Dated: July 7, 2009.

Deborah S. Ingram,

Acting Deputy Assistant Administrator for Mitigation, Mitigation Directorate.

[FR Doc. E9–17211 Filed 7–20–09; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 401

[Docket No. USCG–2008–1126]

RIN 1625–AB29

2009 Rates for Pilotage on the Great Lakes

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is increasing the rates for pilotage service on the Great Lakes by an average of 10.77% over the rates that took effect February 4, 2009. This increase reflects an August 1, 2009, increase in benchmark contractual wages and benefits, as well as an increase in the ratio of pilots to ''bridge hours.'' The Coast Guard intends the final rule to generate sufficient revenue to cover allowable expenses, target pilot compensation, and returns on investment. The final rule promotes the Coast Guard strategic goal of maritime safety.

DATES: This final rule is effective August 1, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–1126 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this final rule, please call Mr. Paul Wasserman, Chief, Great Lakes Pilotage Branch, Commandant (CG–54122), U.S. Coast Guard, at 202–372–1535, by fax 202–372–1929, or e-mail *Paul.M.Wasserman@uscg.mil.* For questions on viewing or submitting material to the docket, call Renee V. Wright, Chief, Dockets, Department of Transportation, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Abbreviations

AMOU American Maritime Officer Union
GLPAC Great Lakes Pilotage Advisory Committee
MISLE Coast Guard Marine Inspection, Safety, and Law Enforcement system
MOA Memorandum of Agreement
NAICS North American Industry Classification System
NPRM Notice of Proposed Rulemaking
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget

II. Effective Date

This final rule takes effect August 1, 2009. Under 5 U.S.C. 553(d), we find good cause for this final rule to take effect less than 30 days after publication. The Great Lakes Pilotage Act of 1960, as amended by Public Law 109–241, section 302, requires the Coast Guard to review and adjust the Great Lakes pilotage rates annually by March 1. We could not issue this final rule until some months after that date due to the time needed to review and resolve comments received on the proposed rule. We nonetheless need to issue the final rule before the August 1, 2009, increase in benchmark contractual wages and benefits that necessitates this year's rate adjustment. Under these circumstances, publication of the final rule 30 days or more in advance of the August 1 benchmark increase is impracticable. The regulated community well understands the significance of the August benchmark increase and anticipates that the final rule will take effect not later than August 1. Therefore, we find that delay of the final rule's effective date beyond August 1, 2009, would be unnecessary, and contrary to the public interest in timely rate increases.

III. Background

We published a notice of proposed rulemaking on April 24, 2009 (NPRM, 74 FR 18669). The NPRM proposed an average 9.41% increase.

This rulemaking increases Great Lakes pilotage rates in accord with the methodology contained in Coast Guard regulations in 46 CFR Parts 401–404. Our regulations implement the Great Lakes Pilotage Act of 1960, 46 U.S.C. Chapter 93, which requires foreign-flag vessels engaged in foreign trade to use Federally registered Great Lakes pilots while transiting the St. Lawrence Seaway and the Great Lakes system, and which requires the Secretary of Homeland Security to ''prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services.'' 46 U.S.C. 9303(f).

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 Director of Great Lakes Pilotage to operate a pilotage pool. It is important to note that, while we set rates, we do not control the actual number of pilots an association maintains, so long as the association is able to provide safe, efficient, and reliable pilotage service, nor do we control the actual compensation that pilots receive. This is determined by each of the three District associations, which use different compensation practices.

District One, consisting of Areas 1 and 2, includes all U.S. waters of the St. Lawrence River and Lake Ontario. District Two, consisting of Areas 4 and 5, includes all U.S. waters of Lake Erie, the Detroit River, Lake St. Clair, and the St. Clair River. District Three, consisting of Areas 6, 7, and 8, includes all U.S. waters of the St. Mary's River, Sault Ste. Marie Locks, and Lakes Michigan, Huron, and Superior. Area 3 is the Welland Canal, which is serviced exclusively by the Canadian Great Lakes Pilotage Authority and, accordingly, is not included in the U.S. rate structure. Areas 1, 5, and 7 have been designated by Presidential Proclamation, pursuant to the Great Lakes Pilotage Act of 1960, to be waters in which pilots must at all times be fully engaged in the navigation of vessels in their charge. Areas 2, 4, 6, and 8 have not been so designated because they are open bodies of water. Under the Great Lakes Pilotage Act of 1960, pilots assigned to vessels in these areas are only required to ''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.'' 46 U.S.C. 9302(a)(1)(B).

Our pilotage regulations require annual reviews of pilotage rates and the setting of new rates at least once every five years, or sooner, if annual reviews show a need. 46 CFR 404.1. To assist in calculating pilotage rates, the pilotage associations are required to submit annual financial statements prepared by certified public accounting firms. In addition, every fifth year, in connection with the mandatory rate adjustment, we contract with an independent accounting firm to conduct a full audit of the accounts and records of the pilotage associations and prepare and submit financial reports relevant to the ratemaking process. In those years when a full ratemaking is conducted, we generate the pilotage rates using Appendix A to 46 CFR Part 404. The last Appendix A review was concluded in 2006 (71 FR 16501, Apr. 3, 2006). Between the five-year full ratemaking intervals, we annually review the pilotage rates using Appendix C to Part 404, and adjust rates when deemed appropriate. We conducted Appendix C reviews in 2007 and 2008, and increased rates in both years. The 2008 final rule was published January 5, 2009 (74 FR 220), and took effect on February 4, 2009. We define the terms and formulas used in Appendix A and Appendix C in Appendix B to Part 404.

This final rule concludes the annual Appendix C rate review for 2009, and increases rates by an average of 10.77% over the rates that took effect February 4, 2009.

IV. Discussion of Comments

We received four comments during the NPRM public comment period.

Timeliness. Three commenters, including a pilots' association, pointed out that 46 U.S.C. 9303(f), as amended by Public Law 109–241, sec. 302, requires us to review and, if necessary, establish adjusted pilotage rates by March 1 of each year, in order to provide critical information before the start of the annual Great Lakes shipping season, usually in early spring. These commenters point out that we have not met the March 1, 2009, deadline for this year's review. We acknowledge this and future compliance is a Coast Guard priority. In 2007 and 2008, we mitigated the impact of delay by ensuring that interim rules were in place at the opening of the shipping season. In letters dated April 24, 2007, and March 3, 2008, the pilots' associations expressed their appreciation to the Coast Guard for these efforts. In 2009, publishing a rule at the beginning of the shipping season was not possible, but we hope to mitigate the impact of delay by issuing the final rule so that it takes effect on August 1, 2009, when the benchmark contract increase that accounts for a meaningful portion of this year's rate adjustment takes effect.

