TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes (a)
* * * * * * *			
CA	Beckman Instruments	Porterville	P.
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(a) = Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be greater than or equal to 28.50).

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*P = Sites with partial deletion(s).

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 401 and 404

[USCG–2018–0665]

RIN 1625–AC49

Great Lakes Pilotage Rates—2019 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 and surcharges for the 2019 shipping season. This rule will adjust the pilotage rates to account for a rolling ten-year average for traffic, and result in an increase in pilotage rates due to an adjustment for anticipated inflation, changes in operating expenses, surcharges for applicant pilots, and an addition of two pilots.

DATES: This rule is effective June 10, 2019.

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

SUPPLEMENTARY INFORMATION:

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I. Abbreviations

AMO American Maritime Officers
APA American Pilots Association
BLS Bureau of Labor Statistics
CAD Canadian dollars
CFR Code of Federal Regulations
CPA Certified public accountant
CPI Consumer Price Index
DHS Department of Homeland Security
FOIA Freedom of Information Act
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
ICR Information Collection Request
LIBOR London Interbank Offered Rate
NAICS North American Industry Classification System
NPRM Notice of proposed rulemaking
NTSB National Transportation Safety Board
OIRA Office of Information and Regulatory Affairs
OMB Office of Management and Budget
PCE Personal Consumption Expenditures
SBA Small Business Administration
§ Section symbol
SLSMC Saint Lawrence Seaway Management Corporation
The Act Great Lakes Pilotage Act of 1960
U.S.C. United States Code
USD United States dollars
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—including setting the rates for pilotage services and adjusting them on an annual basis. The rates, which during the 2018 shipping year ranged from $271 to $653 per pilot hour (depending on the specific area where pilotage service is provided), are paid by shippers to pilot associations. The three pilot associations are the exclusive U.S. source of registered pilots on the Great Lakes. The pilot associations use this revenue to cover operating expenses, maintain infrastructure, compensate working pilots, and train new pilots. Since 2016, the Coast Guard has used a ratemaking methodology that was developed in accordance with our statutory requirements and regulations. This ratemaking methodology calculates the revenue needed for each pilotage association (including operating expenses, compensation, and infrastructure needs), and then divides that amount by the 10-year average of shipping traffic to produce an hourly rate. This process is currently effected through a 10-step methodology and supplemented with surcharges, which are explained in detail in this rulemaking.

In this final rule, the Coast Guard is establishing new pilotage rates for 2019 based on the existing ratemaking methodology. As proposed in the notice of proposed rulemaking (NPRM), the Coast Guard is adjusting the rates to account for 2019 inflation, the addition of two working pilots, and updated historic traffic data. Based on the comments to the NPRM, the Coast Guard is also adjusting the operating expenses and correcting previous traffic data, which is discussed in Section V below. The result of these changes is an overall increase in the rates, as shown in Table 1.

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

Area	Name	2018 Pilotage rate	Proposed 2019 pilotage rate	Final 2019 pilotage rate
District One: Designated	St. Lawrence River	$653	$698	$733
District One: Undesignated	Lake Ontario	435	492	493
District Two: Undesignated	Lake Erie	497	530	531
District Two: Designated	Navigable waters from Southeast Shoal to Port Huron, MI.	593	632	603
District Three: Undesignated	Lakes Huron, Michigan, and Superior	271	304	306
District Three: Designated	St. Mary's River	600	602	594

This final rule is not economically significant under Executive Order 12866. This rule impacts 51 United States Great Lakes pilots, 3 pilot associations, and the owners and operators of an average of 256 oceangoing vessels that transit the Great Lakes annually. The estimated overall annual regulatory economic impact of this rate change is a net increase of $2,831,743 in payments made by shippers from the 2018 shipping season. Because the Coast Guard must review, and, if necessary, adjust rates each year, the rates are analyzed as single year costs and are not annualized over 10 years. This rule does not affect the Coast Guard's budget or increase Federal spending. Section VII of this preamble provides the regulatory impact analyses of this final rule.

III. Basis and Purpose

The legal basis of this rulemaking is the Great Lakes Pilotage Act of 1960 (''the Act''),[2] which requires U.S. vessels operating on register and foreign vessels to use U.S. or Canadian registered pilots while transiting the U.S. waters of the St. Lawrence Seaway and the Great Lakes system.[3] For the U.S. registered Great Lakes pilots (''pilots''), the Act requires the Secretary to ''prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services.''[4] The Act requires that rates be established or reviewed and adjusted each year, no later than March 1. 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, the rates must be reviewed and, if necessary, adjusted. The Secretary's duties and authority under the Act have been delegated to the Coast Guard.[5]

This final rule establishes new pilotage rates and surcharges for the 2019 shipping season. The Coast Guard believes that the new rates will promote pilot retention, ensure safe, efficient, and reliable pilotage services on the Great Lakes, and provide adequate funds to upgrade and maintain infrastructure.

IV. Background

Pursuant to the Great Lakes Pilotage Act of 1960, the Coast Guard, in conjunction with the Canadian Great Lakes Pilotage Authority, 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.[6] United States and Canadian ''lakers,'' which account for most commercial shipping on the Great Lakes, are not affected.[7] Generally, vessels are assigned a U.S. or Canadian pilot depending on the order in which they transit a particular area of the Great Lakes and do not choose the pilot they receive. If a vessel is assigned a U.S. pilot, that pilot will be assigned by the pilotage association responsible for the particular district in which the vessel is operating, and the vessel operator will pay the pilotage association for the pilotage services.

The 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

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

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

[6] See 46 CFR part 401.

[7] 46 U.S.C. 9302(f). A ''laker'' is a commercial cargo vessel especially designed for and generally limited to use on the Great Lakes.

pilotage services in District One, which includes all U.S. waters of the St. Lawrence River and Lake Ontario. The Lakes Pilotage Association provides pilotage services in District Two, which includes all U.S. waters of Lake Erie, the Detroit River, Lake St. Clair, and the St. Clair River. The Western Great Lakes Pilotage Association provides pilotage services in District Three, which includes all U.S. waters of the St. Mary's River; Sault Ste. Marie Locks; and Lakes Huron, Michigan, and Superior.

Each pilotage district is further divided into ''designated'' and ''undesignated'' areas. Designated areas are classified as such by Presidential Proclamation [8] to be waters in which pilots must, at all times, be fully engaged in the navigation of vessels in their charge. Undesignated areas, on the other hand, are open bodies of water, and thus are not subject to the same pilotage requirements. While working in those 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.'' [9] For pilotage purposes, rates in designated areas are significantly higher than those in undesignated areas for these reasons.

TABLE 2—AREAS OF THE GREAT LAKES AND SAINT LAWRENCE SEAWAY

District	Pilotage association	Designation	Area No.[10]	Area name [11]
One	Saint Lawrence Seaway Pilotage Association.	Designated	1	St. Lawrence River.
		Undesignated	2	Lake Ontario.
Two	Lake Pilotage Association	Designated	5	Navigable waters from Southeast Shoal to Port Huron, MI.
		Undesignated	4	Lake Erie.
Three	Western Great Lakes Pilotage Association.	Designated	7	St. Mary's River.
		Undesignated	6	Lakes Huron and Michigan.
		Undesignated	8	Lake Superior.

Each pilot association is an independent business and is the sole provider of pilotage services in the district in which it operates. Each pilot association is responsible for funding its own operating expenses, maintaining infrastructure, acquiring and implementing technological advances, training personnel or partners and pilot compensation. The Coast Guard developed a 10-step ratemaking methodology to derive a pilotage rate that covers these expenses based on the estimated amount of traffic. The methodology is designed to measure how much revenue each pilotage association will need to cover expenses and provide competitive compensation to working pilots. The Coast Guard then divides that amount by the historical average traffic transiting through the district.

Over the past three 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 of this preamble). In 2018, we revised the methodology by which we develop the compensation benchmark, based upon the rate of U.S. mariners rather than Canadian registered pilots. The 2018 methodology, which was finalized in the June 5, 2018 final rule (83 FR 26162) and is the current methodology, 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, currently outlined in 46 CFR 404.101 through 404.110, consists of 10 steps that are designed to account for the revenues needed and total traffic expected in each district. The result is an hourly rate, determined separately for each of the areas administered by the Coast Guard.

In Step 1, ''Recognize previous operating expenses,'' (§ 404.101), the Director reviews audited operating expenses from each of the three pilotage associations. 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 three years behind the projected year of expenses. In calculating the 2019 rates, the Coast Guard used the audited expenses from fiscal year 2016.

While each pilotage association operates in an entire district, the Coast Guard determines costs by area. Thus, with regard to operating expenses, the Coast Guard allocates certain operating expenses to undesignated areas, and certain expenses to designated areas. In some cases (*e.g.,* insurance for applicant pilots who operate in undesignated areas only), we allocate based on where they are actually accrued. In other situations (*e.g.,* general legal expenses), expenses are distributed between designated and undesignated waters on a *pro rata* basis, based upon the proportion of income 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 2019 projected operating expenses. To do this, we apply inflation adjustors for three years to the operating expense baseline received in Step 1. The inflation factors used are from the Bureau of Labor Statistics (BLS) Consumer Price Index (CPI) for the Midwest Region, or, if not available, the Federal Open Market Committee (FOMC) median economic projections for Personal Consumption Expenditures (PCE) inflation. This step produces the

[8] Presidential Proclamation 3385, *Designation of Restricted Waters Under the Great Lakes Pilotage Act of 1960,* December 22, 1960.

[9] 46 U.S.C. 9302(a)(1)(B).

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

[11] The areas are listed by name in the Code of Federal Regulations, see 46 CFR 401.405.

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 (3), to estimate how many pilots would be needed to handle shipping during the beginning and close of the season. This number is helpful in providing guidance to the Director in approving an appropriate number of credentials for pilots.

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

In Step 4, ''Determine target pilot compensation benchmark,'' (§ 404.104), the Director determines the revenue needed for pilot compensation in each area and district. This step contains two processes. In the first process, we calculate the total compensation for each pilot using a ''compensation benchmark.'' Next, we multiply the individual pilot compensation by the number of working pilots for each area and district (from Step 3), producing a figure for total pilot compensation. Because pilots are paid by the associations, but the costs of pilotage are divided up by area for accounting purposes, we assign a certain number of pilots for the designated areas and a certain number of pilots for the undesignated areas for purposes of determining the revenues needed for each area. To make the determination of how many pilots to assign, we use the staffing model designed to determine the total number of pilots described in Step 3, above.

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

In Step 5, ''Project working capital fund,'' (§ 404.105), the Director calculates a value that is added to pay for needed capital improvements. This value is calculated by adding the total operating expenses (derived in Step 2) and 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 adds up the totals produced by the preceding steps. For each area and district, we add the projected operating expense (from Step 2), 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 ''revenue needed.''

In Step 7, ''Calculate initial base rates,'' (§ 404.107), the Director calculates an hourly pilotage rate to cover the revenue needed, as calculated in step 6. This step consists of first calculating the 10-year traffic average for each area. Next, we divide the revenue needed in each area (calculated in Step 6) by the 10-year 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.

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 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), we modify the base rates by accounting for the extra revenue generated by the weighting factors. We do this by dividing the initial pilotage rate for each area (from Step 7) by the corresponding average weighting factor (from Step 8), to produce a revised rate.

In Step 10, ''Review and finalize rates,'' (§ 404.110), often referred to informally as ''Director's discretion,'' the Director reviews the revised base rates (from Step 9) to ensure that they meet the goals set forth in the Act and 46 CFR 404.1(a), which include promoting efficient, safe, and reliable pilotage service on the Great Lakes; generating sufficient revenue for each pilotage association to reimburse necessary and reasonable operating expenses; compensating pilots fairly and providing appropriate funds for infrastructure and training. The Coast Guard also uses various factors to ensure that the rate is set in the public interest and will continue to encourage robust traffic in the Great Lakes. The Martin Study is one factor the Coast Guard considered when setting rates for shipping, but Coast Guard also recognizes that it is not a comprehensive analysis of all economic factors.[12]

Finally, after the base rates are set, § 401.401 permits the Coast Guard to apply surcharges. Currently, we use surcharges to pay for the training of new pilots rather than incorporating training costs into the overall ''revenue needed'' used in the calculation of the base rates. In recent years, we have allocated $150,000 per applicant pilot to be collected via surcharges. This amount is calculated as a percentage of total revenue for each district, and that percentage is applied to each bill. When the total amount of the surcharge has been collected, the pilot associations are prohibited from collecting further surcharges. Thus, in years where traffic is heavier than expected, shippers early in the season could pay more than shippers employing pilots later in the season, after the surcharge cap has been met.

