations.gov and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

We accept anonymous comments. All comments received will be posted without change to http://www.regulations.gov and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the *Federal Register* (70 FR 15086).

We are not planning to hold a public meeting but will consider doing so if public comments indicate a meeting would be helpful. We would issue a separate *Federal Register* notice to announce the date, time, and location of such a meeting.

II. Abbreviations

CFR	Code of Federal Regulations
CPI	Consumer Price Index
FR	*Federal Register*
NPRM	Notice of proposed rulemaking
OMB	Office of Management and Budget
SNPRM	Supplemental notice of proposed rulemaking
U.S.C.	United States Code

III. Executive Summary

In this SNPRM, the Coast Guard proposes changes in its methodology to adjust for the weighting factor charged for larger vessels. The result of the adjustment would be a reduction in the hourly pilotage rates in the Great Lakes region from amounts proposed in the NPRM, published in October 2016 (81 FR 72011, October 19, 2016). This action does not change the total amount of projected revenue we deem necessary for the pilot associations to provide safe, efficient, and reliable service, but would have the practical effect of reducing the actual amount of money paid as pilotage fees by shippers by approximately 28 to 32 percent. The Coast Guard believes that this adjustment in hourly rates would allow us to more accurately project the amount of revenue to be collected that we consider necessary for the pilot associations to carry out their duties.

We note that until a final rule is produced, the 2016 rates will stay in effect, even if a final rule is not published by the start of the 2017 season.

Pursuant to the Great Lakes Pilotage Act, the Coast Guard sets hourly rates for pilot services on the Great Lakes. While all vessels must pay these base rates, larger vessels pay a higher rate, as a "weighting factor" multiplies the base rates they pay by a factor of 1.15 to 1.45. In past rate-settings, the methodology used to calculate hourly rates on the Great Lakes did not adjust the rates for the weighting factor. During the 2016 shipping season, under the revised methodology, preliminary estimates of actual revenues exceeded the projected revenues, even when adjusted for increased shipping traffic.

Based on the 2016 data, we believe it is necessary to account for the weighting factors in the hourly rate calculation in the methodology in order for the U.S. Great Lakes pilot associations to more accurately generate total revenues. Our projections for total revenues are intended to ensure safe, efficient, and reliable pilotage service. One goal of our methodology is to produce revenues that reflect the level of actual pilotage demand. While we recognize that traffic varies from year to year, in years where traffic is higher than the 10-year rolling average, the rates should generate more revenue than our projections. In years where traffic is lower than the 10-year rolling average, the rates should generate less than our projections. The variance in actual demand for pilotage services should align with the variance in actual revenues.

The preliminary information we have available to us after 1 year under the revised methodology indicates that not adjusting for the weighting factor in the calculation of hourly rates has contributed to actual revenues exceeding our projected revenues. We believe that revising the methodology to adjust hourly rates for the weighting factors would improve the ability of the methodology to more closely match projections of total revenue with the actual revenue generated.

Table 1 shows the proposed changes in the pilotage charges per hour. The first column lists the current pilotage charges in force, the second column shows the rate increase that the Coast Guard proposed in October of 2016, and the third column shows the revised rates, which incorporate an adjustment for the weighting factors into the ratemaking methodology. We note that this rule does not change the weighting factors themselves, only the methodology used to calculate base hourly pilotage rates. Additionally, this does not change the overall revenue we project as necessary to provide safe, efficient, and reliable pilotage service. As this action does not change the amount of projected revenue we deem necessary for the pilot associations, the Regulatory Analyses remains unchanged from the NPRM.