''Pilots needed'' and rounding. One commenter said that, in calculating the number of pilots needed in each Area, we should always round the result of our mathematical calculations up to the nearest ''whole pilot,'' and another commenter criticized the imprecision of the language we used in the NPRM to describe our rounding. We agree with this latter comment and have revised our language in this final rule.

We acknowledge that in recent years we have usually rounded the results of the mathematical calculation used to determine the number of ''pilots needed,'' pursuant to our discretionary authority ''to make adjustments to these numbers to ensure uninterrupted pilotage service in each area, or for other reasonable circumstances.'' 46 CFR Part 404, Appendix A, Step 2.B (also applicable in Appendix C calculations). This rounding has never been performed as a matter of policy, nor do we adopt it as policy now. In fact, our current ratemaking methodology requires no rounding whatsoever, and until 2006, what rounding we applied was merely up or down to the nearest tenth of a whole number: *see, e.g.,* our December 12, 2003 (68 FR 69564) and March 10, 2005 (70 FR 12082) interim rules.

In the April 3, 2006 final rule (71 FR 16501), we acknowledged nine public comments in favor of rounding to whole numbers and approved the use of that process for that rule. However, we did not actually apply that methodology in the 2006 final rule. The mathematical result of our 2006 calculations was a whole number in each of the seven Areas, because we rounded the bridge hour projections (not pilot numbers) that year.

In the 2007 interim rule (72 FR 8115, Feb. 23, 2007), we agreed with a public commenter that the rounding of bridge hour projections in 2006 was a departure from past practice and agreed to use unrounded bridge hour projections. We also rounded the mathematical results of our pilots-needed calculations up to the next whole number in all six Areas where rounding was needed. These calculations were unchanged in the 2007 final rule (72 FR 53158, Sep. 18, 2007).

In 2008, the March 21, 2008 interim rule (73 FR 15092) adopted without change the calculations proposed in the February 1, 2008 NPRM (73 FR 6085). Mathematical results of pilots-needed calculations were rounded up in all six Areas where rounding was needed. However, we introduced three adjustments in the 2008 final rule (74 FR 220, Jan. 5, 2009). These adjustments responded to public comments that pointed out that the NPRM and interim rule overstated the bridge hour projections for Areas 2, 4, and 5.

The first adjustment reduced projected bridge hours in Area 2 from 7,993 to 5,650, but kept the ''pilots needed'' for Area 2 at five, one more than would have been indicated by rounding up the mathematical result (5,650/1,800 = 3.14, rounded up = 4). We exercised our discretion to do so because ''experience has demonstrated the need for at least five pilots in that Area,'' a need that we discussed in detail in the final rule at 74 FR 221.

Second, in Area 4, we reduced projected bridge hours from 8,490 to 7,320, and rounded the mathematical result (7,320/1,800 = 4.07) down to four pilots needed. Third, in Area 5, we reduced projected bridge hours from 6,395 to 5,097, and rounded the mathematical result (5,097/1,000 = 5.10) up to six pilots. We exercised our discretion in these two Areas ''because the District 2 Pilots' Association has routinely operated with an average of one less pilot than is authorized under the rate and for the last season and a half with two fewer pilots than authorized. Accordingly, a reduction of one pilot per Area reflects actual practice.'' 74 FR at 222. We might also have observed that pilots in one Area frequently operate in other Areas as well, that District Two comprises both Areas 4 and 5, and that the minimal downward adjustment from 4.07 to 4 in Area 4 should therefore be balanced against the more substantial rounding up, from 5.10 to 6, in Area 5.

We acknowledge that the determination of pilots needed is an issue of concern to many, and that some might wish to see the formula for that determination modified to require ''rounding up'' in all instances. We observe that the ratemaking formula was never designed to produce anything more than a useful model for subsequent calculations. It could be argued that the model worked best without rounding, or with only limited rounding, for example because rounding up inflates pilot numbers and makes it less likely that pilots will be able to reach their target compensation. We defer consideration of such arguments until they can be made and considered in the context of an overall review of our ratemaking methodology. Until then, we intend to apply the pilots-needed calculations much as we have done since 2007.

Data for bridge hour projections. One commenter said we failed to consult industry in projecting 2009 vessel traffic, and that our bridge hour projections for 2009 (*i.e.,* the projection of hours pilots are aboard vessels providing pilotage service) should have been based on 2008 figures rather than on 2007 figures. To meet the statutory deadline for establishing rates by March 1, 2009, we began preparing the 2009 NPRM long before actual data for 2008 was available. Although our practice has not been to document every contact with industry or pilots, our regulations and our ratemaking methodology presuppose frequent informal contacts between the Director of Great Lakes Pilotage, industry, and pilots. The information received through those contacts is submitted for public comment in our NPRM. In this case, our use of 2007 figures for 2009, instead of waiting for 2008 figures, was based on 2008 informal discussions with pilot and industry representatives that endorsed the continued use of 2007 figures, with some modifications. Those modifications were explained in the April 2009 NPRM.

We agree with one commenter who said that the NPRM did not adequately explain the difference in Area 6 and Area 7 base period bridge hours (18,000 and 3,863, respectively), and the 2009 projected bridge hours for those Areas (13,406 and 3,259, respectively). Areas 6 and 7 experienced a significant decrease in 2007 actual bridge hours, from 2007 projections. Therefore, the 2009 projections for those Areas reflects their actual 2007 bridge hours, and then further reduces those figures by an additional 10% in each Area.

One commenter said we should adjust Area 1 projected bridge hours to more accurately reflect anticipated traffic for the 2009 shipping season, as we did for areas 2, 4, and 5 in the 2008 final rule and as we proposed for District Three in the 2009 NPRM. We agree and, in this final rule, we are reducing the projected bridge hours for Area 1 from 5661 to 5203. We are also adjusting District Three bridge hours as indicated in the NPRM.

Class 4 vessels. One commenter said that our pilotage rates for Class 4 vessels are 15% higher than Canadian rates. This may be true, but in the past year the difference has been less than 1%, but has varied subsequently due to fluctuations in the relative value of U.S. and Canadian currency.

Miscellaneous. Three commenters took issue with various aspects of our ratemaking methodology. These comments are beyond the scope of this rulemaking, which applies the methodology as it exists today, but we address two points briefly here. One commenter petitioned the Coast Guard to review our formula for setting benchmark compensation levels of Great Lakes vessel masters. We deny that petition because we have previously conducted the requested review and believe the formula is correct: a supporting memorandum appears in the docket for this rulemaking as USCG–2008–1126–0017. The same commenter criticized us for not yet adopting the recommendations of Rear Admiral Timothy J. Riker's 2003 report on Great Lakes bridge hours. We decline to adopt the Riker Report recommendations in full because we do not think the Report adequately accounted for the difference between a Great Lakes pilot's active, on call, work life during a portion of the year and the work life of an office-based 40 hour per week worker through a 52-week year.

