

## PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

### Subpart Z—Toxic and Hazardous Substances

3. The authority citation for Subpart Z of 29 CFR 1926 is revised to read as follows:

**Authority:** Sec. 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), or 6-96 (62 FR 111), as applicable; 29 CFR part 1911.

Section 1926.1102 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

4. In § 1926.1101, add paragraph (a)(8) and revise paragraph (g)(11) introductory text to read as follows:

#### § 1926.1101 Asbestos.

(a) *Scope and application.* \* \* \*

\* \* \* \* \*

(8) This section does not apply to asbestos-containing asphalt roof coatings, cements and mastics.

\* \* \* \* \*

(g) *Methods of compliance* \* \* \*

\* \* \* \* \*

(11) *Alternative methods of compliance for installation, removal, repair, and maintenance of certain roofing and pipeline coating materials.* Notwithstanding any other provision of this section, an employer who complies with all provisions of this paragraph (g)(11) when installing, removing, repairing, or maintaining intact pipeline asphaltic wrap, or roof flashings which contain asbestos fibers encapsulated or coated by bituminous or resinous compounds shall be deemed to be in compliance with this section. If an employer does not comply with all provisions of this paragraph (g)(11) or if during the course of the job the material does not remain intact, the provisions of paragraph (g)(8) of this section apply instead of this paragraph (g)(11).

\* \* \* \* \*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Parts 404, 405, 406, and 407

#### 46 CFR Parts 401, 402, 403, and 404

[USCG-1998-3976]

### Great Lakes Pilotage; Reorganization of Regulations

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Saint Lawrence Seaway Development Corporation's (SLSDC) responsibility for administering the Secretary's functions under the Great Lakes Pilotage Act, as amended, (GLPA) was transferred from the SLSDC to the U.S. Coast Guard on March 5, 1998. This rule relocates the Great Lakes Pilotage regulations from their current place in Title 33, Code of Federal Regulations, to their original place in Title 46, Code of Federal Regulations. Relocation of these regulations is necessary to position Great Lakes Pilotage rules with other U.S. Coast Guard regulations, and not with other SLSDC regulations. This rule also makes conforming amendments to the regulations to reflect U.S. Coast Guard responsibilities under the GLPA.

**DATES:** This final rule is effective June 30, 1998.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at the Docket Management Facility, (USCG-1998-3976), U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington DC 20590-00001.

**FOR FURTHER INFORMATION CONTACT:** For questions on this rule, contact LTJG Mark A. Cunningham, U.S. Coast Guard, telephone 202-267-1534. For questions on viewing material in the docket, contact Dorothy Walker, Chief, Documents, Department of Transportation, telephone 202-366-9329.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory History

This rulemaking relates to departmental management, organization, procedure, and practice. Under 5 U.S.C. 553(b)A, notice and public comment are unnecessary with respect to rules of this nature. Therefore, a notice of proposed rulemaking was not published prior to this rulemaking. For the same reason, good cause exists for making this rule effective less than 30 days after its publication date as is ordinarily required by 5 U.S.C. 553(d).

### Background and Purpose

In 1994, the Secretary of Transportation (the Secretary) formed a study group to determine where to best locate the authority to execute the functions vested in him by the GLPA. Among other powers and duties, the GLPA authorizes the Secretary to examine pilots, register them, and set rates for their services. Because the study group recommended transferring these functions from the U.S. Coast Guard to the SLSDC, the Secretary withdrew the Coast Guard's authority in these matters and redelegated it to the SLSDC (December 11, 1995; 60 FR 63444). On November 12, 1997, the U.S. Court of Appeals for the District of Columbia Circuit, in *Halverson v. Slater*, 129 F.3d 180 (D.C. Cir. 1997), reversed a district court decision and held that the Secretary lacks the authority, under 49 U.S.C. 322(b), to delegate Great Lakes Pilotage Act powers and duties to the SLSDC. The court vacated the December 11, 1995 rule and determined that, under 46 U.S.C. 2104(a), the Secretary may delegate these functions only to the U.S. Coast Guard. On March 5, 1998, the Secretary responded to the court's ruling by redelegating the authority to carry out functions under the GLPA to the U.S. Coast Guard (63 FR 10781-2).

This rulemaking relocates the Great Lakes Pilotage regulations from their current place in Title 33 to their original place in Title 46. Reorganization of the CFR is necessary to position Great Lakes Pilotage rules with other U.S. Coast Guard regulations, and not with other SLSDC regulations. This rule redesignates parts 404, 405, 406, and 407 of 33 CFR Chapter IV, as parts 401, 402, 403, and 404, respectively, of 46 CFR Chapter III.

This rule also makes conforming editorial changes to the redesignated sections that reflect the redelegation of Seaway responsibilities to the U.S. Coast Guard. For example, the word "Administrator" is changed to the word "Commandant" and the words "Saint Lawrence Seaway Development Corporation" are changed to the words "U.S. Coast Guard."