V. Discussion of Comments

In response to the October 17, 2018, NPRM (83 FR 52355), the Coast Guard received five comment letters. These included one comment from the three Great Lakes pilot associations,[13] one comment from the law firm Thompson Coburn, which represents the interests of the Shipping Federation of Canada, the American Great Lakes Ports Association, and the United States Great Lakes Shipping Association (hereinafter ''User's Coalition''),[14] a comment from the president of the St. Lawrence Seaway Pilots' Association,[15] a comment from the president of the Lakes Pilots Association,[16] and a comment from the president of the Western Great Lakes Pilot Association.[17] As each of these commenters touched on numerous issues, for each response below, we note which commenters raised the specific points addressed. In situations where multiple commenters

[12] Martin Associates, ''Analysis of Great Lakes Pilotage Costs on Great Lakes Shipping and the Potential Impact of Increases in U.S. Pilotage Charges,'' page 33. Available at *http://www.regulations.gov,* USCG–2018–0665–0005.

[13] USCG–2018–0665–0008, available at *http://www.regulations.gov.*

[14] USCG–2018–0665–0010.

[15] USCG–2018–0665–0009.

[16] USCG–2018–0665–0007.

[17] USCG–2018–0665–0006.

raised similar issues, we attempt to provide one response to those issues.

A. Operating Expenses

The first step of the ratemaking process entails establishing the allowable operating expenses for each pilotage district, and allowing pilot associations to recoup any costs that are considered reasonable and necessary for operation of a pilotage association. To do so, pilotage associations submit accounting statements to independent auditors, and then the audited reports are forwarded to the Coast Guard for additional review. We received several comments from pilot associations and persons representing such interests requesting changes to these adjustments, which are discussed below.

a. Medical Benefits Paid to Retired Pilots

The Coast Guard received one comment concerning an adjustment made for payments to retired pilots. In the NPRM, we proposed to disallow $90,600 of requested charges for payments of health benefits for retired pilots. In doing so, we stated that ''we consider health benefits to be 'compensation,' and compensation paid to pilots cannot be recouped as operating expenses.'' [18] One commenter [19] stated that, because the payments were made on behalf of retired pilots who were not among the 13 allowed pilots, the amount should not be considered as pilot compensation and should be construed as a reimbursable operating expense. The commenter also noted that such a payment had been allowed in a 2005 Interim Rule.[20]

Upon examining the enclosed **Federal Register** citation to the 2005 interim final rule and reviewing the regulatory text, the Coast Guard confirms its proposal to disallow payments of health benefits and reaffirms here that medical expenses paid on behalf on pilots should be considered pilot compensation, and not an operating expense. Section 404.2 requires that medical and pension benefits for pilots be treated as pilot compensation; *i.e.,* not as an allowable operating expense. The reasoning in the 2005 **Federal Register** Interim Rule does not apply here. In the 2005 Interim Rule, which was predicated on pre-2016 regulations, the Coast Guard based the decision to expense certain medical costs on the specific contours of the American Maritime Officers (AMO) union contracts that formed the basis of the 2005 compensation benchmark. Such reasoning, even if it were permissible under the current regulations, does not apply to the 2016 operating expenses at issue in this year. Instead of basing our compensation on the AMO contract, the Coast Guard based the 2016 compensation benchmark on Canadian compensation figures.

b. Calculation of Applicant Pilot Costs

One commenter stated that District 3 had misstated its medical expenses in its report to the auditors.[21] The commenter argued that it had submitted an aggregated medical expense of $77,060, and that the auditors had incorrectly allocated all of that sum as costs associated with pilots. The commenter stated that, in fact, $60,031 of that sum was paid as medical expenses for applicant pilots, while only $17,030 (numbers are rounded to the nearest dollar) were paid as partner compensation. They claimed that they had submitted a spreadsheet to the auditors with the correct disaggregated information, but that the auditors had failed to use it.

The Coast Guard agrees with this comment. The Coast Guard consulted with the auditors, who re-examined the information provided to them by District 3. The auditors agreed that information disaggregating the medical expense items had been overlooked, and that the medical expenses of the District 3 applicant pilots had been understated by a total of $60,031. For that reason, the Coast Guard is adding that figure to the total applicant medical expenses for District 3 (see Table 5 below).

In a related note, the adjustment to applicant pilot compensation for District 3 effects the Director's adjustment for District 2 applicant pilot expenses. In the NPRM, the Coast Guard proposed to make a substantial adjustment to the District 2 request for reimbursement of $571,248 for two applicant pilots, as that request was not supported by audited financial statements.[22] Instead of permitting $571,248 for two applicant pilots, we proposed allowing an operating expense of $257,566, or $128,783 per applicant pilot, which was equivalent to the amount paid by District 3 to applicant pilots, resulting in a proposed Director's adjustment of $313,681. However, as we have adjusted the allowance for District 3 applicants by $60,031 for the reasons described above, a similar adjustment is required for the two District 2 applicants. For that reason, we are finalizing a positive $60,031 Director's adjustment for District 2 applicant pilot benefits, in addition to the negative $313,681 adjustment to wages originally proposed, for a total negative adjustment of $253,650 (see Table 5 below).

One commenter provided comments on the District 2 applicant pilot adjustment, and we believe the above change addresses their comment. The commenter stated that in the NPRM, ''the proposed rule training expenses have been denied merely on the ground that they are higher than purported (and incorrectly stated) District 3 expenses.'' [23] While the commenter is incorrect that the Coast Guard did not approve the stated figures *merely* because they were high,[24] we agree with the commenter that the District 3 expenses were inaccurately stated. However, we disagree with the commenter's argument that the District 2 applicant expenses should be accepted at face value. We note that all operating expenses must be ''reasonable in their amounts'' pursuant to section 404.2(c)(1). District 2 asserted, in their letter to the Coast Guard,[25] that they paid applicant pilots $285,624.23 each in wages alone, a number far larger than the applicant salaries of the other Districts and nearly on par with full pilots, which the Coast Guard provided a targeted compensation level of $326,114 (a figure which included full benefits) for 2016. In the NPRM, we stated that ''because this number is far out of line from wages paid to applicant pilots in other districts, as well as the Coast Guard's estimate[s] . . . the Director proposes only allowing a portion of these expenses to be recouped as reasonable operating expenses.'' [26] We remain unpersuaded that $285,624.23 is a reasonable wage for an applicant pilot.

c. Reimbursement for Direct-Billed Pilot Boat Costs

One commenter suggested that the auditor's adjustment for direct-billed pilot boat runs should be reduced. In the NPRM, the Coast Guard noted an auditor's adjustment for $92,056 of direct-billed boat and discharge costs.[27] In District 3, ordinary pilot boat costs are billed to the Western Great Lakes

[18] Great Lakes Pilotage Rates—2019 Annual Review and Revisions to Methodology (October 17, 2018), 83 FR 52355 at 52361.

[19] USCG–2018–0665–0007.

[20] 70 FR 12082, 12086 (March 10, 2005).

[21] USCG–2018–0665–0008, p. 2–3.

[22] See 83 FR 52355, at 52361.

[23] USCG–2018–0665–0008, p.8.

[24] In the NPRM, we stated that we had received inaccurate information on applicant expenses originally, and the unaudited assertion made in response to Coast Guard inquiries was not believed. See 83 FR 52355, at 52361.

[25] USCG–2018–0665–0001.

[26] 83 FR 52355, at 52361.

[27] See item D3–16–02, 83 FR 52355, at 52362.

Pilot Association (WGLPA), and are considered a reimbursable operating expense. However, when a pilot boat is operated for the convenience of the vessel, the cost is billed directly to the vessel and paid to the associations, which reimburse the pilot boat. Thus, the pilotage association cannot claim that cost as a reimbursable operating expense, as that would constitute double-billing. For this reason, the auditor disallowed the recoupment of those fees as operating costs. However, one commenter [28] argued that the auditor erred. Because of that $92,056 billed to the shippers, the Canadian Great Lakes Pilotage Authority (GLPA) had received $37,754 more in revenues from those services than it had paid in costs, and the WGLPA suffered an equivalent shortfall. The WGLPA requested that it be allowed to recoup the $37,754 shortfall as reimbursable operating expenses.

After consideration of the comment, the Coast Guard does not agree that this expense should be included with operating costs. The cost for pilotage boat services was $92,056, which was paid by the shippers at that time. As the commenter stated, while the revenues from $92,056 were split approximately evenly between the GLPA and WGLPA, the WGLPA paid a much larger percentage of the $92,056 in costs, resulting in a $37,754 shortfall for the WGLPA and an equivalent windfall for the GLPA. While the WGLPA is correct that it suffered a loss from this inequitable split, we do not believe that the shortfall should be made up by permitting the WGLPA to bill an additional $37,754 to the shippers, who have already paid the costs for the pilot boat services in full.

d. Housing Allowances

In the NPRM, the Coast Guard proposed to disallow $36,900 in housing allowance expenditures for the District 3 operating expenses. As we did not have documentation of monies spent, we requested that the association ''provide the receipts that could help to determine if these are recoverable operating expenses.'' [29] We also note that the Director is legally prohibited from permitting undocumented expenses pursuant to 46 CFR 404.2(c)(1).

One comment addressed the amount of money paid for housing. This commenter [30] argued that the total sum amounted to $820 per month for 5 pilots, and that this amount was paid to the pilots so they could rent apartments in the De Tour/Sault St. Marie area instead of using hotels when required to stay overnight. The commenter argued that the cost of a hotel in the area is about $95 per night, and that using hotels could cost over $2,000 per month per pilot. While hotel receipts would satisfy the Coast Guard's need for ''receipts,'' the commenter argues using hotels would not be a cost-effective method for housing pilots. The Coast Guard believes that this commenter has placed too much emphasis on the Coast Guard's use of the word ''receipts'' and misinterpreted the requirements of 46 CFR 404.2(c)(1), which prohibits the recoupment of ''undocumented expenses.'' That provision requires documentation of money spent, and does not permit the reimbursement of an ''allowance.'' For example, the Coast Guard would accept leases and documentation of money paid for apartments as an allowable operating expense, assuming it found the expense necessary and reasonable pursuant to section 404.2(a). However, we cannot reimburse an allowance paid to pilots as an operating expense. We require verification for all payments with proper documentation clearly demonstrating that the money was spent on allowable and reasonable expenses. For these reasons, we are denying the request to recoup the housing allowance as an operating expense.[31]

e. Capital Expenses

One commenter stated they submitted costs for ''infrastructure'' to the Coast Guard, and that ''discussions with the Coast Guard at the time indicated the submitted data was sufficient for ratemaking purposes,'' but that the ''NPRM shows no contemplation of removing these funds.'' [32] This comment refers to the ''Capital Acquisitions'' item referred in Section X of the document entitled St. Lawrence Seaway Pilots Association—Independent Accountant's Report on Applying Agreed-Upon Procedures.'' [33] That document describes three properties in New York used by the St. Lawrence Seaway Pilots Association for operational needs. The document stated that the Coast Guard would approve $466,940 in operating costs to cover cash outlays made in 2016 to acquire these properties.[34]

While the Coast Guard originally believed that these outlays would be covered by money brought in from Step 5 of the ratemaking process, we now believe, based on the comment and contemporaneous communication with the association, that this should be considered an operating expense. While future capital acquisitions may or may not be considered operating expenses due to the existence of the working capital fund (see the ''working capital fund'' discussion below for more detailed discussion on treatment of capital expenses), we note that the working capital fund was not in effect at the time of these acquisitions. It was only in 2017 that Step 5 of the ratemaking process was identified as the working capital fund, and until that point, it had been characterized as a ''return on investment.'' Based on that, we believe it within the purview of the Coast Guard to identify which capital expenses are considered reasonable and necessary pursuant to the guidelines in § 404.2, and we believe that these purchases are within those guidelines. For that reason, we are adding the $466,940 property acquisition cost to the allowable operating expenses of District 1.

f. Legal Fees

One commenter suggested that the Coast Guard had erroneously made a Director's adjustment of $1,292 for legal fees for District 3, and that adjustment should be removed.[35] The commenter stated that only $15,208.09 of its reported legal fees were for ''general activities,'' and that it had already excluded 3 percent of that amount from its requested operating expenses as related to lobbying. The Coast Guard has examined the commenter's calculations and agrees the Director's adjustment was unneeded, and has thus removed it.

B. Surcharge Offsets

Beginning in 2016, the Coast Guard began implementing surcharges on shipping rates to encourage the recruitment and training of new pilots on the Great Lakes. Unlike pilot compensation, costs relating to the compensation and training of applicant pilots are fully reimbursable as operating expenses. However, the Coast Guard used surcharges so that pilot associations could receive the money needed to cover the costs of recruiting and training pilots in the year they were incurred, rather than wait three years until such costs could be reimbursed as ordinary operating expenses. As such, the surcharges act as an ''advance'' on

[28] USCG–2018–0665–0006, p.3.

[29] 83 FR 52355, at 52362.

[30] USCG–2018–0665–0006, p. 4.

[31] We note that the commenter describes a situation in which the pilots maintain apartments in the metro area (DeTour/Sault St Marie) in which they work. Under IRS guidance, one cannot claim lodging expenses in the city in which they work.

[32] USCG–2018–0665–0009, p.1.

[33] USCG–2018–0665–0002, p.30.