We acknowledge that through the years, both pilots and industry have indicated concerns about aspects of our ratemaking methodology. Some of those concerns are described in communications that we received between January 2009, when we published the 2008 final rule, and April 2009, when we published the 2009 NPRM. Those communications appear in the docket for this rulemaking as supplemental material. To obtain a more comprehensive understanding of these concerns, we have decided to publish a notice focusing on our ratemaking methodology, and requesting public comments. That notice appears elsewhere in today's **Federal Register**. We will refer the comments we receive to the Great Lakes Pilotage Advisory Committee, which Congress established to advise the Coast Guard on significant policy decisions relating to Great Lakes pilotage.

V. Discussion of the Final Rule

A. Summary

We are increasing pilotage rates in accordance with the methodology outlined in Appendix C to 46 CFR Part 404, by increasing rates an average 10.77% over the 2008 final rule. This final rule puts into place, with two modifications, the rate changes we proposed in the April 24, 2009 NPRM. The first modification adjusts projected bridge hours in Area 1 as discussed in part IV of this preamble. The second modification updates the ship tonnage percentages under the AMO union contracts. This second modification accounts for only 0.36% of the overall rate increase.

TABLE 1—2009 AREA RATE CHANGES

If pilotage service is required in:	Then the proposed percentage increases over the current rate is:
Area 1 (designated waters)	13.43
Area 2 (undesignated waters)	4.79
Area 4 (undesignated waters)	4.90
Area 5 (designated waters)	4.48
Area 6 (undesignated waters)	12.52
Area 7 (designated waters)	23.64
Area 8 (undesignated waters)	2.52
Overall rate change (percentage change in overall prospective unit costs/base unit costs; *see* Table 18)	10.77

Rates for cancellation, delay, or interruption in rendering services (46 CFR 401.420), and basic rates and charges for carrying a U.S. pilot beyond the normal change point, or for boarding at other than the normal boarding point (46 CFR 401.428), have been increased by 10.77% in all Areas.

B. Calculating the Rate Adjustment

The Appendix C ratemaking calculation involves eight steps:

Step 1: Calculate the total economic costs for the base period (*i.e.*, pilot compensation expense plus all other recognized expenses plus the return element) and divide by the total bridge hours used in setting the base period rates;

Step 2: Calculate the ''expense multiplier,'' the ratio of other expenses and the return element to pilot compensation for the base period;

Step 3: Calculate an annual ''projection of target pilot compensation'' using the same procedures found in Step 2 of Appendix A;

Step 4: Increase the projected pilot compensation in Step 3 by the expense multiplier in Step 2;

Step 5: Adjust the result in Step 4, as required, for inflation or deflation;

Step 6: Divide the result in Step 5 by projected bridge hours to determine total unit costs;

Step 7: Divide prospective unit costs in Step 6 by the base period unit costs in Step 1; and

Step 8: Adjust the base period rates by the percentage changes in unit cost in Step 7.

The base data used to calculate each of the eight steps comes from the 2008 final rule, published in January 2009. We also used the most recent union contracts between the American Maritime Officers Union (AMOU) and vessel owners and operators on the Great Lakes, which we received on August 16, 2007, to determine target pilot compensation. Bridge hour projections for the 2009 season have been obtained from historical data, pilots, and industry. All documents and records used in this rate calculation have been placed in the public docket for this rulemaking and are available for review at the addresses listed under **ADDRESSES**.

Some values may not total exactly due to format rounding for presentation in charts and explanations in this section. The rounding does not affect the integrity or truncate the real value of the calculations in the ratemaking methodology described below.

Step 1: Calculate the total economic cost for the base period. The calculations in Step 1 are unchanged from the NPRM, but are repeated for your convenience.

In this step, for each Area, we divide total economic costs for the base period by the total bridge hours used in setting the base period rates, to yield the base cost per bridge hour. Total base period economic costs include pilot compensation expenses, plus all other recognized expenses, plus the return element. The calculations providing the total base period economic costs for each Area are summarized in Table 16 of the 2008 final rule. Total bridge hours used in setting the base period rates were calculated in Table 13 of the 2008 final rule. Tables 2 through 4 summarize the Step 1 calculations:

TABLE 2—TOTAL ECONOMIC COST FOR BASE PERIOD, DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Total base period economic costs	$2,078,551	$1,474,806	$3,553,357
Base bridge hours	÷ 5,661	÷ 5,650	÷ 11,311
Base cost per bridge hour	= $367.17	= $261.03	= $314.15

TABLE 3—TOTAL ECONOMIC COST FOR BASE PERIOD, DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Total base period economic costs	$1,251,203	$2,334,169	$3,585,372
Base bridge hours	÷ 7,320	÷ 5,097	÷ 12,417
Base cost per bridge hour	= $170.93	= $457.95	= $288.75

TABLE 4—TOTAL ECONOMIC COST FOR BASE PERIOD, DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Total base period economic costs	$2,884,724	$1,427,515	$1,944,032	$6,256,273
Base bridge hours	÷ 18,000	÷ 3,863	÷ 11,390	÷ 33,253
Base cost per bridge hour	= $160.26	= $369.54	= $170.68	= $188.14

Step 2. Calculate the expense multiplier. The calculations in Step 2 are unchanged from the NPRM, but are repeated for your convenience.

In this step, for each Area, we calculate an expense multiplier by dividing the base operating expense, shown in Table 16, Column B of the 2008 final rule, by base pilot compensation, shown in Table 16, Column C of the 2008 final rule. Tables 5 through 7 show the Step 2 calculations.

TABLE 5—EXPENSE MULTIPLIER, DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Base operating expense	$516,138	$529,046	$1,045,185

TABLE 5—EXPENSE MULTIPLIER, DISTRICT ONE—Continued

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Base target pilot compensation	÷ $1,562,413	÷ $945,760	÷ $2,508,173
Expense multiplier	= .33035	= .55939	= .41671

TABLE 6—EXPENSE MULTIPLIER, DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Base operating expense	$494,595	$771,756	$1,266,351
Base target pilot compensation	÷ $756,608	÷ $1,562,413	÷ $2,319,021
Expense multiplier	= .65370	= .49395	= .54607

TABLE 7—EXPENSE MULTIPLIER, DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Base operating expense	$993,207	$385,906	$619,968	$1,999,081
Base target pilot compensation	÷ $1,891,520	÷ $1,041,609	÷ $1,324,064	÷ $4,257,193
Expense multiplier	= .52508	= .37049	= .46823	= .46958

Step 3. Calculate annual projection of target pilot compensation. Step 3 calculations have been modified since the NPRM. In this step, we determine the new target rate of compensation and the new number of pilots needed in each pilotage Area, to determine the new target pilot compensation for each Area.