Table 1: Summary of current and proposed pilotage fees, from 46 CFR 401.405

Area	Current pilotage charges per hour	NPRM proposed charges per hour	SNPRM proposed charges per hour
St. Lawrence River	$580	$757	$592
Lake Ontario	$398	$522	$402
Navigable waters from Southeast Shoal to Port Huron, MI	$684	$720	$546
Lake Erie	$448	$537	$408
St. Mary’s River	$528	$661	$508
Lakes Huron, Michigan, and Superior	$264	$280	$215

IV. Basis and Purpose

The legal basis of this rulemaking is the Great Lakes Pilotage Act of 1960 (“the Act”), which requires U.S.-flagged and foreign-flagged vessels to use U.S. or Canadian registered pilots while transiting the U.S. waters of the St. Lawrence Seaway and the

Great Lakes system. For the U.S. registered Great Lakes 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." The Act requires that rates be established or reviewed and adjusted each year, not later than March 1. Also, the Act requires the establishment of 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. The Secretary's duties and authority under the Act have been delegated to the Coast Guard.

In this SNPRM, the Coast Guard proposes to incorporate the weighting factor into its method of calculating pilotage rates set forth in the previously-published NPRM (81 FR 72011, October 19, 2016). This SNPRM does not propose to make any other adjustments to the methodology proposed in that NPRM.

V. Background

Because the Coast Guard is charged by statute with setting pilotage rates by regulation, taking into account the public interest and the cost of providing services, we have in the past used a methodology that attempts to determine the amount of traffic, the number of pilots needed to handle that traffic, allowable operating expenses, and a fair pilot compensation. It uses these calculations to set a mandatory cost of pilotage for each of six areas in the Great Lakes region.[1] In the past, the Coast Guard's modeling efforts fell short, leaving pilots in the Great Lakes substantially undercompensated compared to their peers, and resulting in retention and attrition problems, as well as shipping delays, which led to a disruption of commerce. These revenue shortfalls also prevented the pilot associations from investing in infrastructure, obtaining educational opportunities, and

[1] See 46 CFR 401.405.

acquiring the latest technological tools to improve service. In order to correct these problems, the Coast Guard undertook a major overhaul of its rate-setting program in 2016, substantially revising how it made those calculations and adjusting the per-hour pilotage rates accordingly.

Because the Coast Guard sets pilotage rates on a yearly basis, we proposed changes to the 2016 methodology for 2017, issuing an NPRM in October 2016 that proposed various modifications to the 2016 methodology for the 2017 shipping season. In our NPRM, we proposed a substantial number of changes in how to determine operating expenses and the number of pilots needed. The proposed methodology is carried out in an eight-step process, separately for each area, as described briefly below. For a fuller explanation of the process, please refer to the NPRM, at 81 FR 72011 beginning on page 72013.

Step 1: *Recognize previous year's operating expenses*. In this step, the Coast Guard would use audited financial information from the pilot's association to determine recognized operating expenses from the previous year. These include expenses such as insurance, administrative expenses, payroll taxes, and other items. However, they do not include pilot compensation or money for infrastructure projects.

Step 2: *Project next year's operating expenses*. In this step, we would multiply the previous year's operating expenses by the Consumer Price Index (CPI) for the Midwest region.

Step 3: *Determine the number of pilots needed*. In this step, we would determine the number of pilots needed by dividing the total number of hours worked by the average pilot cycle (that is, the full cycle, including work time, travel time, and rest time). That number is multiplied by an “efficiency factor” to account for times of double pilotage as well as time spent waiting for ships.

Step 4: *Determine target pilot compensation*. In this step, we would establish a goal for what an average pilot should earn over the course of the shipping season.

Step 5: *Determine working capital fund*. In this step, we would determine the amount of money needed to fund future capital projects by multiplying the operating expenses and pilot compensation by the average annual rate of return for new issuances of high-grade corporate securities, currently set at 4.16 percent.

Step 6: *Project needed revenue for next year*. In this step, we would add the projected operating expenses, the target pilot compensation, and the working capital fund to arrive at a total amount needed to cover the upcoming year’s revenue needs.

Step 7: *Make initial base rate calculations*. In this step, we would divide the revenue needed by the 10-year running average of hours worked, to arrive at preliminary hourly rate figures.

Step 8: *Review and finalize rates*. This step would allow the Director of the Great Lakes Pilotage Office to impose surcharges for the training of new pilots and other unexpected expenses.