[34] USCG–2018–0665–0002, p.8, note 2.

[35] USCG–2018–0665–0006, p.3.

the reimbursed operating expenses. This year, 2019, is the first year in which we can view the incurred operating expenses for applicant pilots in 2016, and deduct from operating expenses the actual amounts collected in surcharges. We note that in the 2017 rulemaking, we modified the surcharge provision to limit the amount collected to $150,000 per applicant pilot. However, in 2016, the year to which these calculations apply, there was no cap on the amount of surcharges, and the amounts collected therefore totaled far more than the surcharge percentage was anticipated to collect.

In the NPRM, the Coast Guard included a ''surcharge offset'' line, which corresponded to the actual amount collected in surcharges in the 2016 shipping season.[36] We received several comments on this issue, although some of the commenters appeared to misunderstand what the surcharge adjustment was for or the basis on which it was calculated. One commenter provided information about pilot costs from 2017, stating that ''the Coast Guard should have audited data showing that District Three's surcharge revenue for 2017 was only $382,297.24 of the $600,000 projected applicant pilot cost.'' [37] The commenter's statement refers to the wrong year—the ''surcharge offset'' should be equal to the amount actually collected by surcharges in the year of expenses being analyzed (which for this rule is 2016, not 2017). We will analyze surcharge offsets for subsequent years at the appropriate time, when we consider that year's operating expenses for purposes of rate calculation.

One commenter stated that ''the proposed rule also errs in stating that the $150,000 per pilot surcharge amounts were intended to be hard estimates or caps on the amount of reasonable training expenditures, so that any amounts expended beyond that should now be disallowed.'' [38] While the Coast Guard is uncertain about what statements in the proposed rule the commenter is referring to, we agree that there was no hard limit on how much could be spent on training and stipends for applicant pilots, so long as the expenses were considered to be reasonable and necessary pursuant to the requirements in § 404.2(a). The commenter goes on to state that the NPRM ''proposes to *deduct* from each association's operating expenses not only any surcharges collected in excess of $150,000 per applicant pilot, *id.* . . .'' [39] [40] We disagree with the commenter, and note the ''surcharge offset'' is equal to the actual dollar amount collected as surcharges in the 2016 shipping season. The ''surcharge offset'' is unrelated to whether certain operating costs are deemed necessary and reasonable.

C. Continued Use of Surcharges

In the NPRM, the Coast Guard suggested that we might not continue to use surcharges in future years to cover costs relating to applicant pilots, and instead revert to a system where all costs associated with applicant pilots would be reimbursed through the operating expense provisions. Noting that the ''vast majority of registered pilots are not scheduled to retire in the next 20 years,'' [41] the Coast Guard invited comments on discontinuing the surcharge practice that has been in effect the last three years. We received several responses to this suggestion, all of which opposed the idea. One commenter argued that ''while there has been progress in hiring new pilots nothing suggests that these new hires, many of which have been made to expand the pilotage pool rather than to replace departing pilots, have operated to reduce the need to train replacement pilots for the next two decades.'' [42] Another commenter stated that ''[m]uch as we dislike surcharges—we think the Coast Guard should keep the status quo until it is ready to propose a better solution.'' [43]

Based on the comments received, it appears that various interests on the pilot side support the continued application of surcharges. While no change was proposed for 2019, the Coast Guard will take this stated preference into consideration as we prepare the 2020 ratemaking deliberations.

D. Target Compensation

In the NPRM, the Coast Guard established the target compensation benchmark by multiplying the previous year's compensation benchmark by the estimated inflation for 2018, giving a total of $359,887 per pilot for 2019. We received numerous comments pertaining to this calculation, which are described below.

a. Questions Relating to the Interim Compensation Benchmark

i. Inflation Adjustments From 2015–2018

One commenter raised questions about the use of AMO contracts in the ''interim compensation'' benchmark that the Coast Guard established in the 2018 ratemaking rule.[44] The commenter argued that the Coast Guard's failure to use the actual wage adjustment rates received by the AMO from 2015–2018 was a mistake, and caused the compensation figure to be too low, and demonstrated calculations that would use the contracted increases from the AMO 2015 onward contract to arrive at target compensation figure approximately $10,000 above what the Coast Guard calculated for 2018. This commenter misunderstands the nature of the interim compensation benchmark, which was tied to the AMO contracts in place from 2011–2015. To summarize, the interim compensation benchmark sought to match the daily AMO compensation level from 2015, apply it to the 270-day working season for Great Lakes pilots, and then adjust that number for inflation. It did not seek to match the contract stipulations from 2015 onward, because the Coast Guard did not have access to the underlying contract documents for that period. We discussed the interim compensation benchmark more thoroughly in the 2018 NPRM and final rule. In those documents, we described the interim compensation benchmark as being based on the 2015 AMO rate—and then adjusted for inflation using public inflation data to achieve an equivalent real value for 2018. We stated that we would not use the more recent data on AMO contracts, as we did not have access to the underlying documents. As we still lack that data and have not proposed changing the basis for the compensation benchmark, we cannot adopt the commenter's assertion that we should use contract data from the 2015–2019 AMO contracts.

ii. Use of a 270-Day Multiplier and Guaranteed Overtime Figure

One commenter [45] raised an issue relating to how we translated the daily wage rate from the AMO contract to a yearly compensation for purposes of setting the interim compensation benchmark in 2018. As described in the 2018 ratemaking, the Coast Guard multiplied the daily rate, as calculated using the AMO contracts, by 270 to get the yearly compensation figure. We

[36] See NPRM, 83 FR 52355, at 52359 for additional discussion.

[37] USCG–2018–0665–0006, p.5.

[38] USCG–2018–0665–0008, p.5.

[39] It is unclear what the commenter is citing here, as the previous citation was to the 2016 GLPAC Public Meeting.

[40] USCG–2018–0665–0008, p. 7.

[41] 83 FR 52355, at 52370.

[42] USCG–2018–0665–0008, p.5.

[43] USCG–2018–0665–0006, p.5.

[44] USCG–2018–0665–0008, p.2–3.

[45] USCG–2018–0665–0010, p. 4.

used the figure of 270 days because that is the number of days in the Great Lakes shipping season. However, the commenter argued that the Coast Guard should have multiplied the daily rate by 200, which is the number of days a Great Lakes pilot is actually expected to work under our staffing model, which would result in significantly lower target compensation. The commenter stated that the lower figure ''reflected the reality of the Coast Guard's imposition of a required 10-day per month rest requirement for U.S. pilots.'' [46] The commenter also took issue with the Coast Guard's incorporation of the ''guaranteed overtime'' figure that was incorporated into the rate, stating that the ''Coast Guard accepted this figure at face value and incorporated it in its entirety . . . with no reported inquiry into the validity of this figure.[47]

While the Coast Guard understands the commenter's arguments that these actions by the Coast Guard led to significantly higher target compensation figures, we stand by the reasoning in doing so as articulated in the 2018 final rule. In responding to a similar comment to the 2018 NPRM, we stated that ''while we believe the industry commenters' suggestion of multiplying the aggregate daily wage by 200, rather than 270, has merit, we have decided that in the interests of recruiting and retaining a suitable number of experienced pilots, a multiplier of 270 is the preferable course of action. The Coast Guard also noted ''[w]hile we have considered the argument that it would be more efficient to pay pilots less or have fewer of them to generate lower shipping rates, we believe the effect on safety and reliability warrant a multiplier of 270.'' [48] With regard to the additional overtime figure, we adopted it because the commenter who provided the overtime figures had firsthand knowledge of the contract between the AMO and the shippers.[49] If the commenter has information about this contract that could be shared which would cause the Coast Guard to question the validity of the overtime figure, we would be open to receiving it. However, as no additional information has been supplied, we will continue to use the best information we have to calculate the target compensation, which at this time includes the overtime figure.

[46] USCG–2018–0665–0010, p. 4.

[47] USCG–2018–0665–0010, p. 5.

[48] 83 FR 26171.

[49] 83 FR 26169.

b. Comparisons With Other U.S. Pilots

One commenter argued that ''the proposed 2019 target compensation also continues to lag [behind] the compensation of other U.S. pilots by a considerable margin.'' The commenter went on to argue that ''the pilots stand ready to assist the Coast Guard in [studying pilot compensation]'' and ''urge the Coast Guard to review the information they [the pilots] have provided, which they believe supports a higher compensation level.'' [50] The Coast Guard notes that the past information provided by the pilot associations contains recent total compensation information for selected pilot groups in other regions. However, because target compensation and actual compensation are quite different (in recent years, actual compensation has been significantly higher than target compensation due to higher-than-expected shipping demand), we cannot directly compare the two. We would welcome submission of actual pilot compensation data for Great Lakes pilots in recent years to improve our analysis, and will raise it as an issue in a future Great Lakes Pilotage Advisory Committee meeting.

E. Manning and Traffic Figures

a. Manning

Several commenters raised issues relating to the calculation of the number of pilots needed, given anticipated traffic on the Great Lakes (the staffing model). In the 2019 NPRM, using that model, we left the maximum number of pilots at 54 total, although for 2019 we proposed authorizing only 51 pilots, an increase of two pilots over the authorized number for 2018. Based on the comments received, the Coast Guard is not making changes to the staffing model at this time, but note the concerns of the commenters, as discussed below.

One commenter argued that ''with the growth of tanker and cruise ship traffic, vessel transit frequency no longer subsides during the summer period. The result is pilots being unable to realize the restorative rest stated as a goal in the manning models and needed for continued safe operation.'' [51] The Coast Guard believes this is potentially a valid 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 seven-month mid-season period. We are currently monitoring traffic patterns, and if the commenter's assertion proves accurate, it would cause us to reevaluate the staffing model. While at this time we are still gathering data, we would appreciate additional data and suggestions for alternative staffing models in light of changes in traffic patterns.

[50] USCG–2018–0665–0008, p. 3.

[51] USCG–2018–0665–0009, p. 2.

Another commenter criticized the Coast Guard's use of rounding up the number of pilots authorized to operate in a district as a means of calculating the administrative time required of each association's president.[52] The commenter suggests that the Coast Guard ''devise a better method'' to account for the president's administrative duties. We disagree with the commenter's suggestion. We note that, because we are calculating the number of full-time pilots, we must round to the nearest whole number in any event. Furthermore, because administrative time varies widely, it is difficult to assign a concrete number to that duty. We continue to believe that upward rounding of the number of pilots needed is appropriate given that the association president is both a pilot providing service and the lead administrator for the association. We, however, encourage the commenter to suggest an alternative method for calculating administrative time.

b. Use of Bridge Hours and Average Traffic Figures

One commenter raised questions about the validity and consistency of various calculations used in the Coast Guard's ratemaking methodology. Specifically, the commenter stated that the ''use of inconsistent time periods for varying data sets—*e.g.,* a ten-year rolling average of historical traffic volume data against three-year or one-year data for determining expense levels or pilot staffing needs'' [53] was a pressing concern. We believe that the commenter has mischaracterized the Coast Guard's data collection and aggregation efforts, and we will attempt to explain them here.

The first issue is the use of the historical traffic average (sometimes referred to as ''actual traffic'') to determine anticipated traffic volumes, which we implement by using a rolling 10-year average. The Coast Guard requires an estimate of the amount of traffic in the upcoming year as part of its ratemaking methodology as this is not something that can be measured beforehand. To derive this estimate, the

[52] USCG–2018–0665–0006, p. 5.

[53] USCG–2018–0665–0010, p. 2.

Coast Guard takes the average of the previous 10 years of traffic in each area on the Great Lakes. The use of the historical traffic figure was unanimously recommended by the Great Lakes Pilotage Advisory Committee (GLPAC) in 2014,[54] and we believe that it is the best tool we have to estimate traffic. While in recent years high levels of traffic have been greater than the historical average, we also note that, not unexpectedly, in some years, the level of traffic has been lower than average. The use of the 10-year average may cause the average to lag trends, but it does reduce fluctuations in predicted traffic levels resulting in a more stable rate on a year to year basis. While we are open to suggestions as to how to better predict total traffic, we would encourage the commenters to raise these suggestions at the GLPAC, as we are currently continuing to follow its recommendation on this subject.

Unlike the traffic prediction, the other factors the commenters cite (the operating expenses and number of authorized pilots) are measured numbers, and thus do not require a predictive mechanism. The operating expenses (the ''three-year'' figure) are direct reimbursements for actual expenses three years previous. The reason for the delay is the time it takes to receive, audit, and present those numbers through the rulemaking process. Similarly, the Director of Great Lakes Pilotage determines the number of working pilots (the ''one-year'' figure) based on measured training progressions and retirement announcements. These are not predictions that would require us to average a previous year's estimates or use some other mechanism to make predictions. For these reasons, the Coast Guard does not believe the commenter's concern regarding the different time periods at issue represents a flaw in the Coast Guard's ratemaking methodology.

c. Calculation of 2017 Traffic Figure for District 3

One commenter suggested that the Coast Guard had made an error in its calculation of the total traffic figures for District 3. The commenter stated that the Coast Guard's 2017 total traffic figures (26,183 hours in undesignated waters and 3,798 hours in designated waters) were inaccurate, and that the correct figures for that year were 20,955 hours in undesignated waters, and 2,997 hours in designated waters.[55] In response to this comment, we reviewed the data from 2017 and were unable to replicate the traffic figures cited in the NPRM. We were, however, able to validate the commenter's figures using the search parameters they provided. For that reason, we believe that the information provided by the commenter provides a stronger basis for the 2017 traffic figures, and have made the adjustment accordingly.

