DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 401 and 404

[USCG–2020–0457]

RIN 1625–AC67

Great Lakes Pilotage Rates—2021 Annual Review and Revisions to Methodology

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: In accordance with the Great Lakes Pilotage Act of 1960, the Coast Guard is proposing new base pilotage rates for the 2021 shipping season. This proposed rule would adjust the pilotage rates to account for changes in district operating expenses, an increase in the number of pilots, and anticipated inflation. Additionally, this proposed rule would make one change to the ratemaking methodology to account for actual inflation, in step 4, and two policy changes. The first policy change would be to always round up numbers, as opposed to rounding to the nearest whole integer, in the staffing model. The second policy change would be to exclude litigation fees incurred in litigation against the Coast Guard regarding ratemaking from necessary and reasonable pilot association operating expenses. The Coast Guard estimates that this proposed rule would result in a 4-percent net increase in pilotage costs compared to the 2020 season. Finally, the Coast Guard is requesting comments on how apprentice pilots (a mariner with a limited registration) should be compensated in future rulemakings.

DATES: Comments and related material must be received by the Coast Guard on or before November 27, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0457 using the Federal eRulemaking Portal at *https://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. 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. Public Participation and Request for Comments

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

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

We do not plan to hold a public meeting, but we will consider doing so if we determine from public comments that 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

AMOU American Maritime Officers Union

APA American Pilots Association
BLS Bureau of Labor Statistics
CAD Canadian dollars
CFR Code of Federal Regulations
CPA Certified public accountant
CPI Consumer Price Index
DHS Department of Homeland Security
Director U.S. Coast Guard's Director of the Great Lakes Pilotage
EAJA Equal Access to Justice Act
FOMC Federal Open Market Committee
FR Federal Register
GLPA Great Lakes Pilotage Authority (Canadian)
GLPMS Great Lakes Pilotage Management System
NAICS North American Industry Classification System
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
PCE Personal Consumption Expenditures
Pilots Working pilots
SBA Small Business Administration
§ Section
The Act Great Lakes Pilotage Act of 1960
U.S.C. United States Code

III. 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 for the 2020 season range from $337 to $758 per pilot hour (depending on which of the specific six areas pilotage service is provided), are paid by shippers to pilot associations. 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 applicant and registered pilots, acquire and implement technological advances, train new personnel, and allow partners to participate in professional development.

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, compensation for 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 effected through a 10-step methodology, which is explained in detail in the Summary of Ratemaking Methodology in section V of the preamble to this notice of proposed rulemaking (NPRM).

As part of our annual review, in this NPRM we are proposing new pilotage rates for 2021 based on the existing methodology. The result is a decrease in rates for all areas. These changes are due to a combination of four factors: (1) A decrease in the amount of money needed for the working capital fund, (2) adjusting pilot compensation for inflation, (3) the net addition of three working pilots (''pilots'') at the beginning of the 2021 shipping season in District One, and (4) an increase in the average hours of traffic for each area. This increase in the average hours of traffic resulted in lower hourly rates despite a net increase in the amount of revenue needed by the pilot association, because when calculating the base hourly rates the total revenue needed is divided by the average hours of traffic annually (see Step 7 of the ratemaking process). The proposed rates for 2021 do not account for the impacts COVID–19 may have on shipping traffic in the Great Lakes, because we use the most recent 10-years of complete data in our average traffic calculations. For this proposed ratemaking, that means the years 2010 through 2019. The rates for 2022 will take into account the impact of COVID–19 on shipping traffic, because that ratemaking will include 2020 traffic data. The Coast Guard uses a 10-year average when calculating traffic to smooth out variations in traffic caused by global economic conditions, such as those caused by the COVID–19 pandemic.

In addition, the Coast Guard proposes one methodological change to the way we calculate the inflation of pilot compensation to account for actual inflation; modifying the way we round the numbers used in the staffing model (82 **Federal Register** (FR) at 41466 and table 6 at 41480, August 31, 2017); and disallowing legal fees used in litigation against the Coast Guard regarding the ratemaking rulemakings as redeemable operating expenses. Last, the Coast Guard is requesting comments, for consideration in a future rulemaking, on whether apprentice pilot compensation should be calculated by using a percentage of the target pilot compensation. These proposed changes are discussed in detail in Section VI of this preamble.

Based on the ratemaking model discussed in this NPRM, we are proposing the rates shown in table 1.

TABLE 1—CURRENT AND PROPOSED PILOTAGE RATES ON THE GREAT LAKES

Area	Name	Final 2020 pilotage rate	Proposed 2021 pilotage rate
District One: Designated	St. Lawrence River	$758	$757
District One: Undesignated	Lake Ontario	463	428
District Two: Designated	Navigable waters from Southeast Shoal to Port Huron, MI.	618	577
District Two: Undesignated	Lake Erie	586	566
District Three: Designated	St. Marys River	632	584
District Three: Undesignated	Lakes Huron, Michigan, and Superior	337	335

This proposed rule would impact 55 U.S. Great Lakes pilots, 3 pilot associations, and the owners and operators of an average of 279 oceangoing vessels that transit the Great Lakes annually. This proposed rule is not economically significant under Executive Order 12866 and would 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 $1,059,966 in estimated payments made by shippers during the 2020 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 IX of this preamble provides the regulatory impact analyses of this proposed rule.

[1] 46 U.S.C. Chapter 93; Public Law 86–555, 74 Stat. 259, as amended.

IV. Basis and Purpose

The legal basis of this rulemaking is the Great Lakes Pilotage Act of 1960 (''the Act''),[2] which requires foreign merchant vessels and U.S. vessels operating ''on register,'' meaning U.S. vessels engaged in foreign trade, to use U.S. or Canadian pilots while transiting the U.S. waters of the St. Lawrence Seaway and the Great Lakes system.[3] For U.S. 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.''[4] The Act requires that rates be established or reviewed and adjusted each year, not later than March 1.[5] The Act also 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.[6] The Secretary's duties and authority under the Act have been delegated to the Coast Guard.[7]

The purpose of this NPRM is to propose new pilotage rates for the 2021 shipping season. The Coast Guard believes that the new rates would continue to promote pilot retention, ensure safe, efficient, and reliable pilotage services in order to facilitate maritime commerce throughout the Great Lakes and Saint Lawrence River System, and provide adequate funds to upgrade and maintain infrastructure.

V. 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. Under Coast Guard regulations, all vessels engaged in foreign trade (often referred to as ''salties'') are required to engage U.S. or Canadian pilots during their transit through the regulated waters.[8] U.S. and Canadian ''lakers,'' which account for most commercial shipping on the Great Lakes, are not affected.[9] 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 working 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. Marys 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 Presidential Proclamation, are waters in which pilots must, at all times, be fully engaged in the navigation of vessels in their charge.[10] 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.''[11] 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 No.[12]	Area name[13]
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. Marys 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, compensating pilots and applicant pilots, acquiring and implementing technological advances, and training personnel and partners. The Coast Guard developed a 10-step ratemaking methodology to derive a pilotage rate, based on the estimated amount of traffic, which covers these expenses. The methodology is designed to measure how much revenue each pilotage association would need to cover expenses and provide competitive compensation goals to working pilots. We then divide that amount by the historic 10-year average for pilotage demand. 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 would be maintained and that pilots will receive adequate

[2] 46 U.S.C. Chapter 93; Public Law 86–555, 74 Stat. 259, as amended.

[3] 46 U.S.C. 9302(a)(1).

[4] 46 U.S.C. 9303(f).

[5] *Id.*

[6] *Id.*

[7] Department of Homeland Security (DHS) Delegation No. 0170.1, para. II (92.f).

[8] See 46 CFR part 401.

[9] 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.

[10] Presidential Proclamation 3385, *Designation of restricted waters under the Great Lakes Pilotage Act of 1960,* December 22, 1960.

[11] 46 U.S.C. 9302(a)(1)(B).

[12] Area 3 is the Welland Canal, which is serviced exclusively by the Canadian GLPA and, accordingly, is not included in the U.S. pilotage rate structure.

[13] The areas are listed by name at 46 CFR 401.405.

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 has made 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 accurately account for the additional revenue produced by the application of weighting factors (discussed in detail in Steps 7 through 9 for each district, in Section VIII of this preamble). In 2018, we revised the methodology by which we develop the compensation benchmark, based upon U.S. mariners rather than Canadian working pilots. The current methodology, which was finalized in the Great Lakes Pilotage Rates-2020 Annual Review and Revisions to Methodology final rule (85 FR 20088), published April 9, 2020, 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 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. Operating expenses include all allowable expenses minus wages and benefits. This number forms the baseline amount that each association is budgeted. Because of the time delay between when the association submits raw numbers and the Coast Guard receives audited numbers, this number is 3 years behind the projected year of expenses. So, in calculating the 2021 rates in this proposal, we begin with the audited expenses from the 2018 shipping season.

While each pilotage association operates in an entire district, the Coast Guard tries to determine costs by area. Thus, with regard to operating expenses, we allocate certain operating expenses to designated areas, and certain operating expenses to undesignated areas. In some cases, we can allocate the costs based on where they are actually accrued. For example, we can allocate the costs for insurance for applicant pilots who operate in undesignated areas only. In other situations, such as general legal expenses, expenses are distributed between designated and undesignated waters on a *pro rata* basis, based upon the proportion of income forecasted 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 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 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 the first part of Step 4, ''Determine target pilot compensation benchmark,'' (§ 404.104) the Director determines the revenue needed for pilot compensation in each area and district. For the 2020 ratemaking, the Coast Guard updated the benchmark compensation model in accordance with § 404.104(b), switching from using the American Maritime Officers Union (AMOU) 2015 aggregated wage and benefit information, to the 2019 compensation benchmark. Based on our experience over the past two ratemakings, the Coast Guard has determined 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 for future ratemakings and will instead simply adjust the amount of target pilot compensation for inflation. This benchmark has advanced the Coast Guard's goals of safety through rate and compensation stability while also promoting recruitment and retention of qualified U.S. pilots.

In order to further this goal, for the 2021 ratemaking, the Coast Guard is proposing to change the way inflation is calculated in this step to account for actual inflation instead of predicted inflation. See the Discussion of Proposed Methodological and Other Changes at section VI of this preamble for a detailed description of the changes proposed.

In the second part 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 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 needed capital improvements and other non-recurring expenses, such as technology investments and infrastructure maintenance. 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. 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 10-year hours of traffic average for each area. Next, the revenue needed in each area (calculated in Step 6) is divided by the 10-year hours of traffic average 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 need to account for the added revenue produced by the weighting factors to ensure that shippers are not overpaying for pilotage services. We do this in the next step.

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 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.

After the base rates are set, § 401.401 permits the Coast Guard to apply surcharges. As stated in the 2020 rulemaking, as the vast majority of working pilots are not anticipated to reach the regulatory required retirement age of 70 in the next 20 years, we continue to believe that the pilot associations are now able to plan for the costs associated with retirements without relying on the Coast Guard to impose surcharges.

VI. Discussion of Proposed Methodological and Other Changes

For 2021, the Coast Guard is proposing one methodological change to the ratemaking model and two policy changes. The proposed changes, discussed in detail below, include changes to how we calculate inflation of pilot compensation in step 4, how we round numbers in the staffing model, and the proposed exclusion of legal expenses associated with lawsuits against the Coast Guard's ratemaking rulemakings from operating expenses. For consideration in a future rulemaking, we are also requesting comments on how to calculate compensation for apprentice pilots.

