F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (59 FR 22951, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have tribal implications, as specified in Executive Order 13175 because EPA retains its authority over Indian Country. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it approves a state program.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. This rule does not affect the level of protection provided to human health or the environment because this rule authorizes pre-existing State rules which are no less stringent than existing Federal requirements.

K. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 281

Environmental protection, administrative practice and procedure, hazardous materials, state program approval, and underground storage tanks.

Authority: This document is issued under the authority of section 9004 of the Resource Conservation and Recovery Act, 42 U.S.C. 6991c.

Dated: February 14, 2012.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2012–4657 Filed 2–27–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 401

[USCG–2011–0328]

RIN 1625–AB70

2012 Rates for Pilotage on the Great Lakes

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is adjusting the rates for pilotage services on the Great Lakes, which were last amended in February 2011. The adjustments establish new base rates and are made in accordance with a required full ratemaking procedure. They result in an average decrease of approximately 2.62 percent from the rates established in February 2011. This final rule promotes the Coast Guard's strategic goal of maritime safety.

DATES: This final rule is effective August 1, 2012.

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–2011–0328 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 by going to *http://www.regulations.gov,* inserting USCG–2011–0328 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Todd Haviland, Management & Program Analyst, Office of Great Lakes Pilotage, Commandant (CG–5522), Coast Guard; telephone 202–372–2037, email *Todd.A.Haviland@uscg.mil,* or fax 202–372–1909. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Abbreviations

AMOU American Maritime Officers Union
CFR Code of Federal Regulations
COBRA Consolidated Omnibus Budget Reconciliation Act
CPA Certified public accountant
CPI Consumer Price Index
FR **Federal Register**
GLPAC Great Lakes Pilotage Advisory Committee
NAICS North American Industry Classification System
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
ROI Return on Investment
§ Section symbol
U.S.C. United States Code

II. Regulatory History

On August 4, 2011, we published a notice of proposed rulemaking (NPRM) entitled ''2012 Rates for Pilotage on the Great Lakes'' in the **Federal Register** (76 FR 47095). We received 10 comments on the proposed rule. No public meeting was requested and none was held.

III. Basis and Purpose

The basis of this rule is the Great Lakes Pilotage Act of 1960 (''the Act'') (46 U.S.C. chapter 93), which requires U.S. vessels operating ''on register'' [1] and foreign vessels to use U.S. registered pilots while transiting the U.S. waters of the St. Lawrence Seaway and the Great Lakes system. 46 U.S.C. 9302(a)(1). The Act 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). Rates must be established or reviewed and adjusted each year, not later than March 1. Base rates must be established by a full ratemaking at least once every 5 years, and in years when base rates are not established they must be reviewed and adjusted if necessary. 46 U.S.C. 9303(f). The Secretary's duties and authority under the Act have been delegated to the Coast Guard. Department of Homeland Security Delegation No. 0170.1, paragraph (92)(f). Coast Guard regulations implementing the Act appear in parts 401 through 404 of Title 46, Code of Federal Regulations (CFR). Procedures for use in establishing base rates appear in 46 CFR part 404, Appendix A (''Appendix A''), and procedures for annual review and adjustment of existing base rates appear in 46 CFR part 404, Appendix C (''Appendix C'').

The purpose of this rule is to establish new base pilotage rates using the Appendix A methodology.

IV. Background

The vessels affected by this rule traverse the U.S. waters of the Great Lakes and are engaged in foreign trade. United States and Canadian lake freighters, or ''lakers,'' [2] which account for most commercial shipping on the Great Lakes, are not affected. 46 U.S.C. 9302.

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. It is important to note that, while we set rates, we do not control the actual number of pilots an association maintains, as long as the association is able to provide safe, efficient, and reliable pilotage service. We also do not control the actual compensation that pilots receive. The actual compensation 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 Act, 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. While working in those undesignated areas, pilots must only ''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).

This rule is a full ratemaking to establish new base pilotage rates using the Appendix A methodology. Among other things, the Appendix A methodology requires us to review detailed pilot association financial information, and we contract with independent accountants to assist in that review. The last full ratemaking established the current base rates in 2006 (final rule, 71 FR 16501, April 3, 2006). Following the 2006 full ratemaking, and for the first time since 1996 when the Appendix A and Appendix C methodologies were established, we began a series of five annual Appendix C rate reviews and adjustments, each of which produced overall rate increases. The most recent Appendix C annual review was concluded on February 4, 2011 (76 FR 6351), and adjusted pilotage rates effective August 1, 2011.

We intended to establish new base rates within 5 years of the 2006 full ratemaking, or by March 1, 2011. In order to meet that deadline, we started our ratemaking process early and were using 2007 financial data reported by the pilot associations as audited by our independent accountant. However, the independent accountant's report on pilot association financial information proved to be incomplete and inadequate for ratemaking purposes due to inconsistent financial data collection. We went to great lengths and expended significant time and resources to resolve these inadequacies with the independent accountant, to no avail. We finally concluded, as we previously announced last year (2011 NPRM, 75 FR 51191 at 51192, col. 3), that we would need to contract with a new independent accountant, which delayed this Appendix A ratemaking. The second independent accountant used the most recent available data, which was for 2009. This year's NPRM and this final rule both are based on our review of the second independent accountant's financial report of 2009 data. We discuss the comments by the pilot associations on that report and the independent accountant's final findings in our ''Summary—Independent Accountant's Report on Pilot Association Expenses, with Pilot Association Comments and Accountant's Responses,'' which

[1] ''On register'' means that the vessel's Certificate of Documentation has been endorsed with a registry endorsement, and therefore, may be employed in foreign trade or trade with Guam, American Samoa, Wake, Midway, or Kingman Reef. 46 U.S.C. 12105, 46 CFR 67.17.

[2] A ''laker'' is a commercial cargo vessel especially designed for and generally limited to use on the Great Lakes, engaged in trade across the Great Lakes region, including trade between the U.S. and Canada.

appears in the docket for this rulemaking.

V. Discussion of Comments and Changes

We received public comments on our NPRM from 10 commenters. Some commenters submitted multiple comments. Nine commenters were groups or individuals representing pilots; the remaining commenter was an association representing the agents, owners, and operators of ocean ships trading to or from the U.S. Great Lakes. As a result of these comments and as summarized in part VII.A of this preamble, when the rate adjustments shown in Tables 35 through 37 of this preamble are averaged, the average decrease in rates for 2012 will be 2.62 percent and not 4 percent as we proposed in the NPRM.

The 2009 audit base year. Nine commenters questioned the Coast Guard's use of 2009 as the auditing base year for this ratemaking. They pointed out that the Coast Guard originally stated (see, for example, the 2007 final rule, 72 FR 53158 at 53159 col. 3, Sep. 18, 2007) that we would base the next Appendix A ratemaking on audited data ''at the completion of the 2007 navigation season.'' Some commenters felt we had not adequately explained why our original audit was unusable, or why we did not have the second auditor work with the same data that was available to the first auditor. All of the commenters noted that 2009 was historically their ''all time lowest season by traffic volume,'' and hence not representative. One commenter suggested that we ''apparently selected [2009] solely for the effect that it would have on the outcome of the rate calculation.'' Some commenters also felt that the use of a historically low-traffic season as the auditing base year ''flies in the face of reason'' and freezes the expense base at 2009 levels even though the NPRM projects that 2012 traffic levels will be 56 percent higher overall than they were in 2009.

As discussed in part IV of this preamble, the first independent accountant's report was based on improperly collected 2007 financial data, and proved unusable for ratemaking. We discussed the issue in greater detail at the Great Lakes Pilotage Advisory Committee (GLPAC) meeting held on October 18, 2011, which was attended by most of the nine commenters or their representatives. A transcript of that meeting appears in the docket. It is true that 2009 was a historically low base year, but we have traditionally and consistently used the most recent financial data available for ratemaking purposes and there was no legitimate basis to depart from this precedent. As we explained at the GLPAC meeting, we intend to use the Appendix A ratemaking methodology annually, beginning next year, so that year-to-year variations in financial conditions can be more quickly reflected in the rates. The impact of using the 2009 data is somewhat ameliorated by the adjustments we are making in this final rule, in response to comments on the NPRM. Also, the improved conditions pilots experienced in 2010 should be reflected in the next ratemaking cycle.

Demand projections. Four commenters cited the Coast Guard's ''consistent over-projection of traffic'' as the main reason pilots consistently fail to meet target compensation, have the lowest compensation of any pilots in America, and are leaving Great Lakes piloting for other work. These commenters also said traffic falls short of projection, so sufficient revenue is not generated. One commenter suggested that the Coast Guard deliberately overestimates projected traffic levels to harm the pilots. Other commenters suggested that we should be more transparent in revealing our sources for these projections.

We would like to be more transparent in publicizing these sources and the weight we assign to each source. However, we know of no single source that projects either demand for pilotage service or Great Lakes traffic that will require a U.S. pilot. Therefore, we must rely on historic data, input from pilots and industry, periodicals and trade magazines, and information from conferences to project demand for pilotage services. We reduced our projections for pilotage service demand by nearly 27 percent between 2006 and 2011. For this 2012 ratemaking, we anticipate an additional 4.3 percent decrease in demand for pilotage services. At the May 20, 2011, GLPAC meeting, a transcript of which also appears in the docket, we presented an analysis of projected bridge hours to actual bridge hours. The analysis demonstrates that the projected and actual bridge hours values converge between 2006 and 2010. This convergence shows that our ability to project demand has improved, and we expect that improvement to continue.