F. Working Capital Fund

In the NPRM, the Coast Guard requested comments on the utility and value of the working capital fund and in response, received several comments and questions regarding its origins, uses, and tax implications. One commenter stated that while it appreciated that the working capital fund provides a revenue stream intended to be used for infrastructure, one problem is that the Coast Guard ''hasn't established any guidelines or limits on acceptable uses.''[56] Another commenter suggested changes to the way the working capital fund operates. Currently, the working capital fund ''is structured so that the pilot associations can demonstrate credit worthiness when seeking funds from a financial institution for needed infrastructure projects, and those projects can produce a return on investment at a rate commensurate to repay a financial institution.''[57] The commenter argued that ''if the reserve fund is used for improvements then it is not available to provide a return on investment,''[58] and recommended that the interest rate on which the value of the working capital fund is calculated be dramatically increased (the commenter suggested London Interbank Offered Rate (LIBOR) + 4 percent). We disagree with this suggestion, and believe the commenter has misinterpreted the Coast Guard's intent. In previous years, the goal of the ''return on investment'' step, the precursor of the working capital fund, was to provide a return to monies invested by the pilots in associations. The amount of the money invested (the investment base) by pilots was relatively small, and thus the return on that investment was small in absolute terms. However, when we recalibrated the return on investment (later dubbed the working capital fund) to be based on the total income of the associations, rather than simply the money invested in capital improvements, the goal was to increase infrastructure spending by providing a more substantial pool of available funds.

The goal of the working capital fund is not to provide a windfall for the associations. It is to demonstrate that associations can accrue additional capital, and thus have the resources to invest in infrastructure, either with the capital on hand or by financing a loan. It is not designed to provide extra money for associations to distribute to their shareholders.

Industry commenters had a very negative view of the working capital fund. In addition to several concerns about the terminology, the commenter stated that ''the Coast Guard does not impose safeguards to require segregation of funds generated as a result of this element'' or ''ensure that such funds are used in a manner consistent with Coast Guard explanations as to why the [working capital fund] exists.''[59] The commenter argued that ''there has been no indication as to why a ''Working Capital'' figure would be the product or function of multiplying the sum of operating expenses and target pilot compensation by [AAA bond yields].'' Finally, industry commenters asserted that ''until the Coast Guard establishes exactly what this component of the pilotage revenue stream is, how it should be rationally computed, and how it must be used, the correct value of the [working capital fund] should be set at $0.''[60]

Based on comments received, it is clear that both pilots and industry are in favor of clear guidelines for the working capital fund. To this end, the Coast Guard transmitted a letter to the pilot associations, dated November 30, 2018 and now available in the docket,[61] to establish the uses and restrictions on the working capital fund. To summarize, 46 U.S.C. 9304 and 46 CFR 401.320 authorize the Coast Guard to outline how each respective pilotage association will manage the funds generated by the Working Capital Fund until the Coast Guard can update regulations or policy concerning the Working Capital Fund. The Coast Guard's November 30 letter therefore requires that pilot associations segregate the revenues generated by the working capital fund step, and provide a report on the status of these funds annually.[62] The funds are to be used for

[54] See Great Lakes Pilotage Advisory Committee meeting transcript, July 23, 2014, at p. 254 to 258.

[55] USCG–2018–0665–0006, p. 2.

[56] USCG–2018–0665–0006, p. 6.

[57] 83 FR 26173, citing 82 FR 41466, p. 41484.

[58] USCG–2018–0665–0008, p. 4.

[59] USCG–2018–0665–0010, p.7.

[60] USCG–2018–0665–0010, p.7.

[61] USCG–2018–0665–0011.

[62] We note that in the letter we stated that there would be an auditing report required on April 7 each year, and at this time the Information Collection Request (ICR) for the Great Lakes Pilotage Ratemaking does not currently cover this information request. The Coast Guard will amend the current ICR to include this information, however until the Office of Information and

Continued

capital expenditures only, and are subject to a reasonableness standard. We believe that this letter will help to ensure that working capital fund revenues are used for their intended purposes of facilitating infrastructure improvements.

G. Use of the Martin Report

The Coast Guard received one comment on the use of the 2017 Martin Associates report, ''Analysis of Great Lakes Pilotage Costs on Great Lakes Shipping and the Potential Impact of Increases in U.S. Pilotage Charges,'' in our regulatory analysis.[63] The commenter believes the study should not be used for any part of the rulemaking process because the study is biased toward industry, relies upon faulty invoice data, and uses a flawed methodology to estimate the impact of increasing pilotage rates on vessel traffic and employment in the Great Lakes. According to the commenter, these alleged faults in the Martin Report would overestimate the impact on pilotage rates on shipping. The commenter did not, however, object to using the Martin Report to support the proposition that the proposed 2019 pilotage rate increases would not ''have significant secondary economic harms.'' Given the commenter's conclusion, the Coast Guard will not address the commenter's concerns here. Nevertheless, the regulatory analysis of this final rule does not rely upon the Martin Report because the data used in that report is now several years old and out-of-date to support our analysis.

One commenter contested the Coast Guard's use of an upper rate standard, as elucidated in the Martin Report, to determine that the rates are set ''giving consideration to the public interest'' in accordance with the Great Lakes Pilotage Act. Referencing the Coast Guard's response to the commenter in the 2018 Annual Review, that commenter argued that ''an upper rate standard based on 'levels that threaten the economic viability of Great Lakes Shipping' is not a useful or responsible standard.'' [64] The commenter went on to state that rate increases are resulting ''in negative economic impacts on ports, agents, other maritime community stakeholders, and the economic well-being of the region'' without providing support for that position. While the commenter suggested that data on actual pilot compensation would assist the Coast Guard in developing an alternative method of meeting its statutory obligation to give consideration to the public interest, it was neither clear what that alternative measure would be nor how pilot compensation data would affect in development of that alternative. Given the absence of alternative methods, we consider the use of the Martin Report's estimates on the possible economic impact to be one tool to gauge the impact of pilotage rates on shipping. Finally, impact on shipping is not the only consideration for the Coast Guard in determining the public interest. The protection of the marine environment from oil spills resulting from groundings and collisions and the protection of maritime infrastructure, *e.g.,* locks, are also in the public interest. Professional pilotage services provided for under this ratemaking reduce the risks of such an incident occurring and increases the safety of maritime traffic on the Great Lakes. Consequently, the Coast Guard considers the safety of maritime traffic on the Great Lakes to be in the public interest.

H. Other Issues Concerning Ratemaking Procedures

a. Over-Realization of Pilotage Revenue

One commenter raised the issue that actual revenue realizations in the years 2014–2017 exceeded the target revenues by a considerable amount. As an example, the commenter noted that, in 2017, $26.5 million in pilotage revenue was realized, which was far in excess of the stated target of $21.7 million.[65] The commenter requested that the Coast Guard ''validate the real world likelihood of additional over-realization by using known information on pilotage billings to date for 2018 to assess whether rate increases . . . are, in fact necessary to achieve revenue targets stated in the Proposed Rule.'' [66]

While the Coast Guard agrees with the commenter that, in several recent years, realized revenues have exceeded target revenues, we do not believe this is a systemic or perpetual position. We note that, as rates are derived by using an average of the most recent 10 years of traffic, if the traffic in the current year exceeds the average (*i.e.,* it is a busier than an average year), pilots will realize more than the target revenue, and if it is a slower than an average year, pilots will realize less than the target revenue. Because the last several years that the commenters cite have seen larger-than-average traffic flows, additional revenue has been realized.[67] We also believe that it is important to clarify that meeting the ''target revenue'' is not a goal for the Coast Guard in and of itself; the target revenue is just a marker used by the ratemaking methodology to set rates assuming an average traffic year. The revenue realized is expected to vary from ''target revenue'' consistent with the manner actual traffic varies from the projected traffic.

The Coast Guard does agree with the commenter that known information on 2018 traffic should be incorporated into the 2019 ratemaking calculation. The calculations in this final rule are based on traffic in a 10-year period of 2009–2018. We note that generally the most recent year's traffic figures are not included in the NPRM, which comes out before the end of the previous year's season, but are included in the final rule of the annual ratemaking.

The commenter also urged the Coast Guard to ''require Pilot Association financials to provide individual pilot compensation data, screened to protect individual pilot identities, as part of the standard annual financial reports.'' [68] The commenter suggests that this information is ''critical in evaluating frequent, but vague and non-empirical justifications based on recruitment, retention, and attrition of pilots proffered by the Coast Guard to [increase pilot compensation].'' [69] While, as stated above, the Coast Guard believes this information could be used to more accurately compare the compensation of Great Lakes pilots to known salaries of pilots in other pilot associations, we would need more specific suggestions on how this information would be incorporated into the ratemaking methodology before considering requiring it.

b. Disparity of Rates Between U.S. and Canadian Pilotage

One commenter raised questions about the difference between U.S. and Canadian pilotage cost structures. The commenter stated that ''sample comparisons of the costs of U.S. versus Canadian pilotage on the same or similar voyages by the same or similar vessels show that U.S. pilotage costs are often nearly twice as high as those of the

Regulatory Affairs (OIRA) approves this ICR amendment, we will not enforce this collection.

[63] The study is available at *http://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Marine-Transportation-Systems-CG-5PW/Office-of-Waterways-and-Ocean-Policy/Office-of-Waterways-and-Ocean-Policy-Great-Lakes-Pilotage-Div/.*

[64] USCG–2018–0665–0010, p.3.

[65] USCG–2018–0665–0010, p.5.

[66] USCG–2018–0665–0010, p.6.

[67] We also note that the commenters may be including revenue from non-compulsory pilotage in their realized revenue calculations. We note that the current methodology does count revenue from this source in developing the target revenue.

[68] USCG–2018–0665–0010, p.6.

[69] USCG–2018–0665–0010, p.6.

Canadian counterparts.'' [70] The commenter cites a CPCS report, which contains an example where a vessel was billed $21,054 for an American pilot and $6,431 for a Canadian pilot, while the two pilots were simultaneously deployed in a double-pilotage situation.[71] The commenter asked why the rates were so different, and what justified the difference in rates.

The Coast Guard is aware that the U.S. and Canada do not bill for service in identical ways. One significant difference between the U.S. and Canada is that the U.S. has three different Districts that must each support themselves, whereas the Canadian GLPA operates as a unified whole. This means that there may be a level of cross-subsidization among Canadian pilots that is impossible to replicate on the American side, which could result in higher rates in some areas (and lower rates in others).[72] Simple anecdotal comparisons on a single voyage do not provide the Coast Guard with the comprehensive information needed to determine if there is a system-wide problem with rates or if we are merely seeing a rare, if extreme, incident.

I. Out-of-Scope Issues

Industry commenters provided several comments that are not directly pertinent to this ratemaking action. These included comments on pilotage charges assessed early and late in the navigation season, where charges may accrue while a vessel is not under active navigation. Industry commenters also requested development of a mechanism for an alternative provision of pilotage services, as well as a mechanism by which money collected in previous years under a system found to be arbitrary by a court could be refunded, such as through a ''negative surcharge'' or other means. Comments also addressed various issues relating to labor disputes, disputed instances where a tug is requested by a pilot, and issues regarding delays caused by various factors outside a ship's control.

The Coast Guard is not addressing these comments in this document, as they are out of the scope of the ratemaking action. We note that this regulation is narrowly confined to the actual hourly rates charged in 2019 and the data and calculations used to develop those rates. If industry commenters wish to address these concerns in a separate process, they are encouraged to reach out by formal or informal means to the Great Lakes Pilotage Office or submit a petition for rulemaking laying out specific changes to the program they would like to see and include supporting data.

J. Changes Resulting From Litigation

On February 19, 2019, the United States Court for the District of Columbia issued an opinion in St. Lawrence Seaway Pilots Association *et al.* v. United States Coast Guard.[73] The District Court held that paragraph (b)(6) of 33 CFR 404.2, which states that legal fees incurred in litigation against the Coast Guard cannot be recouped as operating expenses, had been improperly promulgated, and vacated the provision. In this final rule we are removing that paragraph from section 404.2. While we did not propose removing this text in the NPRM, because the text has been vacated by judicial order after publication of the NPRM, under 5 U.S.C. 553(b)(B), notice and comment is unnecessary.

VI. Discussion of Current Rate Adjustments

In this final rule, based on the current methodology described in the previous section, the Coast Guard is establishing new pilotage rates for 2019. This section discusses the rate changes using the ratemaking steps provided in 46 CFR part 404. We will detail each step of the ratemaking procedure to show how we arrived at the established new rates.