A. Inflation of Pilot Compensation Calculation in Step 4

Based on public comments received on the 2020 proposed rule, the Coast Guard is proposing to change the inflation calculation in Step 4 of the ratemaking. This step discusses the use of the Federal Reserve's projected PCE data, as opposed to using historic BLS ECI data. Currently 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 each year's ratemaking, the Coast Guard projects future values that requires forecasted inflation data. The BLS ECI only provides historic data; consequently we use PCE data, in accordance with § 404.104(b), as the PCE provides estimates of future inflation. The forecasted PCE inflation data is generated by the Federal Reserve. The Federal Reserve is responsible for setting monetary policy in the United States, which in turn influences 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 government's best prediction of what will happen, and the Coast Guard will continue to use it as our predicted inflation value in Step 4 of the ratemaking.

However, as the Coast Guard updates the previous year's target compensation value for inflation in each ratemaking, any differences between the predicted inflation rate and the actual inflation rate will be compounded with each ratemaking, if the predicted PCE value is continually higher or lower than actual inflation. Therefore, for this ratemaking, the Coast Guard is proposing to modify the way inflation is calculated in Step 4 of the ratemaking to account for the difference between the predicted inflation and actual inflation.

In this NPRM, the Coast Guard is proposing that the previous year's target compensation value would first be adjusted by the difference between predicted PCE inflation value and actual ECI inflation value, to ensure the target compensation value accounts for actual inflation. We would then multiply this adjusted target compensation value by the predicted future inflation value from the PCE to account for future inflation.

For 2020, the actual ECI inflation is 3.4 percent, which is 1.4 percent greater than the predicted PCE inflation of 2 percent. Therefore, this proposed use of the difference between predicted PCE inflation rates and historic ECI inflation data to account for actual inflation in § 401.104(b) would result in a 1.4 percent increase for the 2021 pilotage fees versus continuing to use the predicted PCE inflation value. In some years, however, it is possible that the actual ECI inflation will be lower than the predicted PCE inflation, resulting in a decrease for the pilotage fees.

B. Changes to Rounding in the Staffing Model

The first policy change is to how we round numbers in the staffing model in 46 CFR 401.220(a)(2). This proposed rule would amend the text to always round up in the staffing model, instead of rounding to the nearest whole integer. We are proposing this change in response to three comments we received on the proposed rule, ''Great Lakes Pilotage Rates—2020 Annual Review and Revisions to Methodology'' (84 FR 58099, Oct. 30, 2019), which are posted within docket number USCG–2019–0736. The St. Lawrence Seaway Pilot's Association asserted that the regulatory burden on the three pilotage associations has increased substantially. The commenter suggested that rounding in the staffing model does not account for the administrative time and effort required of the three associations' Presidents and therefore one additional pilot per district is necessary to cover the President's pilotage duties. Lakes Pilots Association, Inc. also stated that the staffing model should include an additional pilot in the rate for administrative work of the president and committee members. Another commenter, on behalf of all pilots within the three pilot associations, made similar assertions that the pilot associations' presidents are spending more time at meetings, conferences, traveling, and facilitating communication between the pilots and Coast Guard. They requested that we authorize an administrative position for each district to account for these increased duties and prevent delays in responsiveness to the Coast Guard. We rejected the proposal to add an ''administrative pilot'' because this is not consistent with industry standards. According to our discussions with the American Pilots Association (APA), aside from the largest pilot groups, many state and local groups recognize that the pool president continues to work as a pilot. However, due to the presidential duties, the president is expected to spend less time engaged in piloting vessels.

Rounding up in the staffing model would account for extra staff or extra time spent by the pilot associations' presidents, including attending meetings and conferences, providing additional financial and traffic information to increase transparency and accountability, overseeing and ensuring the integrity of the association training program, evaluating technology, and coordinating with the APA to implement and share best practices. Rounding up in the staff model is also consistent with industry standards, as is it not possible to have a portion of a person. Therefore, if the staffing model requires 8.1 pilots for an area, 9 pilots are actually needed. In addition, we currently estimate how many pilots each district needs for the upcoming year without taking into account the administrative work that takes the president of each association away from their role as a Great Lakes pilot. We believe rounding up is prudent with regard to maritime safety to help ensure enough pilots are allocated to each district to cover the extra hours the association's president spends engaged in the non-pilot tasks and administrative work discussed above. In sum, rounding down in the staffing model could result in too few pilots allocated to a district which, when coupled with the president's spending less time serving as pilot, may adversely impact recuperative rest goals for working pilots that are essential for safe navigation.

The Coast Guard agrees that, where the pilot associations' presidents are spending an increased amount of their time on administrative issues, the staffing model should account for that time and allow for additional staff to assist. In light of the information presented by the pilot association's comments, the Coast Guard is proposing to always round up the final number, rather than round to the nearest integer when determining the maximum number of pilots in the staffing model. For the 2021 ratemaking, this proposed change to the rounding in the staffing model would allow each association one additional pilot that would not have otherwise been allowed.

C. Exclusion of Legal Fees Incurred in Lawsuits Against the Coast Guard Related To Ratemaking and Regulating From Pilots Associations' Approved Operating Expenses

This is the second policy change. The Coast Guard is proposing to exclude legal fees incurred in litigation against the Coast Guard in relation to the ratemaking and oversight requirements in Title 46 of the United States Code (U.S.C.) at sections 9303, 9304, and 9305 from approved pilot associations' operating expenses used in the calculation of pilotage rates. We believe causing the shippers to pay for the pilots' litigation expenses against the Coast Guard's annual ratemaking is an undue burden, because the shippers are not responsible for the ratemaking and the pilots can be reimbursed through other means.

The Coast Guard acknowledges that many legal fees are appropriately included in the operating expenses of the pilot associations, and that excluding legal fees incurred in lawsuits against the Coast Guard related to ratemaking is a departure from our past policies. The regulations will still provide for the inclusion of the legal fees needed for the pilots to run their businesses, defend their licenses, and to protect their interests when the shippers litigate. To clarify, pilot associations who intervene as defendants alongside the Coast Guard in a shipper-initiated lawsuit related to the ratemaking would be able to continue to include those legal fees in their operating expenses, because they are not incurred in a lawsuit against the Coast Guard. As the U.S. District Court recently noted, ''each year, it seems, either the shipping companies or the associations that supply the pilots sue the Coast Guard to challenge aspects of the rulemaking. The shippers perennially complain that the rates are too high, while the pilots gripe that they are too low.'' [14] The pilots have an incentive to sue the Coast Guard annually on the ratemaking, regardless of the outcome of the case, because the costs associated with the lawsuit will inflate the pilot's associations operating expenses, and, in turn, increase their annual rates. Regardless of outcome, those legal fees go into the calculations that, ultimately, the shipper pays. From the shippers' perspective, shippers are generally paying legal fees for pilots to try and obtain higher fees from the shippers.

The Coast Guard is proposing to remove this expense from the ratemaking calculation, noting that under the Equal Access to Justice Act (EAJA), 28 U.S.C. 2412, the Coast Guard can reimburse pilots if they prevail on the merits. This more equitable solution places the burden of paying legal fees on the Coast Guard when the pilots prevail in such litigation. Excluding legal fees incurred by suing the Coast Guard from the operating expenses on the annual ratemaking is a change consistent with giving consideration to the public interest and the costs of providing the services, as the pilots would be eligible for reimbursement from the Coast Guard if their challenge prevails.

Additionally, shippers become a party in interest when the pilots sue the Coast Guard. In some cases, shipping companies have intervened as defendants in legal challenges to the ratemakings. Under the present scheme, pilots are reimbursed for their legal expenses when they sue the Coast Guard, irrespective of whether they win or lose. But it is not the Government that bears the expense—shippers pay the pilots' legal expenses, in the form of higher pilotage rates, when those legal expenses are included in the operating expenses.

The general proposition in the American system of jurisprudence is that litigants bears their own expenses for the litigation. ''In the United States, the prevailing litigant is ordinarily not entitled to collect a reasonable attorneys' fee from the loser.'' [15] Under this jurisprudence, the shippers, as a party in interest, should not continue to bear the legal expenses each time the pilots sue the Coast Guard in relation to the ratemaking and regulation, because the shippers are not responsible for the ratemaking and regulatory function.

The pilots have alternative remedies to recoup their legal fees in lawsuits against the Coast Guard related to the ratemaking and oversight requirements. Under the EAJA, a prevailing party in a suit where the government agency is an opposing party can apply for its legal fees under certain conditions. To be considered a prevailing party entitled to an award of attorney fees under the EAJA, it is sufficient if the claimant prevails on an important matter that directly benefits them, but they need not prevail on all issues.[16] One D.C. Circuit

[14] *Am. Great Lake Ports Ass'n* v. *Coast Guard,* 443 F. Supp. 3d 44, 47 (D.D.C. Mar. 10, 2020).

[15] *Alyeska Pipeline Service Co.* v. *Wilderness Soc'y,* 421 U.S. 240, 247 (1975).

[16] *Ctr. for Food Safety* v. *Burwell,* 126 F. Supp. 3d 114, 120 (D.D.C. 2015) (citing *Tex. State Teachers Ass'n* v. *Garland Indep. Sch. Dist.,* 489 U.S. 782, 790 (1989) (''At the same time, however, a plaintiff need not prevail on the ''central issue'' in the litigation to be a prevailing party under the EAJA; it is sufficient for a party to prevail on an ''important matter'' in the course of litigation, even when that party ''does not prevail on all issues.' '').

Court of Appeals opinion, *Select Milk Producers, Inc.* v. *Johanns,* affirmed that plaintiffs were prevailing parties entitled to attorney fees under the EAJA even where the plaintiff secured a preliminary injunction but a subsequent change in regulation rendered the case moot.[17] Plaintiffs can also become a prevailing party if they enter a favorable settlement agreement under a court's consent decree.[18] If the prevailing party is awarded legal fees, the government agency, in this case the Coast Guard, pays those fees. Similarly, if a case involving the Coast Guard settles, attorney fees can be included as a term of the settlement.

Excluding these legal fees from operating expenses in the ratemaking and regulatory function is consistent with ''giving consideration to the public interest and the costs of providing the services,'' [19] as it would place the burden of paying the legal fees on the Coast Guard as the regulatory agency, rather than the shipping companies that pay for pilotage services. The Coast Guard finds that continuing to allow these legal expenses to be included in the operating expenses is not necessary for the costs of providing services, because the legal fees incurred by the pilot associations are eligible for reimbursement through settlement negotiations or through the EAJA, when the pilots prevail on the merits. For these reasons, we do not believe that excluding these narrowly defined legal expenses from operating expenses when the pilots sue the Coast Guard will have a deleterious effect on the safe, efficient operation of pilots or otherwise militate against the public interest in the regulation of pilotage services.

As such, we believe that repositioning the financial responsibility for legal fees on the proper entity by removing them from pilots' operating expenses is an equitable resolution that comports with our statutory mandate to give consideration to both the public interest and the costs of providing the services.

Our process to exclude the legal fees in our annual ratemaking would be as follows. First, the unreimbursed pilot associations' legal fees incurred in litigation against the Coast Guard would be identified as an individual line item in the operating expenses. Second, we would remove the same amount by way of a Director's adjustment in a later step. If the pilot association is not reimbursed at all by the EAJA or other settlement means, then the full unreimbursed cost of legal fees for that year would be listed as an operating expense, and then the same dollar amount would be excluded by a Director's adjustment. Where a pilot association's legal fees are reimbursed fully or partially by way of the EAJA or settlement, then the operating expense amount would be reduced to represent only the unreimbursed dollar amount, and that same dollar amount would be excluded by a Director's adjustment. Only the outstanding cost of legal fees incurred in litigation against the Coast Guard related to ratemaking and oversight would be listed, representing the true cost to the association. Listing the dollar amount of unreimbursed legal expenses and removing it from the operating expenses would provide transparency to the pilot associations of the exact amount of legal fees excluded by this proposed change.

D. Request for Comments on Changes to Apprentice Pilot Compensation for Consideration in a Future Rulemaking

For consideration in a future ratemaking, we are requesting comments on how we calculate compensation for apprentice pilots and pilots with a limited registration. We are requesting comments on setting the reimbursable cost associated with apprentice pilot salaries at a set amount based on a percentage of the previous year's target pilot compensation. This reimbursable cost would be included in the approved operating expenses for pilotage associations.