We discussed the issue of pilotage demand and traffic projection again at the October 2011 GLPAC meeting. GLPAC recommended that we consider adding a review of using a 3-, 5-, or 7-year rolling average of actual bridge hours to project bridge hours for future rates to the proposed bridge hour study. We agreed to include this recommendation in the proposed study.

Work standards and bridge hours. Three commenters said that the current workload standard of 1,000 bridge hours in designated waters and 1,800 bridge hours in undesignated waters is unrealistically high and jeopardizes safe, efficient, and reliable pilotage service. This issue was discussed at GLPAC's October 2011 meeting and GLPAC approved our outline for a third-party study of bridge hours and the workload standard. We are currently preparing the necessary documentation to select a suitable third party to conduct the study. While there is general consensus that a more accurate bridge hour standard needs to be developed, there is no evidence that the current standard is ''unrealistically high and jeopardizes safe, efficient, and reliable pilotage service.'' We will continue to use the current established standard until a new study provides an alternate standard.

Another commenter said that we had departed from the ''previous Appendix A procedure'' in calculating revenue per bridge hour. However this commenter did not provide any further explanation. This commenter said we should ''revert to the prior more reasonable practice'' of using revenue and bridge hours from the audited year, adjusted for changes in the interim period between the audited year and the base year. We have never performed the procedure outlined by this commenter. We followed the same procedure we used for the last Appendix A review (71 FR 16501 at 16509, paragraph H), and the steps required by the methodology to calculate projected revenue by multiplying the projected demand for bridge hours by the rates currently in effect.

Coast Guard discretionary authority. Two commenters who represent pilots said without further explanation that we should use our broad Appendix A authority to revise the proposed 2012 rates and make them ''fairer, more reasonable, and indicative of actual expected traffic levels.'' We disagree with the underlying premise of this comment that the Appendix A methodology provides us with broad authority to revise rates. The Appendix A methodology requires strict adherence to a series of steps and equations that leads to consistent ratemaking results. As previously stated, we rely on historic data, input from pilots and industry, periodicals and trade magazines, and information from conferences to project demand for pilotage services and traffic levels.

Other comments relating to methodology. An industry commenter said we consistently ignore the actual cost to the industry of pilotage services in the United States and that our ratemaking methodology only makes reference to projected or required revenues and never includes any mention of actual costs for previous years. We disagree. Operating expenses represent one of the primary drivers of the current ratemaking methodology. The operating expenses reported in the pilot association financial statements and the independent accountant's audits are actual expenses that are used in developing the ''projection of operating expenses'' for the coming year. This is the first step of an Appendix A ratemaking. In addition, the expenses of pilot compensation and benefits that must be recovered in the rate are also included in the calculation using past years' data to project the cost into the coming year. The Appendix A methodology similarly dictates how we project revenues for ratemaking purposes which also require an examination of historical data. The commenter states that no where does the methodology mention ''total costs for previous years.'' While true, as discussed, the methodology does take into consideration total prior costs and expenses in the ratemaking process. In addition, our shift to conducting Appendix A rulemakings on an annual basis will also recognize ''necessary and reasonable'' operating expenses in a more timely manner, allow us to use a more accurate operating expense base when we establish rates, and better reflect the operating expenses associated with providing pilotage on the Great Lakes.

A pilot association commenter said that our inflation/deflation and payroll tax adjustments should account for the 3 years between the 2009 base year and conditions that can be projected for the 2012 navigation season. We disagree. The Appendix A methodology clearly states that the inflation/deflation adjustment must be based on the single year between the base year and the succeeding navigation season, and payroll expense adjustments must be based on actual base year expenses.

The same commenter said that because most rate adjustment factors are unrelated to the benchmark union contract changes that take effect in August, those unrelated factors should be recognized in rate changes that take effect at the beginning of the 2012 shipping season, and not be delayed until August. We disagree. These benchmark changes, though perhaps few in number compared to the many factors our ratemaking methodology takes into account, continue to be the substantial portion of the rate adjustment. We will continue this practice for the 2012 Appendix A rulemaking, as in every year since 2009 when the rate became effective August 1, consistent with the date when the benchmark contract changes take effect.

One commenter, representing all three Great Lakes pilotage associations, said that membership dues for the American Pilots' Association (APA) should not be viewed as discretionary or personal to pilots, but as necessary and reasonable expenses of each association, and that except for the portion directly attributable to lobbying expenses, these dues should be included in the rate base. The issue of pilot association dues arose in our last Appendix A ratemaking. 71 FR 16501 at 16507, col. 3. Our regulations provide clear guidance concerning this issue and state, ''[each] expense item included in the rate base is evaluated to determine if it is necessary for the provision of pilotage service, and if so, what dollar amount is reasonable for the expense.'' 46 CFR 404.5(a)(1). Recognizable expenses must be both ''reasonable and necessary for the provision of pilotage.'' This topic is analogous to a licensure issue. Expenditures associated with obtaining and maintaining one's pilot's license represent ''necessary'' expenses that are recognized. Membership in a voluntary special interest association, like the APA, is not necessary for the provision of pilotage. Therefore, we found then, and continue to find, that American Pilots' Association membership dues are not necessary and thus are excluded from the rate's expense base. 71 FR at 16506, col. 3.

Another commenter representing pilots said it is very frustrating to address the same issues year after year in connection with the ratemaking process with no progress made on what are clearly identified problems. We understand the commenter's frustration, but the progress the commenter seeks cannot take place within the annual ratemakings that simply apply the existing ratemaking methodology. The upcoming third-party study of the bridge hour definition and the workload standard, and our decision to begin annual Appendix A reviews, are all efforts to address these issues and should alleviate stakeholder concerns. In addition, these issues have been the subject of discussion at the May and October 2011 GLPAC meetings, both of which were open to the public.

District One-specific comments. Commenters representing pilots in District One raised comments specific to that district. Some of the following comments were made by the local pilotage association and others were made by the association's controller.

First, the pilots said that to derive the full cost of their operating expenses and return on investment, we should include the operating expenses and assets of the service corporation affiliated with the pilots' association. Our ratemaking is based on the financial information provided by each association, Appendix A, Sub-step 1.A. The independent accountant's draft financial report included expenses of the service corporation and the association did not raise this issue when it reviewed the draft report. The draft report's findings, the association's comments on those findings, and the final findings are all discussed in the ''Summary—Independent Accountant's Report on Pilot Association Expenses, with Pilot Association Comments and Accountant's Responses,'' which appear in the docket for this rulemaking.

However, the independent accountant's financial reports did not include the investment base calculation. We coordinated with the independent accountant and used the financial information provided by District One to calculate the investment base for this rulemaking. The independent accountant's financial reports will include the investment base calculation for future rulemakings.

Second, the pilots raised a number of questions about the expenses they are now incurring for a new pilot boat that entered service after the close of the 2009 base year. Under the ratemaking methodology, we can recognize ''foreseeable circumstances'' that could affect operating expenses in the upcoming year, but we cannot recognize foreseeable circumstances that might affect the calculation of the association's 2012 investment base (Appendix A, Sub-steps 1.D, 4). We consider significant capital expenditures and the fixed costs associated with those capital expenditures as ''foreseeable circumstances.'' The rest of the expenses that fluctuate due to market forces and the variance in demand for pilot services will be reimbursed when they are recognized in the independent accountant's financial reports that we will use in future ratemaking. Thus, for 2012, and for the duration of the pilot boat mortgage contract, we will recognize the association's mortgage payments on the boat as a foreseeable circumstance affecting their operating expenses. Also, we will recognize the current insurance costs for the boat as a one-time expense for 2012. We will not recognize the boat's depreciation because we are already recognizing the payment of the mortgage principle. Recognizing the payment of the mortgage principal and depreciation would be double counting for the same expense.

Third, the pilots raised questions about a new dock and boatlift they plan to acquire in 2012. Based on the agreement the association has entered into for the performance of this work, we will recognize the association's cost as a foreseeable circumstance affecting their operating expenses in 2012. We will adjust for any expense shortfalls or overages in the following year's ratemaking.

Fourth, the association's controller said we should adjust projected operating expenses for pilot subsistence and travel, in recognition of projected 2012 traffic levels for Areas 1 and 2 that are 62 percent and 50 percent higher, respectively, than 2009 levels. The controller also said we should raise the adjustment for license insurance because the association is adding a new pilot, and that 2012 projections should discount the layoffs that economic conditions forced in 2009 that consequently lowered the association's 2009 operating expenses. We believe that each of the proposed adjustments rests on assumptions that by themselves are too speculative to constitute ''foreseeable circumstances'' for 2012 within the meaning of Appendix A, Step 1.D. Our planned use of Appendix A for future annual ratemakings will allow demonstrated changes in each of these factors to be recognized beginning in 2013.

District Two-specific issues. Commenters representing pilots in District Two raised comments specific to that district. Some of the following comments were made by the local pilotage association and others were made by the association's certified public accountant (CPA).