Using this process, the Coast Guard produced the following proposed changes to the hourly pilotage rates, as summarized in Table 2. As shown by the figures in the table, the NPRM proposed increases of varying sizes for rates in each of the six regions.

Table 2: Proposed changes to the hourly pilotage rates in the 2017 NPRM

Area	**Current pilotage charge per hour**	**NPRM proposed charges per hour**
St. Lawrence River (District One Designated)	$580	$757
(District One Undesignated) Lake Ontario	$398	$522

(District Two Undesignated) Lake Erie	$448	$537
Navigable waters from Southeast Shoal to Port Huron, MI (District Two Designated)	$684	$720
District Three Undesignated Lakes Huron, Michigan, and Superior	$264	$280
St. Mary's River (District Three Designated)	$528	$661

While we believe that the ratemaking calculations proposed in the NPRM are fairly comprehensive, there is one item that is currently not captured by that methodology. This item is the "weighting factor." The weighting factor is a multiplier of between 1.0 and 1.45, which is applied to the total pilot costs for larger vessels. The weighting factor has been used to ensure that larger vessels, which can absorb more in pilotage costs than smaller ones, pay a larger percentage of the total costs of pilotage in the Great Lakes. However, while the weighting factor increases the total pilotage revenue generated, it is not used in the calculation of pilotage rates. Instead, as shown earlier in Step 7 of the rate-setting process, we use only the total number of hours to set pilotage rates, which is not adjusted to include additional revenues brought in due to the weighting factor.

VI. Discussion of Proposed Changes

In the NPRM, the Coast Guard did not propose to incorporate the weighting factors into the rate-setting methodology. We stated that we did not have sufficient data at the time of the NPRM to incorporate them into the calculations. While we discussed three options on how to proceed, we specifically stated that "we request public comment on which of three options should be implemented for future ratemakings." The three options were as follows: (1) Maintain the status quo, by continuing to mandate the weighting factors while leaving them out of the ratemaking calculation; (2) remove the weighting factors completely and charge each vessel equally for pilotage service; and (3) incorporate weighting factors into the rulemaking through an additional step that examines and projects their impact on the revenues of the pilot associations. We note that this third option "might enable us to better forecast revenue, but it would add another variable to the projections in the rate methodology." (81 FR at 72027)

In the comments to the NPRM, the Coast Guard received data and commentary from both shippers and pilots regarding the weighting factors. One commenter, representing the pilots, stated that the Coast Guard has "correctly explained that the weighting factors are separate from the ratemaking calculation."[2] The commenter noted that "over the last decade, the pilots have consistently failed to reach target compensation even with the weighting factors included. Changing this practice would exacerbate an already unfortunate situation and risk further contributing to the pilot attraction and retention difficulties." The commenter also stated that although the final numbers for the 2016 season were not available at the time of the NPRM's publication, they believe there is nothing in this most recent shipping season that suggests the trend of failing to reach the target compensation level is abating.

Shippers, on the other hand, argued that the weighting factors should be included in the revenue calculations. The shipping industry commenters stated that revenue projections in the Coast Guard's regulations will not be accurate if they do not include some value reflecting vessel size, and that it is an "arithmetic certainty" that the revenue projections in the NPRM would overstate the rates needed to generate a given level of pilotage revenue.[3] The shipping industry comments included data indicating that the average weighting factor applied to all ships over a period from 2010 through 2015 as

[2] Commenter docket number (USCG-2016-0268-0028), p. 9, citing the NPRM at 81 FR 72027.
[3] Commenter docket number (USCG-2016-0268-0033), pp. 29-30.

1.26.[4] Similarly, comments from the Shipping Federation of Canada, included as an enclosure, stated that the weighting factor adds an average of over 20 percent to the pilotage invoice revenue.