Apprentice pilot salaries are currently based on a Director's adjustment made in the 2019 rulemaking, which adjusted these salaries to approximately 36 percent of target pilot compensation. The Coast Guard is requesting comments on setting all future apprentice pilot salaries at a rate equivalent to 36 percent of target pilot compensation. This would align the compensation practices for apprentice pilots across all three districts. The Coast Guard believes setting this benchmark for apprentice pilot salaries would help recruit highly qualified mariners to join and remain with the pilot associations by providing apprentice pilots with the ability to earn an equitable income during the training process, which can last from 6 to 48 months. This could also ensure that the pilot associations have sufficient personnel to continue providing service, despite retirements and unscheduled turn-over.

We would like to hear any comments, suggestions, or questions you have pertaining to the Coast Guard's proposed recommendation to set future apprentice pilot salaries at an amount equivalent to 36 percent of the target pilot compensation. If you disagree with this proposed percentage, please address your concerns and provide a substitute amount or percentage along with your rationale supporting the proposed substitution. If you agree with the proposed percentage for different reasons than the Coast Guard noted above, please explain your rationale and reasoning.

VII. Coast Guard's Authority To Remedy Harms From Past Ratemakings in Response to 2020 D.C. Appellate Court Opinion

In *American Great Lakes Ports Association, et al.,* v. *Shultz,* the U.S. Court of Appeals for the District of Columbia Circuit affirmed the District Court's decision with regard to the remedy in the challenge to the 2016 pilotage rates.[20] The D.C. Circuit agreed that the District Court properly decided not to vacate the 2016 rates, noting the ''numerous disruptive consequences that would follow from vacating the 2016 Rule.'' [21] The D.C. Circuit Court further affirmed that the precise amount of any funds that would be needed to recoup and redistribute funds was unknown, since there would be no operative 2016 rate.[22] Finally, the Circuit Court urged the Coast Guard, in this annual rate review, to ''consider if it has the statutory authority to remedy the harms from the 2016 Rule and if doing so would comport with its mandate to consider 'the public interest and the costs of providing services' 46 U.S.C. 9303(f).'' [23]

A. Coast Guard's Authority To Remedy Harms From Past Ratemakings

First, the Coast Guard's longstanding position is that it has no statutory authority to retroactively recalculate rates. The District Court, in *American Great Lakes Ports Assoc.* v. *Zukunft,* confirmed that no such statutory authority existed.[24] Therefore, the question is whether the Act authorizes discretionary prospective rate adjustments to correct for or offset in part a past error. The relevant authority in § 9303(f) states ''[t]he Secretary shall prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and

[17] 400 F. 3d 939, 195 (D.C. Cir. 2005).

[18] *Buckhannon Bd. & Care Home Inc.* v. *W. Va. Dep't of Health and Human Res.,* 532 U.S. 598, 604 (2001).

[19] 46 U.S.C. 9303(f).

[20] *Am. Great Lakes Ports Ass'n.* v. *Shultz,* 962 F. 3d 510 (D.C. Cir. June 16, 2020).

[21] *Id.* at 519–520.

[22] *Id.* at 516.

[23] *Am. Great Lakes Ports Ass'n.* v. *Shultz,* 962 F. 3d at 520.

[24] *Am. Great Lakes Ports Ass'n* v. *Zukunft,* 301 F. Supp. 3d 99, 104 (D.D.C. Mar. 13, 2018).

the costs of providing the services. The Secretary shall establish new pilotage rates by March 1 of each year.'' [25] While the statute does not allow the Coast Guard to retroactively re-calculate rates, based on the broad grant of authority in the statute, the Coast Guard believes that the statute grants the Coast Guard discretion to consider the impact of past rates in setting annual rates that are just and reasonable to ensure the public safety and reliability of the pilotage services while also covering the allowable and reasonable costs of those services.

Within the existing methodology, the Coast Guard includes an allowance for the discretionary adjustment of rates. In Step 10, ''Review and finalize rates,'' (§ 404.110), often referred to informally as Director's discretion, the Director of the Great Lakes Pilotage 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 capital for improvements.

The Coast Guard has yet to exercise this discretion under the 2016 methodology, and generally believes that its discretion is properly limited to circumstances of clear error or mistake resulting in an unjust rate or extraordinary circumstances. The annual ratemaking ensures that the consequences of any error is limited in time. The 2016 methodology, as currently implemented, has survived legal challenge and is producing stable rates based on, among other factors, an ever-increasing amount of historical data.

The consideration of the impact of past rates includes the consequences of any identified errors. The Coast Guard clarifies that its longstanding policy against calculating retroactive rates does not prevent its estimation of correcting for past rates when reliable information for doing so is available, and it is in the public interest and provides for the cost of services. In considering whether to exercise our discretion to adjust current rates for issues in past rates, the Coast Guard takes a retrospective look for extraordinary circumstances associated with past rates that the Coast Guard concludes were both unjust and unreasonable.

B. Does remedying harms from past ratemakings comport with our statutory mandate?

Next, the Coast Guard will consider whether remedying any portion of the identified harms from the 2016 ratemaking final rule in this ratemaking is appropriate. More specifically, the Coast Guard will consider whether a prospective rate adjustment aligns with our mandate to consider the public interest and the costs of providing services per 46 U.S.C. 9303(f). Consistent with its longstanding position; [26] that is, that adjusting rates annually to correct for past events will tend to result in greater swings in the rate from year to year, as the rates constantly seek to correct for possible miscalculations used in past ratemakings, the Coast Guard is generally of the view that exercising its discretion to consider adjustments based on possible past errors should be limited to clear error or extraordinary circumstances.[27] The Coast Guard strives to accurately project demand for pilotage services and required revenue each year, generally resulting in incremental changes and rate stability. We believe this is in the public interest, as it provides greater predictability to both shipping companies and the pilots and promotes public confidence in the Coast Guard.[28]

The Coast Guard exercises discretion to adjust the final rates in step 10, to produce adequate revenue for the upcoming year. Ensuring the rates are adjusted to sufficiently cover all the approved operating expenses is consistent with our mandate to consider the public interest and safety of navigating through the Great Lakes. Having considered all of the information before it carefully, the Coast Guard does not intend to make a prospective change in the 2021 rates to correct for 2016 errors for the following three reasons.

One: By the time the 2021 final rule publishes, 5 years will have passed since the 2016 pilotage rates final rule was issued and implemented. Since then, the Coast Guard has improved its ratemaking methodology to remove the arbitrary calculations that led to the harm identified in the opinions of the D.C. district court and the D.C. Circuit. The passage of time weighs against a rate adjustment, and even more significantly, we cannot calculate the actual error in 2016 because of the inherent difficulty of determining what the correct target compensation should have been. As the D.C. District Court opinion noted, with regard to target pilot compensation, there was evidence in the record to support either a higher or a lower target compensation, and the Coast Guard could, on remand, have supported the 10-percent adjustment.[29] Therefore, it is not a simple arithmetic exercise to determine what the 2016 rates should have been; indeed it is unclear on the existing record whether they should have been higher or lower or that some should have been higher and some lower. Due to the changes in the methodology, the Coast Guard has no data from subsequent years on which to estimate with reasonable reliability what the 2016 rate would have been without the consideration of factors found to be arbitrary or insufficiently justified by the courts. Because the target compensation adjustment could have been lower or higher than our 10-percent estimate, we cannot adjust the weighting factors to produce a number without acting arbitrarily or risking being perceived as arbitrary. Determining how to make all the necessary corrections would be resource intensive, and likely controversial and disruptive to the current participants in the market for pilotage services, and we believe that our resources are better devoted to getting this year's rates correct and published in a timely fashion without adjustment for the 2016 errors. The Coast Guard does not believe that, to date, either the pilots or the shippers have convincingly showed a methodology for correcting the 2016 rate that reliably produces a just and reasonable rate.

Two: Also related to the passage of significant time, pilot turnover and changes in operators render a remedial rate adjustment to compensate for circumstances 5 years ago less equitable and less in the public interest because the remedy may not benefit those who were actually disadvantaged by the ratemaking. As we stated in the 2020 ratemaking proposed rule, we found that 457 unique vessels used pilotage services during the years 2016 through 2018.[30] Of these vessels, 420 were

[25] *See* 46 U.S.C. 9303(f). This authority has been delegated to the Coast Guard through DHS Delegation No. 0170.1, para. II (92.f).

[26] Memorandum of Points and Authorities in Reply to Plaintiffs' Opposition at par. III.B, *Am. Great Lakes Ports Ass'n.* v. *Zukunft,* 301 F. Supp. 3d 99 (D.D.C. Mar. 13, 2018) (Civil Action No.: 16–1019) 2017 WL 632501.

[27] Memorandum of Points and Authorities in Reply to Plaintiffs' Opposition at 3, par. III.B, *Am. Great Lakes Ports Ass'n.* v. *Zukunft,* 301 F. Supp. 3d 99 (D.D.C. Mar. 13, 2018) (Civil Action No.: 16–1019) 2017 WL 632501.

[28] *Id.*

[29] *Am. Great Lakes Ports Ass'n* v. *Zukunft,* 301 F. Supp. 3d at 103 (D.D.C. Mar. 13, 2018).

[30] Great Lakes Pilotage Rates—2020 Annual Review and Revisions to Methodology, 84 FR 58099 at 58120, Oct. 30, 2019.

foreign-flagged vessels and 37 were U.S.-flagged vessels. In 2016, 245 unique vessels used pilotage services compared with 287 unique vessels in 2019. In addition, of those 287 vessels only 63 percent used pilotage services in both 2016 and 2019. The number of unique vessels that transit the area is an indication that any changes made for the 2021 ratemaking period would be unlikely to reach all those who were disadvantaged by the 2016 ratemaking.

Three: Using the discretionary adjustment in step 10 to correct for potential overcharges in past years, by lowering the pilotage rates from the result of the multi-step process, risks imposing rates below the level needed to adequately fund operational expenses. In fact, imposing a remedy through even a small, discretionary adjustment to the 2021 rate could disadvantage or harm pilots or shipping companies unjustly for the upcoming year, and the harms likely outweigh the uncertain benefits. As we have seen in the past, when the rates or actual traffic volume do not produce predicted revenue, pilot attrition increases, which leads to fewer qualified pilots and the additional costs of training new pilots, which can take from 6 months to 48 months.

VIII. Discussion of Proposed Rate Adjustments

In this NPRM, based on the proposed changes to the existing methodology described in the previous section, we are proposing new pilotage rates for 2021. We propose to conduct the 2021 ratemaking as an ''interim year,'' as was done in 2020, rather than a full ratemaking as was conducted in 2018. Thus, the Coast Guard proposes to adjust the compensation benchmark pursuant to § 404.104(b) for this purpose, rather than § 404.104(a).

This section discusses the proposed rate changes using the ratemaking steps provided in 46 CFR part 404, incorporating the proposed changes discussed in section VI. We will detail all 10 steps of the ratemaking procedure for each of the 3 districts to show how we arrive at the proposed 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 2018 expenses and revenues.[31] 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.

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 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. Although the districts did not collect any surcharges for the 2020 shipping season, they did collect a surcharge for the 2018 season, which will need to be reflected in the operating expenses of the districts.