The association said we should adjust the 2012 rates in recognition that several unusual factors of the 2009 base year are unlikely to reoccur in 2012. In 2009, the commenter claimed that there were significant layoffs, the association eliminated one pilot's position, health plan coverage was temporarily suspended for retirees, pilots' subsistence and travel expenses were decreased, the American Pilots' Association temporarily reduced the association's dues because of economic hardship, and the association moved out of temporary headquarters into a more costly new headquarters late in the year. We are recognizing the mortgage and tax payments the association is making on its new headquarters as ''foreseeable circumstances'' affecting 2012 operating expenses, but the other proposed adjustments rest on assumptions that, by themselves, are too speculative to constitute foreseeable circumstances for 2012 within the meaning of Appendix A, Step 1.D. Our use of the Appendix A methodology for annual ratemakings will account for demonstrated changes in each of these factors, which will be recognized beginning in 2013.

The association's CPA said the association's interest expenses increased in 2011 due to motor and interior upgrades on two pilot boats in this rulemaking. We are recognizing those expenses for one of the boats. For the other, we still lack sufficient documentation to treat any increase as a foreseeable circumstance affecting 2012 operating expenses because the association is still negotiating the contract related to the financing of the upgrades.

The same CPA also said that the association's investment base should be increased by the cost of constructing the association's new headquarters and to reflect the fair market value of the upgraded pilot boat. Changes to the investment base cannot be treated on the same ''foreseeable circumstances'' basis we use for operating expenses, but these impacts, once they are actually felt by the association and reported, should be captured in future annual Appendix A ratemakings, perhaps as early as next year.

Annual Appendix A reviews. One commenter, representing all three pilotage associations, encouraged us to follow through with annual Appendix A reviews beginning next year, noting that this would be fairer to all parties than our past practice of using the Appendix A methodology once every 5 years and relying on the Appendix C methodology in interim years. We agree and have already begun the audit of 2010 expenses in preparation for next year's Appendix A ratemaking. The associations will have an opportunity to review, question, and comment on the independent accountant's draft reports. The independent accountant will consider the questions and comments and draft the final financial reports, which we will then use as the basis for next year's NPRM and final rule.

VI. Discussion of the Final Rule

A. Summary

We are decreasing base pilotage rates in accordance with the Appendix A methodology. The new rates will be established by March 1, 2012, and effective August 1, 2012. Table 1 shows the percent change for the new rates for each area. Overall, rates will average approximately 2.62 percent less than the February 2011 rate adjustments, not 4 percent as we proposed in the NPRM.

TABLE 1—SUMMARY OF RATE ADJUSTMENTS

If pilotage service is required in:	Then the percent change over the current rate is:
Area 1 (Designated Waters)	3.59
Area 2 (Undesignated Waters)	−3.10
Area 4 (Undesignated Waters)	−3.90
Area 5 (Designated Waters)	−3.03
Area 6 (Undesignated Waters)	−3.73
Area 7 (Designated Waters)	−3.08
Area 8 (Undesignated Waters)	−5.08

B. Calculating the Rate Adjustment

Appendix A provides seven steps, with sub-steps, for calculating rate adjustments. The following discussion describes those steps and sub-steps and includes tables showing how we applied them to the 2009 detailed pilot financial information.

Step 1: Projection of Operating Expenses. In this step, we project the amount of vessel traffic annually. Based on that projection, we forecast the amount of fair and reasonable operating expenses that pilotage rates should recover.

Sub-step 1.A: Submission of Financial Information. This sub-step requires each pilot association to provide us with detailed financial information in accordance with 46 CFR part 403. The associations complied with this requirement, supplying 2009 financial information in 2010.

Sub-step 1.B: Determination of Recognizable Expenses. This sub-step requires us to determine which reported association expenses will be recognized for ratemaking purposes, using the guidelines shown in 46 CFR 404.5. We contracted with an independent accountant to review the reported expenses and submit findings with recommendations on which reported expenses should be recognized. The accountant also reviewed which reported expenses should be adjusted prior to recognition and which, if any, should be denied for ratemaking purposes. The independent accountant made preliminary findings; these findings were sent to the pilot associations, and the pilot associations reviewed and provided comments. Then, the independent accountant made final findings. The Coast Guard Director of Great Lakes Pilotage reviewed and accepted those final findings, resulting in the determination of recognizable expenses. The preliminary findings, the associations' comments on those findings, and the final findings are all discussed in the "Summary—Independent Accountant's Report on Pilot Association Expenses, with Pilot Association Comments and Accountant's Responses," which appear in the docket for this rulemaking. Tables 2 through 4 show each association's recognized expenses.

TABLE 2—RECOGNIZED EXPENSES FOR DISTRICT ONE

Reported expenses for 2009	Area 1	Area 2	Total
	St. Lawrence River	Lake Ontario	
Other Pilot Costs:			
Pilot subsistence/travel	$164,782	$131,436	$296,218
License insurance	28,428	18,952	47,380
Other	980	857	1,837
Pilot Boat and Dispatch Expenses:			
Pilot boat expense	101,612	82,506	184,118
Administrative Expenses:			
Legal	10,450	8,685	19,135
Depreciation/auto leasing/other	8,917	7,283	16,200
Dues and subscriptions	13,717	10,678	24,395
Bad debt expense	9,302	1,004	10,306
Utilities	478	346	824
Accounting/professional Fees	2,182	1,818	4,000
Bookkeeping and Administration	77,730	66,121	143,851
Other	762	582	1,344
Total Recognizable	419,340	330,268	749,608
Adjustments:			
Other Pilot Costs:			
Pilotage Subsistence/Travel	(4,624)	(3,641)	(8,265)
Payroll taxes	48,508	38,204	86,712
Other	(589)	(463)	(1,052)
Administrative Expenses:			
Legal	(270)	(212)	(482)
Dues and subscriptions	(13,647)	(10,748)	(24,395)
Bad debt expense	(5,765)	(4,540)	(10,305)
Other	(120)	(94)	(214)
Total CPA Adjustments	23,495	18,504	41,999
Total Expenses	442,835	348,772	791,607

TABLE 3—RECOGNIZED EXPENSES FOR DISTRICT TWO

Reported expenses for 2009	Area 4	Area 5	Total
	Lake Erie	Southeast Shoal to Port Huron, MI	
Other Pilot Costs			
Pilot subsistence/travel	$67,580	$101,371	$168,951
License insurance	6,254	9,380	15,634
Payroll taxes	19,453	43,770	63,223
Other	12,697	28,662	41,359
Pilot Boat and Dispatch Expenses:			
Pilot boat expense	28,026	179,577	207,603
Dispatch expense	12,975	0	12,975
Payroll taxes	0	7,154	7,154
Administrative Expenses:			
Legal	30,052	45,079	75,131
Office rent	30,275	45,413	75,688
Insurance	10,408	15,611	26,019
Employee benefits	26,483	39,725	66,208
Payroll taxes	3,821	5,731	9,552
Other taxes	9,815	14,723	24,538
Depreciation/auto leasing/other	27,383	41,075	68,458
Interest	16,314	24,471	40,785
Dues and subscriptions	4,450	6,675	11,125
Salaries	12,164	18,245	30,409
Accounting/professional Fees	43,071	64,607	107,678
Bookkeeping and Administration	9,400	14,100	23,500

TABLE 3—RECOGNIZED EXPENSES FOR DISTRICT TWO—Continued

Reported expenses for 2009	Area 4	Area 5	Total
	Lake Erie	Southeast Shoal to Port Huron, MI	
Other	9,427	14,140	23,567
Total Recognizable	380,048	719,509	1,099,557
Adjustments:			
Other Pilot Costs:			
Pilotage Subsistence/Travel	(1,338)	(2,533)	(3,871)
Pilot Boat and Dispatch Expenses:			
Pilot boat expense	2,907	5,504	8,411
Administrative Expenses:			
Legal	(4,915)	(9,305)	(14,220)
Employee benefits	1,177	2,228	3,405
Other taxes	(238)	(450)	(688)
Depreciation/auto leasing/other	2,398	4,540	6,938
Interest	(10,379)	(19,649)	(30,028)
Dues and subscriptions	(3,807)	(7,208)	(11,015)
Salaries	417	789	1,206
Other	(833)	(1,577)	(2,410)
Total CPA Adjustments	(14,611)	(27,661)	(42,272)
Total Expenses	365,437	691,848	1,057,285