We conducted the 2019 ratemaking as an ''interim year,'' rather than a full ratemaking. Thus, for this purpose, the Coast Guard will adjust the compensation benchmark pursuant to § 404.104(b) rather than § 404.104(a).

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 2016 expenses and revenues.[74] For accounting purposes, the financial reports divide expenses into designated and undesignated areas. In certain instances, for example, costs are applied to the undesignated or designated area based on where they were actually accrued. For example, costs for ''Applicant pilot license insurance'' in District One are assigned entirely to the undesignated areas, as applicant pilots work exclusively in those areas. For costs that are accrued to the pilot associations generally, for example, pilot insurance, the cost is divided between the designated and undesignated areas on a *pro rata* basis. The recognized operating expenses for the three districts are laid out in tables 3 through 5.

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 three years to reimburse. The rationale for using surcharges to cover these expenses, rather than including the costs as operating expenses, was so that retiring pilots would not have to cover the costs of training their replacements. Because operating expenses incurred are not actually recouped for a period of three years, beginning in 2016, the Coast Guard added a $150,000 surcharge per applicant pilot to recoup those costs in the year incurred. To ensure that the ratepayers are not double-billed for the same expense(s), we deduct the amount collected via surcharges from the operating expenses. For that reason, the Coast Guard has established a ''surcharge adjustment from 2016'' as part of its adjustment for each pilotage district. This surcharge adjustment reflects the additional monies that were collected by the surcharge that year. We note that in 2016, there was no mechanism to prevent the collection of surcharges above the authorized amounts, and so the amounts we deducted from each association's operating expenses are equal to the actual amount of surcharges collected in the 2016 shipping season, which are in excess of $150,000 per applicant pilot.

The Coast Guard also deducted 3 percent of the ''shared counsel'' expenses for each district, to account for lobbying expenditures, which we do not consider ''reasonable and necessary'' to conduct operations (with the exception of District 3, for reasons described in the ''Operating Expenses'' section above).

For each of the analyses of the operating expenses below, we explained in the NPRM why we established the Director's adjustments, other than the surcharge adjustments and lobbying expenses, described above. Other adjustments were made by the auditors and are explained in the auditor's reports, which are available in the docket for this rulemaking. Numbers by the entries are references to descriptions in the auditor's reports. Finally, we note

[70] USCG–2018–0665–0010, p.3.

[71] USCG–2018–0665–0010, exhibit 3, p.8.

[72] The inability to replicate the possible sharing of costs across the entire Canadian system is exacerbated by the fact that only Canadian pilots provide pilotage services in Area 3.

[73] 357 F. Supp. 3d 30.

[74] These reports are available in the docket for this rulemaking (see Docket #USCG–2018–0665).

that several changes to the NPRM's proposed operating expenses have been made as a result of the notice and comment process—described above in the ''Operating Costs'' portion of Section V.

TABLE 3—2016 RECOGNIZED EXPENSES FOR DISTRICT ONE

District One	Designated	Undesignated	Total
Reported Expenses for 2016	St. Lawrence River	Lake Ontario	
Costs Relating to Pilots:			
Pilot subsistence/travel	$421,749	$336,384	$758,133
Subsistence/Travel—Pilots (D1–16–01)	−70,224	−34,846	−105,070
License insurance	40,464	28,269	68,733
Payroll taxes	111,279	90,179	201,458
Payroll taxes—Pilots (D1–16–03)	0	−2,509	−2,509
Training	17,198	13,717	30,915
Training—Pilots (D1–16–04)	−594	0	−594
Other	842	672	1,514
Total costs relating to pilots	520,714	431,866	952,580
Applicant Pilots:			
Wages	70,700	90,000	160,700
Wages (D1–16–02)	0	28,054	28,054
Subsistence/Travel	0	146,219	146,219
Subsistence/Travel—Trainees (D1–16–02)	−12,283	−20,589	−32,872
Benefits	0	0	0
Payroll taxes	8,039	11,123	19,162
Payroll taxes—Trainees (D1–16–03)	0	−5,115	−5,115
Surcharge Offset—Director's Adjustment	−318,117	−253,649	−571,766
Total applicant pilot costs	−251,661	−3,957	−255,618
Pilot Boat and Dispatch Costs:			
Pilot boat expense	209,800	167,335	377,135
Dispatch expense	51,240	31,705	82,945
Payroll taxes	16,007	12,767	28,774
Total pilot and dispatch costs	277,047	211,807	488,854
Administrative Expenses:			
Legal—general counsel	4,565	3,641	8,206
Legal—shared (K&L Gates) (D1–16–05)	20,558	16,397	36,955
Legal—shared (K&L Gates) (D1–16–05)	−713	−713	−1,426
Legal—shared counsel 3% lobbying fee (K&L Gates) (Director's Adjustment)	−617	−492	−1,109
Office rent	0	0	0
Insurance	21,869	17,443	39,312
Employee benefits—Admin	9,428	7,519	16,947
Payroll taxes—Admin	6,503	5,187	11,690
Other taxes	274,503	218,941	493,444
Admin Travel	2,346	1,871	4,217
Depreciation/Auto leasing/Other	65,971	52,618	118,589
Interest	20,688	16,501	37,189
Dues and Subscriptions (incl. APA) (D1–16–05)	29,687	13,959	43,646
Dues and Subscriptions (incl. APA) (D1–16–05)	−1,079	−1,079	−2,158
Utilities	12,318	9,578	21,896
Salaries—Admin	65,401	52,163	117,564
Accounting/Professional fees	5,479	3,921	9,400
Other	23,456	18,708	42,164
Total Administrative Expenses	560,363	436,163	996,526
Capital Expenditures:			
Property Acquisition (Directors Adjustment)	280,164	186,776	466,940
Total Operating Expenses	1,386,627	1,262,655	2,649,282

TABLE 4—2016 RECOGNIZED EXPENSES FOR DISTRICT TWO

District Two	Undesignated	Designated	Total
Reported expenses for 2016	Lake Erie	SES to Port Huron	
Pilot-related expenses:			
Pilot subsistence/travel	$131,956	$197,935	$329,891
Pilot subsistence/travel CPA Adjustment (D2–16–01)	−44,955	−67,433	−112,388
License insurance	10,095	15,142	25,237
License Insurance CPA Adjustment (D2–16–03)	−635	−953	−1,588

TABLE 4—2016 RECOGNIZED EXPENSES FOR DISTRICT TWO—Continued

District Two	Undesignated	Designated	Total
Reported expenses for 2016	Lake Erie	SES to Port Huron	
Payroll taxes	77,306	115,958	193,264
Total Pilot-related expenses	173,767	260,649	434,416
Expenses related to applicant pilots:			
Wages (from supplemental form)	228,499	342,749	571,248
Wages—Director's Adjustment	−125,472	−188,209	−313,681
Benefits (from supplemental form)	9,736	14,605	24,341
Benefits—Director's Adjustment	60,031	0	60,031
Applicant pilot Subsistence/Travel	43,905	65,858	109,763
Applicant Pilot subsistence/travel CPA Adjustment (D2–16–02)	−14,940	−22,410	−37,350
Housing Allowance CPA Adjustment (D2–16–02)	14,940	22,410	37,350
Payroll taxes	15,144	22,717	37,861
2016 Surcharge Offset Director's Adjustment	−158,640	−277,106	−435,746
Total applicant pilot expenses	73,203	−19,386	53,817
Pilot Boat and Dispatch Costs:			
Pilot boat expense	205,572	308,359	513,931
Dispatch expense	8,520	12,780	21,300
Employee benefits	75,405	113,107	188,512
Payroll taxes	10,305	15,457	25,762
Total pilot and dispatch costs	299,802	449,703	749,505
Administrative Expenses:			
Office rent	26,275	39,413	65,688
Office Rent CPA Adjustment	4,766	7,150	11,916
Legal—general counsel	1,624	2,437	4,061
Legal—shared counsel (K&L Gates)	13,150	19,725	32,875
Legal—shared counsel CPA Adjustment	−526	−789	−1,315
Legal—shared counsel 3% lobbying fee (K&L Gates) (Director's Adjustment)	−395	−592	−987
Employee Benefits—Admin Employees	59,907	89,861	149,768
Employee benefits (Director's Adjustment)	−30,200	−60,400	−90,600
Workman's compensation—pilots	74,561	111,841	186,402
Payroll taxes—admin employees	5,688	8,532	14,220
Insurance	10,352	15,529	25,881
Other taxes	9,149	13,723	22,872
Administrative Travel	18,205	27,307	45,512
Administrative Travel (D2–16–06)	−153	−229	−382
Depreciation/auto leasing/other	39,493	59,239	98,732
Depreciation/Auto leasing/Other CPA Adjustment (D2–16–03)	−221	−332	−553
Interest	6,224	9,336	15,560
APA Dues	17,145	25,717	42,862
APA Dues CPA Adjustment (D2–16–04)	−815	−1,223	−2,038
Utilities	16,748	25,121	41,869
Salaries	55,426	83,139	138,565
Accounting/Professional fees	12,520	18,780	31,300
Other	128,093	192,139	320,232
Other CPA Adjustment (D2–16–07)	−221	−332	−553
Total Administrative Expenses	466,795	685,092	1,151,887
Total Operating Expenses	1,013,567	1,376,058	2,389,625

TABLE 5—2016 RECOGNIZED EXPENSES FOR DISTRICT THREE

District Three	Undesignated	Designated	Total
Reported Expenses for 2016	Lakes Huron and Michigan and Lake Superior	St. Mary's River	
Pilotage Costs:			
Pilot subsistence/travel	$378,014	$100,485	$478,499
Pilot subsistence/Travel (D3–16–01)	−50,285	−13,367	−63,652
Pilot subsistence/Travel director's adjustment (housing allowance)	0	−36,900	−36,900
License insurance	21,446	5,701	27,147
Payroll taxes	194,159	51,612	245,771
Other	19,193	72,202	91,395

TABLE 5—2016 RECOGNIZED EXPENSES FOR DISTRICT THREE—Continued

District Three	Undesignated	Designated	Total
Reported Expenses for 2016	Lakes Huron and Michigan and Lake Superior	St. Mary's River	
Total Pilotage Costs	562,527	179,733	742,260
Applicant Pilots:			
Wages	610,433	162,267	772,700
Benefits	160,265	26,644	186,909
Subsistence/travel	170,089	45,214	215,303
Payroll taxes	50,561	13,440	64,001
Training	11,642	3,095	14,737
Surcharge Adjustment	−1,106,339	−235,673	−1,342,012
Total applicant pilotage costs	−103,349	14,987	−88,362
Pilot Boat and Dispatch Costs:			
Pilot boat costs	580,822	154,396	735,218
Pilot boat costs (D3–16–02)	−72,724	−19,332	−92,056
Dispatch costs	146,220	38,868	185,088
Employee benefits	6,517	1,733	8,250
Payroll taxes	15,745	4,186	19,931
Total pilot boat and dispatch costs	676,580	179,851	856,431
Administrative Expenses:			
Legal—general counsel	22,196	5,900	28,096
Legal—shared counsel (K&L Gates)	34,020	9,043	43,063
Office rent	6,978	1,855	8,833
Insurance	14,562	3,871	18,433
Employee benefits	103,322	27,465	130,787
Payroll Taxes (administrative employees)	6,540	1,739	8,279
Other taxes	1,338	356	1,694
Depreciation/auto leasing/other	46,016	12,232	58,248
Interest	2,775	738	3,513
APA Dues	24,760	6,582	31,342
Utilities	38,763	10,304	49,067
Administrative Salaries	94,371	25,086	119,457
Accounting/Professional fees	31,877	8,474	40,351
Pilot Training	35,516	9,441	44,957
Other	13,619	3,621	17,240
Other expenses (D3–16–03)	−$2,054	−$546	−$2,600
Total Administrative Expenses	474,599	126,161	600,760
Total Operating Expenses	1,610,357	500,732	2,111,089

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

Having identified the recognized 2016 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. The Coast Guard calculated inflation using the BLS data from the CPI for the Midwest Region of the United States [75] and reports from the Federal Reserve.[76] Based on that information, the calculations for Step 1 are as follows:

TABLE 6—ADJUSTED OPERATING EXPENSES FOR DISTRICT ONE

	Designated	Undesignated	Total
Total Operating Expenses (Step 1)	$1,386,627	$1,262,655	$2,649,282
2017 Inflation Modification (@1.7%)	23,573	21,465	45,038
2018 Inflation Modification (@1.9%)	26,794	24,398	51,192
2019 Inflation Modification (@2.1%)	30,177	27,479	57,656
Adjusted 2019 Operating Expenses	1,467,171	1,335,997	2,803,168

[75] Available at *https://www.bls.gov/regions/midwest/data/consumerpriceindexhistorical_midwest_table.pdf.* Specifically the Consumer Price Index is defined as "All Urban Consumers (CPI–U), All Items, 1982−4 = 100". Downloaded January 31, 2019.