(a) Determine new target rate of compensation. Target pilot compensation is based on the average annual compensation of first mates and masters on U.S. Great Lakes vessels. Compensation includes wages and benefits. For pilots in undesignated waters, we approximate the first mates' compensation and, in designated waters, we approximate the master's compensation (first mates' wages multiplied by 150% plus benefits). To determine first mates' and masters' average annual compensation, we use data from the most recent AMOU contracts with the U.S. companies engaged in Great Lakes shipping. Where different AMOU agreements apply to different companies, we apportion the compensation provided by each agreement according to the percentage of tonnage represented by companies under each agreement.

There are two current AMOU contracts. In our April 2009 NPRM, we stated that vessels operated by the American Steamship Co. and Inland Lakes Management Co. (acquired in 2008 by Mittal Steel USA, Inc.) operate under ''Agreement A,'' and that Key Lakes, Inc. and Mittal Steel USA, Inc. vessels (other than the Inland Lakes vessels acquired by Mittal) operate under ''Agreement B.'' However, as of May 2009, Agreement A applies only to Key Lakes, Inc. vessels, and Agreement B applies to all vessels operated by American Steamship Co. and Mittal Steel USA, Inc.

Both Agreement A and Agreement B provide for a 3% wage increase effective August 1, 2009. Under Agreement A, the daily wage rate will be increased from $255.28 to $262.73. Under Agreement B, the daily wage rate will be increased from $314.42 to $323.86.

To calculate monthly wages, we apply Agreement A and Agreement B monthly multipliers of 54.5 and 49.5, respectively, to the daily rate. Agreement A's 54.5 multiplier represents 30.5 average working days, 15.5 vacation days, 4 days for four weekends, 3 bonus days, and 1.5 holidays. Agreement B's 49.5 multiplier represents 30.5 average working days, 16 vacation days, and 3 bonus days.

To calculate average annual compensation, we multiply monthly figures by 9 months, the length of the Great Lakes shipping season.

Table 8, which is unchanged from the NPRM, shows new wage calculations based on Agreements A and B effective August 1, 2009.

TABLE 8—WAGES

Monthly component	Pilots on undesignated waters	Pilots on designated waters (undesignated × 150%)
Agreement A:		
$262.73 daily rate × 54.5 days	$14,319	$21,478
Agreement A:		
Monthly total × 9 months = total wages	128,870	193,305
Agreement B:		
$323.86 daily rate × 49.5 days	16,031	24,046
Agreement B:		

TABLE 8—WAGES—Continued

Monthly component	Pilots on undesignated waters	Pilots on designated waters (undesignated × 150%)
Monthly total × 9 months = total wages	144,278	216,417

Both Agreements A and B include a health benefits contribution rate of $80.69 effective August 1, 2009. Agreement A includes a pension plan contribution rate of $33.35 per man-day. Agreement B includes a pension plan contribution rate of $43.55 per man-day. Both Agreements A and B provide a 401K employer matching rate, 5% of the wage rate. Neither Agreement A nor Agreement B includes a clerical contribution that appeared in earlier contracts. Per the AMOU, the multiplier used to calculate monthly benefits is 45.5 days.

Table 9, which is unchanged from the NPRM, shows new benefit calculations based on Agreements A and B, effective August 1, 2009.

TABLE 9—BENEFITS

Monthly component	Pilots on undesignated waters	Pilots on designated waters
Agreement A:		
Employer contribution, 401(K) plan (Monthly Wages × 5%)	$715.95	$1,073.92
Pension = $33.35 × 45.5 days	1,517.43	1,517.43
Health = $80.69 × 45.5 days	3,671.40	3,671.40
Agreement B:		
Employer contribution, 401(K) plan (Monthly Wages × 5%)	801.54	1,202.32
Pension = $43.55 × 45.5 days	1,981.53	1,981.53
Health = $80.69 × 45.5 days	3,671.40	3,671.40
Agreement A:		
Monthly total benefits	= 5,904.77	= 6,262.74
Agreement A:		
Monthly total benefits × 9 months	= 53,143	= 56,365
Agreement B:		
Monthly total benefits	= 6,454.46	= 6,855.24
Agreement B:		
Monthly total benefits × 9 months	= 58,090	= 61,697

Table 10, which is unchanged from the NPRM, totals the wages and benefits under each agreement.

TABLE 10—TOTAL WAGES AND BENEFITS

	Pilots on undesignated waters	Pilots on designated waters
Agreement A: Wages	$128,870	$193,305
Agreement A: Benefits	+ 53,143	+ 56,365
Agreement A: Total	= 182,013	= 249,670
Agreement B: Wages	144,278	216,417
Agreement B: Benefits	+ 58,090	+ 61,697
Agreement B: Total	= 202,368	= 278,114

Table 11, as it appeared in the NPRM, has been revised to reflect the change in the distribution of vessels operating under Agreements A and B as of May 2009. It shows that approximately 30% of U.S. Great Lakes shipping deadweight tonnage operates under Agreement A, with the remaining 70% operating under Agreement B.

TABLE 11—DEADWEIGHT TONNAGE BY AMOU AGREEMENT

Company	Agreement A	Agreement B
American Steamship Company	....	815,600

TABLE 11—DEADWEIGHT TONNAGE BY AMOU AGREEMENT—Continued

Company	Agreement A	Agreement B
Mittal Steel USA, Inc		38,826
Key Lakes, Inc	361,385	
Total tonnage, each agreement	361,385	854,426
Percent tonnage, each agreement	361,385 ÷ 1,215,811 = 29.7238%	854,426 ÷ 1,215,811 = 70.2762%

Table 12, as it appeared in the NPRM, has been modified. It applies the percentage of tonnage represented by each agreement to the wages and benefits provided by each agreement, to determine the projected target rate of compensation on a tonnage-weighted basis.

TABLE 12—PROJECTED TARGET RATE OF COMPENSATION, WEIGHTED

	Undesignated waters	Designated waters
AGREEMENT A:		
Total wages and benefits × percent tonnage	$182,013 × 29.72% = $54,101	$249,670 × 29.72% = $74,211
AGREEMENT B:		
Total wages and benefits × percent tonnage	$202,368 × 70.28% = $142,217	$278,114 × 70.28% = $195,448
Total weighted average wages and benefits = projected target rate of compensation	$54,101 + $142,217 = $196,318	$74,211 + $195,448 = $269,659

(b) Determine number of pilots needed. Subject to discretionary adjustment by the Director of Great Lakes Pilotage to ensure uninterrupted service or for other reasonable circumstances, we determine the number of pilots needed in each Area by dividing each Area's projected bridge hours, either by 1,000 (designated waters) or by 1,800 (undesignated waters). The resulting number is rounded either up or down based upon the needs of commerce at the discretion of the Director.