For District One, we propose several Director's adjustments. District One had two applicant pilots during the 2018 season. In total, the District paid these two pilots $594,521, or $297,261 each. The Coast Guard believes this amount is above what is necessary and reasonable for retention and recruitment. In the 2019 NPRM, the Coast Guard proposed to make an adjustment to District Two's request for reimbursement of $571,248 for two applicant pilots ($285,624 per applicant). Instead of permitting $571,248 for two applicant pilots, we proposed allowing $257,566, or $128,783 per applicant pilot based on discussions with other pilot associations at the time. This standard went into the final rule for 2019 and was not opposed. To determine this percentage, we reached out to several of the pilot associations throughout the United States to see what percentage they pay their applicant pilots, then factored in the sea time and experience required to become an applicant pilot on the Great Lakes. Finally, we discussed the percentage with the presidents of each association to determine if it was fair and reasonable. If we adopt this methodology, the Coast Guard would continue to use the same ratio of applicant-to-target compensation for all districts. For 2019, this was approximately 36 percent ($128,783 ÷ $359,887 = 35.78 percent), so the Coast Guard is proposing to use the rounded up value of 36.0 percent of target compensation as the benchmark for applicant pilot compensation, for a 2021 target pilot compensation of $132,151 ($367,085 × .36). This allows adjustments to applicant pilot compensation to fluctuate in line with target compensation.

The other Director's adjustments to expenses occurred because District One did not break out any costs associated with applicant pilots after the audit, and included these costs as part of pilotage costs. For transparency, the Coast Guard has included the applicant pilot costs as Director's adjustments and has then deducted the same amount to avoid any double counting of these costs. These costs are necessary and reasonable for district operations and should, therefore, be implemented in the rate.

A Director's adjustment has also been proposed for the amount collected using the 2018 surcharge. A final Director's adjustment is proposed for the amount of Coast Guard litigation legal fees. 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 Public Participation and Request for Comments portion of the preamble.

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

TABLE 3—2018 RECOGNIZED EXPENSES FOR DISTRICT ONE

Reported operating expenses for 2018	District one		
	Designated	Undesignated	Total
	St. Lawrence River	Lake Ontario	
Pilotage Costs:			
Subsistence/travel—Pilot	$799,507	$533,005	$1,332,512
License insurance—Pilots	45,859	30,573	76,432
Payroll taxes—Pilots	202,848	135,232	338,080
Other	15,474	10,316	25,790
Total Other Pilotage Costs	1,063,688	709,126	1,772,814
Pilot Boat and Dispatch Costs:			
Pilot Boat Expense	267,420	178,280	445,700
Dispatch Expense	55,280	36,853	92,133
Payroll Taxes	19,100	12,733	31,833
Total Pilot and Dispatch Costs	341,800	227,866	569,666
Administrative Expenses:			
Legal—general counsel	8,550	5,700	14,250
Legal—shared counsel (K&L Gates)	34,607	23,071	57,678
Legal—USCG Litigation	7,743	5,162	12,905
Office Rent	0	0	0
Insurance	24,423	16,282	40,705
Employee benefits	8,064	5,376	13,440
Other taxes	50,963	33,976	84,939
Real Estate taxes	22,280	14,853	37,133
Depreciation/auto leasing/other	101,140	67,426	168,566
Interest	28,270	18,846	47,116
APA Dues	26,416	17,610	44,026
Dues and subscriptions	3,960	2,640	6,600
CPA DEDUCTION	(3,960)	(2,640)	(6,600)
Utilities	21,887	14,591	36,478
Travel	4,314	2,876	7,190
Salaries	74,763	49,842	124,605
Pay Roll Tax	7,323	4,882	12,205
Accounting/Professional fees	7,800	5,200	13,000
Pilot Training	0	0	0
Other	21,276	14,184	35,460
Total Administrative Expenses	449,819	299,877	749,696
Total Operating Expenses (Other Costs + Pilot Boats + Admin)	1,855,307	1,236,869	3,092,176
Proposed Adjustments (Director):			
Directors Adjustment (Applicant Salaries)	356,712	237,809	594,521
Directors Adjustment (Applicant Salaries) Deduction	(356,712)	(237,809)	(594,521)
Directors Adjustment (Applicant Salaries) *Deduction (Salary Adjustment)*	(132,088)	(198,132)	(330,220)
Directors Adjustment (Applicant License insurance)	2,540	1,693	4,233
Directors Adjustment (Applicant License insurance) *Deduction*	(2,540)	(1,693)	(4,233)
Directors Adjustment (Applicant Health insurance)	10,336	6,891	17,227
Directors Adjustment (Applicant Health insurance) *Deduction*	(10,336)	(6,891)	(17,227)
Directors Adjustment (Applicant Expenses)	93,296	62,197	155,493
Directors Adjustment (Applicant Expenses) *Deduction*	(93,296)	(62,197)	(155,493)
Directors Adjustment (Applicant payroll tax)	30,944	20,629	51,573
Directors Adjustment (Applicant payroll tax) *Deduction*	(30,944)	(20,629)	(51,573)
Directors Adjustment Surcharge Collected in 2018	(144,770)	(144,770)	(289,540)
Directors Adjustment Legal—USCG Litigation	(7,743)	(5,162)	(12,905)
Total Director's Adjustments	(284,601)	(348,064)	(632,665)
Total Operating Expenses (OpEx + Adjustments)	1,570,706	888,805	2,459,511

B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation

Having identified the recognized 2018 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 using the BLS data from the CPI for the Midwest Region of the United States for the 2019 inflation rate.[32] Because the BLS does not provide forecasted inflation data, we use economic projections from the Federal Reserve for the 2019 and 2020

[32] The 2019 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 11, 2020.

inflation modification.[33] Based on that information, the calculations for Step 2 are as follows:

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)	$1,570,706	$888,805	$2,459,511
2019 Inflation Modification (@1.5%)	23,561	13,332	36,893
2020 Inflation Modification (@0.8%)	12,754	7,217	19,971
2021 Inflation Modification (@1.6%)	25,712	14,550	40,262
Adjusted 2021 Operating Expenses	1,632,733	923,904	2,556,637

C. Step 3: Estimate Number of Registered Pilots

In accordance with the text in § 404.103, we estimate the number of registered pilots in each district. We determine the number of registered pilots based on data provided by the Saint Lawrence Seaway Pilots Association. Using these numbers, we estimate that there will be 18 registered pilots in 2021 in District One. Based on the seasonal staffing model discussed in the 2017 ratemaking (see 82 FR 41466), and our proposed changes to that staffing model, we assigned a certain number of pilots to designated waters and a certain 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
Proposed Maximum number of pilots (per § 401.220(a)) [34]	18
2021 Authorized pilots (total)	18
Pilots assigned to designated areas	11
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 proposing an ''interim'' ratemaking this year, we propose to follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark by inflation. As stated in Section VI.A of the preamble, we are proposing to use a two-step process to adjust target pilot compensation for inflation. The first step adjusts the 2019 target compensation benchmark of $367,085 value by 1.4 percent for a total adjusted value of $372,224. This adjustment accounts for the difference between the predicted 2020 Median PCE inflation value of 2 percent and the actual 2020 ECI inflation value of 3.4 percent.[35] [36] Because we do not have a value for the ECI for 2021, we multiply the adjusted 2020 compensation benchmark of $372,224 by the Median PCE inflation value of 1.60 percent.[37] Based on the projected 2021 inflation estimate, the proposed compensation benchmark for 2021 is $378,180 per pilot.

TABLE 6—TARGET PILOT COMPENSATION

2020 Target Compensation	$367,085
Difference between Q12020 ECI Inflation Rate (3.4%) and the 2020 PCE Predicted Inflation Rate (2.0%)	1.400%
Adjusted 2020 Compensation	$372,224
2020 to 2021 Inflation Factor	1.60%
2021 Target Compensation	$378,180

Next, we certify that the number of pilots estimated for 2021 is less than or equal to the number permitted under the proposed changes to the staffing model in § 401.220(a). The proposed changes to the staffing model suggest that the number of pilots needed is 18 pilots for District One, which is more than or equal to 18, the number of registered 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 registered pilots for District One, as shown in table 7.

[33] The 2020 and 2021 inflation rates are available at *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20200610.pdf.* We used the PCE median inflation value found in table 1, Downloaded June 11, 2020.

[34] 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).

[35] U.S. Bureau of Labor Statistics Employment Cost Index (ECI) Q1 2020 data for Total Compensation for Private Industry Workers in the Transportation and Material Moving Sector (Series ID: CIU2010000520000A). The first quarter data was the most recently available data at the time of analysis for this NPRM. The Coast Guard will use updated 2020 ECI data in the final rule. *https://www.bls.gov/news.release/archives/eci_01312020.pdf.*

[36] In Step 2 of the ratemaking, the Coast Guard uses the Federal Reserve's predicted PCE inflation rate of 0.8% to inflate operating expenses to 2020 dollars. This value differs from the ECI Q1 inflation rate of 3.4%. The reason for the large deviation between the values is the timing of each dataset. The ECI data is only for Q1 of 2020 (January–March) and therefore does not capture the impact of COVID–19. The PCE inflation predictions are from the June 2020 and account for the impacts of the pandemic on the U.S. economy.

[37] The Federal Reserve, Table 1. Economic projections of Federal Reserve Board members and Federal Reserve Bank presidents, under their individual assumptions of projected appropriate monetary policy, June 2020, (June 10, 2020, 2:00 p.m.), *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20200610.pdf.*

TABLE 7—TARGET COMPENSATION FOR DISTRICT ONE

	District One		
	Designated	Undesignated	Total
Target Pilot Compensation	$378,180	$378,180	$378,180
Number of Pilots	11	7	18
Total Target Pilot Compensation	4,159,980	2,647,260	6,807,240

E. Step 5: Project Working Capital Fund

Next, we calculate the working capital fund revenues needed for each area. First, we add 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 3.3875 percent.[38] By multiplying the two figures, we obtain the working capital fund contribution for each area, as shown in table 8.

TABLE 8—WORKING CAPITAL FUND CALCULATION FOR DISTRICT ONE

	District one		
	Designated	Undesignated	Total
Adjusted Operating Expenses (Step 2)	$1,632,733	$923,904	$2,556,637
Total Target Pilot Compensation (Step 4)	4,159,980	2,647,260	6,807,240
Total 2021 Expenses	5,792,713	3,571,164	9,363,877
Working Capital Fund (3. 3.875%)	196,228	120,973	317,201

F. Step 6: Project Needed Revenue

In this step, we add all 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 9.

TABLE 9—REVENUE NEEDED FOR DISTRICT ONE

	District one		
	Designated	Undesignated	Total
Adjusted Operating Expenses (Step 2, see table 4)	$1,632,733	$923,904	$2,556,637
Total Target Pilot Compensation (Step 4, see table 6)	4,159,980	2,647,260	6,807,240
Working Capital Fund (Step 5, see table 8)	196,228	120,973	317,201
Total Revenue Needed	5,988,941	3,692,137	9,681,078

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 10-year average of traffic in District One, using the total time on task or pilot bridge hours.[39] Because we calculate separate figures for designated and undesignated waters, there are two parts for each calculation. We show these values in table 10.

TABLE 10—TIME ON TASK FOR DISTRICT ONE

[Hours]

Year	District one	
	Designated	Undesignated
2019	8,232	8,405
2018	6,943	8,445
2017	7,605	8,679
2016	5,434	6,217

[38] Moody's Seasoned Aaa Corporate Bond Yield, average of 2019 monthly data. 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 11, 2020)

[39] 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.

TABLE 10—TIME ON TASK FOR DISTRICT ONE—Continued

[Hours]

Year	District one	
	Designated	Undesignated
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
Average	6,129	6,694

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 11.

TABLE 11—INITIAL RATE CALCULATIONS FOR DISTRICT ONE

	Designated	Undesignated
Needed revenue (Step 6)	$5,988,941	$3,692,137
Average time on task (hours)	6,129	6,694
Initial rate	$977	$552

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 12 and 13.[40]

TABLE 12—AVERAGE WEIGHTING FACTOR FOR DISTRICT ONE, DESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
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 1 (2019)	72	1	72
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 2 (2019)	378	1.15	434.7
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 3 (2019)	122	1.3	158.6
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
Class 4 (2019)	730	1.45	1,058.5
Total	4,858		6,252
Average weighting factor (weighted transits/number of transits)		1.29	

[40] To calculate the number of transits by vessel class, we use the billing data from GLPMS, 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.