[76] Available at *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20180613.pdf.* We used the PCE median inflation value found in Table 1, Downloaded January 31, 2019.

TABLE 7—ADJUSTED OPERATING EXPENSES FOR DISTRICT TWO

	Undesignated	Designated	Total
Total Operating Expenses (Step 1)	$1,013,567	$1,376,058	$2,389,625
2017 Inflation Modification (@1.7%)	17,231	23,393	40,624
2018 Inflation Modification (@1.9%)	19,585	26,590	46,175
2019 Inflation Modification (@2.1%)	22,058	29,947	52,005
Adjusted 2019 Operating Expenses	1,072,441	1,455,988	2,528,429

TABLE 8—ADJUSTED OPERATING EXPENSES FOR DISTRICT THREE

	Undesignated	Designated	Total
Total Operating Expenses (Step 1)	$1,610,357	$500,732	$2,111,089
2017 Inflation Modification (@1.7%)	27,376	8,512	35,888
2018 Inflation Modification (@1.9%)	31,117	9,676	40,793
2019 Inflation Modification (@2.1%)	35,046	10,897	45,943
Adjusted 2019 Operating Expenses	1,703,896	529,817	2,233,713

C. Step 3: Estimate Number of Working Pilots

In accordance with the text in § 404.103, we estimated the number of working pilots in each district. Based on input from the Saint Lawrence Seaway Pilots Association, we estimate that there will be 17 working pilots in 2019 in District One. Based on input from the Lakes Pilots Association, we estimate there will be 14 working pilots in 2019 in District Two. Based on input from the Western Great Lakes Pilots Association, we estimate there will be 20 working pilots in 2019 in District Three.

Furthermore, based on the staffing model employed to develop the total number of pilots needed, we assign a certain number of pilots to designated waters and a certain number to undesignated waters. These numbers are used to determine the amount of revenue needed in their respective areas.

TABLE 9—AUTHORIZED PILOTS

	District One	District Two	District Three
Maximum number of pilots (per § 401.220(a)) [77]	17	15	22
2019 Authorized pilots (total)	17	14	20
Pilots assigned to designated areas	10	7	4
Pilots assigned to undesignated areas	7	7	16

D. Step 4: Determine Target Pilot Compensation Benchmark

In this step, we determine the total pilot compensation for each area. Because this is an ''interim'' ratemaking this year, we follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark by inflation. Because we do not have a value for the employment cost index for 2019, we multiply last year's compensation benchmark by the Median PCE Inflation of 2.1 percent.[78] Based on the projected 2019 inflation estimate, the compensation benchmark for 2019 is $359,887 per pilot.

Next, we certify that the number of pilots estimated for 2019 is less than or equal to the number permitted under the staffing model in § 401.220(a). The staffing model suggests that the number of pilots needed is 17 pilots for District One, 15 pilots for District Two, and 22 pilots for District Three,[79] which is more than or equal to the numbers of working pilots provided by the pilot associations.

Thus, in accordance with § 404.104(c), we use the revised target individual compensation level to derive the total pilot compensation by multiplying the individual target compensation by the estimated number of working pilots for each district, as shown in tables 10–12.

TABLE 10—TARGET COMPENSATION FOR DISTRICT ONE

	Designated	Undesignated	Total
Target Pilot Compensation	$359,887	$359,887	$359,887
Number of Pilots	10	7	17
Total Target Pilot Compensation	$3,598,870	$2,519,209	$6,118,079

[77] For a detailed calculation of the staffing model, see 82 FR 41466, table 6 on p. 41480 (August 31, 2017).

[78] *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20180613.pdf.*

[79] See Table 6 of the 2017 final rule, 82 FR 41466 at 41480 (August 31, 2017). The methodology of the staffing model is discussed at length in the final rule (see pages 41476–41480 for a detailed analysis of the calculations).

TABLE 11—TARGET COMPENSATION FOR DISTRICT TWO

	Undesignated	Designated	Total
Target Pilot Compensation	$359,887	$359,887	$359,887
Number of Pilots	7	7	14
Total Target Pilot Compensation	$2,519,209	$2,519,209	$5,038,418

TABLE 12—TARGET COMPENSATION FOR DISTRICT THREE

	Undesignated	Designated	Total
Target Pilot Compensation	$359,887	$359,887	$359,887
Number of Pilots	16	4	20
Total Target Pilot Compensation	$5,758,192	$1,439,548	$7,197,740

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, that number is 3.93 percent.[80] By multiplying the two figures, we get the working capital fund contribution for each area, as shown in tables 13–15.

TABLE 13—WORKING CAPITAL FUND CALCULATION FOR DISTRICT ONE

	Designated	Undesignated	Total
Adjusted Operating Expenses (Step 2)	$1,467,171	$1,335,997	$2,803,168
Total Target Pilot Compensation (Step 4)	3,598,870	2,519,209	6,118,079
Total 2019 Expenses	5,066,041	3,855,206	8,921,247
Working Capital Fund (3.93%)	199,095	151,510	350,605

TABLE 14—WORKING CAPITAL FUND CALCULATION FOR DISTRICT TWO

	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2)	$1,072,441	$1,455,988	$2,528,429
Total Target Pilot Compensation (Step 4)	2,519,209	2,519,209	5,038,418
Total 2019 Expenses	3,591,650	3,975,197	7,566,847
Working Capital Fund (3.93%)	141,152	156,225	297,377

TABLE 15—WORKING CAPITAL FUND CALCULATION FOR DISTRICT THREE

	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2)	$1,703,896	$529,817	$2,233,713
Total Target Pilot Compensation (Step 4)	5,758,192	1,439,548	7,197,740
Total 2019 Expenses	7,462,088	1,969,365	9,431,453
Working Capital Fund (3.93%)	293,260	77,396	370,656

F. Step 6: Project Needed Revenue

In this step, we add up 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 tables 16 through 18.

[80] Moody's Seasoned Aaa Corporate Bond Yield, average of 2018 monthly data. The Coast Guard uses the most recent complete year of data. See *https://fred.stlouisfed.org/series/AAA.* (February 14, 2019)

TABLE 16—REVENUE NEEDED FOR DISTRICT ONE

	Designated	Undesignated	Total
Adjusted Operating Expenses (Step 2)	$1,467,171	$1,335,997	$2,803,168
Total Target Pilot Compensation (Step 4)	3,598,870	2,519,209	6,118,079
Working Capital Fund (Step 5)	199,095	151,510	350,605
Total Revenue Needed	5,265,136	4,006,716	9,271,852

TABLE 17—REVENUE NEEDED FOR DISTRICT TWO

	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2)	$1,072,441	$1,455,988	$2,528,429
Total Target Pilot Compensation (Step 4)	2,519,209	2,519,209	5,038,418
Working Capital Fund (Step 5)	141,152	156,225	297,377
Total Revenue Needed	3,732,802	4,131,422	7,864,224

TABLE 18—REVENUE NEEDED FOR DISTRICT THREE

	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2)	$1,703,896	$529,817	$2,233,713
Total Target Pilot Compensation (Step 4)	5,758,192	1,439,548	7,197,740
Working Capital Fund (Step 5)	293,260	77,396	370,656
Total Revenue Needed	7,755,348	2,046,761	9,802,109

G. Step 7: Calculate Initial Base Rates

Having determined the revenue needed for each area in the previous six steps, the Coast Guard divides that number by the expected number of hours of traffic to develop an hourly rate. Step 7 is a two-part process. In the first part, we calculate the 10-year average of traffic in each district. Because we are calculating separate figures for designated and undesignated waters, there are two parts for each calculation. The calculations are shown in tables 19 through 21.

TABLE 19—TIME ON TASK FOR DISTRICT ONE

Year	Designated	Undesignated
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
2009	3,511	3,947
Average	5,657	6,248

TABLE 20—TIME ON TASK FOR DISTRICT TWO

Year	Undesignated	Designated
2018	6,150	6,655
2017	5,139	6,074
2016	6,425	5,615
2015	6,535	5,967
2014	7,856	7,001
2013	4,603	4,750
2012	3,848	3,922
2011	3,708	3,680
2010	5,565	5,235
2009	3,386	3,017
Average	5,322	5,192

TABLE 21—TIME ON TASK FOR DISTRICT THREE

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

Next, we derive the initial hourly rate by dividing the revenue needed by the average number of hours for each area. This produces an initial rate needed 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 tables 22 through 24.

TABLE 22—INITIAL RATE CALCULATIONS FOR DISTRICT ONE

	Designated	Undesignated
Revenue needed (Step 6)	$5,265,136	$4,006,716
Average time on task (hours)	5,657	6,248
Initial rate	$931	$641

TABLE 23—INITIAL RATE CALCULATIONS FOR DISTRICT TWO

	Undesignated	Designated
Revenue needed (Step 6)	$3,732,802	$4,131,422
Average time on task (hours)	5,322	5,192
Initial rate	$701	$796

TABLE 24—INITIAL RATE CALCULATIONS FOR DISTRICT THREE

	Undesignated	Designated
Revenue needed (Step 6)	$7,755,348	$2,046,761
Average time on task (hours)	19,476	2,651
Initial rate	$398	$772

H. Step 8: Calculate Average Weighting Factors by Area

In this step, the Coast Guard calculates the average weighting factor for each designated and undesignated area. We collect the weighting factors, as 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 25 through 30.

TABLE 25—AVERAGE WEIGHTING FACTOR FOR DISTRICT 1, 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 2 (2014)	285	1.15	327.75
Class 2 (2015)	295	1.15	339.25
Class 2 (2016)	185	1.15	212.75
Class 2 (2017)	352	1.15	404.8
Class 2 (2018)	559	1.15	642.85
Class 3 (2014)	50	1.3	65

TABLE 25—AVERAGE WEIGHTING FACTOR FOR DISTRICT 1, DESIGNATED AREAS—Continued

Vessel class/year	Number of transits	Weighting factor	Weighted transits
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	1.30	111.8
Class 4 (2014)	271	1.45	392.95
Class 4 (2015)	251	1.45	363.95
Class 4 (2016)	214	1.45	310.3
Class 4 (2017)	285	1.45	413.25
Class 4 (2018)	393	1.45	569.85
Total	3,556		4,528
Average weighting factor (weighted transits/number of transits)		1.27	

TABLE 26—AVERAGE WEIGHTING FACTOR FOR DISTRICT 1, 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 2 (2014)	238	1.15	273.7
Class 2 (2015)	263	1.15	302.45
Class 2 (2016)	169	1.15	194.35
Class 2 (2017)	290	1.15	333.5
Class 2 (2018)	352	1.15	404.8
Class 3 (2014)	60	1.3	78
Class 3 (2015)	42	1.3	54.6
Class 3 (2016)	28	1.3	36.4
Class 3 (2017)	45	1.3	58.5
Class 3 (2018)	63	1.30	81.9
Class 4 (2014)	289	1.45	419.05
Class 4 (2015)	269	1.45	390.05
Class 4 (2016)	222	1.45	321.9
Class 4 (2017)	285	1.45	413.25
Class 4 (2018)	382	1.45	553.9
Total	3,109		4,028.35
Average weighting factor (weighted transits/number of transits)		1.30	

TABLE 27—AVERAGE WEIGHTING FACTOR FOR DISTRICT 2, 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 2 (2014)	356	1.15	409.4
Class 2 (2015)	354	1.15	407.1
Class 2 (2016)	380	1.15	437
Class 2 (2017)	222	1.15	255.3
Class 2 (2018)	123	1.15	141.45
Class 3 (2014)	20	1.3	26
Class 3 (2015)	0	1.3	0
Class 3 (2016)	9	1.3	11.7
Class 3 (2017)	12	1.3	15.6
Class 3 (2018)	3	1.3	3.9
Class 4 (2014)	636	1.45	922.2
Class 4 (2015)	560	1.45	812
Class 4 (2016)	468	1.45	678.6
Class 4 (2017)	319	1.45	462.55
Class 4 (2018)	196	1.45	284.2

TABLE 27—AVERAGE WEIGHTING FACTOR FOR DISTRICT 2, UNDESIGNATED AREAS—Continued

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Total	3,814		5,023
Average weighting factor (weighted transits/number of transits)		1.32	

TABLE 28—AVERAGE WEIGHTING FACTOR FOR DISTRICT 2, 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 2 (2014)	237	1.15	272.55
Class 2 (2015)	217	1.15	249.55
Class 2 (2016)	224	1.15	257.6
Class 2 (2017)	127	1.15	146.05
Class 2 (2018)	153	1.15	175.95
Class 3 (2014)	8	1.3	10.4
Class 3 (2015)	8	1.3	10.4
Class 3 (2016)	4	1.3	5.2
Class 3 (2017)	4	1.3	5.2
Class 3 (2018)	14	1.30	18.2
Class 4 (2014)	359	1.45	520.55
Class 4 (2015)	340	1.45	493
Class 4 (2016)	281	1.45	407.45
Class 4 (2017)	185	1.45	268.25
Class 4 (2018)	379	1.45	549.55
Total	2,660		3,509.9
Average weighting factor (weighted transits/number of transits)		1.32	

