DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 401 and 404

[Docket No. USCG–2020–0457]

RIN 1625–AC67

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

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: In accordance with the Great Lakes Pilotage Act of 1960, the Coast Guard is establishing new base pilotage rates for the 2021 shipping season. This final rule will adjust the pilotage rates to account for changes in district operating expenses, an increase in the number of pilots, and anticipated inflation. The rule makes one change to the ratemaking methodology to account for actual inflation in step 4. Additionally, the rule excludes legal fees incurred in litigation against the Coast Guard regarding ratemaking from necessary and reasonable pilot association operating expenses. When combined with the changes above, this results in a 7-percent net increase in pilotage costs compared to the 2020 season.

DATES: This final rule is effective April 12, 2021.

ADDRESSES: To view documents and comments mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0457 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

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

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I. Abbreviations

APA American Pilots' Association
BLS Bureau of Labor Statistics
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
ECI Employment Cost Index
FOMC Federal Open Market Committee
FR Federal Register
GLPA Great Lakes Pilotage Authority (Canadian)
GLPAC Great Lakes Pilotage Advisory Committee
GLPMS Great Lakes Pilotage Management System
I.R.C. Internal Revenue Code
LPA Lakes Pilots Association
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
SLSPA St. Lawrence Seaway Pilots' Association
§ Section
The Act Great Lakes Pilotage Act of 1960
The Coalition The Shipping Federation of Canada, the American Great Lakes Ports Association, and the United States Great Lakes Shipping Association
U.S.C. United States Code
User's Coalition The Shipping Federation of Canada, the American Great Lakes Ports Association, and the United States Great Lakes Shipping Association
WGLPA Western Great Lakes Pilot Association

II. Executive Summary

Pursuant to the Great Lakes Pilotage Act of 1960 (''the Act''),[1] the Coast Guard regulates pilotage for oceangoing vessels on the Great Lakes and St. Lawrence Seaway—including setting the rates for pilotage services and adjusting them on an annual basis for the upcoming shipping season. Shipping season begins when the locks are opened in the St. Lawrence Seaway, which allows traffic access to and from the Atlantic Ocean. The opening of the locks varies annually depending on the waterway conditions, but is generally in March or April. 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 have been modifying our methodology, originally introduced in 2016, each year since then, in

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

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 demand for pilotage services 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 IV of the preamble to this final rule.

As part of our annual review, in this final rule we are implementing new pilotage rates for 2021 based on the existing methodology. The result is an increase in rates for two areas, a decrease for three areas, and no change in the remaining area when compared to the 2020 rates. In the 2021 ratemaking NPRM, we estimated a 4 percent increase in pilotage rates from the 2020 rates. In the 2021 ratemaking final rule, the pilotage rates for 2021 are about 7 percent more than the 2020 rates. These changes are due to a combination of five 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 two working pilots (''pilots'') at the beginning of the 2021 shipping season;

(4) an increase in total operating expenses for District One compared to the previous year; and

(5) 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 associations, 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 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 is implementing one methodological change to the inflation calculation for pilot compensation in step 4, to account for actual inflation. And, finally, this rule will disallow legal fees for litigation against the Coast Guard regarding the ratemakings as redeemable operating expenses. These changes are further discussed in Sections V and VI of this preamble.

Based on the ratemaking model discussed in this final rule, we are implementing the rates shown in Table 1.

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

Area	Name	Final 2020 pilotage rate	Proposed 2021 pilotage rate	Final 2021 pilotage rate
District One: Designated	St. Lawrence River	$758	$757	$800
District One: Undesignated	Lake Ontario	463	428	498
District Two: Designated	Navigable waters from Southeast Shoal to Port Huron, MI.	618	577	580
District Two: Undesignated	Lake Erie	586	566	566
District Three: Designated	St. Marys River	632	584	586
District Three: Undesignated	Lakes Huron, Michigan, and Superior	337	335	337

This rule will impact 54 United States registered pilots, 3 pilot associations, and the owners and operators of an average of 279 oceangoing vessels that transit the Great Lakes annually. This rule is not economically significant under Executive Order 12866 and does not affect the Coast Guard's budget or increase Federal spending. The overall annual regulatory economic impact of this rate change is a net increase of $2,064,622 in projected payments made by consumers of pilotage services 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 VIII of this preamble provides the regulatory impact analyses of this rule.

III. Basis and Purpose

The legal basis of this rulemaking is the Great Lakes Pilotage Act of 1960,[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 United States registered 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, in consideration of the public interest and the costs of providing the services, adjusted.[6] The Secretary's duties and authority under the Act have been delegated to the Coast Guard.[7]

The purpose of this final rule is to establish new pilotage rates for the 2021 shipping season. The Coast Guard believes that the new rates will continue to promote our goals in title 46 of the Code of Federal Regulations (CFR), part 404.1, for pilot retention, to ensure safe, efficient, and reliable pilotage services in order to facilitate maritime commerce throughout the Great Lakes and Saint Lawrence River System, and to provide adequate funds to upgrade and maintain infrastructure.

IV. Background

Pursuant to the Act, the Coast Guard, in conjunction with the Canadian Great Lakes Pilotage Authority (GLPA), regulates shipping practices and rates on the Great Lakes. 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] United States and Canadian ''lakers,'' which account for most commercial shipping

[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 401.

on the Great Lakes, are not affected.[9] Generally, vessels are assigned a U.S. or Canadian registered 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. navigable waters from Southeast Shoal to Port Huron, MI, including all the 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, including the 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.
			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 will need to cover expenses and provide compensation to working pilots. Since the Coast Guard cannot guarantee demand for pilotage services, target pilot compensation for working pilots is a goal. The actual demand for service dictates the actual compensation for the 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 will be maintained and that pilots will receive adequate compensation and work a reasonable number of hours, with adequate rest between assignments, to ensure retention of highly trained personnel.

Over the past 4 years, the Coast Guard 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 VII 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 (Volume 85 of the **Federal Register** (FR) at Page 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

[9] The Coast Guard uses the term ''laker'' to identify commercial cargo vessels especially designed for and generally limited to use on the Great Lakes. These vessels are excluded from the requirement to use a pilot in the Great Lakes in 46 U.S.C. 9302(f).

[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.

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 rule, 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 2021 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 will 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 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 seek alternative benchmarks for target compensation for future ratemakings at this time 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 also changing the way inflation is calculated in this step, to account for actual inflation instead of predicted inflation. See the Discussion of Methodological and Other Changes at Section V of this preamble for a detailed description of the changes.

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 adjustment'' or ''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. We did not propose any surcharges in the notice of proposed rulemaking (NPRM) (85 FR 68210, October 27, 2020), and the Coast Guard will not be imposing surcharges in the 2021 ratemaking.

V. Discussion of Methodological and Other Changes

In the 2021 ratemaking NPRM, the Coast Guard proposed one methodological change to Step 4 of the ratemaking model and two policy changes. In consideration of the comments, this final rule only adopts the change to the way we calculate inflation of pilot compensation in Step 4 and the exclusion of legal fees associated with lawsuits against the Coast Guard's ratemaking and oversight requirements from pilot association operating expenses. Additionally, this final rule makes corrections to District One's operating expenses. This rule does not make any changes to the staffing model, for the reasons discussed in Section VI, Discussion of Comments.

A. Inflation of Pilot Compensation Calculation in Step 4

As proposed in the NPRM, this rule changes the inflation calculation in § 404.104(b) for interim ratemakings so that the previous year's target compensation value will first be adjusted by actual inflation using the Employment Cost Index (ECI) inflation value. With this change, we will update the previous year's target compensation value for actual inflation using ECI inflation values in each ratemaking. This ensures that any differences between the predicted inflation rate and the actual inflation rate will not be compounded with each ratemaking when the predicted PCE value is higher or lower than actual inflation. We will then multiply the ECI-adjusted target compensation for past years by the predicted future inflation value from the PCE to account for future inflation.

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 for the upcoming shipping season. 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.

For 2020, the actual ECI inflation is 3.5 percent, which is 1.5 percent greater than the predicted PCE inflation of 2 percent.[14] The difference between using the 2020 predicted PCE inflation rates and historic ECI actual inflation data in § 401.104(b) results in a 1.5 percent increase for 2021 target pilot compensation 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 lower value for target pilot compensation than if we had continued to use the PCE inflation.

B. Exclusion of Legal Fees Incurred in Lawsuits Against the Coast Guard Related to Ratemaking and Regulating From Pilot Associations' Approved Operating Expenses

This final rule excludes legal fees incurred in litigation against the Coast Guard in relation to the ratemaking and oversight requirements in 46 U.S.C. 9303, 9304, and 9305 from approved pilot associations' operating expenses used in the calculation of pilotage rates. As we proposed in the NPRM, this exclusion will be added to § 404.2, ''Procedure and criteria for recognizing association expenses,'' in paragraph (b)(6).

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,'' [15] because it places the burden of paying the legal fees on the Coast Guard, as the responsible party, when the pilots prevail on the merits, rather than the shipping companies that have no choice but to pay the set rate for pilotage services. Our reasoning is discussed further in Section VI of this preamble, Discussion of Comments.

Our process to exclude the legal fees in our annual ratemaking will be as follows. First, the unreimbursed pilot associations' legal fees incurred in litigation against the Coast Guard will be identified as an individual line item in the operating expenses. Second, we will remove the same amount by way of a Director's adjustment in a later step. To clarify, any pilot association's legal fees associated with intervening on the Coast Guard's defense in a ratemaking lawsuit will continue to be included as an approved operating expense and will not be removed by way of a Director's adjustment.

When a pilot association's legal fees are reimbursed fully or partially by way of the Equal Access to Justice Act (EAJA) or settlement, then the operating expense amount will be reduced to represent only the unreimbursed dollar amount, and that same dollar amount will 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 will be listed, representing the true cost to the association. Listing the dollar amount of unreimbursed legal expenses and removing it from the operating expenses will provide transparency to the pilot associations of the exact amount of legal fees excluded by this change.

C. Operation Expenses in Table 3—2018 Recognized Expenses for District One

The St. Lawrence Seaway Pilots' Association (SLSPA), District One, comment from Captain Boyce,[16] Association President, described several errors in the NPRM's Table 3—2018 Recognized Expenses For District One.[17] He commented that the rate calculation did not include 2018 operating expenses for the following allowable items: (1) Applicant pilot salaries, (2) a down payment for a pilot boat, (3) loan payments for the new pilot boat, and (4) dock repairs. Per our requirements in § 404.101, the Coast Guard uses a third-party auditing firm to produce financial reports for the pilot associations. We contracted CohnReznick (a professional services firm that specializes in accounting, taxes, and advising) to create the 2018 financial reports, and used them to establish the rates in the 2021 NPRM. We asked CohnReznick to review the District One 2018 expense report and SLSPA comment to verify the four missing operating expenses raised by the commenter and provide us with updated numbers.

The commenter asserted that applicant salaries were improperly excluded from expenses and makes the following points: (1) For apprentice pilots, as K–1 partners, compensation is not recorded as an expense by generally accepted accounting principles (GAAP) accounting standards, although it clearly fits within what is, and has been, recognized as an allowable expense in the ratemaking; (2) the NPRM shows the applicant salary amount by adding then

[14] U.S. BLS ECI Q3 2020 data for Total Compensation for Private Industry Workers in the Transportation and Material Moving Sector (Series ID: CIU2010000520000A). The third quarter data was the most recently available data at the time of analysis for this final rule, available at *https://www.bls.gov/news.release/archives/eci_10302020.pdf* in Table 5 on page 10. The NPRM used the Q1 value of 3.4 percent, which is available at *https://www.bls.gov/news.release/archives/eci_04302020.pdf* in Table 5 on page 10.