This rule also revises the authority citations of each redesignated part to reflect the renewed delegation of responsibilities from the Secretary to the U.S. Coast Guard.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities.

"Small entities" include 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. This rulemaking is an intra-departmental administrative that does nothing more than relocate certain sections of the U.S. Code of Federal Regulations. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

### Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

### Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that under figure 2-1, paragraph (34)(b), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

### List of Subjects

#### 33 CFR Part 404

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

#### 33 CFR Part 405

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

#### 33 CFR Part 406

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

#### 46 CFR Part 407

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

#### 46 CFR Part 401

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

#### 46 CFR Part 402

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

#### 46 CFR Part 403

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

#### 46 CFR Part 404

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

For the reasons discussed in the preamble, and under the authority of 46 U.S.C. 2104(a) and 49 CFR 1.46 (mmm), the Coast Guard amends 33 CFR Chapter IV, and 46 CFR Chapter III as follows:

### 33 CFR CHAPTER IV

#### PARTS 404, 405, 406, AND 407 [REDESIGNATED AS 46 CFR CH. III (PARTS 401, 402, 403 AND 404)]

1. In 33 CFR Chapter IV, redesignate parts 404, 405, 406, and 407 as 46 CFR Chapter III, parts 401, 402, 403, and 404 respectively.

### 46 CFR CHAPTER III

2. Add a heading for 46 CFR Chapter III to read as follows:

#### CHAPTER III—COAST GUARD (GREAT LAKES PILOTAGE), DEPARTMENT OF TRANSPORTATION

#### PART 401—[AMENDED]

3. The authority citation for redesignated part 401, Title 46, Code of Federal Regulations is revised to read as follows:

**Authority:** 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; 49 CFR 1.45, 1.46 (mmm), 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

4. Revise the redesignated §§ 401.110 (a)(2) and (a)(9) to read as follows:

#### § 401.110 Definitions.

\* \* \* \* \*

(a) \* \* \*

(2) *Commandant* means Commandant, U.S. Coast Guard, Washington, DC 20593-0001.

\* \* \* \* \*

(9) *Director* means Director, Great Lakes Pilotage. Communications with the Director may be sent to the following address: Director, Great Lakes Pilotage (G-MO), 2100 Second Street, SW, Washington, DC 20593-0001.

\* \* \* \* \*

#### § 401.230 [Amended]

5. In the second sentence of § 401.230(b) remove the words "Director or other official of the Saint Lawrence Seaway Development Corporation." and add, in its place, the word "Director."

6. Revise redesignated § 401.250(d) to read as follows:

#### § 401.250 Suspension and revocation of certificates of registration.

\* \* \* \* \*

(d) Every U.S. Registered Pilot shall, whenever his or her license is revoked or suspended under the provisions of Part 5 of this title, deliver his Certificate of Registration simultaneously with his or her license to the U.S. Coast Guard. If the license is suspended, the Certificate of Registration will be held with the suspended license and returned to the holder upon expiration of the suspension period.

#### § 401.431 [Amended]

6. In redesignated § 401.431(e) remove the words "Saint Lawrence Seaway Development Corporation" and add, in its place, the word "Administration."

#### § 401.510 [Amended]

7. In both sentences of redesignated § 401.510(b)(5) remove the words "or the Director."

### PART 402—[AMENDED]

8. The authority citation for redesignated part 402, Title 46, Code of Federal Regulations is revised to read as follows:

**Authority:** 46 U.S.C. 2104(a), 8105, 9303, 9304; 49 CFR 1.46 (mmm).

### PART 403—[AMENDED]

9. The authority citation for redesignated part 403, Title 46, Code of Federal Regulations is revised to read as follows:

**Authority:** 46 U.S.C. 2104(a), 8105, 9303, 9304; 49 CFR 1.46 (mmm).

**PART 404—[AMENDED]**

10. The authority citation for redesignated part 404, Title 46, Code of Federal Regulations is revised to read as follows:

**Authority:** 46 U.S.C. 2104(a), 8105, 9303, 9304; 49 CFR 1.46 (mmm).

11. In addition to the above amendments to Chapter III of Title 46, remove the word "Director" and add, in its place, the word "Commandant" in the following sections:

- a. Section 401.210(a)(4);
- b. Section 401.210(a)(7);
- c. Section 401.220(b);
- d. Section 401.240(d);
- e. Section 401.320(d)(2);
- f. Section 401.320(d)(3);
- g. Section 401.510(b)(3), introductory text
- h. Section 401.710(g); and
- i. Section 401.100.

