L. Executive Order 12988: Civil Justice Reform

In issuing this final rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Lists of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: September 10, 2007.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 761—[AMENDED]

■ 1. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

■ 2. Section 761.80 is amended by adding a new paragraph (j) to read as follows:

§ 761.80 Manufacturing, processing and distribution in commerce exemptions.

* * * * *

(j) The Administrator grants the United States Defense Logistics Agency's July 21, 2005 petition for an exemption for 1 year to import 1,328,482 pounds of PCBs and PCB items stored or in use in Japan as identified in its petition, as amended, for disposal.

* * * * *

[FR Doc. E7–18345 Filed 9–17–07; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 401

[USCG–2006–24414]

RIN 1625–AB05

Rates for Pilotage on the Great Lakes

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is finalizing the February 2007 interim rule, which updated rates for pilotage service on the Great Lakes by increasing rates an average of 22.62% across all three pilotage districts over the last ratemaking that was completed in April 2006. Annual reviews of pilotage rates are required by law to ensure that sufficient revenues are generated to cover the annual projected allowable expenses, target pilot compensation, and returns on investment of the pilot associations.

DATES: This final rule is effective October 18, 2007.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2006–24414 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this final rule, please call Mr. Michael Sakaio, Program Analyst, Office of Great Lakes Pilotage, Commandant (CG–3PWM), U.S. Coast Guard, at 202–372–1538, by fax 202–372–1929, or by email at *michael.sakaio@uscg.mil.* For questions on viewing or submitting material to the docket, call Renee V. Wright, Chief, Dockets, Department of Transportation, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

The Great Lakes Pilotage Act of 1960, codified in Title 46, Chapter 93, of the United States Code (U.S.C.), requires foreign-flag vessels and U.S.-flag vessels in foreign trade to use Federal Great Lakes registered pilots while transiting the St. Lawrence Seaway and the Great Lakes system. 46 U.S.C. 9302, 9308. The Coast Guard is responsible for administering this pilotage program, which includes setting rates for pilotage service. 46 U.S.C. 9303.

The Coast Guard pilotage regulations require annual reviews of pilotage rates and the creation of a new rate at least once every five years, or sooner, if annual reviews show a need. 46 CFR part 404. 46 U.S.C. 9303(f) requires these reviews and, where deemed appropriate, that adjustments be established by March 1 of every shipping season.

To assist in calculating pilotage rates, the three Great Lakes pilotage associations are required to submit to the Coast Guard annual financial statements prepared by certified public accounting firms. In addition, every fifth year, in connection with the full ratemaking, the Coast Guard contracts with an independent accounting firm to conduct audits of the accounts and records of the pilotage associations and to submit financial reports relevant to the ratemaking process. In those years when a full ratemaking is conducted, the Coast Guard generates the pilotage rates using Appendix A to 46 CFR Part 404. Between the five-year full ratemaking intervals, the Coast Guard annually reviews the pilotage rates using Appendix C to 46 CFR Part 404, and adjusts rates as appropriate.

The last full ratemaking was published in the **Federal Register** on April 3, 2006 (71 FR 16501). The first annual review following the 2006 ratemaking showed a need to adjust rates for the 2007 Great Lakes shipping season. That adjustment was the subject of a Notice of Proposed Rulemaking (''NPRM,'' 71 FR 39629, Jul. 13, 2006), followed by an Interim Rule (72 FR 8115, Feb. 23, 2007; corrected at 72 FR 13352, Mar. 21, 2007) which took effect March 26, 2007. In addition to the public comments, we received on the NPRM, we invited comments on the interim rule.

II. Discussion of Comments

The Coast Guard received three comments in response to the interim rule. One comment was received from the legal representative of the pilot associations; one comment was received from the legal representative for the Shipping Federation of Canada; and one comment was received from the Saint Lawrence Seaway Pilots Association.