TABLE 13—AVERAGE WEIGHTING FACTOR FOR DISTRICT ONE, UNDESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
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 1 (2019)	30	1	30
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 2 (2019)	366	1.15	420.9
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 3 (2019)	58	1.3	75.4
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
Class 4 (2019)	326	1.45	472.7
Total	3,889		5,027
Average weighting factor (weighted transits/number of transits)		1.29	

I. Step 9: Calculate Revised Base Rates

In this step, we revise the base rates so that once the impact of the weighting factors is considered; the total cost of pilotage will 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 14.

TABLE 14—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	$977	1.29	$757
District One: Undesignated	552	1.29	428

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 this, the Director considers whether the proposed 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 proposed rates would cover operating expenses and infrastructure costs, including average traffic and weighting factions. Based on the financial information submitted by the pilots, the Director is not proposing any alterations to the rates in this step. We propose to modify the text in § 401.405(a) to reflect the final rates shown in table 15.

TABLE 15—PROPOSED FINAL RATES FOR DISTRICT ONE

Area	Name	Final 2020 pilotage rate	Proposed 2021 pilotage rate
District One: Designated	St. Lawrence River	$758	$757
District One: Undesignated	Lake Ontario	463	427

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 2018 expenses and revenues.[41] For accounting purposes, the financial reports divide expenses into designated and undesignated 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 16.

For District Two, we propose three Director's adjustments: (1) For the amount collected from the 2018 surcharge; (2) for the amount in Coast Guard litigation legal fees; and (3) for the amount paid to the District's applicant pilot. District Two had one applicant pilot during the 2018 season and paid $334,659 in salary. The Coast Guard believes this amount is above what is necessary and reasonable for retention and recruitment. In the 2019 NPRM, the Coast Guard proposed to make an adjustment to District Two's request for reimbursement of $571,248 for two applicant pilots ($285,624 per applicant). Instead of permitting $571,248 for two applicant pilots, we proposed allowing $257,566, or $128,783 per applicant pilot. This proposal went into the final rule for 2019 and was not opposed. Going forward, the Coast Guard will continue to use the same ratio of applicant to target compensation. For 2019, this was approximately 36 percent ($128,783 ÷ $359,887 = 35.78 percent), so the Coast Guard is proposing to use the rounded up value of 36.0 percent of target compensation as the benchmark for applicant pilot compensation, for a 2021 target pilot compensation of $132,151 ($367,085 × .36). This allows adjustments to applicant pilot compensation to fluctuate in line with target compensation. Other adjustments made by the auditors are explained in the auditors' reports (available in the docket where indicated in the Public Participation and Request for Comments portion of this document).

TABLE 16—2018 RECOGNIZED EXPENSES FOR DISTRICT TWO

Reported operating expenses for 2018	District two		
	Undesignated	Designated	Total
	Lake Erie	Southeast Shoal to Port Huron	
Other Pilotage Costs:			
Subsistence/Travel—Pilots	$115,073	$172,608	$287,681
CPA DEDUCTION	(3,457)	(5,185)	(8,642)
Hotel/Lodging Cost	50,464	75,696	126,160
License Insurance	138	207	345
Payroll taxes	82,960	124,441	207,401
Other	860	1,291	2,151
Total Other Pilotage Costs	246,038	369,058	615,096
Applicant Pilot Costs:			
Applicant Salaries	133,864	200,795	334,659
Applicant Health Insurance	18,691	28,036	46,727
Applicant Payroll Tax	4,496	6,745	11,241
Applicant Subsistence	9,872	14,807	24,679
Total Applicant Pilot Cost	166,923	250,383	417,306
Pilot Boat and Dispatch Costs:			
Pilot Boat Cost	206,998	310,496	517,494
Employee Benefits	80,906	121,358	202,264
Payroll Taxes	12,523	18,785	31,308
Total Pilot and Dispatch Costs	300,427	450,639	751,066
Administrative Expenses:			
Legal—general counsel	35,711	53,567	$89,278
Legal—shared counsel (K&L Gates)	17,037	25,555	42,592
Legal—USCG litigation	2,185	3,277	5,462
Office rent	33,326	49,988	83,314
Insurance	20,357	30,536	50,893
Employee Benefits	89,999	134,999	224,998
Other taxes	25,620	38,430	64,050
Real Estate taxes	6,066	9,099	15,165
Depreciation/Auto lease/Other	29,392	44,087	73,479
Interest	586	880	1,466
APA dues	13,703	20,554	34,257
Dues and Subscriptions	676	1,015	1,691
Utilities	19,413	29,119	48,532
Salaries—Admin employees	53,170	79,755	132,925
Payroll taxes	5,558	8,338	13,896
Accounting	14,276	21,414	35,690

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

TABLE 16—2018 RECOGNIZED EXPENSES FOR DISTRICT TWO—Continued

Reported operating expenses for 2018	District two		
	Undesignated	Designated	Total
	Lake Erie	Southeast Shoal to Port Huron	
Pilot Training	14,434	21,414	35,848
Other	15,310	22,966	38,276
Total Administrative Expenses	396,819	594,993	991,812
Total Operating Expenses (Other Costs + Pilot Boats + Admin)	1,110,207	1,665,073	2,775,280
Proposed Adjustments (Director):			
Directors Adjustment Surcharge Collected in 2018	(65,962)	(65,962)	(131,924)
Directors Adjustment Applicant Pilot Salary	(66,828)	(135,680)	(202,508)
Proposed Legal Fee Removal—USCG Litigation	(2,185)	(3,277)	(5,462)
Total Director's Adjustments	(134,975)	(204,919)	(339,894)
Total Operating Expenses (OpEx + Adjustments)	975,232	1,460,154	2,435,386

B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation

Having identified the recognized 2019 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 using the BLS data from the CPI for the Midwest Region of the United States for the 2019 inflation rate.[42] Because the BLS does not provide forecasted inflation data, we use economic projections from the Federal Reserve for the 2020 and 2021 inflation modification.[43] Based on that information, the calculations for Step 1 are as follows:

TABLE 17—ADJUSTED OPERATING EXPENSES FOR DISTRICT TWO

Item	District two		
	Undesignated	Designated	Total
Total Operating Expenses (Step 1)	$975,232	$1,460,154	$2,435,386
2019 Inflation Modification (@1.5%)	14,628	21,902	36,530
2020 Inflation Modification (@0.8%)	7,919	11,856	19,775
2021 Inflation Modification (@1.6%)	15,964	23,903	39,867
Adjusted 2021 Operating Expenses	1,013,743	1,517,815	2,531,558

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 registered pilots based on data provided by the Lakes Pilots Association. Using these numbers, we estimate that there will be 15 registered pilots in 2021 in District Two. Furthermore, based on the seasonal staffing model discussed in the 2017 ratemaking (see 82 FR 41466) and our proposed changes to that staffing model, we assign a certain number of pilots to designated waters and a certain number to undesignated waters, as shown in table 18. These numbers are used to determine the amount of revenue needed in their respective areas.

TABLE 18—AUTHORIZED PILOTS

Item	District two
Proposed Maximum number of pilots (per § 401.220(a)) [44]	16
2021 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 proposing an ''interim'' ratemaking this year, we propose to follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark by inflation. As stated in Section VI.A of the preamble, we are proposing to use a two-step process to adjust target pilot compensation for inflation. The first step adjusts the 2019 target compensation benchmark of $367,085

[42] *Supra* footnote 29, at 30.

[43] *Supra* footnote 30, at 32.

[44] 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).

by 1.4 percent, for a total adjusted value of $372,224. This adjustment accounts for the difference between the predicted 2020 Median PCE inflation value of 2 percent and the actual 2020 ECI inflation value of 3.4 percent.[45 46] Because we do not have a value for the employment cost index for 2021, we multiply the adjusted 2020 compensation benchmark of $372,224 by the Median PCE inflation value of 1.60 percent.[47] Based on the projected 2021 inflation estimate, the proposed compensation benchmark for 2021 is $378,180 per pilot (see table 6 for calculations).

Next, we certify that the number of pilots estimated for 2021 is less than or equal to the number permitted under the proposed changes to the staffing model in § 401.220(a). The proposed changes to the staffing model suggest that the number of pilots needed is 16 pilots for District Two, which is more than or equal to 15, the number of registered pilots provided by the pilot associations.[48]

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 registered pilots for District Two, as shown in table 19.

TABLE 19—TARGET COMPENSATION FOR DISTRICT TWO

	Undesignated	Designated	Total
Target Pilot Compensation	$378,180	$378,180	$378,180
Number of Pilots	8	7	15
Total Target Pilot Compensation	$3,025,440	$2,647,260	$5,672,700

E. Step 5: Project Working Capital Fund

Next, we calculate the working capital fund revenues needed for each area. First, we add 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 3.3875 percent.[49] By multiplying the two figures, we obtain the working capital fund contribution for each area, as shown in table 20.

TABLE 20—WORKING CAPITAL FUND CALCULATION FOR DISTRICT TWO

Item	District two		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2)	$1,013,743	$1,517,815	$2,531,558
Total Target Pilot Compensation (Step 4)	3,025,440	2,647,260	5,672,700
Total Expenses	4,039,183	4,165,075	8,204,258
Working Capital Fund (3.3875%)	136,827	141,092	277,919

F. Step 6: Project Needed Revenue

In this step, we add all 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 21.

TABLE 21—REVENUE NEEDED FOR DISTRICT TWO

	District two		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2, see Table 17)	$1,013,743	$1,517,815	$2,531,558
Total Target Pilot Compensation (Step 4, see Table 19)	3,025,440	2,647,260	5,672,700
Working Capital Fund (Step 5, see Table 20)	136,827	141,092	277,919
Total Revenue Needed	4,176,010	4,306,167	8,482,177

[45] U.S. Bureau of Labor Statistics Employment Cost Index (ECI) Q1 2020 data for Total Compensation for Private Industry Workers in the Transportation and Material Moving Sector (Series ID: CIU2010000520000A). The first quarter data was the most recently available data at the time of analysis for this NPRM. The Coast Guard will use updated 2020 ECI data in the final rule. *https://www.bls.gov/news.release/archives/eci_01312020.pdf.*

[46] In Step 2 of the ratemaking, the Coast Guard uses the Federal Reserve's predicted PCE inflation rate of 0.8% to inflate operating expenses to 2020 dollars. This value differs from the ECI Q1 inflation rate of 3.4%. The reason for the large deviation between the values is the timing of each dataset. The ECI data is only for Q1 of 2020 (January–March) and therefore does not capture the impact of COVID–19. The PCE inflation predictions are from the June 2020 and account for the impacts of the pandemic on the US economy.

[47] The Federal Reserve, *Table 1. Economic projections of Federal Reserve Board members and Federal Reserve Bank presidents, under their individual assumptions of projected appropriate monetary policy, June 2020,* (June 10, 2020, 2:00 p.m.), *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20200610.pdf).*

[48] 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).

[49] See footnote 33.

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 10-year average of traffic in District Two, using the total time on task or pilot bridge hours.[50] Because we calculate separate figures for designated and undesignated waters, there are two parts for each calculation. We show these values in table 22.

TABLE 22—TIME ON TASK FOR DISTRICT TWO

[Hours]

Year	Undesignated	Designated
2019	6,512	7,715
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
Average	5,634	5,661

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 23.

TABLE 23—INITIAL RATE CALCULATIONS FOR DISTRICT TWO

Item	Undesignated	Designated
Needed revenue (Step 6)	$4,176,010	$4,306,167
Average time on task (hours)	5,634	5,661
Initial rate	$741	$761

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 24 and 25.[51]

TABLE 24—AVERAGE WEIGHTING FACTOR FOR DISTRICT TWO, UNDESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
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
Class 1 (2019)	54	1	54
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 2 (2019)	127	1.15	146.05
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 3 (2019)	1	1.3	1.3
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

[50] See footnote 34 for more information.