Because the weighting factors were adjusted in 2014, we propose using the measured average of weighting factors from the years 2014 through 2016 to calculate an average weighting factor to use in the ratemaking calculations. We calculated the average multiplier by weighting each class of vessels according to the number of transits, for each district, and for designated and undesignated areas. We note this is a different method than used by the shipping industry in their comments, which we averaged by the number of ships. We believe our methodology is more accurate as some ships will transit multiple times per year, paying the weighted pilotage cost each time. The following tables show the calculations we used to determine proposed average weighting factors in both designated and undesignated waters for each district.

Table 3a: Calculation of average weighting factor for designated waters in District One

Vessel Class	Number of transits	Weighting factor	Multiplier
Class 1	103	1.00	103
Class 2	765	1.15	879.75
Class 3	128	1.30	166.4
Class 4	736	1.45	1,067.2
Total transits	1,732		2,216.35
Average weighting factor			1.28

Table 3b: Calculation of average weighting factor for undesignated waters in District One

Vessel Class	Number of transits	Weighting factor	Multiplier
Class 1	71	1.00	71
Class 2	670	1.15	770.5

[4] Commenter docket number (USCG-2016-0268-0033, Exhibit I). While the commenter found some lower weighting factor averages in the years prior to 2014, we have focused on the later years because the classification parameters for weighting factors changed in 2013, producing overall lower values.

Class 3	130	1.30	169
Class 4	780	1.45	1,131
Total	1,651		2,141.5
Average weighting factor			1.30

Table 3c: Calculation of average weighting factor for designated waters in District Two

Vessel Class	Number of transits	Weighting factor	Multiplier
Class 1	98	1.00	98
Class 2	1,090	1.15	1,253.5
Class 3	29	1.30	37.7
Class 4	1,664	1.45	2,412.8
Total	2,881		3,802
Average weighting factor			1.32

Table 3d: Calculation of average weighting factor for undesignated waters in District Two

Vessel Class	Number of transits	Weighting factor	Multiplier
Class 1	63	1.00	63
Class 2	678	1.15	779.7
Class 3	20	1.30	26
Class 4	980	1.45	1,421
Total	1,741		2,289.7
Average weighting factor			1.32

Table 3e: Calculation of average weighting factor for designated waters in District Three

Vessel Class	Number of transits	Weighting factor	Multiplier
Class 1	105	1.00	105
Class 2	540	1.15	621
Class 3	10	1.30	13
Class 4	757	1.45	1,097.65
Total	1,412		1,836.65
Average weighting factor			1.30

Table 3f: Calculation of average weighting factor for undesignated waters in District Three

Vessel Class	Number of transits	Weighting factor	Multiplier
Class 1	244	1.00	244
Class 2	1,237	1.15	1,422.55
Class 3	43	1.30	55.9

Class 4	1,801	1.45	2,611.45
Total	3,325		4,333.9
Average weighting factor			1.30

Table 3g: Summary of average weighting factors by Association

Association	Undesignated weighting factor	Designated weighting factor	Total weighting factor
Saint Lawrence Seaway Pilots Association (District One)	1.28	1.30	1.29
Lakes Pilots Association (District Two)	1.32	1.32	1.32
Western Great Lakes Pilots Association (District Three)	1.30	1.30	1.30

Using preliminary data from the pilot associations for the entire 2016 season with regard to revenues and surcharges, as well as internal Coast Guard systems, we examined disparities between the revenue raised from pilotage services and the total number of hours worked. We expect a relatively simple relationship between hours billed and total revenue raised.[5] However, an examination of the relationship between traffic and revenue in each district appears to produce a significant disparity as shown in Table 4.

Table 4: Comparison of actual 2016 pilot demand and revenues

Association	Projected pilot demand (Hours)	Actual pilot demand (Hours)	Projected Revenue ($)	Actual Revenue ($)
Saint Lawrence Seaway Pilots Association (District One)	10,987	11,651	5,804,945	7,718,852

[5] We note that other factors can cause discrepancies in the ratio between the actual traffic and actual revenue raised. These other factors include shipping delays, a pilot being detained on the ship or overcarried for the convenience of the vessel, cancelled orders, and weather delays during certain times of the year. We believe that the impact of these factors is often small and we do not believe that they would cause discrepancies of the magnitude experienced in 2016.