Bridge hours are the number of hours a pilot is aboard a vessel providing pilotage service. Projected bridge hours are based on the vessel traffic that pilots are expected to serve. Based on historical data and information provided by pilots and industry, the Coast Guard projects the same bridge hours for Areas 2, 4, 5, and 8 in 2009 as were projected in the 2008 final rule. As discussed in Part IV of this preamble, we are reducing projected bridge hours for Areas 1, 6, and 7. With these reductions, we are reducing the number of pilots in Area 6 by two.

Table 13, as it appeared in the NPRM, has been modified to reflect the reductions in Areas 1, 6, and 7 bridge hour projections. Table 13 shows the projected bridge hours needed for each Area, and the total number of pilots needed after dividing those figures either by 1,000 or 1,800 and, for the purposes of this rulemaking only, rounding up to the next whole pilot, with two exceptions. In Area 2 we round up from 3.14 to 5, and in Area 4 we round down from 4.07 to 4, for the reasons discussed in the 2008 final rule.

TABLE 13—NUMBER OF PILOTS NEEDED

Pilotage area	Projected 2009 bridge hours	Divided by 1,000 (designated waters) or 1,800 (undesignated waters)	Pilots needed (total = 40)
Area 1	5,203	1,000	6
Area 2	5,650	1,800	5
Area 4	7,320	1,800	4
Area 5	5,097	1,000	6
Area 6	13,406	1,800	8
Area 7	3,259	1,000	4
Area 8	11,630	1,800	7

(c) Determine the projected target pilot compensation for each Area. We project new total target pilot compensation separately for each pilotage Area, by multiplying the number of pilots needed in each Area (*see* Table 13) by the projected target rate of compensation (*see* Table 12) for pilots working in that Area. Table 14 (modified from NPRM version) shows this calculation.

TABLE 14—PROJECTED TARGET PILOT COMPENSATION

Pilotage Area	Pilots needed (total = 40)	Multiplied by target rate of compensation	Projected target pilot compensation
Area 1	6	× $269,659	$1,617,955
Area 2	5	× 196,318	981,589
Total, District One	11		2,599,544
Area 4	4	× 196,318	785,271
Area 5	6	× 269,659	1,617,955
Total, District Two	10		2,403,226
Area 6	8	× 196,318	1,570,542
Area 7	4	× 269,659	1,078,637
Area 8	7	× 196,318	1,374,224
Total, District Three	19		4,023,403

Step 4: Increase the projected pilot compensation in Step 3 by the expense multiplier in Step 2. Step 4 calculations have been modified since the NPRM. This step yields a projected increase in operating costs necessary to support the increased projected pilot compensation. Table 15 (modified from NPRM version) shows this calculation.

TABLE 15—PROJECTED OPERATING EXPENSE

Pilotage area	Projected target pilot compensation	Multiplied by expense multiplier	Projected operating expense*
Area 1	$1,617,955	× .33035	$534,487
Area 2	981,589	× .55939	549,089
Total, District One	2,599,544	× .41671	1,083,260
Area 4	785,271	× .65370	513,332
Area 5	1,617,955	× .49395	799,192
Total, District Two	2,403,226	× .54607	1,312,333
Area 6	1,570,542	× .52508	824,666
Area 7	1,078,637	× .37049	399,625
Area 8	1,374,224	× .46823	643,454
Total, District Three	4,023,403	× .46958	1,889,298

*Unique expense multipliers are used to calculate projected operating expense for all areas and districts, and as such, projected operating expense for Districts One, Two and Three may not equal the sum of the projected operating expense for the areas.

Step 5: Adjust the result in Step 4, as required, for inflation or deflation, and calculate projected total economic cost. Step 5 calculations have been modified since the NPRM. Based on data from the U.S. Department of Labor's Bureau of Labor Statistics, we have multiplied the results in Step 4 by a 1.027 inflation factor, reflecting an average inflation rate of 2.7% in ''Midwest Economy—Consumer Prices'' between 2006 and 2007, the latest years for which data are available. Table 16 (modified from NPRM version) shows this calculation and the projected total economic cost.

TABLE 16—PROJECTED TOTAL ECONOMIC COST

Pilotage area	A. Projected operating expense	B. Increase, multiplied by inflation factor (= A × 1.027)	C. Projected target pilot compensation	D. Projected total economic cost (= B + C)
Area 1	$534,487	$548,918	$1,617,955	$2,166,873
Area 2	549,089	563,914	981,589	1,545,503
Total, District One	1,083,260	1,112,508	2,599,544	*3,712,052
Area 4	513,332	527,192	785,271	1,312,463
Area 5	799,192	820,770	1,617,955	2,438,725
Total, District Two	1,312,333	1,347,766	2,403,226	*3,750,992
Area 6	824,666	846,932	1,570,542	2,417,474
Area 7	399,625	410,415	1,078,637	1,489,052

TABLE 16—PROJECTED TOTAL ECONOMIC COST—Continued

Pilotage area	A. Projected operating expense	B. Increase, multiplied by inflation factor (= A × 1.027)	C. Projected target pilot compensation	D. Projected total economic cost (= B + C)
Area 8	643,454	660,828	1,374,224	2,035,052
Total, District Three	1,889,298	1,940,310	4,023,403	*5,963,713

*Unique expense multipliers are used to calculate projected operating expense for all areas and districts, and as such, projected total economic cost for Districts One, Two and Three may not equal the sum of the projected total economic cost for the areas.

Step 6: Divide the result in Step 5 by projected bridge hours to determine total unit costs. Step 6 calculations have been modified since the NPRM. Table 17 (modified from NPRM version) shows this calculation.

TABLE 17—TOTAL UNIT COSTS

Pilotage area	A. Projected total economic cost	B. Projected 2009 bridge hours	Prospective (total) unit costs (A divided by B)
Area 1	$2,166,873	5,203	$416.47
Area 2	1,545,503	5,650	273.54
Total, District One	3,712,052	10,853	342.03
Area 4	1,312,463	7,320	179.30
Area 5	2,438,725	5,097	478.46
Total, District Two	3,750,992	12,417	302.09
Area 6	2,417,474	13,406	180.33
Area 7	1,489,052	3,259	456.90
Area 8	2,035,052	11,630	174.98
Total, District Three	5,963,713	28,295	210.77
Overall	13,426,758	51,565	260.39

Step 7: Divide prospective unit costs (total unit costs) in Step 6 by the base period unit costs in Step 1. Step 7 calculations have been modified since the NPRM. Table 18 (modified from NPRM version) shows this calculation, which expresses the percentage change between the total unit costs and the base unit costs. The results, for each Area, are identical with the percentage increases listed in Table 1.