[51] *Supra* footnote 35, at 41.

TABLE 24—AVERAGE WEIGHTING FACTOR FOR DISTRICT TWO, UNDESIGNATED AREAS—Continued

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 4 (2019)	210	1.45	304.5
Total	4,206		5,529
Average weighting factor (weighted transits/number of transits)		1.31	

TABLE 25—AVERAGE WEIGHTING FACTOR FOR DISTRICT TWO, DESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
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 1 (2019)	48	1	48
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 2 (2019)	281	1.15	323.15
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 3 (2019)	1	1.3	1.3
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
Class 4 (2019)	403	1.45	584.35
Total	3,393		4,467
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 will 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 26.

TABLE 26—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	$741	1.31	$566
District Two: Undesignated	761	1.32	577

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 this, the Director considers whether the proposed 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 proposed rates would cover operating expenses and infrastructure costs, and takes average traffic and weighting factors into consideration. Based on this information, the Director is not proposing any alterations to the rates in this step. We propose to modify the text in § 401.405(a) to reflect the final rates shown in table 27.

TABLE 27—PROPOSED FINAL RATES FOR DISTRICT TWO

Area	Name	Final 2020 pilotage rate	Proposed 2021 pilotage rate
District Two: Designated	Navigable waters from Southeast Shoal to Port Huron, MI.	$586	$566
District Two: Undesignated	Lake Erie	618	577

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 2018 expenses and revenues.[52] For accounting purposes, the financial reports divide expenses into designated and undesignated 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 Three are shown in table 28.

For District Three, we propose two Director's adjustments. One would be for the amount collected from the 2018 surcharge and the other for the amount of Coast Guard litigation legal fees. Other adjustments made by the auditors are explained in the auditors' reports (available in the docket where indicated in the Public Participation and Request for Comments portion of this document).

We would make no adjustments to the District Three compensation for applicant pilots. In the 2019 NPRM, the Coast Guard proposed to make an adjustment to District Three's request for reimbursement of $571,248 for two applicant pilots ($285,624 per applicant). Instead of permitting $571,248 for two applicant pilots, we proposed allowing $257,566, or $128,783 per applicant pilot. This proposal went into the final rule for 2019 and was not opposed. Going forward, the Coast Guard will to continue to use the same ratio of applicant to target compensation for all districts. For 2019, this was approximately 36 percent ($128,783 ÷ $359,887 = 35.78 percent), so the Coast Guard will use 36 percent of target compensation as the benchmark for applicant pilot compensation. This allows adjustments to applicant pilot compensation to fluctuate in line with target compensation.

TABLE 28—2018 RECOGNIZED EXPENSES FOR DISTRICT THREE

Reported expenses for 2018	District three			
	Undesignated[53] (Area 6)	Designated (area 7)	Undesignated (area 8)	Total
	Lakes Huron and Michigan	St. Marys River	Lake Superior	
Operating Expenses:				
Other Pilotage Costs:				
Pilot subsistence/travel	$208,110	$110,697	$123,980	$442,787
Hotel/Lodging Cost	88,982	47,331	53,011	189,324
License Insurance—Pilots	13,516	7,189	8,052	28,757
Payroll taxes	122,954	65,401	73,249	261,604
Other	19,521	10,383	11,629	41,533
Total Other Pilotage Costs	453,083	241,001	269,921	964,005
Applicant Pilot Costs:				
Applicant Salaries	183,485	97,598	109,310	390,393
Applicant pilot subsistence/travel	16,411	8,729	9,777	34,917
Applicant Insurance	38,312	20,379	22,823	81,514
Applicant Payroll Tax	16,411	8,729	9,777	34,917
Applicant Total Cost	254,619	135,435	151,687	541,741
Pilot Boat and Dispatch Costs:				
Pilot boat costs	346,160	184,127	206,223	736,510
Dispatch costs	99,982	53,182	59,563	212,727
Payroll taxes	13,609	7,239	8,108	28,956
Total Pilot and Dispatch Costs	459,751	244,548	273,894	978,193
Administrative Expenses:				
Legal—general counsel	22,766	12,109	13,563	48,438
Legal—shared counsel (K&L Gates)	19,426	10,333	11,573	41,332
Legal—USCG litigation	8,611	4,580	5,130	18,321
Office rent	4,020	2,138	2,395	8,553
Insurance	11,354	6,040	6,764	24,158
Employee benefits	68,303	36,331	40,691	145,325
Other taxes	131	70	78	279

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

TABLE 28—2018 RECOGNIZED EXPENSES FOR DISTRICT THREE—Continued

Reported expenses for 2018	District three			
	Undesignated [53] (Area 6)	Designated (area 7)	Undesignated (area 8)	Total
	Lakes Huron and Michigan	St. Marys River	Lake Superior	
Depreciation/Auto leasing/Other	57,315	30,487	34,145	121,947
Interest	7	4	4	15
APA Dues	20,628	10,973	12,289	43,890
Dues and subscriptions	3,290	1,750	1,960	7,000
Utilities	31,860	16,947	18,980	67,787
Salaries	60,876	32,381	36,267	129,524
Payroll taxes	5,406	2,875	3,220	11,501
Accounting/Professional fees	8,069	4,292	4,807	17,168
Pilot training	18,586	9,886	11,073	39,545
Other expenses (D3–18–01)	8,907	4,738	5,306	18,951
(D3–18–01) CPA Deduction	(2,030)	(1,080)	(1,210)	(4,320)
Total Administrative Expenses	347,525	184,854	207,035	739,414
Total Operating Expenses (Other Costs + Pilot Boats + Admin)	1,514,978	805,838	902,537	3,223,353
Proposed Adjustments (Director):				
Directors Adjustment Surcharge Collected in 2018	(273,168)	(273,168)	(273,168)	(819,504)
Proposed Legal Fee Removal—USCG Litigation	(8,611)	(4,580)	(5,130)	(18,321)
Total Director's Adjustments	(281,779)	(277,748)	(278,298)	(837,825)
Total Operating Expenses (OpEx + Adjustments)	1,233,199	528,090	624,239	2,385,528

B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation

Having identified the recognized 2018 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 using the BLS data from the CPI for the Midwest Region of the United States for the 2019 inflation rate.[54] Because the BLS does not provide forecasted inflation data, we use economic projections from the Federal Reserve for the 2020 and 2021 inflation modification.[55] Based on that information, the calculations for Step 1 are as follows:

TABLE 29—ADJUSTED OPERATING EXPENSES FOR DISTRICT THREE

	District three		
	Undesignated	Designated	Total
Total Operating Expenses (Step 1)	$1,857,438	$528,090	$2,385,528
2019 Inflation Modification (@1.5%)	27,862	7,921	35,783
2020 Inflation Modification (@0.8%)	15,082	4,288	19,370
2021 Inflation Modification (@1.6%)	30,406	8,645	39,051
Adjusted 2021 Operating Expenses	1,930,788	548,944	2,479,732

C. Step 3: Estimate Number of Working Pilots

In accordance with the text in § 404.104(c), we estimate the number of working pilots in each district. We determine the number of registered pilots based on data provided by the Western Great Lakes Pilots Association. Using these numbers, we estimate that there will be 22 registered pilots in 2021 in District Three. Furthermore, based on the seasonal staffing model discussed in the 2017 ratemaking (see 82 FR 41466), and our proposed changes to that staffing model, we assign a certain number of pilots to designated waters and a certain number to undesignated waters, as shown in table 30. These numbers are used to determine the amount of revenue needed in their respective areas.

[53] The undesignated areas in District Three (areas 6 and 8) are treated separately in table 28. In table 29 and subsequent tables, both undesignated areas are combined and analyzed as a single undesignated area.

[54] *Supra* footnote 29, at 30.

[55] *Supra* footnote 30, at 31.

TABLE 30—AUTHORIZED PILOTS

	District three
Proposed Maximum number of pilots (per § 401.220(a)) [56]	23
2021 Authorized pilots (total)	22
Pilots assigned to designated areas	4
Pilots assigned to undesignated areas	18

D. Step 4: Determine Target Pilot Compensation Benchmark

In this step, we determine the total pilot compensation for each area. As we are proposing an ''interim'' ratemaking this year, we propose to follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark by inflation. As stated in Section VI.A of the preamble, we are proposing to use a two-step process to adjust target pilot compensation for inflation. The first step adjusts the 2019 target compensation benchmark of $367,085 by 1.4 percent, for a total adjusted value of $372,224. This adjustment accounts for the difference between the predicted 2020 Median PCE inflation value of 2 percent and the actual 2020 ECI inflation value of 3.4 percent.[57] [58] Because we do not have a value for the ECI for 2021, we multiply the adjusted 2020 compensation benchmark of $372,224 by the Median PCE inflation value of 1.60 percent.[59] Based on the projected 2020 inflation estimate, the proposed compensation benchmark for 2021 is $378,180 per pilot (see table 6 for calculations).

Next, we certify that the number of pilots estimated for 2021 is less than or equal to the number permitted under the proposed changes to the staffing model in § 401.220(a). The proposed changes to the staffing model suggest that the number of pilots needed is 23 pilots for District Three,[60] which is more than or equal to 22, the number of registered 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 registered pilots for District Three, as shown in table 31.

TABLE 31—TARGET COMPENSATION FOR DISTRICT THREE

	District three		
	Undesignated	Designated	Total
Target Pilot Compensation	$378,180	$378,180	$378,180
Number of Pilots	18	4	22
Total Target Pilot Compensation	$6,807,240	$1,512,720	$8,319,960

E. Step 5: Project Working Capital Fund

Next, we calculate the working capital fund revenues needed for each area. First, we add 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 3.3875 percent.[61] By multiplying the two figures, we obtain the working capital fund contribution for each area, as shown in table 32.

TABLE 32—WORKING CAPITAL FUND CALCULATION FOR DISTRICT THREE

	District three		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2)	$1,930,788	$548,944	$2,479,732
Total Target Pilot Compensation (Step 4)	6,807,240	1,512,720	8,319,960
Total Expenses	8,738,028	2,061,664	10,799,692
Working Capital Fund (3.3875)	296,001	69,839	365,840

[56] 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).

[57] U.S. Bureau of Labor Statistics Employment Cost Index (ECI) Q1 2020 data for Total Compensation for Private Industry Workers in the Transportation and Material Moving Sector (Series ID: CIU2010000520000A). The first quarter data was the most recently available data at the time of analysis for this NPRM. The Coast Guard will use updated 2020 ECI data in the final rule. *https://www.bls.gov/news.release/archives/eci_01312020.pdf.*

[58] In Step 2 of the ratemaking, the Coast Guard uses the Federal Reserve's predicted PCE inflation rate of 0.8% to inflate operating expenses to 2020 dollars. This value differs from the ECI Q1 inflation rate of 3.4%. The reason for the large deviation between the values is the timing of each dataset. The ECI data is only for Q1 of 2020 (January–March) and therefore does not capture the impact of COVID–19. The PCE inflation predictions are from the June 2020 and account for the impacts of the pandemic on the U.S. economy.

[59] *Supra* footnote 33, at 39.

[60] 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).

[61] Moody's Seasoned Aaa Corporate Bond Yield, average of 2018 monthly data. The Coast Guard uses the most recent complete year of data. See *https://fred.stlouisfed.org/series/AAA.* (June 12, 2019).

F. Step 6: Project Needed Revenue

In this step, we add all 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). The calculations are shown in table 33.