Lakes Pilots Association (District Two)	10,016	12,022	5,929,641	9,181,265
Western Great Lakes Pilots Association (District Three)	21,670	26,868	7,369,092	10,949,257

Furthermore, the disparities between revenue and demand substantially correlate with the average weighting factors. Table 5 demonstrates this disparity.

Table 5: Proportional differences between demand and revenue

Association/District	Measured % of projected revenue	Measured % of projected demand	Proportional difference	Average Weighting Factor (From Table 3g)
Saint Lawrence Seaway Pilots Association (District One)	133%	106%	1.254	1.29
Lakes Pilots Association (District Two)	155%	120%	1.29	1.32
Western Great Lakes Pilots Association (District Three)	149%	124%	1.198	1.30

For example, for District Two, actual pilot demand was above the pilot demand that the Coast Guard projected in the 2016 ratemaking at a ratio of 120 percent (12,022/10,016). Actual revenue generated was above projected revenue by 155 percent (9,181,265/5,929,641). The ratio of the increase in revenues to the increase in pilot demand is 1.29, compared to the average weighting factor of 1.32.

Based on this analysis, we believe that there is a likelihood that the weighting factors are a factor in the difference between projected and a preliminary review of actual revenue experienced in 2016 under the revised methodology. In this SNPRM, we propose to incorporate the weighting factors into the ratemaking model. The practical result of this would be substantial net reductions in hourly pilotage fees, producing reductions of 28 to 32 percent, depending on the area. We request comments on both the new data introduced by the Coast Guard, as well as this specific proposal.

We note that, given the above calculations (more detailed figures underpinning these calculations are available in the docket for this rulemaking), the proposed weighting factors are higher–particularly in the case of District Three[6]–than the measured disparity between traffic and revenue. As it is our goal that the methodology produces a close relationship between measured traffic and revenue, and gets as close as possible to the published target compensation, we seek comments on any factors that could have an effect on the relationship between those factors. Additionally, we specifically request comment on the validity of our calculations of the weighting factors for each area, as well as suggestions as to how it could be improved. We understand that in the past, the methodology did not produce the anticipated revenue and it is our goal to correct this issue.

Because the weighting factors were adjusted in 2014, we propose using the measured average of weighting factors from the years 2014 to 2016 to calculate an average weighting factor to use in the ratemaking calculations. We calculated the average multiplier by weighting each class of vessel according to the number of transits. We note this is a different method than used by the shipping industry in their comments, which averaged by number of ships. We believe our methodology is more accurate as

[6] We believe that the provision, currently located in 46 CFR 404.107(b) (Step 7), limiting the pilotage rate in designated waters to twice the rate of the pilotage rate in undesignated waters, contributed to the particularly large disparity for District Three. In the NPRM, we proposed to eliminate that provision, and believe that this would help to lessen the future traffic-to-revenue disparity for District Three.

some ships will transit multiple times per year, paying the weighted pilotage cost each time.

Using these weighting factor averages, the Coast Guard proposes to add two additional steps to our rate making procedure. We propose renumbering existing step 8, the Director's discretion, to step 10, and adding new steps 8 and 9 to account for the influence the weighting factors have on total generated revenues.

In Step 8, which would be codified as 404.108, "Calculate average weighting factors by Area," the Coast Guard proposes to calculate the rolling average of the weighting factors for the designated and undesignated waters of each pilotage district. We propose using the same 10-year rolling average standard for this calculation as we use for historic pilotage demand. Since the current weighting factors came into place in 2013, we propose using the data between 2014 and 2016 and expand this data set until we reach our 10-year goal. Tables 3a through 3f featured earlier, show the data used in these calculations for this SNPRM.