TABLE 18—PERCENTAGE CHANGE, PROSPECTIVE IN UNIT COSTS

Pilotage area	A. Prospective unit costs	B. Base period unit costs	C. Percentage change from base (A divided by B; result expressed as percentage)
Area 1	$416.47	$367.17	13.43
Area 2	273.54	261.03	4.79
Total, District One	342.03	314.15	8.87
Area 4	179.30	170.93	4.90
Area 5	478.46	457.95	4.48
Total, District Two	302.09	288.75	4.62
Area 6	180.33	160.26	12.52
Area 7	456.90	369.54	23.64
Area 8	174.98	170.68	2.52
Total, District Three	210.77	188.14	12.03
Overall	260.39	235.08	10.77

Step 8: Adjust the base period rates by the percentage change in unit costs in Step 7. Step 8 calculations have been modified since the NPRM. Table 19 (modified from NPRM version) shows this calculation.

TABLE 19—BASE PERIOD RATES ADJUSTED BY PERCENTAGE CHANGE IN UNIT COSTS*

Pilotage	A. Base period rate	B. Percentage change in unit costs	C. Increase in base rate (A × B%)	D. Adjusted rate (A + C, rounded to nearest cent)
Area 1		13.43 (1.1343)		
—Basic pilotage	$14.94/km, $26.44/mi		$2.00/km, $3.55/mi	$16.95/km, $29.99/mi
—Each lock transited	331.03		44.44	375.47
—Harbor movage	1,083.89		145.52	1,229.41
—Minimum basic rate, St. Lawrence River	722.98		97.07	820.04
—Maximum rate, through trip	3,173.51		426.07	3,599.58
Area 2		4.79 (1.0479)		
—6-hr. period	780.23		37.40	817.63
—Docking or undocking	744.24		35.68	779.92
Area 4		4.90 (1.0490)		
—6-hr. period	688.35		33.70	722.05
—Docking or undocking	530.49		25.97	556.46
—Any point on Niagara River below Black Rock Lock	1,354.15		66.30	1,420.45
Area 5 between any point on or in		4.48 (1.0448)		
—Toledo or any point on Lake Erie W. of Southeast Shoal	1,243.75		55.71	1,299.46
—Toledo or any point on Lake Erie W. of Southeast Shoal & Southeast Shoal	2,104.72		94.28	2,198.99
—Toledo or any point on Lake Erie W. of Southeast Shoal & Detroit River	2,732.79		122.41	2,855.20
—Toledo or any point on Lake Erie W. of Southeast Shoal & Detroit Pilot Boat	2,104.72		94.28	2,198.99
—Port Huron Change Point & Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat)	3,665.60		164.20	3,829.80
—Port Huron Change Point & Toledo or any point on Lake Erie W. of Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat)	4,246.60		190.22	4,436.82
—Port Huron Change Point & Detroit River	2,753.85		123.36	2,877.20
—Port Huron Change Point & Detroit Pilot Boat	2,141.88		95.94	2,237.82
—Port Huron Change Point & St. Clair River	1,522.48		68.20	1,590.68
—St. Clair River	1,243.75		55.71	1,299.46
—St. Clair River & Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat)	3,665.60		164.20	3,829.80
—St. Clair River & Detroit River/Detroit Pilot Boat	2,753.85		123.36	2,877.20
—Detroit, Windsor, or Detroit River	1,243.75		55.71	1,299.46
—Detroit, Windsor, or Detroit River & Southeast Shoal	2,104.72		94.28	2,198.99
—Detroit, Windsor, or Detroit River & Toledo or any point on Lake Erie W. of Southeast Shoal	2,732.79		122.41	2,855.20
—Detroit, Windsor, or Detroit River & St. Clair River	2,753.85		123.36	2,877.20
—Detroit Pilot Boat & Southeast Shoal	1,522.48		68.20	1,590.68
—Detroit Pilot Boat & Toledo or any point on Lake Erie W. of Southeast Shoal	2,104.72		94.28	2,198.99
—Detroit Pilot Boat & St. Clair River	2,753.85		123.36	2,877.20
Area 6		12.52 (1.1252)		
—6-hr. period	553.62		69.31	622.93
—Docking or undocking	525.88		65.84	591.72
Area 7 between any point on or in		23.64 (1.2364)		
—Gros Cap & De Tour	1,975.83		467.15	2,442.98
—Algoma Steel Corp. Wharf, Sault Ste. Marie, Ont. & De Tour	1,975.83		467.15	2,442.98
—Algoma Steel Corp. Wharf, Sault Ste. Marie, Ont. & Gros Cap	744.10		175.93	920.03
—Any point in Sault Ste. Marie, Ont., except the Algoma Steel Corp. Wharf & De Tour	1,656.11		391.55	2,047.67
—Any point in Sault Ste. Marie, Ont., except the Algoma Steel Corp. Wharf & Gros Cap	744.10		175.93	920.03
—Sault Ste. Marie, MI & De Tour	1,656.11		391.55	2,047.67
—Sault Ste. Marie, MI & Gros Cap	744.10		175.93	920.03
—Harbor movage	744.10		175.93	920.03
Area 8		2.52 (1.0252)		
—6-hr. period	535.92		13.51	549.44
—Docking or undocking	509.36		12.84	522.20

Rates for "Cancellation, delay or interruption in rendering services (§ 401.420)" and "Basic Rates and charges for carrying a U.S. pilot beyond the normal change point, or for boarding at other than the normal boarding point (§ 401.428)" are not reflected in this table but have been increased by 10.77% across all areas.

VI. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below, we summarize our analyses based on 13 of these statutes or executive orders.

A. Regulatory Planning and Review

Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735, October 4, 1993, requires a determination whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and subject to the requirements of the Executive Order. This rulemaking is not significant under Executive Order 12866 and will not be reviewed by OMB.

The Coast Guard is required to conduct an annual review of pilotage rates on the Great Lakes and, if necessary, adjust these rates to align compensation levels between Great Lakes pilots and industry. *See* the ''Background and Purpose'' section for a detailed explanation of the legal authority and requirements for the Coast Guard to conduct an annual review and provide possible adjustments of pilotage rates on the Great Lakes. Based on our annual review for this rulemaking, we are adjusting the pilotage rates for the 2009 shipping season to generate sufficient revenue to cover allowable expenses, target pilot compensation, and returns on investment.