[15] 46 U.S.C. 9303(f).

[16] *https://www.regulations.gov/document?D=USCG-2020-0457-0005*.

[17] Table 3 can be found in the proposed rule published at 85 FR 68219 (October 27, 2020).

subtracting them from the expenses in the Director's adjustments in Table 3, which, in itself, has no net effect; and (3) the net result is that $594,521 needs to be added to the expenses.

The Coast Guard agrees with the commenter that applicant pilot salaries are necessary expenses that we should have included in the operating expense base of the NPRM. However, we would have adjusted them to reasonable amounts. As the commenter notes, in Table 3 of the NPRM, the salaries were added in but immediately deducted. The applicant salaries were not otherwise included in the expense base, so we should not have deducted them from the ratemaking. Applicant salaries are considered reasonable and necessary expenses, subject to Director's adjustments, under our existing ratemaking process and per § 404.2(a). CohnReznick provided an updated applicant salary expense of $594,331 for the total applicant salaries for District One. We will use the value verified by the auditor, per our requirement in § 404.101. In this rule, we are removing the deduction for applicant pilot salaries in the District One expenses, thus allowing $594,331 for applicant pilot salaries as operating expenses, before any Director's adjustments, to ensure the amount included in the total operating expenses is reasonable. The Director's adjustments to the applicant salaries, originally proposed in the NPRM and adopted in this final rule, include a deduction to bring the total salaries down to an amount determined reasonable by the Director, and a deduction for the amount of applicant salary surcharges the association received in 2018 under that year's ratemaking (see Section VII of this preamble).

In addition, the SLSPA comment noted that District One had operating expenses in 2018 related to the purchase of a new pilot boat, a dock project, and pilot boat loan expenses. The commenter included a spreadsheet detailing the expenses and errors in District One's operating expenses and asserted that the NPRM's Table 3—2018 Recognized Expenses for District One did not cover their mortgaged infrastructure and dock project. We inquired with CohnReznick, and they confirmed that the pilot boat, the loan on the pilot boat, and the dock project were not included in the original report used to develop the NPRM; therefore, they were not included in the operational expenses in Table 3.

It is within our regulatory authority to consider these infrastructure costs as operating expenses. The regulations in 46 CFR 404.1(a) state that the goal of the ratemaking is to reimburse pilot associations' "necessary and reasonable operating expenses, fairly compensate trained and rested pilots, and provide an appropriate profit to use for improvements." Additionally, § 404.2(a) requires the Director to review all reported expenses and determine if they are both necessary for providing pilotage service and reasonable in amount. Under § 404.2(b) criteria for determining if an expense is necessary and reasonable, these capital expenses are not otherwise excluded from being considered necessary and reasonable operating expenses in this rule. The costs for purchasing a new pilot boat, loan costs associated with the new pilot boat, and dock maintenance are necessary for pilotage services because the pilots use the pilot boats and docks in their daily business. It is necessary to maintain their infrastructure to be able to perform their duties efficiently. For the same reasons, these infrastructure expenses are also necessary and reasonable in amount when compared to similar expenses paid by others in the maritime or other comparable industry. Therefore, our regulatory framework requires the Coast Guard to allow these expenses in the year they were paid.

Additionally, current Coast Guard regulations do not require these costs be paid out of the pilot association's working capital fund. The section covering the working capital fund is 46 CFR 403.110, which states that pilot associations may only spend the working capital funds on items such as infrastructure improvements, major pilot boat repairs, and property acquisition. There is no requirement that they must use the working capital fund for these expenses. The commenter and district reported these as expenses for 2018, not working capital funds. As such, we do not have the regulatory authority to require District One to use the working capital fund to pay for these purchases rather than including them as operational expenses.

This final rule includes the infrastructure costs in District One's operational expenses for 2018. These updated numbers are reflected in Table 3 in this preamble under "Capital Expenses." CohnReznick, our auditor, provided us verified numbers for these expenses.

The SLSPA comment also stated that in the NPRM's Table 3—2018 Recognized Expenses for District One,[18] the CPA deduction for dues and subscriptions of $6,600 is incorrect and should be added back into total operating expenses. In their inspection of the CPA's report for 2018, the SLSPA found that the CPA did not deduct $6,600 for dues and subscriptions, meaning this is an allowable expense, in their opinion. The Coast Guard verified that this CPA deduction was not in the audit report and, therefore, the deduction in the NPRM was unsupported. In Table 3 of this rule's preamble, we removed the $6,600 CPA deduction, thus allowing the $6,600 operating expense for dues and subscriptions for District 1. However, in future rulemakings the Coast Guard will be working with the auditors to identify which dues and subscriptions fees should be counted as necessary and reasonable operating expenses and which should be considered pilot compensation.

VI. Discussion of Comments

In response to the October 27, 2020 NPRM (85 FR 68210), the Coast Guard received seven comment letters as well as a duplicate comment submission. These letters included one comment from the Great Lakes Pilots, which represents the interests of the three Great Lake pilot associations ("Great Lakes Pilots' comment"); a comment from the Shipping Federation of Canada, the American Great Lakes Ports Association, and the United States Great Lakes Shipping Association ("the User's Coalition" or "the Coalition"); a comment from the American Pilots' Association ("APA"); a comment from the president of the St. Lawrence Seaway Pilots' Association ("SLSPA"); a comment from the president of the Lakes Pilots Association ("LPA"); a comment from the president of the Western Great Lakes Pilot Association ("WGLPA"); and a comment made by Captain John Swartout, a pilot working for District Three. As each of these commenters touched on numerous issues, for each response below we note which commenter raised the specific points addressed. In situations where multiple commenters raised similar issues, we attempt to provide one response to those issues.

1. Inflation of Pilot Compensation Calculation in Step 4

We received several comments on the proposed changes in the 2021 NPRM to Step 4 of the ratemaking, which adjusts target pilot compensation to account for inflation. In prior ratemakings, the Coast Guard adjusted the existing target pilot compensation to account for inflation, following the procedures outlined in § 404.104(b), which requires that the U.S. Federal Reserve's PCE price index be used when data from the U.S. BLS

[18] Table 3 can be found in the proposed rule published at 85 FR 68219 (October 27, 2020).

ECI data is not available. In the 2021 NPRM, the Coast Guard proposed 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 that 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.

Comments from Captain Swartout,[19] WGLPA,[20] and the Great Lakes Pilots' comment [21] stated that they agreed with Coast Guard's approach to adjust the 2020 target compensation (the previous year's target compensation) adjusted by the difference between predicted PCE inflation value and actual ECI inflation value. However, they believed that the Coast Guard should also adjust the 2018 and 2019 target compensation values by the ECI inflation index. The Great Lakes Pilots' comment went on to state that the ''correct'' target pilot compensation figures can be calculated by applying the ECI inflation value to the 2018 and 2019 rates, and calculates a target compensation value of $388,900. They stated that, in the 2018 final rule, the Coast Guard ''promised'' to use the ECI but instead used the PCE, causing incorrect numbers.

The Coast Guard disagrees with the implication that the target compensation values were incorrectly or illogically calculated. These values were calculated following the methodology outlined in § 404.104(b), which states that, when ECI data is not available, the Coast Guard will use the PCE. The Coast Guard followed this approach in the 2018, 2019, and 2020 ratemakings, using the method that was codified in the CFR at the time. Based on comments provided in the 2020 proposed ratemaking, the Coast Guard reviewed the methodology used to inflate target pilot compensation and proposed a modified approach for the 2021 ratemaking. This modified approach is consistent with our past approach of updating the previous year's target compensations in our ratemakings. Therefore, this final rule does not adjust the previous years' target compensations, because they were set according to the regulations in place at the time, and changing them now would be akin to retroactive rulemaking. We would have had to propose regulations allowing us to adjust target compensations from multiple prior years in order to update the 2018 and 2019 target compensations. The Coast Guard does not plan to recalculate target compensation for previous years, as it has been our consistent approach to only update the previous year's target compensation when calculating the next year's target compensation.

The Coast Guard received a comment from the User's Coalition on the inflation rate of 3.4 percent, which was used to calculate the inflation adjustment for target pilot compensation in the NPRM. The commenter stated that the highest inflation rate they could find was 1.4 percent and suggested that the Coast Guard follow the Bureau of Labor Statistics' recommended guidelines for ''use of the consumer price index for escalation.'' These guidelines include identifying the CPI series, reference period, frequency, and establishing and adjustment formula.

The Coast Guard believes this commenter misunderstands the BLS's CPI, which measures inflation of consumer prices for goods and services, for the ECI, which measures the cost of employment and includes factors such as employee wages and benefits. The Coast Guard currently uses the CPI in Step 2 of the ratemaking, where we use the annual change in average inflation, which was 1.5 percent in 2019. While we cite this data in footnote 32 of the NPRM (and footnote 30 of this final rule), including a link where the user may download the data themselves, we do agree with the commenter that we could provide more citation information. Therefore, in this rule, we added the BLS series ID to that footnote, as well as additional clarification on which numbers we are using. With regards to the 3.4 percent inflation rate in Step 4, that data was first-quarter data from the ECI index for private industry workers in the transportation and moving materials sector. In this final rule, we use 3.5 percent, from third-quarter data. The information for this series, including the series ID and a link to download the data, is found in footnote 35 of the NPRM (and footnote 14 of this final rule). However, in an effort to increase transparency, we have also added more information on the reference period covered by this data.

2. Always Rounding Up in the Staffing Model

In the NPRM, we proposed to always round up the final number in the staffing model, in § 401.220(a)(2), rather than round to the nearest integer when determining the maximum number of pilots. Our justification for this proposed change was based on previous comments and submissions from members of Great Lakes Pilotage Advisory Committee (GLPAC) stating that, due to the nature of associations' presidential duties, the president is expected to spend less time engaged in piloting vessels. None of the commenters who commented on this change agreed that rounding up in the staffing model was the best way to fill the staffing problem. In response, we will forego making any changes to the staffing model in this final rule to gather more information on the best way to address this issue, based on concerns raised by the commenters.

Commenter Captain Swartout [22] suggested that rounding up in the staffing model is not sufficient because the result is random, inconsistent, and a matter of chance whether a district gets an additional pilot or not. For example, there is a significant difference between rounding 15.1 up to 16 and rounding 15.9 up to 16. In both cases, 16 pilots are authorized, but in the first instance, nine-tenths of a pilot is authorized for assisting in administrative work, and in the second instance, only one-tenth of a pilot is. Captain Swartout also noted his continued concern with pilots being expected to work more hours than industry standards and noted that the rounding will not solve this. He suggested, as an alternative, to add one additional pilot to the staffing model for administrative work, even after rounding up. The Coast Guard agrees that we need to consider other alternatives to better the staffing model. As stated above, we will not be implementing the change in this ratemaking in order to conduct more research.