A. *Comments Not Requiring Full Discussion.* Several comments raised issues that have either been fully addressed by the Coast Guard in the interim rule or in preceding rulemakings, or which are not relevant to the current rulemaking. These issues include the Coast Guard's pending action on Rear Admiral J. Timothy Riker's bridge hour standards report; whether delay and detention should be included in calculating bridge hours; the use of actual versus rounded bridge hours in projecting compensation; and whether the Coast Guard is correct in calculating pilot compensation by multiplying mates' wages by 150% and then adding benefits, as opposed to multiplying mates' wages and benefits by 150%. On this last point, one commenter took issue with our statement, in the interim rule, that in 2003 the District Court for the District of Columbia upheld our method of applying the 150% multiplier. This commenter remarked that a court ruling on this issue today might reach a different result in light of the ''quantitative proof'' that the Coast Guard's method is less successful than the commenter's preferred method in producing the outcome intended by Congress. We disagree. No such ''quantitative proof'' data has been submitted to the docket for this rulemaking. Moreover, despite this commenter's statements to the contrary, we have fully and consistently explained the rationale for our method, most recently in the interim rule at 72 FR 8117.

Finally, comments concerning surcharges are not relevant to this rulemaking inasmuch as no surcharges have been taken into consideration in establishing the current rate. In the 2006 ratemaking, we incorporated all surcharges that were determined reasonable and necessary for the provision of pilotage service into each pilot association's expense base, and terminated any further surcharges. No surcharges are currently authorized by the Coast Guard to be charged by the pilot associations and no future surcharges are contemplated. Persons interested in the Coast Guard's treatment of surcharges are referred to the 2006 ratemaking's final rule (71 FR 16501, Apr. 3, 2006).

B. Union Contracts. One of the comments stated that the Coast Guard should consider using other union contracts, besides the American Maritime Officers' (AMO) union contracts, in determining target pilot compensation. It mentioned two other maritime labor unions, the Marine Engineers' Beneficial Association (MEBA) and the National Organization of Masters, Mates, and Pilots of North America (MMP). The comment further stated that ''the Coast Guard has historically limited its review to AMO union contracts. However, the regulations require a review of all union contracts.''

We agree that the Coast Guard, since the implementation of the Great Lakes Ratemaking Methodology in 1996, has consistently used the AMO union contracts in its computation of target pilot compensation. We disagree that the regulations require a review of all union contracts. 46 CFR part 404, Appendix A, states only that ''the average annual compensation for first mates is determined based on the most current union contracts.'' The Coast Guard has interpreted this language to mean contracts most representative of first mates sailing on laker vessels in the Great Lakes. We disagree with the commenter that MEBA and MMP contracts should be included in our computation of rates. Research leading to the publication of the interim rule shows that AMO union contracts represent 62% of all laker tonnage compared to non-AMO union contracts, which represent approximately 38% of the tonnage. We do not know the exact percentage of laker tonnage represented by MEBA or MMP. But even with their presence, or any other union's presence, the majority of the tonnage (62%) is represented by the AMO union contracts.

Another commenter stated that the Coast Guard should use ''only the most lucrative union contract in calculating target pilot compensation.'' We disagree. As previously discussed, 46 CFR part 404, Appendix A, requires that the Coast Guard review ''the most current contracts'' in computing target pilot compensation and that is what we have done. Placing undue emphasis on a single ''most lucrative'' contract would inappropriately inflate compensation projections.

C. Magnitude of Rate Increase. One comment stated the Coast Guard, by raising ''pilotage rates 22.62% ... over the last rulemaking completed approximately one year ago, and just under 50% since 2005'' had, by that fact alone, ''breached its obligation to maintain a fair and efficient pilotage system and adhere to the statutory requirement to ensure that rates accurately reflect the costs of providing pilotage services under the Great Lakes Pilotage Act.'' The Coast Guard disagrees. 46 U.S.C. 9303(f) states that the ''Secretary shall prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services.'' 46 CFR Part 404, Appendices A and C, set out two methodologies, which were themselves the product of public rulemaking, creating fair and impartial formulas for establishing those rates and charges for pilot services. The Coast Guard has meticulously adhered to these methodologies in the creation of the rates referred to by the commenter.