TABLE 4—RECOGNIZED EXPENSES FOR DISTRICT THREE

Reported expenses for 2009	Area 6	Area 7	Area 8	Total
	Lakes Huron and Michigan	St. Mary's River	Lake Superior	
Other Pilot Costs:				
Pilot subsistence/Travel	$144,081	$75,501	$95,005	$314,587
License insurance	10,577	5,543	6,975	23,095
Other	1,025	537	675	2,237
Pilot Boat and Dispatch Expenses:				
Pilot boat costs	156,031	81,763	102,885	340,679
Dispatch expense	46,365	24,296	30,572	101,233
Payroll taxes	5,846	3,064	3,855	12,765
Administrative Expenses:				
Legal	16,462	8,626	10,855	35,943
Office Rent	4,534	2,376	2,990	9,900
Insurance	6,730	3,527	4,438	14,695
Employee benefits	50,668	26,551	33,410	110,629
Payroll taxes	4,774	2,502	3,148	10,424
Other taxes	11,599	6,078	7,648	25,325
Depreciation/auto Leasing	17,396	9,116	11,471	37,983
Interest	2,417	1,267	1,594	5,278
Dues and Subscriptions	15,594	8,172	10,283	34,049
Utilities	15,182	7,956	10,011	33,149
Salaries	35,110	18,398	23,151	76,659
Accounting/professional fees	8,588	4,500	5,663	18,751
Other	6,852	3,591	4,518	14,961
Total Recognizable	559,831	293,364	369,147	1,222,342
Adjustments:				
Other Pilot Costs:.				
Pilotage Subsistence/Travel	(1,102)	(578)	(727)	(2,407)
Payroll taxes	28,842	15,114	19,018	62,973
Other	(196)	(103)	(129)	(428)
Pilot Boat and Dispatch Expenses:				
Dispatch costs	(3,367)	(1,764)	(2,220)	(7,352)
Administrative Expenses:				
Legal	(1,447)	(758)	(954)	(3,159)
Employee benefits	(1,380)	(723)	(910)	(3,013)
Depreciation/auto leasing/other	599	314	395	1,307
Dues and Subscriptions	(15,594)	(8,172)	(10,283)	(34,049)
Other	(528)	(277)	(348)	(1,153)

TABLE 4—RECOGNIZED EXPENSES FOR DISTRICT THREE—Continued

Reported expenses for 2009	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total
Total CPA Adjustments	5,825	3,053	3,841	12,719
Total Expenses	565,656	296,417	372,988	1,235,061

Sub-step 1.C: Adjustment for Inflation or Deflation. In this sub-step we project rates of inflation or deflation for the succeeding navigation season. Because we used 2009 financial information, the "succeeding navigation season" for this ratemaking is 2010. We based our inflation adjustment of 2 percent on the 2010 change in the Consumer Price Index (CPI) for the North Central Region of the United States, which can be found at: *http://www.bls.gov/xg_shells/ro5xg01.htm.* This adjustment appears in Tables 5 through 7.

TABLE 5—INFLATION ADJUSTMENT, DISTRICT ONE

Reported expenses for 2009		Area 1 St. Lawrence River		Area 2 Lake Ontario		Total
Total Expenses		$442,835		$348,772		$791,607
2010 change in the Consumer Price Index (CPI) for the North Central Region of the United States	×	.02	×	.02	×	.02
Inflation Adjustment	=	$8,857	=	$6,975	=	$15,832

TABLE 6—INFLATION ADJUSTMENT, DISTRICT TWO

Reported expenses for 2009		Area 4 Lake Erie		Area 5 Southeast Shoal to Port Huron, MI		Total
Total Expenses		$365,437		$691,848		$1,057,285
2010 change in the Consumer Price Index (CPI) for the North Central Region of the United States	×	.02	×	.02	×	.02
Inflation Adjustment	=	$7,309	=	$13,837	=	$21,146

TABLE 7—INFLATION ADJUSTMENT, DISTRICT THREE

Reported expenses for 2009		Area 6 Lakes Huron and Michigan		Area 7 St. Mary's River		Area 8 Lake Superior		Total
Total Expenses		$565,656		$296,417		$372,988		$1,235,061
2010 change in the Consumer Price Index (CPI) for the North Central Region of the United States	×	.02	×	.02	×	.02	×	.02
Inflation Adjustment	=	$11,313	=	$5,928	=	$7,460	=	$24,701

Step 1.D: Projection of Operating Expenses. The final sub-step of Step 1 is to project the operating expenses for each pilotage area on the basis of the preceding sub-steps and any other foreseeable circumstances that could affect the accuracy of the projection. We received comments and supporting material and determined that foreseeable circumstances exist in Districts One and Two that could affect the accuracy of the projection. As previously stated, we consider only significant capital expenses and the fixed costs associated with the expenses as foreseeable circumstances.

District One's pilot boat mortgage payments, pilot boat insurance, and dock renovation and boat lift project qualify as foreseeable circumstances. For District One, the projected operating expenses are based on the calculations from Sub-steps 1.A through 1.C and the aforementioned foreseeable circumstances. Table 8 shows these projections.

TABLE 8—PROJECTED OPERATING EXPENSES, DISTRICT ONE

Reported expenses for 2009		Area 1		Area 2		Total
		St. Lawrence River		Lake Ontario		
Total expenses before foreseeable circumstances		$442,835		$348,772		$791,607
Inflation adjustment 2%	+	$8,857	+	$6,975	+	$15,832
Foreseeable circumstances (Director's adjustment):						
Pilot boat mortgage payments	+	$39,643	+	$31,222	+	$70,865
Pilot boat insurance	+	$10,831	+	$8,531	+	$19,362
Dock renovation and boat lift project	+	$72,486	+	$57,089	+	$129,575
Total projected expenses for 2012 pilotage season	=	$574,652	=	$452,590	=	$1,027,242

District Two's pilot boat (HURON MAID) upgrade, annual mortgage expense, and property tax expense qualify as foreseeable circumstances. During the audit for next year's 2013 Appendix A rulemaking, the independent accountant informed us that District Two applied for and received a Consolidated Omnibus Budget Reconciliation Act (COBRA) subsidy for the third and fourth quarter of 2009. The American Recovery and Reinvestment Act of 2009 provided for a temporary premium subsidy for COBRA continuation coverage. The amount of the COBRA insurance subsidy for the period 2009 was $99,993.02. For District Two, the projected operating expenses are based on the calculations from Sub-steps 1.A through 1.C, the aforementioned foreseeable circumstances, and the COBRA subsidy. Table 9 shows these projections.

TABLE 9—PROJECTED OPERATING EXPENSES, DISTRICT TWO

Reported expenses for 2009		Area 4		Area 5		Total
		Lake Erie		Southeast Shoal to Port Huron, MI		
Total expenses		$365,437		$691,848		$1,057,285
Inflation adjustment 2%	+	$7,309	+	$13,837	+	$21,146
Foreseeable circumstances (Director's adjustment):						
Huron Maid upgrade	+	$27,104	+	$40,657	+	$67,761
Annual mortgage expense	+	$7,804	+	$11,706	+	$19,511
Property tax expense	+	$1,693	+	$2,540	+	$4,233
American Recovery and Reinvestment Act of 2009 COBRA subsidy	+	($39,997)	+	($59,996)	+	($99,993)
Total projected expenses for 2012 pilotage season	=	$369,351	=	$700,592	=	$1,069,943

Because we are not now aware of any such foreseeable circumstances for District 3, the projected operating expenses are based exclusively on the calculations from Sub-steps 1.A through 1.C. Table 10 shows these projections.

TABLE 10—PROJECTED OPERATING EXPENSES, DISTRICT THREE

Reported expenses for 2009		Area 6		Area 7		Area 8		Total
		Lakes Huron and Michigan		St. Mary's River		Lake Superior		
Total		$565,656		$296,417		$372,988		$1,235,061
Inflation Adjustment 2%	+	$11,313	+	$5,928	+	$7,460	+	$24,701
Total projected expenses for 2012 pilotage season	=	$576,969	=	$302,345	=	$380,448	=	$1,259,762

Step 2: Projection of Target Pilot Compensation. In Step 2, we project the annual amount of target pilot compensation that pilotage rates should provide in each area. These projections are based on our latest information on the conditions that will prevail in 2012.

Sub-step 2.A: Determination of Target Rate of Compensation. We first explained the methodology we consistently used for this sub-step in the interim rule for our last Appendix A ratemaking (68 FR 69564 at 69571 col. 3; December 12, 2003), and most recently restated this explanation in our 2011 Appendix C final rule (76 FR 6351 at 6354 col. 3; February 4, 2011). Target pilot compensation for pilots in undesignated waters approximates the average annual compensation for first mates on U.S. Great Lakes vessels. Compensation is determined based on the most current union contracts and includes wages and benefits received by first mates. We calculate target pilot compensation for pilots on designated waters by multiplying the average first mates' wages by 150 percent and then adding the average first mates' benefits.

The most current union contracts available to us are American Maritime Officers Union (AMOU) contracts with three U.S. companies engaged in Great Lakes shipping. There are two separate AMOU contracts available—we refer to them as Agreements A and B and apportion the compensation provided by each agreement according to the percentage of tonnage represented by companies under each agreement. Agreement A applies to vessels operated by Key Lakes, Inc., and Agreement B applies to all vessels operated by American Steamship Co. and Mittal Steel USA, Inc.

Agreements A and B both expired on July 31, 2011, and AMOU did not reach an agreement on new contracts in time for us to incorporate them into this ratemaking. However, based on past contract increases and on the current contracts, we can project that any new contracts would provide for annual 3-percent wage increases. Under Agreement A, we project that the daily wage rate would increase from $278.73 to $287.09. Under Agreement B, we project that the daily wage rate would increase from $343.59 to $353.90.

Because we are interested in annual compensation, we must convert these daily rates. Agreements A and B both use monthly multipliers to convert daily rates into monthly figures that represent actual working days and vacation, holiday, weekend, or bonus days. The monthly multiplier for Agreement A is 54.5 days and the monthly multiplier for Agreement B is 49.5 days. We multiply the monthly figures by 9, which represents the average length (in months) of the Great Lakes shipping season. Table 11 shows our calculations.