The APA comment [23] affirmed that there is always one pilot ''off the roles'' in each association. Similarly, the SLSPA [24] emphasized it is impossible to operate as a president and pilot a vessel at the same time and with no opportunity to rest. The APA urged the Coast Guard to consider authorizing an additional pilot for each district, whose principal duties would be to serve as an ''operations pilot.'' They said pilots on ships, as well as dispatchers and transportation coordinators, need operational support readily available in real time from a seasoned and experienced piloting professional. This professional is currently the association president or the suggested extra

[19] *https://www.regulations.gov/document?D=USCG-2020-0457-0005.*

[20] *https://www.regulations.gov/document?D=USCG-2020-0457-0006.*

[21] *https://www.regulations.gov/document?D=USCG-2020-0457-0012.*

[22] *https://www.regulations.gov/document?D=USCG-2020-0457-0005.*

[23] *https://www.regulations.gov/document?D=USCG-2020-0457-0007.*

[24] *https://www.regulations.gov/document?D=USCG-2020-0457-0010.*

''operations pilot.'' The APA comment explained that piloting expertise is necessary to perform these duties, and that the president pilot should be replaced with a pilot, not administrative staff. The president is unable to delegate certain administrative duties that keep him from piloting a vessel.

The Coast Guard is considering these suggestions and additional information on the duties that an operational pilot and association president typically perform. Based on this information, we understand that having a ''pilot off the roles'' is a best practice in the state and local pilots' associations. Since we did not propose this, we will plan to address it during a future GLPAC meeting before we consider proposing it in a subsequent rule.

The Great Lakes Pilots' comment asserted that providing only a fractional pilot authorization, rather than a full pilot authorization to handle these administrative and other operational duties, while helpful, does not accord with the reality of the time spent on these functions. They explained that rounding up one year will be of no help in future years if that pilot is, for example, eliminated the next year due to differences in rounding results. The commenter proposed that the operations pilot slot added this year should be made permanent, so that pilots can be added as needed in the future without concern that application of the rounding approach could limit the pilots' ability to efficiently administer their operations. For some of the reasons mentioned by the commenter, we agree that the rounding up method in the staffing model needs more consideration before we adopt a change. The Coast Guard did not propose making the rounding up permanent in the NPRM, but we may consider this option and its effects on the ratemaking in a future rulemaking.

The User's Coalition comment claimed that rounding up in the staffing model was an arbitrary change to increase pilot counts. The commenter suggested that an administrative position could be filled at a much lower cost than an additional pilot, thus freeing up the president's time. We know that pilot association presidents are often pulled away from their pilotage duties by tasks they cannot delegate, leaving less time for them to engage in piloting a vessel. The Coast Guard does not possess sufficient qualitative data to determine this estimated amount of time. However, the Coast Guard will take this suggestion into consideration when determining a way forward.

The SLSPA comment described a throttling effect on traffic flow caused by the Great Lakes Pilotage Association's ability to handle traffic, and requested eight pilots in area one and five pilots in area two on the assignment list during the season. The commenter noted that this number will be higher depending on Canadian GLPA staffing. In order to accommodate 10 days restorative rest per month, the SLSPA stated it needs to have 19.5, rounded up to 20, fully registered pilots. They also requested one additional operations pilot, bringing the total to 21.

As per 46 CFR 401.220, the Director determines the base number of pilots needed by dividing each area's peak pilotage demand data by its pilot work cycle. The pilot work cycle standard includes any time that the Director finds to be a necessary and reasonable component of ensuring that a pilotage assignment is carried out safely, efficiently, and reliably for each area. These components may include, but are not limited to: (1) The amount of time a pilot provides pilotage service; (2) the amount of time available to a vessel's master to provide pilotage service; (3) the pilot's travel time, measured from the pilot's base to and from an assignment's starting and ending points; (4) administrative time for a pilot who serves as a pilot association's president; (5) rest between assignments, as required by § 401.451; (6) the 10 days' recuperative rest per month from April 15 through November 15 each year, provided that lesser rest allowances are approved by the Director at the pilotage association's request, if necessary to provide pilotage without interruption through that period; and (7) time for pilotage-related training.

The Coast Guard is willing to bring up this staffing issue during a future GLPAC meeting. The additional operational pilot requested appears to be the SLSPA's suggested alternative in lieu of the NPRM's proposed rounding up in the staffing model. We will consider this alternative in developing a future rulemaking, but are not adopting any changes to the staffing model at this time, in order to conduct more research. Additionally, the Coast Guard plans to reconsider the recuperative rest requirements in a future ratemaking, but we did not propose any rest requirement-related changes in the NPRM that preceded this final rule.

3. Legal Fees Incurred in Lawsuits Against the Coast Guard's Ratemaking and Oversight Requirements

The Coast Guard received several comments on the exclusion of these legal fees. Comments from Captain John Swartout and the APA mentioned that they successfully sued the Coast Guard for being arbitrary and capricious in the regulatory exclusion of legal fees incurred in litigation against the U.S. Government in our 2016 final rule. Comments from these pilots requested that we explain the difference between the 2016 rulemaking attempt and this year's exclusion of legal fees against the Coast Guard, and explain why we are no longer recognizing litigation expenses for actions against the Coast Guard as an allowable and recognizable expense. The APA comment also referenced the preamble of our proposed rule for the 2003 Great Lakes pilotage ratemaking. The relevant part of the 2003 ratemaking said this: ''The Coast Guard reviewed all legal fees using the guidelines of necessity and reasonableness in 46 CFR 404.5. Only reasonable and necessary legal fees were approved as part of the expense base. No legal fees were allowed in connection with lobbying. Legal fees for litigation against the Government were allowed as long as there was no court proceeding in which there had been a finding of bad faith on the part of the pilot organizations.'' 68 FR 69566, Dec. 12, 2003. In addition, the APA requested that we continue to use the bad faith test for deciding whether to recognize legal fees for litigation against the Coast Guard.

In 2016, we excluded legal expenses incurred in litigation against the U.S. Government from approved operating expenses (81 FR 11908, 11914, Mar. 7, 2016). However, the change in this final rule is limited to litigation against the Coast Guard and its agents as related to the Great Lakes pilotage ratemaking and oversight requirements. We narrowed the language from the 2016 final rule because we do not want to capture legal fees incurred against other agencies, states, or local governments in this exclusion. The procedural error in the 2016 ratemaking was that we did not acknowledge or explain the proposed change in the NPRM or properly respond to comments in the 2016 final rule. The decision in the 2019 case stated, ''The Court takes no position on the relative wisdom of the policy. A rule excluding legal fees incurred against the U.S. government may well be a rational policy. But the process by which the Coast Guard enacted it was arbitrary and capricious.'' *St. Lawrence Seaway Pilots Association* v. *U.S. Coast Guard,* 357 F.Supp.3d 30, 38 (D.D.C. 2019).

The NPRM to this final rule explains the reason for the change, and we elaborate further in this preamble in our response to the comments received. Legal fees incurred in litigation against the Coast Guard are reasonable and necessary if the pilot association prevails in its litigation. In addition, the reasonableness of legal fees depends on the amount of those fees. The Coast Guard believes that fees awarded as reimbursement for pilots and pilots' associations under the EAJA, or by terms of settlement by the party responsible for the error, will provide reasonable reimbursements for the pilot associations when they prevail. Excluding legal expenses incurred in litigation against the Coast Guard and its agents, as related to the ratemaking and oversight requirements, from the ratemaking equation ensures that the shippers do not have to pay for either non-prevailing lawsuits or the Coast Guard's potential errors. By not allowing these legal fees to be recovered in the ratemaking operating expenses, pilot associations' will have the option to seek recuperation of legal fees under the EAJA and settlement negotiations, where a judge or the limits of the EAJA can determine fair legal fee reimbursement. We believe this is a more equitable approach to ensuring that the necessary costs of providing services are covered than the Coast Guard allowing any and all legal fees to be included, without regard to whether the pilots prevailed on any of the merits of the lawsuit.

We agree with the APA comment that pilots' legal fees should be excluded from expenses where there is a finding of bad faith, but the bad faith exclusion mentioned in the 2003 ratemaking NPRM preamble was not written into our regulations. Before the changes made by this 2021 ratemaking, all legal fees incurred in litigation against the Coast Guard were included as operational expenses in the ratemaking, regardless of bad faith. The Coast Guard does not have the explicit authority that the APA suggests, to exclude bad faith proceedings from operating expenses. We did not propose a bad faith legal fee exclusion because it could be seen as an arbitrary exclusion and also as an unattainable administrative burden for the Coast Guard. We review the legal fees incurred in litigation against the Coast Guard as a lump sum for each district 3 years after the fees are paid. If only part of a case is determined to be in bad faith, we would be in the impossible position of determining what portion of the legal costs would count toward a bad faith exclusion. Additionally, we would have no way to exclude legal fees in cases when the pilots do not prevail on some or any of the merits of the case, or where the ratemaking is determined to be legally sound. This alternative would leave the Coast Guard open to the same concerns we raised in the NPRM, such as the policy against charging a party not responsible for the ratemaking and charging the ratepayers even if the pilots do not prevail on the merits. Therefore, in this final rule, we are excluding this legal fee category altogether, leaving the determination of legal fee reimbursement to the courts.

Captain John Swartout commented that his district, WGLPA (District Three), is fast approaching the $7 million threshold of being eligible for the EAJA, and the other districts will not be far behind, meaning they would not be eligible for reimbursement once they reach that threshold. He acknowledges, however, that all three districts are currently eligible for reimbursement under the EAJA. As mentioned previously, pilots may continue to seek reimbursement under settlement negotiations if they do not qualify under the EAJA for any reason.

Captain Swartout also argued that the ratepayers—not the taxpayers—benefit when the pilots sue over the Coast Guard's occasional failure to make rates with due regard to the public interest and the cost of providing service, in accordance with the Administrative Procedure Act, so it is reasonable that the ratepayers, not the taxpayers, should be ''on the hook'' for the cost. However, the commenter fails to acknowledge that the pilot associations usually first seek reimbursement from the Coast Guard for their legal fees when they prevail on the merits. In other words, the taxpayers were already footing that bill, by way of the Coast Guard paying through terms set by the court or settlement, before the changes made by this final rule. The EAJA is intended to benefit taxpayers, like the pilots and their associations, by helping them cover legal expenses to challenge unlawful government actions.

The Great Lakes Pilots' comment assert that the EAJA cap on reimbursement of legal fees is much lower than their actual legal expenses, estimating their reimbursement to be 25 cents for every dollar. This comment, as well as comments from the APA and John Swartout, claimed that we aim to erect barriers to disincentivize pilots from suing the Coast Guard on meritorious claims.

As we noted in the NPRM, traditional jurisprudence and case law says that a party shall bear its own litigation costs. Generally, there is no right to be fully reconstituted for legal expenses, especially by someone who is not responsible for the injury. The purpose of excluding these legal fees from the ratemaking is to move the financial responsibility of meritorious claims onto the Coast Guard and off the shippers. The Coast Guard agrees that litigation is a legitimate way to ensure agency compliance with mandates and statutes. The exclusion of legal fees does not take away any rights of action that pilots have against the Coast Guard related to the ratemaking or oversight requirements. The Coast Guard can continue to be held accountable via judicial review. There are remedies to recover legal fees from the Coast Guard for meritorious claims, which pilots have pursued in the past. Forcing the shippers to incur legal fees above what the EAJA or settlement covers, or when pilots do not prevail on the merits, is not in the public interest or necessary for the costs of providing services.

In his comment, Captain Swartout further asserted that the rate is the proper funding source for all costs of pilotage, including necessary legal fees, arguing that litigation is necessary to ensure the financial viability of service providers. He contended that the legal fees incurred in a year ''doesn't permanently inflate the rate, paying dividends on past expenses, as the Coast Guard seems to imply'' because rates are based on expenses that are 3 years old.