TABLE 33—REVENUE NEEDED FOR DISTRICT THREE

	District three		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2, see Table 9)	$1,930,788	$548,944	$2,479,732
Total Target Pilot Compensation (Step 4, see Table 31)	6,807,240	1,512,720	8,319,960
Working Capital Fund (Step 5, see Table 32)	296,001	69,839	365,840
Total Revenue Needed	9,034,029	2,131,503	11,165,532

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 10-year average of traffic in District Three, using the total time on task or pilot bridge hours.[62] Because we calculate separate figures for designated and undesignated waters, there are two parts for each calculation. We show these values in table 34.

TABLE 34—TIME ON TASK FOR DISTRICT THREE

[Hours]

Year	District three	
	Undesignated	Designated
2019	24,851	3,395
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
Average	20,710	2,808

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 35.

TABLE 35—INITIAL RATE CALCULATIONS FOR DISTRICT THREE

	Undesignated	Designated
Revenue needed (Step 6)	$9,034,029	$2,131,503
Average time on task (hours)	20,710	2,808
Initial rate	$436	$759

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 36 and 37.[63]

TABLE 36—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, UNDESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Area 6:			

[62] *See supra* footnote 34, at 40 for more information.

[63] *See supra* footnote 35, at 41 for more information.

TABLE 36—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, UNDESIGNATED AREAS—Continued

Vessel class/year	Number of transits	Weighting factor	Weighted transits
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 1 (2019)	173	1	173
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 2 (2019)	279	1.15	320.85
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 3 (2019)	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
Class 4 (2019)	334	1.45	484.3
Total for Area 6	4,299	....	5,497
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 1 (2019)	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
Class 2 (2017)	151	1.15	173.65
Class 2 (2018)	102	1.15	117.3
Class 2 (2019)	120	1.15	138
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 3 (2019)	6	1.3	7.8
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
Class 4 (2019)	254	1.45	368.3
Total for Area 8	2,356	....	3,137
Combined total	6,655	....	8,634.10
Average weighting factor (weighted transits/number of transits)	....	1.30	....

TABLE 37—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, DESIGNATED AREAS

Vessel class per year	Number of transits	Weighting factor	Weighted transits
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 1 (2019)	45	1	45
Class 2 (2014)	221	1.15	254.15
Class 2 (2015)	145	1.15	166.75

TABLE 37—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, DESIGNATED AREAS—Continued

Vessel class per year	Number of transits	Weighting factor	Weighted transits
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 2 (2019)	162	1.15	186.3
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 3 (2019)	3	1.3	3.9
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
Class 4 (2019)	308	1.45	446.6
Total	2,814		3,659
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 will 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 38.

TABLE 38—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	$759	1.30	$584
District Three: Undesignated	436	1.30	335

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 this, the Director considers whether the proposed 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 proposed rates would cover operating expenses and infrastructure costs, and takes average traffic and weighting factors into consideration. Based on this information, the Director is not proposing any alterations to the rates in this step. We propose to modify the text in § 401.405(a) to reflect the final rates shown in table 39.

TABLE 39—PROPOSED FINAL RATES FOR DISTRICT THREE

Area	Name	Final 2020 pilotage rate	Proposed 2021 pilotage rate
District Three: Designated	St. Marys River	$632	$584
District Three: Undesignated	Lakes Huron, Michigan, and Superior	337	335

IX. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. A summary of our analyses based on these statutes or Executive orders follows.

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 costs and benefits, reducing costs, harmonizing rules, and 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 proposed rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. Because this proposed rule is not a significant regulatory action, it 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 proposed 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.[64] For this ratemaking, the Coast Guard estimates an increase in cost of approximately $1.06 million to industry as a result of the change in revenue needed in 2021 compared to the revenue needed in 2020.

Table 40 summarizes proposed changes with no cost impacts or where the cost impacts are captured in the proposed rate change. Table 41 summarizes the affected population, costs, and benefits of the proposed rate change.

TABLE 40—PROPOSED CHANGES WITH NO COSTS OR COST CAPTURED IN THE PROPOSED RATE CHANGE

Change	Description	Affected population	Basis for no cost or cost captured in the rate	Benefits
Legal expenses for lawsuits against the U.S. Government are not allowable operating expenses.	The Coast Guard is proposing to exclude legal fees for litigation against the Coast Guard from operating expenses for calculation of pilotage rates. This proposal would only apply to legal fees when pilots associations sue the Coast Guard in relation to the ratemaking and oversight requirement in 46 U.S.C. 9303, 9304 and 9305. As part of this proposed change, the Coast Guard is also proposing to create a new paragraph 46 CFR 404.2(b)(6) which defines legal expenses.	Owners and operators of 279 vessels journeying the Great Lakes system annually, 55 U.S. Great Lakes pilots, and 3 pilotage associations.	Changes in operating expenses are accounted for in the base pilotage rates. For the 2020 ratemaking, these legal fees total $36,688 for all three districts. After adjusting for inflation and the working capital fund, these expenses are $39,430, or 0.13% of the total revenue needed for 2021. The pilotage associations may still be reimbursed for these expenses by the Coast Guard under the EAJA.	The change would remove the undue cost to shippers of effectively paying for the pilots' litigation expenses to sue the Coast Guard.
Changes to Staffing Model.	The Coast Guard is proposing to modify the staffing model at 46 CFR 401.220(a)(3) to round up to the nearest integer, as opposed to the existing method, which rounds to the nearest integer. In total, this would increase the maximum number of allowable pilots by 3.	Owners and operators of 279 vessels journeying the Great Lakes system annually, 55 U.S. Great Lakes pilots, and 3 pilotage associations.	The total number of pilots is accounted for in the base pilotage rates. For the 2021 ratemaking, this proposed change would allow for one additional pilot that would not have otherwise been allowed.	Rounding up in the staffing model accounts for extra staff or extra time spent by the pilot associations presidents, including attending mandatory meetings with the Coast Guard, complying with new reporting requirements, and overseeing projects that enable the associations to provide safe, efficient, and reliable pilotage service in order to facilitate maritime commerce.
Inflation of Target pilot compensation.	The Coast Guard is proposing to modify 46 CFR 404.104(b) to change how inflation of pilot compensation is calculated by accounting for the difference between the predicted PCE inflation rated and the actual ECI inflation rate.	Owners and operators of 279 vessels journeying the Great Lakes system annually, 55 U.S. Great Lakes pilots, and 3 pilotage associations.	Pilot compensation costs are accounted for in the base pilotage rates.	This proposed change ensures the Coast Guard will be able to correct any under- or over-estimates in inflation rather than keeping these errors continuously in the rate.

TABLE 41—ECONOMIC IMPACTS DUE TO PROPOSED 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 279 vessels transiting the Great Lakes system annually, 55 U.S. Great Lakes pilots, and 3 pilotage associations.	Increase of $1,060,757 due to change in revenue needed for 2021 ($29,328,787) from revenue needed for 2020 ($28,268,030), as shown in table 42 below.	New rates cover an association's necessary and reasonable operating expenses. Promotes safe, efficient, and reliable pilotage service on the Great Lakes. Provides fair compensation, adequate training, and sufficient rest periods for pilots. Ensures the association receives sufficient revenues to fund future improvements.

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

The Coast Guard is required to review and adjust pilotage rates on the Great Lakes annually. See Sections IV and V 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 are proposing to adjust the pilotage rates for the 2021 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 proposed rule would decrease the rates for all three districts. In addition, the proposed rule would not implement a surcharge for the training of apprentice pilots as was last implemented in the 2019 ratemaking.[65] These changes lead to a net increase in the cost of service to shippers. However, because the proposed rates would increase for some areas and decrease for others, the change in per unit cost to each individual shipper would 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 rule would impact U.S. Great Lakes pilots, the 3 pilot associations, and the owners and operators of 279 oceangoing vessels that transit the Great Lakes annually. We estimate that there would be 55 pilots registered during the 2021 shipping season. The shippers affected by these rate changes are those 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 2017 through 2019 from the Great Lakes Pilotage Management System (GLPMS) to estimate the average annual number of vessels affected by the rate adjustment. 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. We used 3 years of the most recent billing data to estimate the affected population. When we reviewed 10 years of the most recent billing data, we found the data included vessels that have not used pilotage services in recent years. We believe using 3 years of billing data is a better representation of the vessel population that is currently using pilotage services and would be impacted by this rulemaking. We found that 474 unique vessels used pilotage services during the years 2017 through 2019. That is, these vessels had a pilot dispatched to the vessel and billing information was recorded in the GLPMS. Of these vessels, 434 were foreign-flagged vessels and 40 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 they 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 2017 through 2019 as the best representation of vessels estimated to be affected by the rates in this rulemaking. From 2017 through 2019, an average of 279 vessels used pilotage services annually.[66] On average, 261 of these vessels were foreign-flagged vessels and 18 were U.S.-flagged vessels that voluntarily opted into the pilotage service.

Total Cost to Shippers

The proposed rate changes resulting from this adjustment to the rates would result in a net decrease in the cost of service to shippers. However, the proposed change in per unit cost to each individual shipper would be dependent on their area of operation.

The Coast Guard estimates the effect of the rate changes on shippers by comparing the total projected revenues needed to cover costs in 2020 with the total projected revenues to cover costs in 2021, including any temporary surcharges we have authorized.[67] We set pilotage rates so 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 9, 21, and 33 of this preamble). The Coast Guard estimates that for the 2021 shipping season, the projected revenue needed for all three districts is $29,328,787.

To estimate the change in cost to shippers from this rule, the Coast Guard compared the 2021 total projected revenues to the 2020 projected revenues. Because we review and prescribe rates for the Great Lakes Pilotage annually, the effects are estimated as a single-year cost rather than annualized over a 10-year period. In the 2020 rulemaking, we estimated the total projected revenue needed for 2020 as $28,268,030.[68] This is the best approximation of 2020 revenues, as at the time of this publication, the Coast Guard does not have enough audited data available for the 2020 shipping season to revise these projections.[69] Table 42 shows the revenue projections for 2020 and 2021 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.

[65] See, 84 FR 20551 (May 10, 2019).

[66] 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.

[67] While the Coast Guard implemented a surcharge in 2019, we are not proposing any surcharges for 2021.

[68] 85 FR 20088, see table 41.

[69] The proposed rates for 2021 do not account for the impacts COVID–19 may have on shipping traffic and subsequently pilotage revenue, as we do not have complete data for 2020. The rates for 2022 will take into account the impact of COVID–19 on shipping traffic, because that future ratemaking will include 2020 traffic data. However, the Coast Guard uses 10-year average when calculating traffic in order to smooth out variations in traffic caused by global economic conditions, such as those caused by the COVID–19 pandemic.

TABLE 42—EFFECT OF THE RULE BY AREA AND DISTRICT

[$U.S.; non-discounted]

Area	Revenue needed in 2020	Revenue needed in 2021	Change in costs of this proposed rule
Total, District One	$9,210,888	$9,681,078	$470,190
Total, District Two	8,345,871	8,482,177	136,306
Total, District Three	10,711,271	11,165,532	454,261
System Total	28,268,030	29,328,787	1,060,757

The resulting difference between the projected revenue in 2020 and the projected revenue in 2021 is the annual change in payments from shippers to pilots as a result of the rate change imposed by this proposed rule. The effect of the rate change to shippers varies by area and district. After taking into account the change in pilotage rates, the rate changes would lead to affected shippers operating in District One experiencing an increase in payments of $470,190 over the previous year. District Two and District Three would experience an increase in payments of $136,306 and $454,261, respectively, when compared with 2020. The overall adjustment in payments would be an increase in payments by shippers of $1,060,757 across all three districts (a 4-percent increase when compared with 2020). 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 2020 to 2021 and presents each revenue-component as a percentage of the total revenue needed. In both 2020 and 2021, the largest revenue-component was pilotage compensation (68 percent of total revenue needed in 2020 and 71 percent of total revenue needed in 2021), followed by operating expenses (29 percent of total revenue needed in 2020 and 26 percent of total revenue needed in 2021).