This same commenter states that by switching to unrounded bridge hour projections in the interim rule, vice the rounded bridge hour projections used in the NPRM, rates actually increased by 7.2%, overall, instead of the 3% claimed by the Coast Guard. We disagree. As we stated in the preamble to the interim rule, this correction increased the rate by 3%. The remaining percentage increases are attributable to a 14.7% increase in wages and benefits under the most recent AMO union contracts, a 5% increase in projected traffic, and .5% to non-wage inflation.

D. Petition for Full Review. One commenter petitioned the Coast Guard to perform a full review of pilotage rates, to include an independent audit of each pilot association's expense records and accounts pursuant to 46 CFR 404.1(b). That section requires that the Coast Guard perform such a review and audit at least once every five years. The last time the Coast Guard conducted such an audit was following the 2002 navigation season. Accordingly, the Coast Guard will, in the ordinary course, and consistent with the commenter's request, conduct a five year review and audit at the completion of the 2007 navigation season.

III. Discussion of the Final Rule

This final rule finalizes the interim rule's rates that Federal Great Lakes Registered Pilots may charge for the provision of pilotage services. Because this final rule changes none of the calculations or rates contained in the interim rule, we will not repeat the rate calculations or the regulatory evaluation contained in that document (72 IR 8115, Feb. 23, 2007).

IV. Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The interim rule published in February 2007 is unchanged for this final rule. The cost and population data

contained in the interim analysis is also unchanged for this final rule. In addition, there were no comments on the evaluation of the interim rule published in February 2007. Consequently, we adopt the analysis from the interim rule, available in the preamble of the interim rule, for this final rule. This rule makes final the 22.62 percent average rate adjustment for the Great Lakes system over the rate adjustment found in the 2006 final rule. The annual cost of the rate adjustment in this rule to shippers is approximately $2.3 million (non-discounted). The total five-year present value cost estimate (2007–2011) of this rule to shippers is $10.2 million discounted at a seven percent discount rate and $11.0 million discounted at a three percent discount rate. We use a five-year cost estimate because the Coast Guard is required to determine and, if necessary, perform a full adjustment of Great Lakes pilotage rates every five years.

A. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule has 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.

The analysis of the impact to small entities in the interim rule resulted in no small entities affected by this rule. Since we received no comments pertaining to small entities and the analysis has not changed, we adopt the interim analysis for this final rule. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule does not have a significant economic impact on a substantial number of U.S. small entities.

B. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. If the rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Mike Sakaio, Office of Great Lakes Pilotage, (CG–3PWM–2), U.S. Coast Guard, telephone 202–372–1538, or send him e-mail at *Michael.Sakaio@uscg.mil.*

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).

C. Collection of Information

Under the Paperwork Reduction Act of 1995, (44 U.S.C. 3501–3520), the Office of Management and Budget (OMB) reviews each rule that contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, record keeping, notification, and other similar requirements.

This rule calls for no new collection of information under the Paperwork Reduction Act. This rule does not change the burden in the collection currently approved by the Office of Management and Budget under OMB Control Number 1625–0086, Great Lakes Pilotage Methodology.

D. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism because there are no similar State regulations, and the States do not have the authority to regulate and adjust rates for pilotage services in the Great Lakes system.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

G. 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.

H. 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 does not create an environmental risk to health or risk to safety that may disproportionately affect children.

I. Indian Tribal Governments

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

J. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

K. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

L. Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f). There are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(a), of the Instruction, from further environmental documentation. Paragraph 34(a) pertains to minor regulatory changes that are editorial or procedural in nature. This rule adjusts rates in accordance with applicable statutory and regulatory mandates. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 401

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

■ For the reasons set forth in the preamble, the Coast Guard adopts as final without change the interim rule published at 72 FR 8115, February 23, 2007.

Dated: September 10, 2007.

J.G. Lantz,

Acting Assistant Commandant for Prevention, U.S. Coast Guard.

[FR Doc. E7–18306 Filed 9–17–07; 8:45 am]

BILLING CODE 4910–15–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Parts 727, 742, and 752

RIN 0412–AA30

Miscellaneous Amendments to Acquisition Regulations (AIDAR Circular 2007–02)

AGENCY: U.S. Agency for International Development.

ACTION: Final Rule.