12. In addition to the above amendments to Chapter III of Title 46, remove the words "Saint Lawrence Seaway Development Corporation" and add, in their place, the words "U.S. Coast Guard" in the following sections:

- a. Section 401.211(e);
- b. Section 401.230(c);
- c. Section 401.230(d);
- d. Section 401.240(a);
- e. Section 401.250(c);
- f. Section 401.320(d)(4);
- g. Section 401.425;
- h. Section 401.510(b)(2);
- i. Section 401.510(b)(3);
- j. Section 401.600(a);
- k. Section 401.615(b); and
- l. Section 401.620(a).

13. In addition to the above amendments to Chapter III of Title 46, remove the word "Administrator" and add, in its place, the word "Commandant" in the following sections:

- a. Section 401.615(b); and
- b. Section 401.650.

14. In addition to the above amendments to Chapter III of Title 46, remove all references to "404" and add, in their place, "401" in the following sections:

- a. 401.210(a)(8);
- b. 401.210(b);
- c. 401.211(a)(1), (b) and (3);
- d. 401.230(e);
- e. 401.240(b);
- f. 401.320(b);
- g. 401.330(a);
- h. 401.335(a)(1);
- i. 401.340(a) and (c);
- j. 401.400(c);
- k. 401.405 introductory text;
- l. 401.410 introductory text;
- m. 401.420(a);
- n. 401.425;

- o. 401.438;
- p. 401.431(a), (f) and (g);
- q. 401.451(a)(1);
- r. 401.600(b);
- s. 401.620(b);
- t. 401.645;
- u. 401.700(b);
- v. 401.710(e);
- w. 401.720(b);
- x. 401.100;
- y. 401.210(a);
- z. 401.320(a) introductory text;
- aa. 403.100;
- bb. 403.400(c);
- cc. 404.1(a);

15. In addition to the above amendments to Chapter III of Title 46, remove all references to "405" and add, in their place, "402" in the following sections:

- a. 401.340(a);
- b. 401.710.(d) and (e).

16. In addition to the above amendments to Chapter III of Title 46, remove all references to "406" and add, in their place, "403" in the following sections:

- a. 401.320(d)(3);
- b. Part 404, Appendix A. Step 1.A.

17. In addition to the above amendments to Chapter III of Title 46, remove all references to "407" and add, in their place, "404" in the following sections:

- a. 403.120(b);
- b. 404.1(b);
- c. 404.10(a);
- c. 404, Appendix A, Step 1.B;
- d. 404, Appendix C, introductory text.

Dated: June 24, 1998.

**J.P. High,**

*Acting Assistant Commandant for Marine Safety and Environmental Protection.*

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**POSTAL RATE COMMISSION****39 CFR Part 3001**

[Docket No. MC96-1; Order No. 1214]

**Amendments to Domestic Mail Classification Schedule**

**AGENCY:** Postal Rate Commission.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the Domestic Mail Classification Schedule (DMCS) by eliminating provisions related to a barcoded small parcel experiment. These provisions expired April 28, 1998. Given the status of the experiment and the Postal Service's intention not to request an extension or seek a permanent classification, elimination of these provisions will

ensure that the DMCS accurately reflects current classifications and discounts.

**DATES:** This rule was effective April 28, 1998.

**FOR FURTHER INFORMATION CONTACT:**

Stephen L. Sharfman, General Counsel, Postal Rate Commission, 1333 H Street NW, Suite 300, Washington, DC, 20268-0001, 202-789-6820.

**SUPPLEMENTARY INFORMATION:** One of the provisions recommended by the Commission and approved by the Governors in Docket No. MC96-1, Experimental First-Class and Priority Mail Small Parcel Automation Rate Category, specified that the experiment would be limited to a two-year period, ending April 28, 1998. Shortly before the expiration date, the Postal Service published a notice in the **Federal Register** stating its intention to allow the experiment to end on the scheduled expiration date without filing a request with the Commission to establish permanent classifications and discounts. The notice also briefly reviewed the basic objectives of the experiment and the reasons why the Service decided against pursuing a permanent classification. See generally 63 FR 19407-19408 (April 20, 1998).

For the reasons stated above, the Commission hereby adopts the following amendment to the DMCS, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 3001, Appendix A to Subpart C—Postal Service Rates and Charges).

**List of Subjects in 39 CFR Part 3001**

Administrative practice and procedure, Postal Service.

For reasons set out in the preamble, the Commission amends 39 CFR part 3001 as follows:

**PART 3001—RULES OF PRACTICE AND PROCEDURE**

1. The authority citation for 39 CFR part 3001 continues to read as follows:

**Authority:** 39 U.S.C. 404(b), 3603, 3622-3624, 3661, 3662.

**Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule****Appendix A to Subpart C—[Amended]**

2. Appendix A to Subpart C—Postal Service Rates and Charges is amended as follows:

- a. Remove 221.4.
- b. Remove and reserve 223.4.
- c. Remove "Pre-barcoded parcels (experimental)" and footnote 11 in First-Class Mail Rate Schedule 221, Letters and Sealed Parcels.