The legal fee exclusion in this final rule simply repositions the legal fees to be reimbursed by the party responsible, via the EAJA or terms of settlement, when the pilots prevail. The amount of legal fees we exclude in the 2021 ratemaking is approximately 0.1 percent of the total revenue generated each year by the pilot associations. Therefore, when the operating expense adjustment is factored into the ratemaking methodology, it has a very small effect on the final rates. We do not assert that there is a permanent inflation, or dividend, as a result of the legal expenses incurred by pilot associations in a given year. The Coast Guard believes that a 0.1 percent operational expense adjustment for legal fees eligible for reimbursement by the Coast Guard when pilots prevail on some of the merits will not have any adverse impact on future funding for pilot associations and pilot recruitment and retention. The reimbursement of eligible legal fees under the EAJA and settlement negotiations are often available as soon as the parties prevail on the merits, whereas, under the previous scheme, it took 3 years for the expended legal fees to factor into the ratemaking.

The Great Lakes Pilots' comment contested our exclusion of the legal fees by noting that business entities regularly recover legal expenses from their customers by including them in the prices and rates they charge for their products and services. The comment recited the Director's requirement in § 404.2(a) to recognize pilot association expenses that are ''both necessary for providing pilotage service, and reasonable as to its amount when compared to similar expenses paid by others in the maritime or other comparable industry, or when compared with Internal Revenue Service guidelines.'' The commenter requested that the Coast Guard address the deductibility of legal fees under § 404.2(a) and the Internal Revenue Code (I.R.C.), which says that professional fees are deductible if they qualify as ''ordinary and necessary'' expenses under § 162 I.R.C. (26 U.S.C. 165), covering business expenses, or § 212 I.R.C. (26 U.S.C. 212), covering expenses related to the production of income.

The main reason the legal fee expense is not necessary or reasonable to include in operational expenses is that the costs are reimbursable when the pilots prevail by the responsible party—the Coast Guard. As noted in this preamble, the EAJA and settlement terms often reimburse the pilots' legal fees when the pilots prevail. In those cases, a court can determine a reasonable amount of legal fees to include. Traditional jurisprudence also says that the litigant is the bearer of his or her own legal expenses. ''In the United States, the prevailing litigant is ordinarily not entitled to collect a reasonable attorneys' fee from the loser.'' *Alyeska Pipeline Service Co.* v. *Wilderness Soc'y,* 421 U.S. 240, 247 (1975). Additionally, when the pilot association does not prevail on the merits, the legal fees associated with that lawsuit are, arguably, per the court's determination, not necessary for the safeguarding or production of their income. If pilots are not victorious on any of the merits, those legal fees inflate the shipper's rates. Unlike other businesses and jurisdictions, shippers on the Great Lakes cannot choose to purchase from another firm or choose not to purchase the service at all when they disagree with a firm's business practices. Among these and the other reasons cited in this preamble, the legal fees incurred in lawsuits against the Coast Guard are distinguishable from the I.R.C. provisions provided by the commenter.

The User's Coalition supported the legal fee exclusion but urged the Coast Guard to go further and exclude all pilot associations' legal fees related to ratesetting, including instances where pilots intervene as defendants in support of the Coast Guard in a shipper-initiated lawsuit. In cases where shippers initiate litigation against the Coast Guard, the pilots often have a legitimate interest in, and will likely be affected by, the outcome of the lawsuit. Thus, the court typically allows the pilots to intervene in the case to protect their own interests. However, the Coast Guard does not have the same justification to exclude these intervener legal expenses because they are not eligible for reimbursement under the EAJA or settlement from the Coast Guard. These legal fees incurred by pilot associations are not otherwise reimbursed by a more responsible party, so we must consider these costs of providing services in the rates, per our statutory mandate.

The Coalition also suggested that allowing intervener pilot legal fees would force vessel operators to finance legal advocacy in support of the Coast Guard's position on any future ratemaking challenge, incentivizing pilot associations to come to the Coast Guard's aid without financial constraint. The Coalition also alleged that the Coast Guard is creating a financial disincentive for our policies to be challenged by industry stakeholders, impeding stakeholders' legitimate rights to participate in the rulemaking process and go to court to resolve disagreements. The User's Coalition will have all the same legal causes of action against the Coast Guard as before. The exclusion of legal fees is intended to be a small benefit to the shippers by taking that financial responsibility out of the rates and placing it on the responsible regulatory agency; it is not intended nor predicted to be an incentive for pilots to come to the Coast Guard's defense.

The Great Lakes Pilots' comment requested we include all the legal expenses the pilots incurred in the 2016 ratemaking lawsuit where they successfully intervened on the Coast Guard's side in a shipper-initiated lawsuit. The comment stated that we need to correct the legal fee amounts disallowed for Districts One and Three's 2018 legal expenses. In District One, $12,905 was disallowed per Table 3—Recognized Expenses for District One,[25] but the comment asserted that District One only paid $9,988 in 2018 for the pilot-initiated litigation on the 2016 ratemaking. The commenter asked where the Coast Guard obtained the higher number of $12,905. The comment further stated that District Three was disallowed $18,321 per Table 28—Recognized Expenses for District Three,[26] but paid only $9,227 for the 2017 litigation against the Coast Guard in the pilot-initiated suit. The commenter stated the higher disallowance was because the Coast Guard improperly disallowed $9,093 for 2017 intervener litigation fees that District Three paid on the shipper-initiated lawsuit. The comment asserted that the Director's adjustment disallowance should be limited to $9,988 for District One and $9,227 for District Three, even if the rule is validly adopted.

Per our regulations, a third-party auditor provided the amounts of legal fees incurred in litigation against the Coast Guard for use in the NPRM. Our auditor reviewed the operating expenses in response to this comment and did not identify any allowable intervener litigation fees for District One. For that reason, for 2018 operating expenses in District One, the final rule will continue to remove $12,905 in Coast Guard litigation fees via Director's adjustment, which is the same number used in the NPRM.

The commenter is correct that, with this change, pilot intervener legal fees incurred in the 2016 ratemaking shipper-initiated lawsuit should be included as approved operating expenses in the year they were incurred. In this case, District Three incurred intervener legal fees in 2018 which should not have been excluded in the NPRM. The 2018 operating expenses of $18,321 reported to us during the NPRM stage did not distinguish between intervener legal fees and ratemaking lawsuits initiated by the pilots against the Coast Guard. We are correcting the Director's adjustments in the NPRM's District Three's 2018 expense table to only exclude litigation fees against the Coast Guard in this final rule. For 2018 operating expenses in District Three, the final rule will remove $9,227 in Coast Guard litigation fees by Director's adjustment, which allows intervener legal fees in the amount of $9,094 ($18,321–$9,227). These updated numbers are reflected in Table 28 in this preamble.

4. Applicant Pilot Compensation Request for Comments for Consideration in a Future Ratemaking

The Coast Guard received many helpful comments in response to our request for 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. As we stated in the NPRM, we will consider these comments and suggestions in a future rulemaking. This final rule does not make any methodological changes to

[25] Table 3 in the proposed rule is published at 85 FR 68219 (October 27, 2020).

[26] Table 28 in the proposed rule is published at 85 FR 68229–68230 (October 27, 2020).

the ratemaking for apprentice pilot compensation from what we proposed in the NPRM.

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

In the NPRM, we responded to the D.C. Circuit Court's request to ''consider if it [the Coast Guard] 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).'' [27] We concluded that, while we may have the authority to do so, it does not comport with our mandate to make the adjustment in this ratemaking, for three main reasons discussed in the NPRM. The Great Lakes Pilots' comment was in general agreement with the agency's approach to the Court of Appeals' opinion and did not believe any adjustment going forward was warranted.

Based on our response in the NPRM, Captain John Swartout opined that when the pilots sue the Coast Guard and win, no matter how long pilotage rates are impaired before the court makes a final ruling, the Coast Guard is certainly not going to make the pilots whole. The commenter makes an improper assumption that we would never attempt to remedy past ratemakings. The Coast Guard explained in the NPRM that our decision is limited to the case of the 2016 ratemaking, where we had no operative rate from which to make a correction in the 2021 proposed rule. We believe we have the authority to remedy errors from past ratemakings when we have reliable information and there is a continuing extraordinary and unjust circumstance.

The User's Coalition comment did not propose that the Coast Guard retroactively recalculate rates but asked for a flexible path forward to achieve full repayment over time, through credits in this rule and in future ratemaking procedures or such other methodology. The Coalition asserted the weighting factor is known and the amounts billed by the pilot associations and the money collected are available, and included an Exhibit detailing one method to calculate the overpayment of pilotage fees for 2016.

However, in addition to omitting the weighting factors, the Coast Guard erred in the 2016 ratemaking calculation of target pilot compensation, and the correct number could have been higher or lower than the target pilot compensation used. Consequently, adjusting the rates merely to correct for weighting factors, without a 2016 target pilot compensation, would not provide a ''correct'' operative rate for 2016, as the commenter suggests. Therefore, adjusting rates through a Director's adjustment now is not in accordance with our mandate to consider the costs of providing services for 2021. Neither the Coast Guard nor commenters have identified a continuing unjust circumstance caused by the 2016 ratemaking warranting a remedy at this stage.

The Coalition also challenged our assertion that it is difficult to identify those advantaged by the ratemaking by stating that 80 percent of the traffic is produced by 20 percent of the system users, and all major clients continue to send ships to the area. The User's Coalition noted that the St. Lawrence Seaway keeps records of every ship and its owner sailing in the area for at least 10 years, including 2016 and 2017. The Coalition asked us how the fact that some of the potential recipients of the unlawfully paid funds cannot be determined renders all of the monies unrecoverable, including by those who are identified and able to seek recovery.

Despite the fact that some of the shippers may be identifiable for remedy, the Coast Guard does not plan to pursue a remedy at this time for other reasons, also cited in the NPRM. We do not have an operative rate for the 2016 shipping season to determine a proper remedy to return to the identifiable shippers. Nor could we also give full consideration to the costs of providing pilotage services if we modify the rates according to the User's Coalition's request. We believe the risk of underfunding pilotage rates for years to come would have a negative impact on the Great Lake's pilot associations' abilities to safely meet the shipping demands and maintain their infrastructure. Therefore, the fact that we can identify some users of the 2016 rate is not sufficient to overcome our mandate to consider the public interest and covering the costs of services.

In response to the Coast Guard's assertion that we do not want to risk underfunding pilots for upcoming rates through a potential remedy, the User's Coalition asked what happened to the millions of dollars collected by the pilot associations, over and above those operational expenses incurred in 2016 and 2017, as a result of the agency's remanded ratemaking. The Coast Guard is not able to answer the commenter's question because we do not require pilot associations to report the source of funds they use to pay for certain items or services. Because we do not have an operative rate to use for 2016, we do not know exactly how much the pilots collected over operational expenses. Without a clear way to determine that number, a remedy now would be arbitrary. In addition, the Coast Guard made errors in calculating pilotage rates for the 2013, 2014, and 2015, all of which resulted in the pilots receiving less revenue than was required by the methodology in place at the time. Reducing future rates to account for alleged over-generation of revenue based on the 2016 rates without also correcting those errors would be inconsistent with our mandate to consider the public interest and covering the costs of services.