In Step 9, which would be codified as 404.109, "Calculation of Revised Base Rates," the Coast Guard proposes to divide the initial rate calculation, from Step 7 (calculation of the initial base rates), by the average weighting factor calculated in Step 8.

Table 6: Calculation of revised base rates

Area	Initial base rate (Step 7)	Average weighting factor (Step 8)	Revised rate (initial rate/weighting factor)
District One: Designated (St. Lawrence River)	$757	1.28	$592
District One: Undesignated (Lake Ontario)	$522	1.30	$402
District Two: Designated (Southeast Shoal to Port	$720	1.32	$546

Huron, MI)			
District Two: Undesignated (Lake Erie)	$537	1.32	$408
District Three: Designated (St. Mary’s River)	$661	1.30	$508
District Three: Undesignated (Lakes Huron, Michigan, and Superior)	$280	1.30	$215

Finally, we propose renaming the Director’s Discretion as Step 10, but otherwise leave it unchanged.

VII. Regulatory Analyses

We developed this proposed 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

As this action does not change the amount of projected revenue we deem necessary for the pilot associations, the Regulatory Planning and Review remains unchanged from the NPRM.

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. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB's memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

We developed an analysis of the costs and benefits of the NPRM to ascertain its probable impacts on industry. We consider all estimates and analysis in that Regulatory Analysis (RA) to be subject to change in consideration of public comments. As this SNPRM does not change the total required revenue or any other items that would alter the analysis of the impact of the proposed rule we have not included a separate regulatory analysis in this document. Instead, we refer you to the previously published NPRM to see the analysis of the costs and benefit of the proposed rule.

B. Small Entities

As this action does not change the amount of projected revenue we deem necessary for the pilot associations, the Small Entities analysis remains unchanged from the NPRM.

Under the Regulatory Flexibility Act, 5 U.S.C. 601-612, we have considered whether the proposed rule would have a significant economic effect on a substantial number of small entities. The term "small entities" comprises small businesses, not-forprofit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 people.

Based on the analysis in the NPRM, we found this proposed rulemaking, if promulgated, would not affect a substantial number of small entities.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under ADDRESSES. In your comment, explain why you think it qualifies, as well as how and to what degree this proposed rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. Todd Haviland, Director, Great Lakes Pilotage, Commandant (CG-WWM-2), Coast Guard; telephone 202-372-2037, email Todd.A.Haviland@uscg.mil, or fax 202-372-1914. 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 proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). This proposed rule would 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 the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that order 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." 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, the rule is consistent with the principles of federalism and preemption requirements in Executive Order 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this rule has implications for federalism under Executive Order 13132, please contact the person listed in the FOR FURTHER INFORMATION section of this preamble.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, (2 U.S.C. 1531-1538), requires Federal agencies to assess the effects of their 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. Though this proposed rule would not result in such an expenditure, we discuss the effects of this proposed rule elsewhere in this preamble.

G. Taking of Private Property

This proposed rule would 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed 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 Executive 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (15 U.S.C. 272, note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.lD, 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 preliminary 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 preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. This proposed rule is categorically excluded under section 2.B.2, and figure 2-1, paragraph 34(a) of the Instruction. Paragraph 34(a) pertains to minor regulatory changes that are editorial or procedural in nature. This proposed rule adjusts rates in accordance with applicable statutory and regulatory mandates. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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.

46 CFR Part 404

Great Lakes, Navigation (water), Seamen.

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

Title 46—Shipping

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. Revise § 401.401 to read as follows:

§ 401.401 Surcharges.

To facilitate safe, efficient, and reliable pilotage, and for good cause, the Director may authorize surcharges on any rate or charge authorized by this subpart. Surcharges must be proposed for prior public comment and may not be authorized for more than 1 year. Once the approved amount has been received, the pilot association is not authorized to collect any additional funds under the surcharge authority and must cease such collections for the remainder of that shipping season.