TABLE 11—PROJECTED WAGE COMPONENTS

Monthly component	Pilots on undesignated waters	Pilots on designated waters
Agreement A:		
$287.09 daily rate × 54.5 days	$15,646	$23,470
Monthly total × 9 months = total wages	140,818	211,226
Agreement B:		
$353.90 daily rate × 49.5 days	17,518	26,277
Monthly total × 9 months = total wages	157,662	236,494

Based on increases over the 5-year history of the current contracts, we project that both Agreements A and B will increase their health benefits contributions and leave 401K plan and pension contributions unchanged. On average, health benefits contribution rates have increased 10 percent annually. Thus, we project that both Agreements A and B will increase this benefit from $97.64 to $107.40 per day. The multiplier that both agreements use to calculate monthly benefits from daily rates is currently 45.5 days, and we project that this figure will remain unchanged. We use a 9-month multiplier to calculate the annual value of these benefits. Table 12 shows our calculations.

TABLE 12—PROJECTED BENEFITS COMPONENTS

Monthly component	Pilots on undesignated waters	Pilots on designated waters
Agreement A:		
Employer contribution, 401K plan (Monthly wages × 5%)	$782.32	$1,173.48
Pension = $33.35 × 45.5 days	1,517.43	1,517.43
Health = $107.40 × 45.5 days	4,886.70	4,886.70
Monthly total benefits	7,186.45	7,577.61
Monthly total benefits × 9 months	64,678	68,198
Agreement B:		
Employer contribution, 401K plan (Monthly wages × 5%)	875.90	1,313.85
Pension = $43.55 × 45.5 days	1,981.53	1,981.53
Health = $107.40 × 45.5 days	4,886.70	4,886.70
Monthly total benefits	7,744.13	8,182.08
Monthly total benefits × 9 months	69,697	73,639

Table 13 combines our projected wage and benefit components of annual target pilot compensation.

TABLE 13—PROJECTED WAGE AND BENEFITS COMPONENTS, COMBINED

	Pilots on undesignated waters	Pilots on designated waters
Agreement A:		
Wages	$140,818	$211,226
Benefits	64,678	68,198
Total	205,496	279,425
Agreement B:		
Wages	157,662	236,494

TABLE 13—PROJECTED WAGE AND BENEFITS COMPONENTS, COMBINED—Continued

	Pilots on undesignated waters	Pilots on designated waters
Benefits	69,697	73,639
Total	227,360	310,132

Agreements A and B affect three companies. Of the tonnage operating under those three companies, approximately 30 percent operates under Agreement A and approximately 70 percent operates under Agreement B. Table 14 provides detail.

TABLE 14—SHIPPING TONNAGE APPORTIONED BY CONTRACT

Company	Agreement A	Agreement B
American Steamship Company		815,600
Mittal Steel USA, Inc.		38,826
Key Lakes, Inc.	361,385	
Total tonnage, each agreement	361,385	854,426
Percent tonnage, each agreement	361,395 ÷ 1,215,811 = 29.7238%	854,426 ÷ 1,215,811 = 70.2962%

We use the percentages from Table 14 to apportion the projected wage and benefit components from Table 13. This gives us a single tonnage-weighted set of figures. Table 15 shows our calculations.

TABLE 15—TONNAGE-WEIGHTED WAGE AND BENEFIT COMPONENTS

		Undesignated waters		Designated waters
Agreement A:				
Total wages and benefits		$205,496		$279,425
Percent tonnage	×	29.7238%	×	29.7238%
Total	=	$61,081	=	$83,056
Agreement B:				
Total wages and benefits		$227,360		$310,132
Percent tonnage	×	70.2762%	×	70.2762%
Total	=	$159,780	=	$217,949
Projected Target Rate of Compensation:				
Agreement A total weighted average wages and benefits		$61,081		$83,056
Agreement B total weighted average wages and benefits	+	$159,780	+	$217,949
Total	=	$220,861	=	$301,005

Sub-step 2.B: Determination of Number of Pilots Needed. Subject to adjustment by the Coast Guard Director of Great Lakes Pilotage to ensure uninterrupted service or for other reasonable circumstances, we determine the number of pilots needed for ratemaking purposes in each area by dividing projected bridge-hours for each area by either 1,000 (designated waters) or 1,800 (undesignated waters). We round the mathematical results and express our determination as whole pilots.

Bridge hours are ''the number of hours a pilot is aboard a vessel providing pilotage service.'' 46 CFR part 404, Appendix A, Sub-step 2.B(1). For that reason, and as we explained most recently in the 2011 ratemaking's final rule, we do not include, and never have included, pilot delay or detention in calculating bridge hours. 76 FR 6351 at 6352 col. 3 (February 4, 2011). Projected bridge-hours are based on the vessel traffic that pilots are expected to serve. We use historical data, input from the pilots and industry, periodicals and trade magazines, and information from conferences to project demand for pilotage services for the coming year.

In our 2011 final rule, we determined that 38 pilots would be needed for ratemaking purposes. We have determined that 38 remains the proper number to use for ratemaking purposes in 2012. This includes 5 pilots in Area 2, where rounding up alone would result in only 4 pilots. For the same reasons we explained at length in the final rule for the 2008 ratemaking, 74 FR 220 at 221–22 (January 5, 2009), we have determined that this adjustment is essential for ensuring uninterrupted pilotage service in Area 2. Table 16 shows the bridge hours we project will be needed for each area and our calculations to determine the number of whole pilots needed for ratemaking purposes.

TABLE 16—NUMBER OF PILOTS NEEDED

Pilotage area	Projected 2012 bridge hours		Divided by 1,000 (designated aters) or 1,800 undesignated aters)		Calculated value of pilot demand	Pilots needed (total = 38)
AREA 1 (Designated Waters)	5,114	÷	1,000	=	5.114	6
AREA 2 (Undesignated Waters)	5,401	÷	1,800	=	3.001	5
AREA 4 (Undesignated Waters)	6,680	÷	1,800	=	3.711	4
AREA 5 (Designated Waters)	5,002	÷	1,000	=	5.002	6
AREA 6 (Undesignated Waters)	11,187	÷	1,800	=	6.215	7
AREA 7 (Designated Waters)	3,160	÷	1,000	=	3.160	4
AREA 8 (Undesignated Waters)	9,353	÷	1,800	=	5.196	6

Sub-step 2.C: Projection of Target Pilot Compensation. In Table 17 we project total target pilot compensation separately for each area by multiplying the number of pilots needed in each area, as shown in Table 16, by the target pilot compensation shown in Table 15.

TABLE 17—PROJECTION OF TARGET PILOT COMPENSATION BY AREA

Pilotage area	Pilots needed (total = 38)		Target rate of pilot compensation		Projected target pilot compensation
AREA 1 (Designated Waters)	6	×	$301,005	=	$1,806,030
AREA 2 (Undesignated Waters)	5	×	220,861	=	1,104,304
AREA 4 (Undesignated Waters)	4	×	220,861	=	883,443
AREA 5 (Designated Waters)	6	×	301,005	=	1,806,030
AREA 6 (Undesignated Waters)	7	×	220,861	=	1,546,026
AREA 7 (Designated Waters)	4	×	301,005	=	1,204,020
AREA 8 (Undesignated Waters)	6	×	220,861	=	1,325,165

Step 3 and Sub-step 3.A: Projection of Revenue. In these steps, we project the revenue that would be received in 2012 if demand for pilotage services matches the bridge hours we projected in Table 16 and 2011 pilotage rates are left unchanged. Table 18 shows this calculation.

TABLE 18—PROJECTION OF REVENUE BY AREA

Pilotage area	Projected 2012 bridge hours		2011 Pilotage rates		Revenue projection for 2012
AREA 1 (Designated Waters)	5,114	×	$451.38	=	$2,308,357
AREA 2 (Undesignated Waters)	5,401	×	298.98	=	1,614,791
AREA 4 (Undesignated Waters)	6,680	×	196.19	=	1,310,549
AREA 5 (Designated Waters)	5,002	×	519.89	=	2,600,490
AREA 6 (Undesignated Waters)	11,187	×	199.12	=	2,227,555
AREA 7 (Designated Waters)	3,160	×	495.54	=	1,565,906
AREA 8 (Undesignated Waters)	9,353	×	193.72	=	1,811,863
Total					13,439,512

Step 4: Calculation of Investment Base. This step calculates each association's investment base, which is the recognized capital investment in the assets employed by the association that is required to support pilotage operations. This step uses a formula set out in 46 CFR part 404, Appendix B. The first part of the formula identifies each association's total sources of funds. Tables 19 through 21 follow the formula up to that point.