This rule will implement a 10.77% overall rate adjustment for the Great Lakes system over the current rate as adjusted in the 2008 final rule. These adjustments to Great Lakes pilotage rates meet the requirements set forth in 46 CFR part 404 for similar compensation levels between Great Lakes pilots and industry. They also include adjustments for inflation and changes in association expenses to maintain these compensation levels.

In general, we expect an increase in pilotage rates for a certain area to result in additional costs for shippers using pilotage services in that area, while a decrease would result in a cost reduction or savings for shippers in that area. This rule will result in a distributional effect that transfers payments (income) from affected shippers (vessel owners and operators) to the Great Lakes' pilot associations through Coast Guard regulated pilotage rates.

The shippers affected by these rate adjustments are those owners and operators of domestic vessels operating on register (employed in the foreign trade) and owners and operators of foreign vessels on a route 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. However, the Coast Guard issued a policy position several years ago stating that the statute applies only to commercial vessels and not to recreational vessels.

Owners and operators of other vessels that are not affected by this rule, such as recreational boats and vessels only operating within the Great Lakes system, may elect to purchase pilotage services. However, this election is voluntary and does not affect the Coast Guard's calculation of the rate increase and is not a part of our estimated national cost to shippers.

We reviewed a sample of pilot source forms, which are the forms used to record pilotage transactions on vessels, and discovered very few cases of U.S. Great Lakes vessels (*i.e.,* domestic vessels without registry operating only in the Great Lakes) that purchased pilotage services. We assume some vessel owners and operators may also choose to purchase pilotage services if their vessels are carrying hazardous substances or were navigating the Great Lakes system with inexperienced personnel. Based on information from the Coast Guard Office of Great Lakes Pilotage, we have determined that these vessels voluntarily chose to use pilots and, therefore, are exempt from pilotage requirements.

We used 2006–2007 vessel arrival data from the Coast Guard's Marine Inspection, Safety, and Law Enforcement system (MISLE) to estimate the average annual number of vessels affected by the rate adjustment to be 208 vessels that journey into the Great Lakes system. These vessels entered the Great Lakes by transiting through or in part of at least one of the three pilotage Districts before leaving the Great Lakes system. These vessels often make more than one distinct stop, docking, loading, and unloading at facilities in Great Lakes ports. Of the total trips for the 208 vessels, there were approximately 923 annual U.S. port arrivals before the vessels left the Great Lakes system, based on 2006–2007 vessel data from MISLE.

The impact of the rate adjustment to shippers is estimated from the district pilotage revenues. These revenues represent the direct and indirect costs (''economic costs'') that shippers must pay for pilotage services. The Coast Guard sets rates so that revenues equal the estimated cost of pilotage.

We estimate the additional impact (costs or savings) of the rate adjustment in this final rule to be the difference between the total projected revenue needed to cover costs based on the 2008 rate adjustment and the total projected revenue needed to cover costs in this final rule for 2009. Table 20 details additional costs or savings by area and district.

TABLE 20—RATE ADJUSTMENT AND ADDITIONAL IMPACT OF THE FINAL RULE ($U.S.; NON-DISCOUNTED) [1]

	Total projected expenses in 2008	Proposed rate change	Total projected expenses in 2009 [3]	Additional revenue or cost of this rulemaking [2]
Area 1	$2,078,551	1.0425	2,166,873	$88,322
Area 2	1,474,806	1.0479	1,545,503	70,697
Total, District One	3,553,357	1.0447	3,712,052	158,695
Area 4	1,251,203	1.0490	1,312,463	61,260
Area 5	2,334,169	1.0448	2,438,725	104,556
Total, District Two	3,585,372	1.0462	3,750,992	165,620
Area 6	2,884,724	0.8380	2,417,474	(467,250)
Area 7	1,427,515	1.0431	1,489,052	61,537
Area 8	1,944,032	1.0468	2,035,052	91,020

TABLE 20—RATE ADJUSTMENT AND ADDITIONAL IMPACT OF THE FINAL RULE ($U.S.; NON-DISCOUNTED) [1]—Continued

	Total projected expenses in 2008	Proposed rate change	Total projected expenses in 2009 [3]	Additional revenue or cost of this rulemaking [2]
Total, District Three	6,256,273	0.9532	5,963,713	(292,560)

[1] Some values may not total due to rounding.
[2] Additional Revenue or Cost of this Rulemaking = 'Total Projected Expenses in 2009' − 'Total Projected Expenses in 2008'.
[3] 'Total Projected Expenses in 2009' and 'Additional Revenue or Cost of this Rulemaking' for Districts One, Two and Three differ from the sum of the area totals due to the use of unique multipliers, as mentioned in Step 5 under 'Calculating the Rate Adjustment'.

After applying the rate change in this rule, the resulting difference between the projected revenue in 2008 and the projected revenue in 2009 is the annual impact to shippers from this rule. This figure will be equivalent to the total additional payments or savings that shippers will incur for pilotage services from this rule. As discussed earlier, we consider a reduction in payments to be a cost savings.

The impact of the rate adjustment in this rule to shippers varies by area and district. The annual costs of the rate adjustments in Districts 1 and 2 are approximately $159,000 and $166,000, respectively, while District 3 will experience an annual savings of approximately $293,000. To calculate an exact cost or savings per vessel is difficult because of the variation in vessel types, routes, port arrivals, commodity carriage, time of season, conditions during navigation, and preferences for the extent of pilotage services on designated and undesignated portions of the Great Lakes system. Some owners and operators will pay more and some will pay less depending on the distance and port arrivals of their vessels' trips. However, the annual cost or savings reported above does capture all of the additional cost the shippers face as a result of the rate adjustment in this rule.

As Table 20 indicates, all areas will experience an increased annual cost due to this rulemaking except Area 6, which will experience a savings. The projected savings for Area 6 is approximately $467,000. This will cause a net savings for District 3, and is due to a decrease in actual bridge hours in Area 6 from 2008 to 2009. This decrease in bridge hours led to a decrease in the number of pilots needed, from 10 pilots in 2008 to 8 pilots in 2009. This decrease in the number of pilots would reduce the projected revenue needed to cover costs of pilotage services in Area 6.

The effects of a rate adjustment on costs and savings vary by year and area. A decrease in projected expenses for individual areas or districts is common in past pilotage rate adjustments. Most recently, in the 2008 Final Rule, District 2 experienced a decrease in projected expenses due to an adjustment in bridge hours from the 2008 Interim Rule, which led to a savings for that district. However, this savings was not large enough to outweigh the costs to the other districts.

The overall impact of the final rule will be an additional cost to shippers of $32,000 across all three districts. This differs from the estimated cost savings of $15,000 in the NPRM due to the projected changes in bridge hours in Area 1,[1] as well as the change in the distribution of vessels operating under Agreements A and B as of May 2009. We explained these two differences from the NPRM in our Part IV discussion of public comments on bridge hour projection data, and in our Part V.B discussion of Step 3(b) rate calculations. These two changes since the NPRM resulted in increased projected expenses, accounting for the overall increased cost to shippers of the final rule.