TABLE 29—AVERAGE WEIGHTING FACTOR FOR DISTRICT 3, 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 2 (2014)	274	1.15	315.1
Class 2 (2015)	207	1.15	238.05
Class 2 (2016)	236	1.15	271.4
Class 2 (2017)	264	1.15	303.6
Class 2 (2018)	169	1.15	194.35
Class 3 (2014)	15	1.3	19.5
Class 3 (2015)	8	1.3	10.4
Class 3 (2016)	10	1.3	13
Class 3 (2018)	9	1.30	11.7
Class 3 (2017)	19	1.3	24.7
Class 4 (2014)	394	1.45	571.3
Class 4 (2015)	375	1.45	543.75
Class 4 (2016)	332	1.45	481.4
Class 4 (2017)	367	1.45	532.15
Class 4 (2018)	337	1.45	488.65
Total for Area 6	3,504		4,507.05
Area 8:			
Class 1 (2014)	3	1	3
Class 1 (2015)	0	1	0
Class 1 (2016)	4	1	4
Class 1 (2017)	4	1	4
Class 1 (2018)	0	1	0
Class 2 (2014)	177	1.15	203.55
Class 2 (2015)	169	1.15	194.35

TABLE 29—AVERAGE WEIGHTING FACTOR FOR DISTRICT 3, UNDESIGNATED AREAS—Continued

Vessel class/year	Number of transits	Weighting factor	Weighted transits
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 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	1.30	9.1
Class 4 (2014)	243	1.45	352.35
Class 4 (2015)	253	1.45	366.85
Class 4 (2016)	204	1.45	295.8
Class 4 (2017)	269	1.45	390.05
Class 4 (2018)	188	1.45	272.6
Total for Area 8	1,976		2,623.1
Combined total	5,480		7,130.15
Average weighting factor (weighted transits/number of transits)		1.30	

TABLE 30—AVERAGE WEIGHTING FACTOR FOR DISTRICT 3, DESIGNATED AREAS

Vessel class/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 2 (2014)	221	1.15	254.15
Class 2 (2015)	145	1.15	166.75
Class 2 (2016)	174	1.15	200.1
Class 2 (2017)	170	1.15	195.5
Class 2 (2018)	126	1.15	144.9
Class 3 (2014)	4	1.3	5.2
Class 3 (2015)	0	1.3	0
Class 3 (2016)	6	1.3	7.8
Class 3 (2017)	14	1.3	18.2
Class 3 (2018)	6	1.3	7.8
Class 4 (2014)	321	1.45	465.45
Class 4 (2015)	245	1.45	355.25
Class 4 (2016)	191	1.45	276.95
Class 4 (2017)	234	1.45	339.3
Class 4 (2018)	225	1.45	326.25
Total	2,296		2,977.6
Average weighting factor (weighted transits/number of transits)		1.30	

I. Step 9: Calculate Revised Base Rates

In this step, the Coast Guard revised 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 31.

TABLE 31—REVISED BASE RATES

Area	Initial rate (Step 7)	Average weighting factor (Step 8)	Revised rate (initial rate/ average weighting factor)
District One: Designated	$931	1.27	$733
District One: Undesignated	641	1.30	493
District Two: Undesignated	701	1.32	531
District Two: Designated	796	1.32	603

TABLE 31—REVISED BASE RATES—Continued

Area	Initial rate (Step 7)	Average weighting factor (Step 8)	Revised rate (initial rate/ average weighting factor)
District Three: Undesignated	398	1.30	306
District Three: Designated	772	1.30	594

J. Step 10: Review and Finalize Rates

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish that the rates do meet the goal of ensuring safe, efficient and reliable pilotage, the Director considered whether the rates incorporate appropriate compensation for pilots to handle heavy traffic periods and whether there are sufficient pilots to handle those heavy traffic periods. Also, the Director considered whether the rates will cover operating expenses and infrastructure costs, and took average traffic and weighting factors into consideration. Finally, in giving consideration to the public interest, we estimated that the new shipping rates would not have a negative impact on the competitive market for regional shipping services. Based on this information, the Director is not establishing any alterations to the rates in this step. We then modified the text in § 401.405(a) to reflect the final rates, also shown in table 32.

TABLE 32—FINAL RATES

Area	Name	Final 2018 pilotage rate	Proposed 2019 pilotage rate	Final 2019 pilotage rate
District One: Designated	St. Lawrence River	$653	$698	$733
District One: Undesignated	Lake Ontario	435	492	493
District Two: Undesignated	Lake Erie	497	530	531
District Two: Designated	Navigable waters from Southeast Shoal to Port Huron, MI.	593	632	603
District Three: Undesignated	Lakes Huron, Michigan, and Superior	271	304	306
District Three: Designated	St. Mary's River	600	602	594

K. Surcharges

Because there are several applicant pilots in 2019, the Coast Guard is levying surcharges to cover the costs needed for training expenses. Consistent with previous years, we are assigning a cost of $150,000 per applicant pilot. To develop the surcharge, we multiply the number of applicant pilots by the average cost per pilot to develop a total amount of training costs needed, and then impose that amount as a surcharge to all areas in the respective district, consisting of a percentage of revenue needed. In this year, there are two applicant pilots for District One, one applicant pilot for District Two, and four applicant pilots for District Three. The calculations to develop the surcharges are shown in table 33. We note that while the percentages are rounded for simplicity, such rounding does not impact the revenue generated, as surcharges can no longer be collected once the surcharge total has been attained.

TABLE 33—SURCHARGE CALCULATIONS

	District One	District Two	District Three
Number of applicant pilots	2	1	4
Total applicant training costs	$300,000	$150,000	$600,000
Revenue needed (Step 6)	$9,271,852	$7,864,224	$9,802,109
Total surcharge as percentage (total training costs/revenue)	3%	2%	6%

VII. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (Reducing Regulation and

Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. Because this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* the OMB Memorandum titled, ''Guidance Implementing Executive Order 13771, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (April 5, 2017). A regulatory analysis follows.

The purpose of this rulemaking is to establish new base pilotage rates and surcharges for training. 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. Table 34 summarizes the affected population, costs, and benefits of the rate changes. The Coast Guard estimates an increase in cost of approximately $2.83 million to industry as a result of the change in revenue needed in 2019 when compared to the revenue needed in 2018.

TABLE 34—ECONOMIC IMPACTS DUE TO RATE CHANGES

Change	Description	Affected population	Costs	Benefits
Rate 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 256 vessels journeying the Great Lakes system annually, 51 U.S. Great Lakes pilots, and 3 pilotage associations.	$2,831,743 Due to change in revenue needed for 2019 ($27,988,185) from revenue needed for 2018 ($25,156,442) as shown in Table 36 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.

Table 35 summarizes the changes in the regulatory analysis from the NPRM to the final rule. The Coast Guard made these changes either as a result of public comments received after publication of the NPRM, or to incorporate more recent inflation, security, and traffic data that became available after the publication of the NPRM. An in-depth discussion of these comments is located in Section V of the preamble; ''Discussion of Comments.''

TABLE 35—SUMMARY OF CHANGES FROM NPRM TO FINAL RULE

Element of the analysis	NPRM	Final rule	Resulting change in RA
Changes Resulting from Public Comments and Errors in the NPRM			
Operating Expenses (Step 1)	Omitted District 1 capital expenditures.	Corrected this error to account for District 1 capital expenditures totaling $466,940.	Data affects the calculation of projected revenues.
	Omitted the cost of health care benefits for applicant pilots in both District 2 and District 3.	Corrected this error and adjusted the operating expenses to both District 2 and District 3 by $60,031.	
	Incorrectly deducted $1,292 from District 3 for legal fees.	Removed deduction	
	As the result of a mathematical error, we accidently excluded $77,051 worth of District 2 administrative expenses from the their total operating expenses.	Corrected this error	
	Total Operating Expenses from Step 1 (the sum of the totals from Tables 3–5): $6,484,651.	Total Operating Expenses from Step 1 (the sum of the totals from Tables 3–5): $7,149,996.	
Traffic and Transit data	Used incorrect 2017 traffic numbers for District 3.	Corrected this error	No impact on RA. Affects the calculation of the base rates, but not the projected revenues.

TABLE 35—SUMMARY OF CHANGES FROM NPRM TO FINAL RULE—Continued

Element of the analysis	NPRM	Final rule	Resulting change in RA
Pilotage Costs as a Percentage of Total Vessel Costs.	The RA included this analysis, which calculated pilotage costs as a percentage of total voyage costs.	Removed this analysis from the RA based on public comments on the underlying data.	Analysis is no longer included in the RA.
Changes that Incorporate the Most Recently Available Data			
Inflation and securities data	Used inflation and securities data through 2017, which was the most current year available.	Uses 2018 data when applicable and available.	Data affects the calculation of projected revenues.
Traffic and Transit data	Used traffic and transit data through 2017, which was the most current year available.	Uses 2018 data	No impact on RA. Affects the calculation of the base rates, but not the 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 2019 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 rulemaking will lead to an increase in the cost per unit of service to shippers in all three districts, and result in an estimated annual cost increase to shippers. We estimate this rule will increase the total payments made by shippers during the 2019 shipping season by approximately $2,831,743 when compared with total payments that were estimated in 2018, which is an 11 percent increase (table 36).[81]

A detailed discussion of our economic impact analysis follows.

Affected Population

This rule will impact U.S. Great Lakes pilots, the three pilot associations, and the owners and operators of oceangoing vessels that transit the Great Lakes annually. As discussed in Step 3 in Section VI.C of this preamble, there will be 51 pilots working during the 2019 shipping season. The shippers affected by these rate changes are those owners and operators of domestic vessels operating ''on register'' (employed in foreign trade) and owners and operators of non-Canadian foreign vessels on routes within the Great Lakes system. These owners and operators must have pilots or pilotage service as required by 46 U.S.C. 9302. There is no minimum tonnage limit or exemption for these vessels. The statute applies only to commercial vessels and not to recreational vessels. U.S.-flagged vessels not operating on register and Canadian ''lakers,'' which account for most commercial shipping on the Great Lakes, are not required by 46 U.S.C. 9302 to have pilots. However, these U.S.- and Canadian-flagged lakers may voluntarily choose to engage a Great Lakes registered pilot. Vessels that are U.S.-flagged may opt to have a pilot for varying reasons, such as unfamiliarity with designated waters and ports, or for insurance purposes.

The Coast Guard used billing information from the years 2015 through 2017 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. In Step 7 of the methodology, we use a 10-year average to estimate the traffic. We use three 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 three years of billing data is a better representation of the vessel population that is currently using pilotage services and would be impacted by this rulemaking. We found that 448 unique vessels used pilotage services during the years 2015 through 2017. That is, these vessels had a pilot dispatched to the vessel, and billing information was recorded in the GLPMS. Of these vessels, 418 were foreign-flagged vessels and 30 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 the total number of vessels over the time period, an average of the unique vessels using pilotage services from the years 2015 through 2017 is the best representation of vessels estimated to be affected by the rate in this rulemaking. From 2015 through 2017, an average of 256 vessels used pilotage services annually.[82] On average, 241 of these vessels were foreign-flagged vessels and 15 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 add new costs to shippers in the form of higher payments to pilots. The Coast Guard estimates the effect of the rate changes on shippers by comparing the total projected revenues needed to cover costs in 2018 with the total projected revenues to cover costs in 2019, including any temporary surcharges we have authorized. We set pilotage rates so that pilot associations receive enough revenue to cover their necessary and reasonable expenses. Shippers pay these rates when they have a pilot as required by 46 U.S.C. 9302. Therefore, the aggregate payments of shippers to pilot associations are equal to the projected necessary revenues for pilot associations. The revenues each year represent the total costs that shippers must pay for pilotage services, and the change in revenue from the previous year is the additional cost to shippers discussed in this rule.

[81] Total payments across all three districts are equal to the increase in payments incurred by shippers as a result of the rate changes plus the temporary surcharges applied to traffic in Districts One, Two, and Three.

[82] 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.

The impacts of the rate changes on shippers are estimated from the District pilotage projected revenues (shown in tables 15 through 17 of this preamble) and the surcharges described in Section VI.K of this preamble. The Coast Guard estimates that for the 2019 shipping season, the projected revenue needed for all three districts is $26,938,185. This $26,938,185 in revenue does not include the temporary surcharges on traffic in Districts One, Two, and Three which will be applied for the duration of the 2019 season in order for the pilotage associations to recover training expenses incurred for applicant pilots. We estimate that the pilotage associations will require $300,000, $150,000, and $600,000 in revenue for applicant training expenses in Districts One, Two, and Three, respectively. This will represent a total cost of $1,050,000 to shippers during the 2019 shipping season. Adding the projected revenue of $26,938,185 to the surcharges, we estimate the pilotage associations' total projected revenue needed for 2019 will be $27,988,185.