3. Revise § 401.405(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 $592;

(2) Lake Ontario is $402;

(3) Lake Erie is $408;

(4) The navigable waters from Southeast Shoal to Port Huron, MI is $546;

(5) Lakes Huron, Michigan, and Superior is $215; and

(6) The St. Mary's River is $508.

* * * * *

4. Revise § 401.420(b) to read as follows:

§ 401.420 Cancellation, delay, or interruption in rendition of services.

*** * * * ***

(b) When an order for a U.S. pilot's service is cancelled, the vessel can be charged for the pilot's reasonable travel expenses for travel that occurred to and from the pilot's base, and the greater of—

(1) Four hours; or

(2) The time of cancellation and the time of the pilot's scheduled arrival, or the pilot's reporting for duty as ordered, whichever is later.

* * * * *

5. Revise § 401.450 as follows:

a. Redesignate paragraphs (b) through (j) as paragraphs (c) through (k), respectively; and

b. Add new paragraph (b) to read as follows:

§ 401.450 Pilotage change points.

* * * * *

(b) The Saint Lawrence River between Iroquois Lock and the area of Ogdensburg, NY beginning January 31, 2017;

* * * * *

PART 403—GREAT LAKES PILOTAGE UNIFORM ACCOUNTING SYSTEM

6. 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).

7. Revise § 403.300(c) to read as follows:

§ 403.300 Financial reporting requirements.

* * * * *

(c) By January 24 of each year, each association must obtain an unqualified audit report for the preceding year that is audited and prepared in accordance with generally accepted accounting principles by an independent certified public accountant. Each association must electronically submit that report with any associated settlement statements and all accompanying notes to the Director by January 31.

PART 404—GREAT LAKES PILOTAGE RATEMAKING

8. 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).

9. Revise § 404.103 as follows:

a. In paragraph (a), following the words “dividing each area’s” remove the word “peak” and add, in its place, the word “seasonal”; and

b. Revise paragraph (b) to read as follows:

§ 404.103 Ratemaking step 3: Determine number of pilots needed.

* * * * *

(b) Pilotage demand and the base seasonal work standard are based on available and reliable data, as so deemed by the Director, for a multi-year base period. The multi-year period is the 10 most recent full shipping seasons, and the data source is a system approved under 46 CFR 403.300. Where such data are not available or reliable, the Director also may use data, from additional past full shipping seasons or other sources, that the Director determines to be available and reliable.

* * * * *

10. Revise § 404.104 to read as follows:

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

At least once every 10 years, the Director will set a base target pilot compensation benchmark using the most relevant available non-proprietary information. In years in which a base compensation benchmark is not set, target pilot compensation will be adjusted for inflation using the CPI for the Midwest region or a published predetermined amount. The Director determines each pilotage association's total target pilot compensation by multiplying individual target pilot compensation by the number of pilots projected under § 404.103(d) of this part.

§ 404.105 [Amended]

11. In § 404.105, remove the words “return on investment” and add, in their place, the words “working capital fund.”

* * * * *

12. Revise § 404.107 to read as follows:

§404.107 Ratemaking step 7: Initially calculate base rates.

The Director initially calculates base hourly rates by dividing the projected needed revenue from §404.106 of this part by averages of past hours worked in each district's designated and undesignated waters, using available and reliable data for a multi-year period set in accordance with §404.103(b) of this part.

13. Revise § 404.108 to read as follows:

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

The Director calculates the average weighting factor for each area by computing the 10-year rolling average of weighting factors applied in that area, beginning with the year 2014. If less than 10 years of data are available, the Director calculates the average weighting factor using data from each year beginning with 2014.

14. Add § 404.109 as follows:

§ 404.109 Ratemaking step 9: Calculate revised base rates.

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

15. Add § 404.110 as follows:

§ 404.110 Ratemaking step 10: Review and finalize rates.

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

Dated: March 30, 2017

Michael D. Emerson,
Director, Marine Transportation Systems,
U.S. Coast Guard

[FR Doc. 2017-06662 Filed: 4/4/2017 8:45 am; Publication Date: 4/5/2017]