B. Small Entities

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

We expect entities affected by the proposed rule would be classified under the North American Industry Classification System (NAICS) code subsector 483—Water Transportation, which includes one or all of the following 6-digit NAICS codes for freight transportation: 483111—Deep Sea Freight Transportation, 483113—Coastal and Great Lakes Freight Transportation, and 483211—Inland Water Freight Transportation. According to the Small Business Administration's definition, a U.S. company with these NAICS codes and employing less than 500 employees is considered a small entity.

For this rule, we reviewed recent company size and ownership data from 2006–2007 MISLE data and business revenue and size data provided by Reference USA and Dunn and Bradstreet. We were able to gather revenue and size data or link the entities to large shipping conglomerates for 22 of the 24 affected entities in the United States. We found that large, mostly foreign-owned, shipping conglomerates or their subsidiaries owned or operated all vessels engaged in foreign trade on the Great Lakes. We assume that new industry entrants will be comparable in ownership and size to these shippers.

There are three U.S. entities affected by the 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 classified with the same NAICS industry classification and small entity size standards described above, but they have far fewer than 500 employees: approximately 65 total employees combined. We expect no adverse impact to these entities from this rule since all associations receive enough revenue to balance the projected expenses associated with the projected number of bridge hours and pilots.

Therefore, the Coast Guard has determined that this rule will not have a significant economic impact on a substantial number of small entities under 5 U.S.C. 605(b).

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. The

[1] When a decrease in traffic is not accompanied by a reduction in pilots, as in this case, projected pilot compensation and other expenses do not decrease. As such, revenue must increase to meet these expenses, which can only be accomplished through rate increases.

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This rule does not change the burden in the collection currently approved by the Office of Management and Budget (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 State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism because there are no similar State regulations, and the States do not have the authority to regulate and adjust rates for pilotage services in the Great Lakes system.

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 or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

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

J. Indian Tribal Governments

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

K. Energy Effects

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

L. Technical Standards

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

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(a) of the Instruction. Paragraph 34(a) pertains to minor regulatory changes that are editorial or procedural in nature. This rule adjusts rates in accordance with applicable statutory and regulatory mandates. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 401

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

■ For the reasons 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. 2104(a), 6101, 7701, 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1; 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

■ 2. In § 401.405, revise paragraphs (a) and (b), including the footnote to Table (a), to read as follows:

§ 401.405 Basic rates and charges on the St. Lawrence River and Lake Ontario.

* * * * *

(a) Area 1 (Designated Waters):

Service	St. Lawrence River
Basic Pilotage	$16.95 per kilometer or $29.99 per mile.[1]
Each Lock Transited.	$375.[1]
Harbor Movage	$1,229.[1]

[1] The minimum basic rate for assignment of a pilot in the St. Lawrence River is $820, and the maximum basic rate for a through trip is $3,599.

(b) Area 2 (Undesignated Waters):

Service	Lake Ontario
Six-Hour Period	$818
Docking or Undocking	780

* * * * *

■ 3. In § 401.407 revise paragraphs (a) and (b), including the footnote to Table (b), to read as follows:

§ 401.407 Basic rates and charges on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI.

* * * * *

(a) Area 4 (Undesignated Waters):

Service	Lake Erie (east of Southeast Shoal)	Buffalo
Six-Hour Period	$722	$722
Docking or Undocking	557	557
Any Point on the Niagara River below the Black Rock Lock	N/A	1,420

(b) Area 5 (Designated Waters):

Any point on or in	Southeast Shoal	Toledo or any point on Lake Erie west of Southeast Shoal	Detroit River	Detroit pilot boat	St. Clair River
Toledo or any port on Lake Erie west of Southeast Shoal	$2,199	$1,299	$2,855	$2,199	N/A
Port Huron Change Point	[1] 3,829	[1] 4,436	2,877	2,237	1,591
St. Clair River	[1] 3,829	N/A	2,877	2,877	1,299
Detroit or Windsor or the Detroit River	2,198	2,855	1,299	N/A	2,877
Detroit Pilot Boat	1,590	2,199	N/A	N/A	2,877

[1] When pilots are not changed at the Detroit Pilot Boat.

■ 4. In § 401.410, revise paragraphs (a), (b), and (c) to read as follows:

§ 401.410 Basic rates and charges on Lakes Huron, Michigan, and Superior, and the St. Mary's River.

* * * * *

(a) Area 6 (Undesignated Waters):

Service	Lakes Huron and Michigan
Six-Hour Period	$623
Docking or Undocking	592

(b) Area 7 (Designated Waters):

Area	De Tour	Gros Cap	Any harbor
Gros Cap	$2,443	N/A	N/A
Algoma Steel Corporation Wharf at Sault Ste. Marie Ontario	2,443	920	N/A
Any point in Sault Ste. Marie, Ontario, except the Algoma Steel Corporation Wharf	2,048	920	N/A
Sault Ste. Marie, MI	2,048	920	N/A
Harbor Movage	N/A	N/A	$920

(c) Area 8 (Undesignated Waters):

Service	Lake Superior
Six-Hour Period	$549
Docking or Undocking	522

§ 401.420 [Amended]

■ 5. In § 401.420—

■ a. In paragraph (a), remove the number ''$102'' and add, in its place, the number ''$113''; and remove the number ''$1,604'' and add, in its place, the number ''$1,777''.

■ b. In paragraph (b), remove the number ''$102'' and add, in its place, the number ''$113''; and remove the number ''$1,604'' and add, in its place, the number ''$1,777''.

■ c. In paragraph (c)(1), remove the number ''$606'' and add, in its place, the number ''$671''; in paragraph (c)(3), remove the number ''$102'' and add, in its place, the number ''$113''; and, also in paragraph (c)(3), remove the number ''$1,604'' and add, in its place, the number ''$1,777''.

§ 401.428 [Amended]

■ 6. In § 401.428, remove the number ''$618'' and add, in its place, the number ''$684''.

Dated: July 13, 2009.

Kevin S. Cook,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

[FR Doc. E9–17229 Filed 7–20–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 212

RIN 0750–AG23

Defense Federal Acquisition Regulation Supplement; Acquisition of Commercial Items (DFARS Case 2008–D011)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule; correction.

SUMMARY: DoD is making a correction to the interim rule published at 74 FR 34263 on July 15, 2009, which amended the Defense Federal Acquisition Regulation Supplement (DFARS) to address the conditions under which a time-and-materials or labor-hour contract may be used for the acquisition