TABLE 19—TOTAL SOURCES OF FUNDS, DISTRICT ONE

		Area 1		Area 2
Recognized Assets:				
Total Current Assets		$233,316		$174,705
Total Current Liabilities	−	20,091	−	15,044
Current Notes Payable	+	0	+	0
Total Property and Equipment (NET)	+	0	+	0
Land	−	0	−	0

TABLE 19—TOTAL SOURCES OF FUNDS, DISTRICT ONE—Continued

		Area 1		Area 2
Total Other Assets	+	0	+	0
Total Recognized Assets	=	213,225	=	159,661
Non-Recognized Assets:				
Total Investments and Special Funds	+	0	+	0
Total Non-Recognized Assets	=	0	=	0
Total Assets:				
Total Recognized Assets		213,225		159,661
Total Non-Recognized Assets	+	0	+	0
Total Assets	=	213,225	=	159,661
Recognized Sources of Funds:				
Total Stockholder Equity		213,225		159,661
Long-Term Debt	+	0	+	0
Current Notes Payable	+	0	+	0
Advances from Affiliated Companies	+	0	+	0
Long-Term Obligations—Capital Leases	+	0	+	0
Total Recognized Sources	=	213,225	=	159,661
Non-Recognized Sources of Funds:				
Pension Liability		0		0
Other Non-Current Liabilities	+	0	+	0
Deferred Federal Income Taxes	+	0	+	0
Other Deferred Credits	+	0	+	0
Total Non-Recognized Sources	=	0	=	0
Total Sources of Funds:				
Total Recognized Sources		213,225		159,661
Total Non-Recognized Sources	+	0	+	0
Total Sources of Funds	=	213,225	=	159,661

TABLE 20—TOTAL SOURCES OF FUNDS, DISTRICT TWO

		Area 4		Area 5
Recognized Assets:				
Total Current Assets		$228,212		$515,150
Total Current Liabilities	−	214,412	−	484,000
Current Notes Payable	+	23,063	+	52,061
Total Property and Equipment (NET)	+	321,550	+	725,847
Land	−	269,122	−	607,500
Total Other Assets	+	0	+	0
Total Recognized Assets	=	89,290	=	201,559
Non-Recognized Assets:				
Total Investments and Special Funds	+	0	+	0
Total Non-Recognized Assets	=	0	=	0
Total Assets:				
Total Recognized Assets		89,290		201,559
Total Non-Recognized Assets	+	0	+	0
Total Assets	=	89,290	=	201,559
Recognized Sources of Funds:				
Total Stockholder Equity		53,061		119,778
Long-Term Debt	+	282,288	+	637,220
Current Notes Payable	+	23,063	+	52,061
Advances from Affiliated Companies	+	0	+	0
Long-Term Obligations—Capital Leases	+	0	+	0
Total Recognized Sources	=	358,413	=	809,058
Non-Recognized Sources of Funds:				
Pension Liability		0		0
Other Non-Current Liabilities	+	0	+	0
Deferred Federal Income Taxes	+	0	+	0
Other Deferred Credits	+	0	+	0
Total Non-Recognized Sources	=	0	=	0
Total Sources of Funds:				
Total Recognized Sources		358,413		809,058

TABLE 20—TOTAL SOURCES OF FUNDS, DISTRICT TWO—Continued

		Area 4		Area 5
Total Non-Recognized Sources	+	0	+	0
Total Sources of Funds	=	358,413	=	809,058

TABLE 21—TOTAL SOURCES OF FUNDS, DISTRICT THREE

		Area 6		Area 7		Area 8
Recognized Assets:						
Total Current Assets		$439,799		$230,463		$289,999
Total Current Liabilities	–	61,507	–	32,231	–	40,557
Current Notes Payable	+	13,525	+	7,087	+	8,918
Total Property and Equipment (NET)	+	42,019	+	22,019	+	27,707
Land	–	0	–	0	–	0
Total Other Assets	+	343	+	180	+	227
Total Recognized Assets	=	434,180	=	227,518	=	286,293
Non-Recognized Assets:						
Total Investments and Special Funds	+	0	+	0	+	0
Total Non-Recognized Assets	=	0	=	0	=	0
Total Assets:						
Total Recognized Assets		434,180		227,518		286,293
Total Non-Recognized Assets	+	0	+	0	+	0
Total Assets	=	434,180	=	227,518	=	286,293
Recognized Sources of Funds:						
Total Stockholder Equity		417,721		218,893		275,441
Long-Term Debt	+	2,934	+	1,537	+	1,935
Current Notes Payable	+	13,525	+	7,087	+	8,918
Advances from Affiliated Companies	+	0	+	0	+	0
Long-Term Obligations–Capital Leases	+	0	+	0	+	0
Total Recognized Sources	=	434,180	=	227,518	=	286,293
Non-Recognized Sources of Funds:						
Pension Liability		0		0		0
Other Non-Current Liabilities	+	0	+	0	+	0
Deferred Federal Income Taxes	+	0	+	0	+	0
Other Deferred Credits	+	0	+	0	+	0
Total Non-Recognized Sources	=	0	=	0	=	0
Total Sources of Funds:						
Total Recognized Sources		434,180		227,518		286,293
Total Non-Recognized Sources	+	0	+	0	+	0
Total Sources of Funds	=	434,180	=	227,518	=	286,293

Tables 19 through 21 relate to the second part of the formula for calculating the investment base. The second part establishes a ratio between recognized sources of funds and total sources of funds. Since non-recognized sources of funds (sources we do not recognize as required to support pilotage operations) do not exist for any of the pilot associations for this year's rulemaking, the ratio between recognized sources of funds and total sources of funds is 1:1 (or a multiplier of 1) in all cases. Table 22 applies the multiplier of 1, and shows that the investment base for each association equals its total recognized assets. Table 22 also expresses these results by area, because area results are needed in subsequent steps.

TABLE 22—INVESTMENT BASE BY AREA AND DISTRICT

District	Area	Total recognized assets ($)	Recognized sources of funds ($)	Total sources of funds ($)	Multiplier (ratio of recognized to total sources)	Investment base ($) [1]
One	1	213,225	213,225	213,225	1	213,225
	2	159,661	159,661	159,661	1	159,661
Total						372,886
Two [2]	4	89,290	358,413	358,413	1	89,290

TABLE 22—INVESTMENT BASE BY AREA AND DISTRICT—Continued

District	Area	Total recognized assets ($)	Recognized sources of funds ($)	Total sources of funds ($)	Multiplier (ratio of recognized to total sources)	Investment base ($) [1]
	5	201,559	809,058	809,058	1	201,559
Total	....	....	....	....	....	290,849
Three	6	434,180	434,180	434,180	1	434,180
	7	227,518	227,518	227,518	1	227,518
	8	286,293	286,293	286,293	1	286,293
Total	....	....	....	....	....	947,991

[1] **Note:** "Investment base" = "Total recognized assets" x "Multiplier (ratio of recognized to Total sources)"
[2] **Note:** The pilot associations that provide pilotage services in Districts One and Three operate as partnerships. The pilot association that provides pilotage service for District Two operates as a corporation. As shown in Table 20, Total Recognized Assets do not equal Total Sources of Funds due to the level of long-term debt in District Two.

Step 5: Determination of Target Rate of Return. We determine a market-equivalent return on investment (ROI) that will be allowed for the recognized net capital invested in each association by its members. We do not recognize capital that is unnecessary or unreasonable for providing pilotage services. There are no non-recognized investments in this year's calculations. The allowed ROI is based on the preceding year's average annual rate of return for new issues of high-grade corporate securities. For 2010, the allowed ROI was a little more than 4.94 percent, based on the average rate of return that year on Moody's AAA corporate bonds which can be found at: *http://research.stlouisfed.org/fred2/series/AAA/downloaddata?cid=119.*

Step 6: Adjustment Determination. The first sub-step in the adjustment determination requires an initial calculation that applies a formula described in Appendix A. The formula uses the results from Steps 1, 2, 3, and 4 to project the ROI that can be expected in each area if no further adjustments are made. This calculation is shown in Tables 23 through 25.

TABLE 23—PROJECTED ROI, AREAS IN DISTRICT ONE

		Area 1		Area 2
Revenue (from Step 3)	+	$2,308,357	+	$1,614,791
Operating Expenses (from Step 1)	−	574,652	−	452,590
Pilot Compensation (from Step 2)	−	1,806,030	−	1,104,304
Operating Profit/(Loss)	=	(72,324)	=	57,897
Interest Expense (from audits)	−	0	−	0
Earnings Before Tax	=	(72,324)	=	57,897
Federal Tax Allowance	−	0	−	0
Net Income	=	(72,324)	=	57,897
Return Element (Net Income + Interest)		(72,324)		57,897
Investment Base (from Step 4)	÷	213,225	÷	159,661
Projected Return on Investment	=	(0.34)	=	0.36

TABLE 24—PROJECTED ROI, AREAS IN DISTRICT TWO

		Area 4		Area 5
Revenue (from Step 3)	+	$1,310,549	+	$2,600,490
Operating Expenses (from Step 1)	−	369,351	−	700,592
Pilot Compensation (from Step 2)	−	883,443	−	1,806,030
Operating Profit/(Loss)	=	57,755	=	93,868
Interest Expense (from audits)	−	3,302	−	7,455
Earnings Before Tax	=	54,453	=	86,414
Federal Tax Allowance	−	2,210	−	4,990
Net Income	=	52,243	=	81,424
Return Element (Net Income + Interest)		55,545		88,879
Investment Base (from Step 4)	÷	89,290	÷	201,559
Projected Return on Investment	=	0.62	=	0.44

TABLE 25—PROJECTED ROI, AREAS IN DISTRICT THREE

		Area 6		Area 7		Area 8
Revenue (from Step 3)	+	$2,227,555	+	$1,565,906	+	$1,811,863
Operating Expenses (from Step 1)	−	576,969	−	302,345	−	380,448
Pilot Compensation (from Step 2)	−	1,546,026	−	1,204,020	−	1,325,165
Operating Profit/(Loss)	=	104,560	=	59,542	=	106,250

TABLE 25—PROJECTED ROI, AREAS IN DISTRICT THREE—Continued

		Area 6		Area 7		Area 8
Interest Expense (from audits)	−	2,417	−	1,267	−	1,594
Earnings Before Tax	=	102,143	=	58,275	=	104,656
Federal Tax Allowance	−	0	−	0	−	0
Net Income	=	102,143	=	58,275	=	104,656
Return Element (Net Income + Interest)		104,560		59,542		106,250
Investment Base (from Step 4)	÷	434,180	÷	227,518	÷	286,293
Projected Return on Investment	=	0.24	=	0.26	=	0.37

The second sub-step required for Step 6 compares the results of Tables 23 through 25 with the target ROI (approximately 4.94 percent) we obtained in Step 5 to determine if an adjustment to the base pilotage rate is necessary. Table 26 shows this comparison for each area.