6. Other Pilot Staffing and Compensation Comments Unrelated to Proposed Changes

The Great Lakes Pilots requested that the Coast Guard undertake a more comprehensive assessment of compensation, as opposed to interim ratemakings, to align Great Lakes pilots' compensation with pilots of other jurisdictions. The Great Lakes Pilots also requested information about the compensation study the Coast Guard initiated but did not have completed. The Coast Guard commissioned a study to analyze methodologies to determine pilot compensation, but decided not to finalize this study. The compensation study was a backup in the event that we failed to identify a compensation standard that remedied the recruitment and retention issues identified in previous rulemakings, and discussed during previous GLPAC meetings. The current compensation benchmark addresses our goals of promoting the recruitment and retention of highly qualified mariners and experienced United States registered pilots.

The LPA requested only 16 pilots, as per the existing staffing model, without rounding up, to keep up with pilotage demand. Since the Coast Guard is no longer adopting the rounding-up method in the staffing model, the LPA's district, District Two, will be authorized a maximum of 15 pilots for the 2021 shipping season under this rule. In the NPRM, District Two was authorized a maximum of 16 pilots instead of 15, primarily because of the proposed rounding up in the staffing model. The comments were generally unsupportive of the rounding up in the staffing model; many commenters suggested alternative changes to the staffing model, which we will consider in a future rulemaking. The LPA also provided suggestions for calculating apprentice pilot compensation, urging us to adopt a

[27] *Am. Great Lakes Ports Ass'n.* v. *Shultz,* 962 F.3d 510, 520 (D.C. Cir. June 16, 2020).

consistent approach. We will consider those suggestions when developing a future rulemaking.

The comment from the WGLPA provided information on how many registered pilots and apprentice pilots on limited registrations they have, as well as estimates on how many pilots they expect to hire in 2021. The WGLPA stated they have 17 fully registered pilots and 7 apprentice pilots operating on limited registrations because they had 3 unexpected retirements in 2020. The WGLPA expects to hire 2-to-4 apprentice pilots in 2021, in line with the 3 they hired in 2020, and the 4 in 2019. The WGLPA comment also noted that if a pilot in their district logs approximately 1,000 hours per year as ''bridge hours,'' and if the level of traffic in 2021 matches the traffic level in 2019, they will need 3 more pilots. To offset unavoidable attrition or retirement, they believe that 27 is the appropriate number for the ''Proposed Maximum Number of Pilots'' for District Three.

The information provided by the commenter will be helpful in considering alternatives to always rounding up in the staffing model. In the NPRM, we authorized 22 fully registered pilots for the WGLPA, with the maximum number of allowed pilots capped at 23 fully registered pilots. Without adopting the proposed change to always round up in the staffing model, District Three is still authorized 22 pilots in this rule, and the cap will remain at 22 pilots. These pilot numbers represent the maximum for fully registered pilots and temporary registrations, but do not include limited registrations for apprentice pilots. If the District only has 17 fully registered pilots, they will be able to hire 5 additional fully registered pilots in the 2021 season. District Three may have additional apprentice pilots on the roles and continue to hire new apprentice pilots, as approved by the Director.

The WGLPA comment also contained information contrary to our statement in the 2021 NPRM, Summary of Ratemaking Methodology, Step 10, where we said: ''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.'' [28] The WGLPA asserted that 65 percent of their fully registered pilots will reach 70 in the next 20 years, and it is unrealistic to expect them all to work until 70. We anticipate that, with the ability to hire up to 5 more fully registered pilots in 2021, the WGLPA will have a lower rate of planned retirement in the upcoming years.

The SLSPA asserted that the current staffing model is based on old traffic patterns, with a rush at the beginning and the end of each season, but now, due to cruise ships and tankers, shipping is linear throughout the year, with a rush at the end. The comment suggested that pilots lack meaningful rest as a result of the November 15 end of the restorative rest requirement. We thank the commenter for raising this issue. The Coast Guard believes that this is a valid concern and requests more information on this point. The current staffing model is based on the historic increased need for pilots at the start and close of the season, and that, by staffing to meet that need, it allows pilots to take approximately 10 days of restorative rest each month during the 7-month mid-season period.

We are currently monitoring traffic patterns. If the commenter's assertion proves accurate, this would cause us to reevaluate the staffing model. While, at this time, we are still gathering data, we welcome additional data and suggestions for alternative staffing models in light of changes in traffic patterns. We also welcome more information and suggestions at a GLPAC meeting on how to improve our recuperative rest requirements to better serve current traffic patterns. We may consider this information in a future rulemaking.

The SLSPA requested that bridge hours associated with voluntary or non-compulsory vessels should be removed from the ratemaking methodology because additional revenues generated from servicing this traffic has associated bridge hours with it. The commenter asserted that these hours go into the ratemaking methodology as part of the 10-year traffic average, in the denominator of the hourly rate equation, thereby reducing the rates for the next 10 years, benefitting foreign shipping. Our use of historical traffic figures was unanimously recommended by the GLPAC in 2014, without distinction between voluntary and required pilotage services. If there is interest and additional information for why the current methodology is not producing sufficient revenue for the associations, the Coast Guard is willing to bring this issue up at the next GLPAC meeting in 2021.

The User's Coalition comment noted that Canadian lakers have been hiring U.S. and Canadian registered pilots to assist with navigation due to a lack of crew expertise, but expected this to be temporary and eventually resolve itself. The Coalition asked the Coast Guard to: (1) Work with the three U.S. Great Lakes pilot associations to identify and bring on part-time contract pilots, if possible; and (2) initiate a dialogue with the GLPA and Canadian-flagged vessel operators to assess their staffing situation and better predict future pilot demand. As the commenter noted, this is expected to be temporary and eventually resolve itself. The Coast Guard welcomes additional information from the commenter as to the exact amount of voluntary pilotage demand each year from Canada, as well as a reasonable way to address it in the ratemaking. In order to better predict future pilot demand, the Coast Guard would need to predict the demand for global commodities (steel and grain), tankers shipping petroleum products, cruise ships, and winter demand (ordering pilots while the locks are closed for maintenance) on Lakes Erie, Huron, and Michigan. The Coast Guard has no control or influence over any of these activities, and the variables in global commodities are complex and difficult to predict even if we do discuss the matter with Canadian operators. However, we desire to increase our dialogue with all parties involved to address the potential issues identified by the commenter.

Additionally, the User's Coalition requested we make individual pilot compensation available to the public, as it was prior to 2016, as a way to review our progress toward pilot recruitment and retention, reportedly caused by inadequate pilot compensation. The Coast Guard previously cited substantial privacy concerns and being unaware of where individual pilot compensation is made public, but the commenter does not think that these are supportable concerns. This comment did not request any changes to the ratemaking methodology and is not related to changes proposed in the NPRM. The Coast Guard is not inclined to add a regulatory requirement for pilot associations to publicly report the compensation of their pilots, because that number is not included in the expense base or methodology. Because those values are not used in the ratemaking, we believe that a requirement to report pilot compensation is not in the public interest or necessary to provide for the costs of services. Progress toward pilot retention can be reviewed through other means, such as pilot turnover and the

[28] 85 FR 68210 at 68214, October 27, 2020.

ability to fill pilot vacancies for fully registered pilots and apprentice pilots.

7. Other Ratemaking Comments Unrelated to Proposed Changes

The User's Coalition comment asserted that it is unfair to spread the unusual costs associated with pilotage demand in winter months over all users in the annual ratemaking process. The Coalition suggested that winter operators should be allowed to enter into their own financial arrangement with the pilot associations for off-season service. The costs of providing services in the winter months may be higher than the typical shipping season, but they are necessary costs to provide pilotage service on the Great Lakes. Per 46 U.S.C. 9303(f), the Coast Guard is required to set the rates for U.S. pilots operating in the Great Lakes considering the costs of providing services. We did not propose this course of action; therefore, we do not plan to implement it in this final rule. We will include this on the agenda for discussion during a future GLPAC meeting before determining the merits of such a proposal.

VII. Discussion of Rate Adjustments

In this final rule, based on the two changes to the existing methodology described in Section V of this preamble, we are implementing new pilotage rates for 2021. We are conducting this 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 will adjust the compensation benchmark pursuant to § 404.104(b) for this purpose, rather than § 404.104(a).

This section discusses the rate changes using the ratemaking steps provided in 46 CFR part 404, incorporating the changes discussed in Section V. We will detail all 10 steps of the ratemaking procedure for each of the 3 districts to show how we arrive at the new rates.

District One

A. Step 1: Recognize Previous Operating Expenses

Step 1 in our ratemaking methodology requires that the Coast Guard review and recognize the previous year's operating expenses (§ 404.101). To do so, we begin by reviewing the independent accountant's financial reports for each association's 2018 expenses and revenues.[29] 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.

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 to allow these non-recurring costs to be recovered in a more timely fashion and prevent retiring pilots from having 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 is deducted by Director's adjustments reflected in the operating expenses of the districts.

For District One, we finalized several Director's adjustments. District One had two applicant pilots during the 2018 season. In total, the District paid these two pilots $594,331, or $297,166 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 was utilized in 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 president of each association to determine if it was fair and reasonable. The Coast Guard will continue to use the same ratio of applicant-to-target compensation for all districts. For 2019, this was approximately 36 percent of $359,887 which was the target pilot compensation value for 2019 ($128,783 ÷ $359,887 = 35.78 percent). The Coast Guard is using 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. We then deducted the same amount to avoid any double counting of these costs, with the exception of the applicant salary costs. We did not deduct applicant salary costs, as these costs were reported in the audit as part of pilot salaries, which are not included in operating expenses. Therefore, these costs are included as a Director's adjustment. The costs associated with applicant expenses are necessary and reasonable for district operations and are, therefore, implemented in the rate.

A Director's adjustment has also been finalized for the amount collected using the 2018 surcharge. A final Director's adjustment is made 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 **ADDRESSES** section of the preamble.

[29] 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 (Operational)	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
Utilities	21,887	14,591	36,478
Travel	4,314	2,876	7,190
Salaries	74,763	49,842	124,605
Payroll 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	453,779	302,517	756,296
Capital Expenses:			
Dock	128,749	85,832	214,581
Pilot Boat	128,911	85,941	214,852
Infrastructure Loan Payment	106,458	70,972	177,430
Total Capital Expenses	364,118	242,745	606,863
Total Operating Expenses (Other Costs + Pilot Boats + Admin + Capital Expenses)	2,223,385	1,482,254	3,705,639
Adjustments (Director):			
Director's Adjustment (Applicant Salaries)	356,599	237,732	594,331
Director's Adjustment (Applicant Salaries) *Deduction (Salary Adjustment)*	(198,018)	(132,012)	(330,030)
Director's Adjustment (Applicant License insurance)	8,093	5,395	13,488
Director's Adjustment (Applicant License insurance) *Deduction*	(8,093)	(5,395)	(13,488)
Director's Adjustment (Applicant Health insurance)	10,336	6,891	17,227
Director's Adjustment (Applicant Health insurance) *Deduction*	(10,336)	(6,891)	(17,227)
Director's Adjustment (Applicant Expenses)	94,989	63,326	158,315
Director's Adjustment (Applicant Expenses) *Deduction*	(94,989)	(63,326)	(158,315)
Director's Adjustment (Applicant payroll tax)	29,694	19,796	49,490
Director's Adjustment (Applicant payroll tax) *Deduction*	(29,694)	(19,796)	(49,490)
Director's Adjustment Surcharge Collected in 2018	(144,770)	(144,770)	(289,540)
Director's Adjustment Legal—USCG Litigation	(7,743)	(5,162)	(12,905)
Total Director's Adjustments	6,068	(44,212)	(38,144)
Total Operating Expenses (OpEx + Adjustments)	2,229,453	1,438,042	3,667,495

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.[30] Because the BLS does not provide forecasted inflation data, we use economic projections from the Federal Reserve for the 2019 and 2020 inflation modification.[31] Based on that information, the calculations for Step 2 are as follows:

TABLE 4—ADJUSTED OPERATING EXPENSES FOR DISTRICT ONE

	District One		
	Designated	Undesignated	Total
Total Operating Expenses (Step 1)	$2,229,453	$1,438,042	$3,667,495
2019 Inflation Modification (@1.5%)	33,442	21,571	55,013
2020 Inflation Modification (@1.2%)	27,155	17,515	44,670
2021 Inflation Modification (@1.7%)	38,931	25,111	64,042
Adjusted 2021 Operating Expenses	2,328,981	1,502,239	3,831,220

C. Step 3: Estimate Number of Working 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 17 registered pilots in 2021 in District One. Based on the seasonal staffing model discussed in the 2017 ratemaking (see 82 FR 41466), we assign a certain number of pilots to designated waters and a certain number to undesignated waters, as shown in Table 5. These numbers are used to determine the amount of revenue needed in their respective areas.