TABLE 43—DIFFERENCE IN REVENUE BY COMPONENT

Revenue component	Revenue needed in 2020	Percentage of total revenue needed in 2020	Revenue needed in 2021	Percentage of total revenue needed in 2021	Difference (2021 revenue–2020 revenue)	Percentage change from previous year
Adjusted Operating Expenses	$8,110,685	29	$7,567,927	26	($542,758)	(7)
Total Target Pilot Compensation	19,088,420	68	20,799,900	71	1,711,480	9
Working Capital Fund	1,068,925	4	960,960	3	(107,965)	(10)
Total Revenue Needed	28,268,030	100	29,328,787	100	1,060,757	4

Note: Totals may not sum due to rounding.

As stated above, we estimate that there will be a total increase in revenue needed by the pilot associations of $1,060,757. This represents an increase in revenue needed for target pilot compensation of $1,711,480, and a decrease in the revenue needed for adjusted operating expenses and the working capital fund of $542,758 and $107,965, respectively. The proposed removal of legal fees associated with litigation against the Coast Guard would reduce the revenue needed in 2021 by $39,430. While the shippers would no longer reimburse the legal fees associated with litigation via the rate under the proposed rule, the pilot associations may still be reimbursed for these expenses by the Coast Guard under the EAJA.

The majority of the increase in revenue needed, $1,711,480, is the result of changes to target pilot compensation. These changes are due to three factors: (1) The proposed changes to adjust 2020 pilotage compensation to account for the difference between actual and predicted inflation; (2) the net addition of three additional pilots; and (3) inflation of pilotage compensation.

The proposed target compensation is $378,180 per pilot in 2021, compared to $367,085 in 2020. The proposed changes to modify the 2020 pilot compensation to account for the difference between predicted and actual inflation would increase the 2020 target compensation value by 1.4 percent. As show in table 43, this inflation adjustment would increase total compensation by $5,139 per pilot, and the total revenue needed by $282,655 when accounting for all 55 pilots.

TABLE 44—CHANGE IN REVENUE RESULTING FROM THE PROPOSED CHANGE TO INFLATION OF PILOT COMPENSATION CALCULATION IN STEP 4

2020 Target Compensation	$367,085
Adjusted 2020 Compensation ($367,085 × 1.014)	372,224
Difference between Target 2020 Compensation and Target 2020 Compensation ($372,224 − $367,085)	5,139
Increase in total Revenue for 55 Pilots ($5,139 × 55)	282,655

The addition of 3 pilots to full registered status accounts for $1,119,122 of the increase in needed revenue. As shown in table 44, to avoid double counting, this value excludes the change in revenue resulting from the proposed change to adjust 2020 pilotage compensation to account for the difference between actual and predicted inflation.

TABLE 45—CHANGE IN REVENUE RESULTING FROM ADDING THREE ADDITIONAL PILOTS

2021 Target Compensation	$378,180
Total Number of New Pilots	3
Total Cost of new Pilots ($378,180 × 3)	$1,134,540
Difference between Target 2020 Compensation and Target 2020 Compensation ($372,224 − $367,085)	$5,139
Increase in total Revenue for 3 Pilots ($5,139 × 3)	$15,418
Net Increase in total Revenue 3 Pilots ($1,134,540 − $15,418)	$1,119,122

Finally, the remainder of the increase, $309,702, is the result of increasing compensation for the other 52 pilots to account for future inflation of 1.6 percent in 2021. This would increase total compensation by $5,965 per pilot.

TABLE 46—CHANGE IN REVENUE RESULTING FROM INFLATING 2020 COMPENSATION TO 2021

Adjusted 2020 Compensation	$372,224
2021 Target Compensation ($372,224 × 1.016)	378,180
Difference between Target 2020 Compensation and Target 2020 Compensation ($378,180 − $372,224)	5,956
Increase in total Revenue for 52 Pilots ($5,956 × 52)	309,702

Table 46 presents the percentage change in revenue by area and revenue-component, excluding surcharges, as they are applied at the district level.[70]

TABLE 47—DIFFERENCE IN REVENUE BY COMPONENT AND AREA

Area	Adjusted operating expenses			Total target pilot compensation			Working capital fund			Total revenue needed		
	2020	2021	Percentage change	2020	2021	Percentage change	2020	2021	Percentage change	2020	2021	Percentage change
District One: Designated	$1,573,286	$1,632,733	4	$3,670,850	$4,159,980	12	$206,095	$196,228	(5)	$5,450,231	$5,988,941	9
District One: Undesignated	1,048,857	923,904	(14)	2,569,595	2,647,260	3	142,205	120,973	(18)	3,760,657	3,692,137	(2)
District Two: Undesignated	1,019,371	1,013,743	(1)	2,936,680	3,025,440	3	155,473	136,827	(14)	4,111,524	4,176,010	2
District Two: Designated	1,504,635	1,517,815	1	2,569,595	2,647,260	3	160,117	141,092	(13)	4,234,347	4,306,167	2
District Three: Undesignated	2,336,354	1,930,788	(21)	5,873,360	6,807,240	14	322,642	296,001	(9)	8,532,356	9,034,029	6
District Three: Designated	628,182	548,944	(14)	1,468,340	1,512,720	3	82,393	69,839	(18)	2,178,915	2,131,503	(2)

Benefits

This proposed rule would allow the Coast Guard to meet requirements in 46 U.S.C. 9303 to review the rates for pilotage services on the Great Lakes. The rate changes would 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 would also help recruit and retain pilots, which would ensure a sufficient number of pilots to meet peak shipping demand, helping to 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 proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the proposed rule, the Coast Guard reviewed recent company size and ownership data for the vessels identified in the GLPMS, and we reviewed business revenue and size data provided by publicly available sources such as Manta[71] and ReferenceUSA.[72] As described in Section IX.A of this preamble, Regulatory Planning and Review, we found that a total of 474 unique vessels used pilotage services from 2017 through 2019. These vessels are owned by 49 entities. We found that of the 49 entities that own or operate vessels engaged in trade on the Great Lakes that would be affected by this rule, 38 are foreign entities that operate primarily outside the United States, and the remaining 11 entities are U.S. entities. We compared the revenue and employee data found in the company search 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 considered small entities.[73] Table 48 shows the North American Industry Classification System (NAICS) codes of the U.S. entities and the small entity standard size established by the SBA.

[70] The 2020 projected revenues are from the Great Lakes Pilotage Rates—2020 Annual Review and Revisions to Methodology final rule (85 FR 20088) Tables 8, 20, and 32. The 2021 projected revenues are from tables 9, 21, and 33 of this proposed rule.

[71] See *https://www.manta.com/.*

[72] See *http://resource.referenceusa.com/.*

[73] 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.

TABLE 48—NAICS CODES AND SMALL ENTITIES SIZE STANDARDS

NAICS	Description	Small entity size standard
211120	Crude Petroleum Extraction	1,250 employees.
237990	Other Heavy and Civil Engineering Construction	$39.5 million.
238910	Site Preparation Contractors	$16.5 million.
483212	Inland Water Passenger Transportation	500 employees.
487210	Scenic and Sightseeing Transportation, Water	$8.0 million.
488330	Navigational Services to Shipping	$41.5 million.
523910	Miscellaneous Intermediation	$41.5 million.
561599	All Other Travel Arrangement and Reservation Services	$22.0 million.
982100	National Security	Population of 50,000 People.

Of the 11 U.S. entities, 8 exceed the SBA's small business standards for small entities. To estimate the potential impact on the 3 small entities, the Coast Guard used their 2019 invoice data to estimate their pilotage costs in 2021. We increased their 2019 costs to account for the changes in pilotage rates resulting from this proposed rule and the Great Lakes Pilotage Rates—2020 Annual Review and Revisions to Methodology final rule (85 FR 20088). We estimated the change in cost to these entities resulting from this rule by subtracting their estimated 2020 costs from their estimated 2021 costs, and found the average costs to small firms would be approximately $1,226. We then compared the estimated change in pilotage costs between 2020 and 2021 with each firm's annual revenue. In all cases, their estimated pilotage expenses were below 1 percent of their annual revenue.

In addition to the owners and operators discussed above, three U.S. entities that receive revenue from pilotage services would be affected by this proposed rule. These are 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 rule because the three pilot associations would 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 would be impacted by this rule. We did not find any small governmental jurisdictions with populations of fewer than 50,000 people that would be impacted by this rule. Based on this analysis, we conclude this rulemaking would 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 proposed rule would have a less than 1 percent annual impact on 3 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 at the address listed in the **ADDRESSES** section of this preamble. In your comment, explain why you think it qualifies and 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 contact the person in the **FOR FURTHER INFORMATION** section of this proposed rule. The Coast Guard will not retaliate against small entities that question or complain about this proposed 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

The Paperwork Reduction Act of 1995 (44 3501–3520) requires that the Coast Guard consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320(b)(2)(vi), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

The Coast Guard has determined that there would be no new information collection associated with this proposed rule. Approval to collect such information previously was approved by OMB and was assigned 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 Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements as 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 proposed rule is consistent with the fundamental federalism principles and preemption requirements described 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

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 million (adjusted for inflation) or more in any one year. Although this proposed rule would not result in such an expenditure, we do 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 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 (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. If you disagree with our analysis or are aware of voluntary consensus standards that might apply, please send a comment explaining your disagreement or identifying appropriate standards to the docket using the method listed in the **ADDRESSES** section of this preamble.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, Rev. 1 (DHS Directive 023–01), 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 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 Record of Environmental Consideration supporting this determination is available in the docket where indicated under the **ADDRESSES** portion of this preamble.

This proposed rule meets the criteria for categorical exclusion (CATEX) under paragraphs A3 and L54 of Appendix A, Table 1 of DHS Instruction Manual 023–001–01, Rev. 1.[74] 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 proposed rule involves adjusting the pilotage rates to account for changes in district operating expenses, an increase in the number of pilots, and anticipated inflation. In addition, the Coast Guard is proposing how apprentice pilots will be compensated in future rulemakings. All of these proposed changes are consistent with the Coast Guard's maritime safety missions. 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 404

Great Lakes, Navigation (water), Seamen.

[74] *https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%2023-01-001-01%20Rev%2001_508%20Admin%20Rev.pdf.*

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR parts 401, 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).

§ 401.220 [Amended]

■ 2. Amend § 401.220, by revising the first sentence of paragraph (a)(3) to read as follows:

§ 401.220 Registration of pilots.

(a) * * *

(3) The number of pilots needed in each district is calculated by totaling the area results by district and rounding them up to a whole integer.* * *

* * * * *

§ 401.405 Pilotage Rates and Charges.

■ 3. Amend § 401.405 by revising paragraphs (a)(1) through (6) to read as follows:

(a) * * *

(1) The St. Lawrence River is $757;

(2) Lake Ontario is $428;

(3) Lake Erie is $566;

(4) The navigable waters from Southeast Shoal to Port Huron, MI is $577;

(5) Lakes Huron, Michigan, and Superior is $335; and

(6) The St. Marys River is $584.

* * * * *

PART 404—GREAT LAKES PILOTAGE RATEMAKING

■ 4. 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).

■ 5. Amend § 404.2 by adding paragraph (b)(6) to read as follows:

§ 404.2 Procedure and criteria for recognizing association expenses.

* * * * *

(b) * * *

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

* * * * *

■ 6. Amend § 404.104 by revising paragraph (b) to read as follows:

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

* * * * *

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

(1) First, the Director adjusts the previous year's individual target pilot by the difference between the previous year's Bureau of Labor Statistics' Employment Cost Index for the Transportation and Materials sector and the Federal Open Market Committee median economic projections for Personal Consumption Expenditures inflation value used to inflate the previous year's target pilot compensation.

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

* * * * *

Dated: October 16, 2020.

R.V. Timme,

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

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