TABLE 26—COMPARISON OF PROJECTED ROI AND TARGET ROI, BY AREA [1]

	Area 1	Area 2	Area 4	Area 5	Area 6	Area 7	Area 8
	St. Lawrence River	Lake Ontario	Lake Erie	Southeast Shoal to Port Huron, MI	Lakes Huron and Michigan	St. Mary's River	Lake Superior
Projected return on investment	(0.339)	0.363	0.622	0.441	0.241	0.262	0.371
Target return on investment	0.049	0.049	0.049	0.049	0.049	0.049	0.049
Difference in return on investment	(0.389)	0.313	0.573	0.392	0.191	0.212	0.322

[1] **Note:** Decimalization and rounding of the target ROI affects the display in this table but does not affect our calculations, which are based on the actual figure.

Because Table 26 shows a significant difference between the projected and target ROIs, an adjustment to the base pilotage rates is necessary. Step 6 now requires us to determine the pilotage revenues that are needed to make the target return on investment equal to the projected return on investment. This calculation is shown in Table 27. It adjusts the investment base we used in Step 4, multiplying it by the target ROI from Step 5, and applies the result to the operating expenses and target pilot compensation determined in Steps 1 and 2.

TABLE 27—REVENUE NEEDED TO RECOVER TARGET ROI, BY AREA

Pilotage area	Operating expenses (Step 1)		Target pilot compensation (Step 2)		Investment base (Step 4) times; 4.94% (Target ROI) (Step 5)		Federal tax allowance		Revenue needed
AREA 1 (Designated Waters)	$574,652	+	$1,806,030	+	$10,540	+		=	$2,391,222
AREA 2 (Undesignated Waters)	452,590	+	1,104,304	+	7,893	+		=	1,564,786
AREA 4 (Undesignated Waters)	369,351	+	883,443	+	4,414	+	2,210	=	1,259,418
AREA 5 (Designated Waters)	700,592	+	1,806,030	+	9,964	+	4,990	=	2,521,575
AREA 6 (Undesignated Waters)	576,969	+	1,546,026	+	21,463	....		=	2,144,458
AREA 7 (Designated Waters)	302,345	+	1,204,020	+	11,247	....		=	1,517,612
AREA 8 (Undesignated Waters)	380,448	+	1,325,165	+	14,152	+		=	1,719,765
Total	3,356,946	+	9,675,017	+	79,673	+	7,200	=	13,118,836

The "Revenue Needed" column of Table 27 is less than the revenue we projected in Table 18 with the exception of Area 1. For purposes of transparency, we verify the calculations in Table 27 by rerunning the first part of Step 6 using the "revenue needed" from Table 27 instead of the Table 18 revenue projections we used in Tables 23 through 25. Tables 28 through 30 show that attaining the Table 27 revenue needed is sufficient to recover target ROI.

TABLE 28—BALANCING REVENUE NEEDED AND TARGET ROI, DISTRICT ONE

		Area 1		Area 2
Revenue Needed	+	$2,391,222	+	$1,564,786
Operating Expenses (from Step 1)	−	574,652	−	452,590

TABLE 28—BALANCING REVENUE NEEDED AND TARGET ROI, DISTRICT ONE—Continued

		Area 1		Area 2
Pilot Compensation (from Step 2)	−	1,806,030	−	1,104,304
Operating Profit/(Loss)	=	10,540	=	7,893
Interest Expense (from audits)	−	0	−	0
Earnings Before Tax	=	$10,540	=	$7,893
Federal Tax Allowance	−	$0	−	$0
Net Income	=	$10,540	=	$7,893
Return Element (Net Income + Interest)		$10,540		$7,893
Investment Base (from Step 4)	÷	$213,225	÷	$159,661
Return on Investment	=	0.0494	=	0.0494

TABLE 29—BALANCING REVENUE NEEDED AND TARGET ROI, DISTRICT TWO

		Area 4		Area 5
Revenue Needed	+	$1,259,418	+	$2,521,575
Operating Expenses (from Step 1)	−	$369,351	−	$700,592
Pilot Compensation (from Step 2)	−	$883,443	−	$1,806,030
Operating Profit/(Loss)	=	$6,624	=	$14,953
Interest Expense (from audits)	−	$3,302	−	$7,455
Earnings Before Tax	=	$3,322	=	$7,499
Federal Tax Allowance	−	$2,210	−	$4,990
Net Income	=	$1,112	=	$2,509
Return Element (Net Income + Interest)		$4,414		$9,964
Investment Base (from Step 4)	÷	$89,290	÷	$201,559
Return on Investment	=	0.0494	=	0.0494

TABLE 30—BALANCING REVENUE NEEDED AND TARGET ROI, DISTRICT THREE

		Area 6		Area 7		Area 8
Revenue Needed	+	$2,144,458	+	$1,517,612	+	$1,719,765
Operating Expenses (from Step 1)	−	$576,969	−	$302,345	−	$380,448
Pilot Compensation (from Step 2)	−	$1,546,026	−	$1,204,020	−	$1,325,165
Operating Profit/(Loss)	=	$21,463	=	$11,247	=	$14,152
Interest Expense (from audits)	−	$2,417	−	$1,267	−	$1,594
Earnings Before Tax	=	$19,046	=	$9,980	=	$12,558
Federal Tax Allowance	−	$0	−	$0	−	$0
Net Income	=	$19,046	=	$9,980	=	$12,558
Return Element (Net Income + Interest)		$21,463		$11,247		$14,152
Investment Base (from Step 4)	÷	$434,180	÷	$227,518	÷	$286,293
Return on Investment	=	0.0494	=	0.0494	=	0.0494

Step 7: Adjustment of Pilotage Rates. Finally, and subject to the requirements of the Memorandum of Arrangements with Canada or adjustment for other supportable circumstances, we calculate rate adjustments by dividing the Step 6 revenue needed (Table 27) by the Step 3 revenue projection (Table 18), to give us a rate multiplier for each area. Tables 31 through 33 show these calculations.

TABLE 31—RATE MULTIPLIER, AREAS IN DISTRICT ONE

Ratemaking projections		Area 1 St. Lawrence River		Area 2 Lake Ontario
Revenue Needed (from Step 6)		$2,391,222		$1,564,786
Revenue (from Step 3)	÷	$2,308,357	÷	$1,614,791
Rate Multiplier	=	1.036	=	0.969

TABLE 32—RATE MULTIPLIER, AREAS IN DISTRICT TWO

Ratemaking projections		Area 4 Lake Erie		Area 5 Southeast Shoal to Port Huron, MI
Revenue Needed (from Step 6)		$1,259,418		$2,521,575
Revenue (from Step 3)	÷	$1,310,549	÷	$2,600,490

TABLE 32—RATE MULTIPLIER, AREAS IN DISTRICT TWO—Continued

Ratemaking projections		Area 4 Lake Erie		Area 5 Southeast Shoal to Port Huron, MI
Rate Multiplier	=	0.961	=	0.970

TABLE 33—RATE MULTIPLIER, AREAS IN DISTRICT THREE

Ratemaking projections		Area 6 Lakes Huron and Michigan		Area 7 St. Mary's River		Area 8 Lake Superior
Revenue Needed (from Step 6)		$2,144,458		$1,517,612		$1,719,765
Revenue (from Step 3)	÷	$2,227,555	÷	$1,565,906	÷	$1,811,863
Rate Multiplier	=	0.963	=	0.969	=	0.949

We calculate a rate multiplier for adjusting the basic rates and charges described in 46 CFR 401.420 and 401.428 and applicable in all areas. We divide total revenue needed (Step 6, Table 27) by total projected revenue (Steps 3 & 3A, Table 18). Our rate changes for 46 CFR 401.420 and 401.428 reflect the multiplication of the rates we established for those sections in our 2011 final rule by the rate multiplier shown as the result of our calculation in Table 34.