TABLE 5—AUTHORIZED PILOTS

Item	District One
Maximum number of pilots (per § 401.220(a)) [32]	17
2021 Authorized pilots (total)	17
Pilots assigned to designated areas	10
Pilots assigned to undesignated areas	7

D. Step 4: Determine Target Pilot Compensation Benchmark

In this step, we determine the total pilot compensation for each area. As we are conducting an ''interim'' ratemaking this year, we will follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark by inflation. As stated in Section V.A of the preamble, we are using a two-step process to adjust target pilot compensation for inflation. The first step adjusts the 2019 target compensation benchmark of $367,085 by 1.5 percent, for a total adjusted value of $372,591. 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 3.5 percent.[33] [34] Because we do not have a value for the ECI for 2021, we multiply the adjusted 2020 compensation benchmark of $372,591 by the Median PCE inflation value of 1.70 percent.[35] Based on the projected 2021 inflation estimate, the compensation benchmark for 2021 is $378,925 per pilot.

TABLE 6—TARGET PILOT COMPENSATION

2020 Target Compensation	$367,085
Difference between Q1 2020 ECI Inflation Rate (3.5%) and the 2020 PCE Predicted Inflation Rate (2.0%)	1.500%
Adjusted 2020 Compensation	$372,591
2020 to 2021 Inflation Factor	1.70%
2021 Target Compensation	$378,925

[30] The 2019 inflation rate is available at *https://www.bls.gov/regions/midwest/data/consumerpriceindexhistorical_midwest_table.pdf.* For this analysis we use the average to average percentage change as presented in the table on page 1. Specifically, the CPI is defined as ''All Urban Consumers (CPI–U), All Items, 1982–4=100'' (BLS Series ID CUUR0200SA0). Downloaded June 11, 2020.

[31] The 2020 and 2021 inflation rates are available at *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20200916.pdf. We used the PCE median inflation value found in table 1,* Downloaded December 11, 2020.

[32] 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).

[33] U.S. Bureau of Labor Statistics Employment Cost Index (ECI) Q3 2020 data for Total Compensation for Private Industry Workers in the Transportation and Material Moving Sector (Series ID: CIU2010000520000A). The third quarter data was the most recently available data at the time of analysis for this final rule. The data is also available at *https://www.bls.gov/news.release/archives/eci_10302020.pdf* in Table 5 on page 10. The Coast Guard is using the 12 month percentage change for the month ending in Sept 2020.

[34] In Step 2 of the ratemaking, the Coast Guard uses the Federal Reserve's predicted PCE inflation rate of 1.2 percent to inflate operating expenses to 2020 dollars. This value differs from the ECI Q3 inflation rate of 3.5 percent. The reason for the deviation between the values is what is included in each dataset. The PCE is a measure of the Federal Reserve's best prediction of future inflation for all goods and services in the U.S. economy, whereas the ECI is a measure of historic employment costs. When making their economic predictions, the Federal Reserve may be considering economic factors that were not relevant at the time the ECI data was captured, or that have not yet impacted labor costs. It is also important to note that labor costs may be slower to respond to changes in supply and demand than other commercial goods and services.

[35] 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, *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20200916.pdf.* Downloaded December 11, 2020.

Next, we certify that the number of pilots estimated for 2021 is less than or equal to the number permitted under the changes to the staffing model in § 401.220(a). The number of pilots needed is 17 pilots for District One, which is equal to 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.

TABLE 7—TARGET COMPENSATION FOR DISTRICT ONE

	District One		
	Designated	Undesignated	Total
Target Pilot Compensation	$378,925	$378,925	$378,925
Number of Pilots	10	7	17
Total Target Pilot Compensation	$3,789,250	$2,652,475	$6,441,725

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.[36] 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)	$2,328,981	$1,502,239	$3,831,220
Total Target Pilot Compensation (Step 4)	3,789,250	2,652,475	6,441,725
Total 2021 Expenses	6,118,231	4,154,714	10,272,945
Working Capital Fund (3.3875%)	207,255	140,741	347,996

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)	$2,328,981	$1,502,239	$3,831,220
Total Target Pilot Compensation (Step 4, see table 6)	3,789,250	2,652,475	6,441,725
Working Capital Fund (Step 5, see table 8)	207,255	140,741	347,996
Total Revenue Needed	6,325,486	4,295,455	10,620,941

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.[37] Because we calculate separate figures for designated and undesignated waters, there are two parts for each calculation. We show these values in Table 10.

[36] 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).

[37] 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

[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
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)	$6,325,486	$4,295,455
Average time on task (hours)	6,129	6,694
Initial rate	$1,032	$642

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.[38]

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	1058.5
Total	4,858	....	6,252

[38] 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 12—AVERAGE WEIGHTING FACTOR FOR DISTRICT ONE, DESIGNATED AREAS—Continued

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Average weighting factor (weighted transits/number of transits)		1.29	

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	$1,032	1.29	$800
District One: Undesignated	642	1.29	498

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 making any alterations to the rates in this step. We will modify the text in § 401.405(a) to reflect the final rates shown in Table 15.

TABLE 15—FINAL RATES FOR DISTRICT ONE

Area	Name	Final 2020 pilotage rate	Proposed 2021 pilotage rate	Final 2021 pilotage rate
District One: Designated	St. Lawrence River	$758	$757	$800
District One: Undesignated	Lake Ontario	463	428	498

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.[39] 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 finalized three Director's adjustments: (1) For the amount collected from the 2018 surcharge; (2) for the amount in Coast Guard litigation legal fees (allowing intervener 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 of $359,887, which was the target pilot compensation value for 2019 ($128,783 ÷ $359,887 = 35.78 percent). The Coast Guard is using 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 under the **ADDRESSES** 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

[39] 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	
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
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
Adjustments (Director):			
Director's Adjustment Surcharge Collected in 2018	(65,962)	(65,962)	(131,924)
Director's Adjustment Applicant Pilot Salary	(81,003)	(121,505)	(202,508)
Legal Fee Removal—USCG Litigation	(2,185)	(3,277)	(5,462)
Total Director's Adjustments	(149,150)	(190,744)	(339,894)
Total Operating Expenses (OpEx + Adjustments)	961,057	1,474,329	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.[40] Because the BLS does not provide forecasted inflation data, we use economic projections from the Federal Reserve for the 2020 and 2021 inflation modification.[41] 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)	$961,057	$1,474,329	$2,435,386
2019 Inflation Modification (@1.5%)	14,416	22,115	36,531
2020 Inflation Modification (@1.2%)	11,706	17,957	29,663
2021 Inflation Modification (@1.7%)	16,782	25,745	42,527
Adjusted 2021 Operating Expenses	1,003,961	1,540,146	2,544,107

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), 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.

[40] See footnote 30.

[41] See footnote 31.

TABLE 18—AUTHORIZED PILOTS

Item	District Two
Maximum number of pilots (per § 401.220(a)) [42]	15
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 conducting an ''interim'' ratemaking this year, we will follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark by inflation. As stated in Section V.A of the preamble, we are using a two-step process to adjust target pilot compensation for inflation. The first step adjusts the 2019 target compensation benchmark of $367,085 by 1.5 percent, for a total adjusted value of $372,591. 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 3.5 percent.[43 44] Because we do not have a value for the employment cost index for 2021, we multiply the adjusted 2020 compensation benchmark of $372,591 by the Median PCE inflation value of 1.70 percent.[45] Based on the projected 2021 inflation estimate, the compensation benchmark for 2021 is $378,925 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 changes to the staffing model in § 401.220(a). The number of pilots needed is 15 pilots for District Two, which is more than or equal to 15, the number of registered pilots provided by the pilot associations.[46]

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	$378,925	$378,925	$378,925
Number of Pilots	8	7	15
Total Target Pilot Compensation	$3,031,400	$2,652,475	$5,683,875

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.[47] 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)	$1,003,961	$1,540,146	$2,544,107
Total Target Pilot Compensation (Step 4)	3,031,400	2,652,475	5,683,875
Total Expenses	4,035,361	4,192,621	8,227,982
Working Capital Fund (3.3875%)	136,698	142,025	278,723

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.

[42] 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).

[43] See footnote 33.

[44] See footnote 34.

[45] See footnote 35.

[46] 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).

[47] *See footnote 36.*

TABLE 21—REVENUE NEEDED FOR DISTRICT TWO

	District Two		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2, see Table 17)	$1,003,961	$1,540,146	$2,544,107
Total Target Pilot Compensation (Step 4, see Table 19)	3,031,400	2,652,475	5,683,875
Working Capital Fund (Step 5, see Table 20)	136,698	142,025	278,723
Total Revenue Needed	4,172,059	4,334,646	8,506,705

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.[48] 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)	$4,172,059	$4,334,646
Average time on task (hours)	5,634	5,661
Initial rate	$741	$766

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 24 and 25.[49]

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

[48] See footnote 37.

[49] See footnote 38.

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

Vessel class/year	Number of transits	Weighting factor	Weighted transits
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
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	$766	1.32	$580

TABLE 26—REVISED BASE RATES FOR DISTRICT TWO—Continued

Area	Initial rate (Step 7)	Average weighting factor (Step 8)	Revised rate (Initial rate ÷ Average weighting factor)
District Two: Undesignated	741	1.31	566

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 making any alterations to the rates in this step. We will modify the text in § 401.405(a) to reflect the final rates shown in Table 27.

TABLE 27—FINAL RATES FOR DISTRICT TWO

Area	Name	Final 2020 pilotage rate	Proposed 2021 pilotage rate	Final 2021 pilotage rate
District Two: Designated	Navigable waters from Southeast Shoal to Port Huron, MI.	$618	$577	$580
District Two: Undesignated	Lake Erie	586	566	566

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.[50] 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 finalized two Director's adjustments. One is for the amount collected from the 2018 surcharge, and the other for $9,277, which was the amount the district spent on litigation legal fees against the Coast Guard. The other $9,094 spent by District Three on Coast Guard litigation was for intervener fees, which are allowable expenses. Other adjustments made by the auditors are explained in the auditors' reports (available in the docket where indicated in the **ADDRESSES** portion of this document).