To estimate the additional cost to shippers from this rule, the Coast Guard compared the 2019 total projected revenues to the 2018 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 2018 rulemaking, [83] we estimated the total projected revenue needed for 2018, including surcharges, as $25,156,442. This is the best approximation of 2018 revenues as, at the time of this publication, we do not have enough audited data available for the 2018 shipping season to revise these projections. Table 36 shows the revenue projections for 2018 and 2019 and details the additional cost increases to shippers by area and district as a result of the rate changes and temporary surcharges on traffic in Districts One, Two, and Three.

TABLE 36—EFFECT OF THE RULE BY AREA AND DISTRICT

[$U.S.; non-discounted]

Area	Revenue needed in 2018	2018 Temporary surcharge	Total 2018 projected revenue	Revenue needed in 2019	2019 Temporary surcharge	Total 2019 projected revenue	Additional costs of this rule
Total, District 1	$7,988,670	$300,000	$8,288,670	$9,271,852	$300,000	$9,571,852	$1,283,182
Total, District 2	7,230,300	150,000	7,380,300	7,864,224	150,000	8,014,224	633,924
Total, District 3	8,887,472	600,000	9,487,472	9,802,109	600,000	10,402,109	914,637
System Total	24,106,442	1,050,000	25,156,442	26,938,185	1,050,000	27,988,185	2,831,743

The resulting difference between the projected revenue in 2018 and the projected revenue in 2019 is the annual change in payments from shippers to pilots as a result of the rate change imposed by this rule. The effect of the rate change to shippers varies by area and district. The rate changes, after taking into account the increase in pilotage rates and the addition of temporary surcharges, will lead to affected shippers operating in District One, District Two, and District Three experiencing an increase in payments of $1,283,182, $633,924, and $914,637, respectively, over the previous year. The overall adjustment in payments will be an increase in payments by shippers of $2,831,743 across all three districts (an 11 percent increase over 2018). 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 37 shows the difference in revenue by component from 2018 to 2019.[84] The majority of the increase in revenue is due to the inflation of operating expenses and to the addition of two pilots who were authorized in the 2018 rule. These two pilots were in training in 2018 and will become full-time working pilots at the beginning of the 2019 shipping season. The target compensation for these pilots is $359,887 per pilot. The addition of these pilots to full working status accounts for $719,774 of the increase ($1,082,472 when also including the effect of increasing compensation for 49 pilots). The remaining amount is attributed to increases in the working capital fund.

TABLE 37—DIFFERENCE IN REVENUE BY COMPONENT

Revenue component	Revenue needed in 2018	Revenue needed in 2019	Difference (2019 Revenue − 2018 Revenue)	Percentage increase from previous year (%)
Adjusted Operating Expenses	$5,965,599	$7,565,310	$1,599,711	27
Total Target Pilot Compensation	17,271,765	18,354,237	1,082,472	6
Working Capital Fund	869,078	1,018,638	149,560	17
Total Revenue Needed, without Surcharge	24,106,442	26,938,185	2,831,743	12
Surcharge	1,050,000	1,050,000	0	0
Total Revenue Needed, with Surcharge	25,156,442	27,988,185	2,831,743	11

[83] The 2018 projected revenues are from the 2018 Great Lakes Pilotage Ratemaking final rule (83 FR 26189), Table 41.

[84] The 2018 projected revenues are from the 2018 final rule (83 FR 26189), table 41. The 2019 projected revenues are from tables 15–17 of this rule.

Benefits

This rule will allow the Coast Guard to meet the requirements in 46 U.S.C. 9303 to review the rates for pilotage services on the Great Lakes. The rate changes will promote safe, efficient, and reliable pilotage service on the Great Lakes by: (1) Ensuring that rates cover an association's operating expenses; (2) providing fair pilot compensation, adequate training, and sufficient rest periods for pilots; and (3) ensuring the association produces 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, the Coast Guard has 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 the rule, the Coast Guard reviewed recent company size and ownership data for the vessels identified in the GLPMS, and we reviewed business revenue and size data provided by publicly available sources such as Manta [85] and ReferenceUSA.[86] As described in Section VII.A of this preamble, Regulatory Planning and Review, we found that a total of 448 unique vessels used pilotage services from 2015 through 2017. These vessels are owned by 57 entities. We found that of the 57 entities that own or operate vessels engaged in trade on the Great Lakes affected by this rule, 47 are foreign entities that operate primarily outside the United States. The remaining ten 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 Small Business Size Standards [87] to determine how many of these companies are small entities. Table 38 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 38—NAICS CODES AND SMALL ENTITIES SIZE STANDARDS

NAICS	Description	Small business size standard
238910	Site Preparation Contractors	$15 million.
483211	Inland Water Freight Transportation	750 employees.
487210	Scenic & Sightseeing Transportation, Water	$7.5 million.
488330	Navigational Services to Shipping	$38.5 million.
488510	Freight Transportation Arrangement	$15 million.
561510	Travel Agencies	$20.5 million.

Of the ten U.S. entities, nine exceed the SBA's small business standards for small businesses. To estimate the potential impact on the one small entity, the Coast Guard used their 2017 invoice data to estimate their pilotage costs in 2019. We increased their 2017 costs to account for the changes in pilotage rates resulting from this rule and the 2018 final rule (83 FR 26189).[88] We then estimated the change in cost to this entity resulting from this rule by subtracting their estimated 2018 costs from their estimated 2019 costs, and compared this change with their annual revenue. We also compared their total estimated 2019 pilotage cost to their annual revenue and in both cases their estimated pilotage cost was below 1 percent of their annual revenue. In addition, we do not expect the rule will significantly impact any of these ten entities, including the one small entity, because these U.S. entities operate U.S.-flagged vessels and are not required to have pilots as required by 46 U.S.C. 9302.

In addition to the owners and operators of vessels affected by this rule, there are three U.S. entities that will be affected by this rule that receive revenue from pilotage services. 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 industry classification and small-entity size standards described above, but they have fewer than 500 employees; combined, they have approximately 65 employees in total, and, therefore, they are designated as small entities. The Coast Guard expects no adverse effect on these entities from this rule because all associations will receive enough revenue to balance the projected expenses associated with the projected number of bridge hours (time on task) and pilots.

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 rulemaking will not affect a substantial number of small entities, nor have a significant economic impact on any of the affected 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, the Coast Guard offers to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. We will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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

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

[87] See: *https://www.sba.gov/document/support--table-size-standards*. SBA has established a Table of Small Business Size Standards, which sets small business sized 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 considered in order to remain classified as a small business for SBA and Federal contracting programs.

[88] For confidentiality reasons we are unable to provide this vessel's 2017 pilotage costs or its estimated 2018 and 2019 pilotage costs.

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). This rule will not change the burden in the collection currently approved by OMB under OMB Control Number 1625–0086, Great Lakes Pilotage Methodology.

E. Federalism

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The Coast Guard has analyzed this final rule under Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis follows.

Congress directed the Coast Guard to establish ''rates and charges for pilotage services.'' *See* 46 U.S.C. 9303(f). This regulation is issued pursuant to that statute and is preemptive of State law as specified in 46 U.S.C. 9306. Under 46 U.S.C. 9306, a ''State or political subdivision of a State may not regulate or impose any requirement on pilotage on the Great Lakes.'' As a result, States or local governments are expressly prohibited from regulating within this category. Therefore, this 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 federalism implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this rule has implications for federalism under Executive Order 13132, please contact the person listed in the **FOR FURTHER INFORMATION** section of this preamble.

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

This final 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 final 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

The Coast Guard has analyzed this final 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 final 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

The Coast Guard has 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, and the Administrator of OMB's Office of Information and Regulatory Affairs has not designated it as a significant energy action.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

The Coast Guard has analyzed this rule under Department of Homeland Security Management Directive 023–01and Commandant Instruction M16475.lD (COMDTINST M16475.1D), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is not likely to have a significant effect on the human environment. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under the **ADDRESSES** section of this preamble. This rule is categorically excluded under paragraph A3 of table 1, particularly subparts (a), (b), and (c) in Appendix A of DHS Directive 023–01(series). CATEX A3 pertains to promulgation of rules and procedures that are: (a) Strictly administrative or procedural in nature; (b) that implement, without substantive change, statutory or regulatory requirements; or (c) that implement, without substantive change, procedures, manuals, and other guidance documents. This rule adjusts base pilotage rates and surcharges for administering the 2019 shipping season in accordance with applicable statutory and regulatory mandates, and also makes technical changes to the Great Lakes pilotage ratemaking methodology.

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 part 401 as follows:

PART 401—GREAT LAKES PILOTAGE REGULATIONS

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

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

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

§ 401.405 Pilotage rates and charges.

(a) The hourly rate for pilotage service on—

(1) The St. Lawrence River is $733;

(2) Lake Ontario is $493;

(3) Lake Erie is $531;

(4) The navigable waters from Southeast Shoal to Port Huron, MI is $603;

(5) Lakes Huron, Michigan, and Superior is $306; and

(6) The St. Mary's River is $594.

* * * * *

PART 404—GREAT LAKES PILOTAGERATEMAKING

■ 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).

§ 404.2 [Amended]

■ 4. Amend § 404.2 by removing paragraph (b)(6).

§ 404.104 [Amended]

■ 5. Amend § 404.104 in paragraph (c) by removing the reference ''§ 404.103(d)'' and adding in its place ''§ 404.103''.

Dated: May 6, 2019.

John P. Nadeau,

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

[FR Doc. 2019–09657 Filed 5–9–19; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 181218999–9402–02]

RIN 0648–BI67

Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures for the 2019 Tribal and Non-Tribal Fisheries for Pacific Whiting, and Requirement To Consider Chinook Salmon Bycatch Before Reapportioning Tribal Whiting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule for the 2019 Pacific whiting fishery under the authority of the Pacific Coast Groundfish Fishery Management Plan, the Magnuson-Stevens Fishery Conservation and Management Act, and the Pacific Whiting Act of 2006. This final rule announces the 2019 U.S. Total Allowable Catch of 441,433 metric tons (mt) of Pacific whiting, establishes a tribal allocation of 77,251 mt, establishes a set-aside for research and bycatch of 1,500 mt, and announces the allocations of Pacific whiting to the non-tribal fishery for 2019. This final rule also amends the provisions regarding reapportionment of the treaty tribes' whiting allocation to the non-treaty sectors to require that NMFS consider the level of Chinook salmon bycatch before reapportioning whiting. This rule is necessary to manage the Pacific whiting stock to Optimal Yield, ensure that the Pacific Coast Groundfish Fishery Management Plan is implemented in a manner consistent with treaty rights of four treaty tribes to fish for Pacific whiting in their ''usual and accustomed grounds and stations'' in common with non-tribal citizens, and to protect salmon stocks listed under the Endangered Species Act. The catch limits in this rule are intended to ensure the long-term sustainability of the Pacific whiting stock.

DATES: Effective May 10, 2019.

FOR FURTHER INFORMATION CONTACT: Miako Ushio (West Coast Region, NMFS), phone: 206–526–4644, and email: *Miako.Ushio@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the internet at the Office of the Federal Register website at *https://www.federalregister.gov.* Background information and documents are available at the NMFS West Coast Region website at *http://www.westcoast.fisheries.noaa.gov/fisheries/management/whiting/pacific_whiting.html* and at the Pacific Fishery Management Council (Council)'s website at *http://www.pcouncil.org/.*

The final environmental impact statement regarding Harvest Specifications and Management Measures for 2015–2016 and Biennial Periods Thereafter, and the Final Environmental Assessment for Pacific Coast Groundfish Fishery 2019–20 Harvest Specifications, Yelloweye Rebuilding Plan Revisions, and Management Measures, are available on the NMFS West Coast Region website at: *www.westcoast.fisheries.noaa.gov/publications/nepa/groundfish/groundfish_nepa_documents.html.*

Background

This final rule announces the total allowable catch (TAC) for Pacific whiting, which was determined under the terms of the Agreement with Canada on Pacific Hake/Whiting (Agreement) and the Pacific Whiting Act of 2006 (Whiting Act). The Agreement and the Whiting Act establish bilateral bodies to implement the terms of the Agreement. The bilateral bodies include: The Joint Management Committee (JMC), which recommends the annual catch level for Pacific whiting; the Joint Technical Committee (JTC), which conducts the Pacific whiting stock assessment; the Scientific Review Group (SRG), which reviews the stock assessment; and the Advisory Panel (AP), which provides stakeholder input to the JMC.

The Agreement establishes a default harvest policy of F–40 percent, which means a fishing mortality rate that would reduce the biomass to 40 percent of the estimated unfished level. The Agreement also allocates 73.88 percent of the TAC to the United States and 26.12 percent of the TAC to Canada. The JMC is primarily responsible for developing a TAC recommendation to the United States and Canada. The Secretary of Commerce, in consultation with the Secretary of State, has the authority to accept or reject this recommendation.

2019 Pacific Whiting Stock Assessment and Scientific Review

The JTC completed a stock assessment for Pacific whiting in February 2019.