SUMMARY: This final rule amends the USAID acquisition regulation to add two new parts and four new sections in existing parts of the regulation, as more fully discussed in the Supplementary Information. USAID proposed these amendments in the proposed rule published on November 4, 1998, as AIDAR Notice 98–2.

DATES: *Effective Date:* October 18, 2007.

FOR FURTHER INFORMATION CONTACT: M/OAA/P, Ms. Diane M. Howard, Room 7.08–31, 1300 Pennsylvania Ave., NW., U.S. Agency for International Development, Washington, DC 20523–7801. Telephone (202) 712–0206; Internet: *dhoward@usaid.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

AIDAR Notice 98–2 (63 FR 59501, November 4, 1998) proposed four separate items to amend the USAID Acquisition Regulations (48 CFR Chapter 7), or AIDAR. The AIDAR is USAID's supplement to the Federal Acquisition Regulation (48 CFR Chapter 1), the FAR. The following summarizes each item and the final action USAID is taking for each.

1. Item A of AIDAR Notice 98–2 proposed a new Part 712, specifically section 712.101, ''Policy,'' to address a potential conflict between an existing AIDAR clause, (48 CFR) 752.7008 ''Use of Government Facilities or Personnel (APR 1984)'' and the policy stated in (48 CFR) FAR Part 12. The latter states that the government will follow customary commercial practice when acquiring commercial items. The AIDAR clause prohibits the use of Government facilities or personnel in the performance of the contract. The AIDAR clause does not recognize situations in which the customary commercial practice may be for the purchaser to provide facilities or personnel to the vendor. At the time we proposed this new part, we considered the possibility that USAID may provide Government facilities, such as office space and equipment, to contractor employees providing commercial services such as IT support or secretarial/clerical services in USAID facilities. If commercial clients typically provide facilities and equipment for vendors providing similar services in the private sector, then that customary commercial practice would be inconsistent with the policy stated in (48 CFR) AIDAR 752.7008. The proposed part 712 would have required the contracting officer to comply with customary commercial practice unless he or she obtains a waiver in accordance with (48 CFR) FAR 12.302. However, the Agency received no comments on this proposed rule and we have no indication that if providing facilities and equipment is a common commercial practice, it has ever been a problem in a USAID commercial contract. Therefore, we are withdrawing the proposed new part.

2. Item B of the Notice proposed removing (48 CFR) Chapter 7 (AIDAR) Appendix I, ''USAID's Academic Publication Policy'' and adding a new part 727 and subpart 727.4 ''Rights in Data and Copyrights.'' The intent of this item of the proposed rule was to address four issues: (1) To make the clause at (48 CFR) FAR 52.227–14, ''Rights in Data—General'' apply to USAID's contracts performed overseas and awarded to U.S. organizations, (2) to provide an alternate paragraph to add to this FAR clause to reserve USAID's right to restrict release of data when release may have a negative impact on the Government's development or diplomatic relationship with the cooperating country, (3) to provide guidance on Rights in Data coverage for overseas contracts with non-U.S. entities, and (4) to incorporate some of the policies and procedures in Appendix I that would be removed with the Appendix but that should be retained, as being in the Agency's best interests.

We are withdrawing the parts of Item B that affected Appendix I and retaining the current (48 CFR) Chapter 7, Appendix I in its present form. USAID is developing a separate internal policy and regulation on intellectual property. If this policy and regulation affects USAID contracts, we will determine how the AIDAR should implement it and take the appropriate action at that time.

We are, however, finalizing other sections of the proposed (48 CFR) subpart 727.4, but we are amending the language from what appeared in the proposed rule. The only commenter on the proposed rule pointed out several instances where the wording was unclear about the intent of the proposed revision, so we have clarified the wording to address this comment.

We are finalizing the new subpart to address certain FAR requirements that must be met in order for USAID to place limits on release of data under our contracts, as originally explained in the Supplementary Information in the proposed rule.

First, 48 CFR (FAR) § 27.404(g)(3) states, ''* * * agencies may, to the extent provided in their FAR supplements, place limitations or restrictions on the contractor's right to use, release to others, reproduce, distribute, or publish any data first produced in the performance of the