We 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 continue to use the same ratio of applicant to target compensation for all districts. For 2019, this was approximately 36 percent of $359,887, which was the target pilot compensation value for 2019 ($128,783 ÷ $359,887 = 35.78 percent). The Coast Guard is using 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.

TABLE 28—2018 RECOGNIZED EXPENSES FOR DISTRICT THREE

Reported expenses for 2018	District Three			
	Undesignated[51] (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

[50] 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 [51] (Area 6)	Designated (Area 7)	Undesignated (Area 8)	Total
	Lakes Huron and Michigan	St. Marys River	Lake Superior	
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
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
Adjustments (Director):				
Director's Adjustment Surcharge Collected in 2018	(273,168)	(273,168)	(273,168)	(819,504)
Legal Fee Removal—USCG Litigation	(4,337)	(2,307)	(2,584)	(9,227)
Total Director's Adjustments	(277,505)	(275,475)	(275,752)	(828,731)
Total Operating Expenses (OpEx + Adjustments)	1,237,473	530,363	626,785	2,394,622

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.[52] Because the BLS does not provide forecasted inflation data, we use economic projections from the Federal Reserve for the 2020 and 2021 inflation modification.[53] Based on that information, the calculations for Step 1 are as follows:

[51] 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.

[52] See footnote 30.

[53] See footnote 31.

TABLE 29—ADJUSTED OPERATING EXPENSES FOR DISTRICT THREE

	District Three		
	Undesignated	Designated	Total
Total Operating Expenses (Step 1)	$1,864,259	$530,363	$2,394,622
2019 Inflation Modification (@1.5%)	27,964	7,955	35,919
2020 Inflation Modification (@1.2%)	22,707	6,460	29,167
2021 Inflation Modification (@1.7%)	32,554	9,261	41,815
Adjusted 2021 Operating Expenses	1,947,484	554,039	2,501,523

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), 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.

TABLE 30—AUTHORIZED PILOTS

	District Three
Maximum number of pilots (per § 401.220(a)) [54]	22
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 conducting an ''interim'' ratemaking this year, we will follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark by inflation. As stated in Section V.A of the preamble, we are using a two-step process to adjust target pilot compensation for inflation. The first step adjusts the 2019 target compensation benchmark of $367,085 by 15 percent, for a total adjusted value of $372,591. 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 3.3 percent.[55] [56] Because we do not have a value for the ECI for 2021, we multiply the adjusted 2020 compensation benchmark of $372,591 by the Median PCE inflation value of 1.70 percent.[57] Based on the projected 2020 inflation estimate, the compensation benchmark for 2021 is $378,925 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 changes to the staffing model in § 401.220(a). The number of pilots needed is 22 pilots for District Three,[58] 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	$378,925	$378,925	$378,925
Number of Pilots	18	4	22
Total Target Pilot Compensation	6,820,650	1,515,700	8,336,350

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.[59] By multiplying the two figures, we obtain the working capital fund contribution for each area, as shown in Table 32.

[54] 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).

[55] See footnote 33.

[56] See footnote 34.

[57] See footnote 35.

[58] 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).

[59] See footnote 36.

TABLE 32—WORKING CAPITAL FUND CALCULATION FOR DISTRICT THREE

	District Three		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2)	$1,947,484	$554,039	$2,501,523
Total Target Pilot Compensation (Step 4)	6,820,650	1,515,700	8,336,350
Total Expenses	8,768,134	2,069,739	10,837,873
Working Capital Fund (3.3875)	297,021	70,112	367,133

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 29)	$1,947,484	$554,039	$2,501,523
Total Target Pilot Compensation (Step 4, see Table 31)	6,820,650	1,515,700	8,336,350
Working Capital Fund (Step 5, see Table 32)	297,021	70,112	367,133
Total Revenue Needed	9,065,155	2,139,851	11,205,006

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.[60] 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)	$9,065,155	$2,139,851
Average time on task (hours)	20,710	2,808
Initial rate	$438	$762

[60] See footnote 37.

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.[61]

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

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Area 6			
Class 1 (2014)	45	1	45
Class 1 (2015)	56	1	56
Class 1 (2016)	136	1	136
Class 1 (2017)	148	1	148
Class 1 (2018)	103	1	103
Class 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	

[61] See footnote 38.

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
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	$762	1.30	$586
District Three: Undesignated	438	1.30	337

J. Step 10: Review and Finalize Rates

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish 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 making any alterations to the rates in this step. We will modify the text in § 401.405(a) to reflect the final rates shown in Table 39.

TABLE 39—FINAL RATES FOR DISTRICT THREE

Area	Name	Final 2020 pilotage rate	Proposed 2021 pilotage rate	Final 2021 pilotage rate
District Three: Designated	St. Marys River	$632	$584	$586
District Three: Undesignated	Lakes Huron, Michigan, and Superior	337	335	337

VIII. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. A regulatory analysis (RA) follows.

The purpose of this 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.[62] For this ratemaking, the Coast Guard estimates an increase in cost of approximately $2.06 million to industry as a result of the change in revenue needed in 2021 compared to the revenue needed in 2020.

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

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

Change	Description	Affected population	Basis for no cost or cost captured in the final rate	Benefits
Legal expenses for lawsuits against the Coast Guard in relation to the ratemaking are not allowable operating expenses.	The Coast Guard is excluding legal fees for litigation against the Coast Guard from operating expenses for calculation of pilotage rates. This exclusion only applies 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 change, the Coast Guard is also creating 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, 54 United States registered pilots, and 3 pilotage associations.	Changes in operating expenses are accounted for in the base pilotage rates. For the 2021 ratemaking, these legal fees total $27,594 for all three districts. After adjusting for inflation and the working capital fund, these expenses are $29,802, or 0.10% of the total revenue needed for 2021. The pilot associations may still be reimbursed for these expenses by the Coast Guard under the EAJA.	The change will remove the undue cost to shippers of effectively paying for the pilots' litigation expenses to sue the Coast Guard.
Inflation of target pilot compensation.	The Coast Guard is modifying 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, 54 United States registered Great Lakes pilots, and 3 pilotage associations.	Pilot compensation costs are accounted for in the base pilotage rates.	This 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 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, 54 United States registered Great Lakes pilots, and 3 pilotage associations.	Increase of $2,064,622 due to change in revenue needed for 2021 ($30,332,652) from revenue needed for 2020 ($28,268,030), as shown in Table 43 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.

The Coast Guard did not receive any comments on the regulatory analysis itself, but we did receive comments on the operating expenses that affected the calculation of projected revenues. In this final rule, the Coast Guard made six adjustments to the operating expenses (Step 1):

(1) We included intervener legal fees paid by District Three in their operating expenses. These fees were incorrectly deducted via Directors adjustment in the NPRM.

(2) We removed the Director's adjustment deducting District One's applicant pilot salaries.

(3) We removed a CPA deduction of $6,600 for District One's dues and subscriptions, as this deduction was not included in the auditor's report.

(4) We added capital expenses to District One for dock repairs, loan repayment, and the down payment of a new pilot boat.

(5) We adjusted District One's applicant expenses based on new information provided by the CohnReznick.

(6) We redistributed the applicant pilot salary deduction for District Two between the designated and undesignated areas.

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

In addition to the adjustments made to the operating expenses, we made two other changes that impacted the calculation of projected revenues:

(1) We updated the PCE and ECI inflation data to use the most recently available information.

(2) Based on public comment, we decided not to incorporate the proposed rounding changes to the staffing model in this final rule. As a result of this change, District One will have one less working pilot than was proposed.

Table 42 summarizes the changes in the regulatory analysis from the NPRM to this final rule. The Coast Guard made these changes as a result of public comments received after publication of the NPRM and a review of each district's operating expenses by the Coast Guard and CohnReznick. In addition, the Coast Guard updated the ECI and PCE inflation data to use more recent published datasets, and removed one working pilot from District One. An in-depth discussion of the public comments is located in Section VI of the preamble, Discussion of Comments.

TABLE 42—SUMMARY OF CHANGES FROM NPRM TO FINAL RULE

Element of the analysis	NPRM	Final rule	Impact	Resulting change in RA
Operating Expenses (Step 1).	The Coast Guard deducted $36,688 from total operating expenses for legal fees for litigation against the Coast Guard.	Based on public comment, the Coast Guard realized that $9,094 worth of intervener legal fees paid by District Three were erroneously deducted as litigation expenses. We added that amount back into the operating expenses and are deducting $27,594 in this final rule for litigation fees against the Coast Guard.	Increased District Three's total operating expenses by $9,094 before inflation and accounting for the working capital fund adjustments.	Data affects the calculation of projected revenues.
Operating Expenses (Step 1).	The Coast Guard deducted $594,521 from District One's total operating expenses for applicant pilot salaries.	Based on public comment, the Coast Guard removed the Director's adjustment that removed applicant salaries from District One's operating expenses. In addition, based on information provided by CohnReznick, the Coast Guard modified the applicant salary amount from $594,521 to $594,331.	Increased District One's total operating expenses by $594,331 before inflation and accounting for the working capital fund adjustments.	Data affects the calculation of projected revenues.
Operating Expenses (Step 1).	The Coast Guard deducted $6,600 from District One's total operating expenses for dues and subscriptions.	Based on public comment, the Coast Guard removed an erroneous CPA adjustment of $6,600 from District One's operating expenses.	Increased District One's total operating expenses by $6,600 before inflation and accounting for the working capital fund adjustments.	Data affects the calculation of projected revenues.
Operating Expenses (Step 1).	The NPRM did not include expenses incurred by District One for infrastructure expenditures made in 2018.	Based on public comment, the Coast Guard added $606,836 for infrastructure costs to District One's total operating expenses.	Increased District One's total operating expenses by $606,836 before inflation and accounting for the working capital fund adjustments.	Data affects the calculation of projected revenues.
Operating Expenses (Step 1).	The Coast Guard calculated that District One spent a total of $228,526 on applicant pilot expenses, excluding salaries. To increase transparency, we presented these expenses as Director's adjustments in Table 3 of the NPRM and then deducted them to avoid double counting.	The Coast Guard calculated that District One spent a total of $238,520 on applicant pilot expenses, excluding salaries, based on new information from CohnReznick. To increase transparency, we presented these expenses as director's adjustments in Table 3 of this final rule and then deducted them to avoid double counting.	No impact. Because these expenses are not included in the final operating costs for District One, modifying these amounts does not impact District One's total operating costs.	None. There is no impact on projected revenues or the RA.
Operating Expenses (Step 1).	In the NPRM, the Coast Guard attributed 40% of District Two's applicant salary costs to the undesignated area and 60% to the designated area. However, the Director's adjustment for applicant salaries used a 33/67% spilt between the undesignated and designated areas.	The Coast Guard modified the way the Director's adjustment for applicant salaries was allocated to a 40/60 split, with 40% of the Director's adjustment attributed to the undesignated area and 60% attributed to the designated area.	This change reduced the operating expenses for the undesignated area by $14,175 and increased them for the designated area by $14,175. Therefore, this change had no net impact on District Two's total operating expenses.	None. There is no impact on projected revenues or the RA.
Inflation of Operating Expenses (Step 2).	The Coast Guard used a PCE inflation value of 0.8% for 2020 and 1.6% for 2021, based on the most recent PCE data available at the time the NPRM was completed. (June 2020 data).	The Coast Guard updated PCE inflation value to 1.2% for 2020 and 1.7% for 2021, based on the most recently published PCE data (September 2020).	Increased total inflated operating expenses for all three districts by $43,779.	Data affects the calculation of projected revenues.
Estimate of Total Number of Working Pilots (Step 3).	Estimated that there would be a net addition of three additional working pilots.	There will be a net addition of two additional working pilots.	Decreased the amount of revenue needed for pilot compensation by $378,925.	Data affects the calculation of projected revenues.

TABLE 42—SUMMARY OF CHANGES FROM NPRM TO FINAL RULE—Continued

Element of the analysis	NPRM	Final rule	Impact	Resulting change in RA
Target Pilot Compensation (Step 4).	To calculate target pilot compensation, the Coast Guard used a Q1 ECI inflation value of 3.4% and a 2021 PCE value of 1.6% for 2021, based on the most recently available data at the time the NPRM was completed.	To calculate target pilot compensation, the Coast Guard used a Q3 ECI inflation value of 3.5% and a 2021 PCE value of 1.7% for 2021, based on the most recently available data.	Target pilot compensation decreased by $745 per pilot, from $378,180 to $378,925.	Data affects the calculation of projected revenues.

The Coast Guard is required to review and adjust pilotage rates on the Great Lakes annually. See Sections III and IV of this preamble for detailed discussions of the legal basis and purpose for this rulemaking and for background information on Great Lakes pilotage ratemaking. Based on our annual review for this rulemaking, we are adjusting 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 final rule will increase the rates for District One and decrease them for District Two and the designated area of District Three. The rate for District Three's undesignated area will not change from 2020. In addition, the rule will not implement a surcharge for the training of apprentice pilots as was last implemented in the 2019 ratemaking.[63] These changes lead to a net increase in the cost of service to shippers. However, because the rates will 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 will impact United States registered 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 will be 54 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. United States-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 will 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.[64] 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 rate changes resulting from this adjustment to the rates will result in a net increase in the cost of service to shippers. However, the 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.[65] 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

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

[64] 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.

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

revenue needed for all three districts is $30,332,652.

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.[66] 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.[67] Table 43 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.

TABLE 43—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 rule
Total, District One	$9,210,888	$10,620,941	$1,410,053
Total, District Two	8,345,871	8,506,705	160,834
Total, District Three	10,711,271	11,205,006	493,735
System Total	28,268,030	30,332,652	2,064,622

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 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 will lead to affected shippers operating in District One experiencing an increase in payments of $1,410,053 over the previous year. District Two and District Three will experience an increase in payments of $160,834 and $493,735, respectively, when compared with 2020. The overall adjustment in payments will be an increase in payments by shippers of $2,064,622 across all three districts (a 7-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 44 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 pilot compensation (68 percent of total revenue needed in 2020 and 67 percent of total revenue needed in 2021), followed by operating expenses (29 percent of total revenue needed in both 2020 and 2021).

TABLE 44—DIFFERENCE IN REVENUE BY COMPONENT

Revenue-component	Revenue needed in 2020	Percentage of total revenue needed in 2020 (percent)	Revenue needed in 2021	Percentage of total revenue needed in 2021 (percent)	Difference (2021 revenue − 2020 revenue)	Percentage change from previous year (percent)
Adjusted Operating Expenses	$8,110,685	29	$8,876,850	29	$766,165	9
Total Target Pilot Compensation	19,088,420	68	20,461,950	67	1,373,530	7
Working Capital Fund	1,068,925	4	993,852	3	(75,073)	(7)
Total Revenue Needed	28,268,030	100	30,332,652	100	2,064,622	7

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 $2,064,622. This represents an increase in revenue needed for target pilot compensation and adjusted operating expenses of $1,373,530 and $766,165, respectively, and a decrease in the revenue needed for the working capital fund of $75,073. The removal of legal fees associated with litigation against the Coast Guard will reduce the revenue needed in 2021 by $29,802. This number includes adjustments made to the base legal fee amount of $27,594 for inflation and the working capital fund. While the shippers will no longer reimburse the legal fees associated with litigation via the rate under the 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, $1,373,530, is the result of changes to target pilot compensation. These changes are due to three factors: (1) The changes to adjust 2020 pilotage compensation to account for the difference between actual and predicted inflation; (2) the net addition of two additional pilots; and (3) inflation of pilotage compensation to adjust target compensation values from 2020 dollars to 2021 dollars.

The target compensation is $378,925 per pilot in 2021, compared to $367,085 in 2020. The changes to modify the 2020 pilot compensation to account for the difference between predicted and actual inflation will increase the 2020 target compensation value by 1.5 percent. As shown in Table 45, this inflation

[66] 85 FR 20088, see table 41.

[67] The 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.

adjustment will increase total compensation by $5,506 per pilot, and the total revenue needed by $297,339, when accounting for all 54 pilots.

TABLE 45—CHANGE IN REVENUE RESULTING FROM THE CHANGE TO INFLATION OF PILOT COMPENSATION CALCULATION IN STEP 4

2020 Target Compensation	$367,085
Adjusted 2020 Compensation ($367,085 × 1.015)	372,591
Difference between Adjusted Target 2020 Compensation and Target 2020 Compensation ($372,591 − $367,085)	5,506
Increase in total Revenue for 54 Pilots ($5,506 × 54)	297,339

The addition of two pilots to full registered status accounts for $746,837 of the increase in needed revenue. As shown in Table 46, to avoid double counting, this value excludes the change in revenue resulting from the change to adjust 2020 pilotage compensation to account for the difference between actual and predicted inflation.

TABLE 46—CHANGE IN REVENUE RESULTING FROM ADDING TWO ADDITIONAL PILOTS

2021 Target Compensation	$378,925
Total Number of New Pilots	2
Total Cost of new Pilots ($378,925 × 2)	$757,850
Difference between Adjusted Target 2020 Compensation and Target 2020 Compensation ($372,591 − $367,085)	$5,506
Increase in total Revenue for 2 Pilots ($5,506 × 2)	$11,013
Net Increase in total Revenue 2 Pilots ($757,850 − $11,013)	$746,837

Finally, the remainder of the increase, $329,354, is the result of increasing compensation for the other 52 pilots to account for future inflation of 1.7 percent in 2021. This will increase total compensation by $6,334 per pilot.

TABLE 47— CHANGE IN REVENUE RESULTING FROM INFLATING 2020 COMPENSATION TO 2021

Adjusted 2020 Compensation	$372,591
2021 Target Compensation ($372,591 × 1.017)	378,925
Difference between Target 2020 Compensation and Target 2020 Compensation ($378,925 − $372,591)	6,334
Increase in total Revenue for 52 Pilots ($6,334 × 52)	329,354

Table 48 presents the percentage change in revenue by area and revenue-component, excluding surcharges, as they are applied at the district level.[68]

TABLE 48—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	$2,328,981	32%	$3,670,850	$3,789,250	3%	$206,095	$207,255	1%	$5,450,231	$6,325,486	14%
District One: Undesignated	1,048,857	1,502,239	30%	2,569,595	2,652,475	3%	142,205	140,741	(1%)	3,760,657	4,295,455	12%
District Two: Undesignated	1,019,371	1,003,961	–2%	2,936,680	3,031,400	3%	155,473	136,698	(14%)	4,111,524	4,172,059	1%
District Two: Designated	1,504,635	1,540,146	2%	2,569,595	2,652,475	3%	160,117	142,025	(13%)	4,234,347	4,334,646	2%
District Three: Undesignated	2,336,354	1,947,484	–20%	5,873,360	6,820,650	14%	322,642	297,021	(9%)	8,532,356	9,065,155	6%
District Three: Designated	628,182	554,039	–13%	1,468,340	1,515,700	3%	82,393	70,112	(18%)	2,178,915	2,139,851	(2%)

Benefits

This rule will 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 will promote safe, efficient, and reliable pilotage service on the Great Lakes by (1) ensuring that rates cover an association's operating expenses; (2) providing fair pilot compensation, adequate training, and sufficient rest periods for pilots; and (3) ensuring pilot associations produce enough revenue to fund future improvements. The rate changes will also help recruit and retain pilots, which will ensure a sufficient number of pilots to meet peak shipping demand, helping 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 rule will have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For this rule, the Coast Guard reviewed recent company size and ownership data for the vessels identified in the GLPMS, and we reviewed

[68] 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 rule.

business revenue and size data provided by publicly available sources such as Manta[69] and ReferenceUSA.[70] As described in Section VIII.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 will 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.[71] Table 49 shows the North American Industry Classification System (NAICS) codes of the U.S. entities and the small entity standard size established by the SBA.

TABLE 49—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 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 will be approximately $2,146. 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 will be affected by this 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 will receive enough revenue to balance the projected expenses associated with the projected number of bridge hours (time on task) and pilots.

Finally, the Coast Guard did not find any small not-for-profit organizations that are independently owned and operated and are not dominant in their fields that will be impacted by this rule. We did not find any small governmental jurisdictions with populations of fewer than 50,000 people that will be impacted by this rule. Based on this analysis, we conclude this rule will not affect a substantial number of small entities, nor have a significant economic impact on any of the affected entities.

Based on our analysis, this rule will have a less than 1 percent annual impact on 3 small entities; therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, and will not alter or adjust any existing collection of information.

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 rule under Executive Order 13132 and have determined that it is consistent with the fundamental

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

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

[71] 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.

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 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.

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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

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

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform), to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

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

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) and 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this final 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 determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under the **ADDRESSES** portion of this preamble.

This final 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.[72] Paragraph A3 pertains to the promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, advisory circulars, and other guidance documents of the following nature: (a) Those of a strictly administrative or procedural nature; (b) those that implement, without substantive change, statutory or regulatory requirements; or (c) those that implement, without substantive change, procedures, manuals, and other guidance documents; and (d) those that interpret or amend an existing regulation without changing its environmental effect. Paragraph L54 pertains to regulations, which are editorial or procedural.

This rule involves adjusting the pilotage rates to account for changes in district operating expenses, an increase in the number of pilots, and anticipated inflation. Additionally, this rule makes one change to the ratemaking methodology to account for actual inflation and excludes certain legal fees incurred in litigation against the Coast Guard related to ratemaking and oversight requirements. All of these changes are consistent with the Coast Guard's maritime safety missions. We did not receive any comments related to the environmental impact of this 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.

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

[72] *https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%20023-01-001-01%20Rev%2001_508%20Admin%20Rev.pdf.*

PART 401—GREAT LAKES PILOTAGE REGULATIONS

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

Authority: 46 U.S.C. 2103, 2104(a), 6101, 7701, 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1(II)(92.a), (92.d), (92.e), (92.f).

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

§ 401.405 Pilotage Rates and Charges

(a) * * *

(1) The St. Lawrence River is $800;

(2) Lake Ontario is $498;

(3) Lake Erie is $566;

(4) The navigable waters from Southeast Shoal to Port Huron, MI is $580;

(5) Lakes Huron, Michigan, and Superior is $337; and

(6) The St. Marys River is $586.

* * * * *

PART 404—GREAT LAKES PILOTAGE RATEMAKING

■ 3. 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).

■ 4. 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.

* * * * *

■ 5. 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 compensation by the difference between the previous year's Bureau of Labor Statistics' Employment Cost Index for the Transportation and Materials sector and the Federal Open 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: March 8, 2021.

R.V. Timme,

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

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