TABLE 34—RATE MULTIPLIER FOR BASIC RATES AND CHARGES IN 46 CFR 401.420 AND 401.428

Ratemaking projections		
Total revenue Needed (from Step 6)		$13,118,836
Total revenue (from Step 3)	÷	$13,439,512
Rate Multiplier	=	0.976

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), will decrease by 2.39 percent in all areas.

We multiply the existing rates we established in our 2011 final rule by the rate multipliers from Tables 31 through 33 to calculate the Area by Area rate changes we propose for 2012. Tables 35 through 37 show these calculations.

TABLE 35—ADJUSTMENT OF PILOTAGE RATES, AREAS IN DISTRICT ONE

	2011 rate		Rate multiplier		Adjusted rate for 2012
Area 1—St. Lawrence River					
Basic Pilotage	$18.36/km, $32.50/mi	×	1.036	=	$19.02/km, $33.67/mi
Each lock transited	407	×	1.036	=	422
Harbor movage	1,333	×	1.036	=	1,381
Minimum basic rate, St. Lawrence River	889	×	1.036	=	921
Maximum rate, through trip	3,901	×	1.036	=	4,041
Area 2—Lake Ontario					
6 hour period	$893	×	0.969	=	$865
Docking or Undocking	852	×	0.969	=	826

TABLE 36—ADJUSTMENT OF PILOTAGE RATES, AREAS IN DISTRICT TWO

	2011 Rate		Rate multiplier		Adjusted rate for 2012
Area 4—Lake Erie					
6 hour period	$791	×	0.961	=	$760
Docking or undocking	609	×	0.961	=	585
Any point on Niagara River below Black Rock Lock	1,554	×	0.961	=	1,493

TABLE 36—ADJUSTMENT OF PILOTAGE RATES, AREAS IN DISTRICT TWO—Continued

	2011 Rate		Rate multiplier		Adjusted rate for 2012
Area 5—Southeast Shoal to Port Huron, MI, between any point on or in					
Toledo or any point on Lake Erie west of Southeast Shoal	1,412	×	0.970	=	1,369
Toledo or any point on Lake Erie west of Southeast Shoal & Southeast Shoal	2,389	×	0.970	=	2,317
Toledo or any point on Lake Erie west of Southeast Shoal & Detroit River	3,102	×	0.970	=	3,008
Toledo or any point on Lake Erie west of Southeast Shoal & Detroit Pilot Boat	2,389	×	0.970	=	2,317
Port Huron Change Point & Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat)	4,162	×	0.970	=	4,036
Port Huron Change Point & Toledo or any point on Lake Erie west of Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat)	4,821	×	0.970	=	4,675
Port Huron Change Point & Detroit River	3,126	×	0.970	=	3,031
Port Huron Change Point & Detroit Pilot Boat	2,432	×	0.970	=	2,358
Port Huron Change Point & St. Clair River	1,729	×	0.970	=	1,677
St. Clair River	1,412	×	0.970	=	1,369
St. Clair River & Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat)	4,162	×	0.970	=	4,036
St. Clair River & Detroit River/Detroit Pilot Boat	3,126	×	0.970	=	3,031
Detroit, Windsor, or Detroit River	1,412	×	0.970	=	1,369
Detroit, Windsor, or Detroit River & Southeast Shoal	2,389	×	0.970	=	2,317
Detroit, Windsor, or Detroit River & Toledo or any point on Lake Erie west of Southeast Shoal	3,102	×	0.970	=	3,008
Detroit, Windsor, or Detroit River & St. Clair River	3,126	×	0.970	=	3,031
Detroit Pilot Boat & Southeast Shoal	1,729	×	0.970	=	1,677
Detroit Pilot Boat & Toledo or any point on Lake Erie west of Southeast Shoal	2,389	×	0.970	=	2,317
Detroit Pilot Boat & St. Clair River	3,126	×	0.970	=	3,031

TABLE 37—ADJUSTMENT OF PILOTAGE RATES, AREAS IN DISTRICT THREE

	2011 rate		Rate multiplier		Adjusted rate for 2012
Area 6—Lakes Huron and Michigan:					
6 hour period	$688	×	0.963	=	$662
Docking or undocking	653	×	0.963	=	629
Area 7—St. Mary's River between any point on or in:					
Gros Cap & De Tour	2,650	×	0.969	=	2,568
Algoma Steel Corp. Wharf, Sault Ste. Marie, Ont. & De Tour	2,650	×	0.969	=	2,568
Algoma Steel Corp. Wharf, Sault. Ste. Marie, Ont. & Gros Cap	998	×	0.969	=	967
Any point in Sault St. Marie, Ont., except the Algoma Steel Corp. Wharf & De Tour	2,221	×	0.969	=	2,153
Any point in Sault St. Marie, Ont., except the Algoma Steel Corp. Wharf & Gros Cap	998	×	0.969	=	967
Sault Ste. Marie, MI & De Tour	2,221	×	0.969	=	2,153
Sault Ste. Marie, MI & Gros Cap	998	×	0.969	=	967
Harbor movage	998	×	0.969	=	967
Area 8—Lake Superior:					
6 hour period	608	×	0.949	=	577
Docking or undocking	578	×	0.949	=	549

VII. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of 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. This final rule has not been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the final rule has not been reviewed by the Office of Management and Budget.

Based on comments received, the Coast Guard is adjusting the analysis from the NPRM to account for increased expenses in District One, as well as a COBRA subsidy provided to District 2. These changes reduced the overall savings to shippers from an estimated $1 million in the NPRM to approximately $835,000 for this final rule. A final Regulatory Assessment follows:

The Coast Guard is required to review and adjust pilotage rates on the Great Lakes annually. See Parts III and IV of this preamble for detailed discussions of the Coast Guard's legal basis and purpose for this rule and for background information on Great Lakes pilotage ratemaking. Based on our annual review for this rule, we are adjusting the pilotage rates for the 2012 shipping season to generate sufficient revenue to cover allowable expenses, target pilot compensation, and returns on investment. The rate adjustments in this final rule will lead to a cost savings in six of the seven areas and all three districts with an estimated cost savings to shippers of approximately $835,000 across all three districts.

This rule applies the 46 CFR part 404, Appendix A, full ratemaking methodology and decreases Great Lakes pilotage rates, on average, approximately 2.62 percent overall from the current rates set in the 2011 final rule. The Appendix A methodology is discussed and applied in detail in Part VI of this preamble. Part VI reflects audited 2009 financial data from the pilotage associations (the most recent year available for auditing), projected association expenses, and regional inflation or deflation. The last full Appendix A ratemaking was concluded in 2006 and used financial data from the 2002 base accounting year. The last annual rate review, conducted under 46 CFR part 404, Appendix C, was completed in early 2011.

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 in a specific area would result in a cost reduction or savings for shippers in that area. The shippers affected by these rate adjustments are those owners and operators of domestic vessels operating on register (employed in 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. Our interpretation is 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 operating only within the Great Lakes system may elect to purchase pilotage services. However, this election is voluntary and does not affect our calculation of the rate and is not a part of our estimated national cost to shippers. Our sampling of pilot data suggests there are very few U.S. domestic vessels, without registry and operating only in the Great Lakes that voluntarily purchase pilotage services.

We used 2008–2010 vessel arrival data from the Coast Guard's MISLE system to estimate the average annual number of vessels affected by the rate adjustment to be 204 vessels that journey into the Great Lakes system. These vessels enter 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 204 vessels, there were approximately 319 annual U.S. port arrivals before the vessels left the Great Lakes system, based on 2008–2010 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 rule to be the difference between the total projected revenue needed to cover costs in 2012, based on the 2011 rate adjustment, and the total projected revenue needed to cover costs in 2012 as set forth in this rule. Table 38 details additional costs or savings by area and district.

TABLE 38—RATE ADJUSTMENT AND ADDITIONAL IMPACT OF THE RULE BY AREA AND DISTRICT

[$U.S.; Non-discounted]

	Projected revenue needed in 2011*	Projected revenue needed in 2012**	Additional costs or savings of this rule
Area 1	$2,348,516	$2,391,222	$42,706
Area 2	1,689,246	1,564,786	(124,460)
Total, District One	4,037,763	3,956,008	(81,755)
Area 4	1,436,140	1,259,418	(176,722)
Area 5	2,649,876	2,521,575	(128,301)
Total, District Two	4,086,016	3,780,993	(305,023)
Area 6	2,311,006	2,144,458	(166,548)
Area 7	1,614,974	1,517,612	(97,362)
Area 8	1,904,237	1,719,765	(184,472)
Total, District Three	5,830,218	5,381,835	(448,383)

* These 2011 estimates are detailed in Table 16 of the 2011 final rule (76 FR 6351).
** These 2012 estimates are detailed in Table 27 of this rulemaking.
Some values may not total due to rounding.
''Additional Revenue or Cost of this Rulemaking'' = ''Revenue needed in 2012'' minus ''Revenue needed in 2011.''

After applying the rate change in this rule, the resulting difference between the projected revenue in 2011 and the projected revenue in 2012 is the annual impact to shippers from this rule. This figure would be equivalent to the total additional payments or savings that shippers would 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 rate adjustments would lead to a cost savings in all seven areas and all three districts, with affected shippers operating in District One, District Two, and District Three experiencing savings of $82,000, $305,000, and $448,000, respectively (values rounded). 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 would pay more and some would pay less depending on the distance and port arrivals of their vessels' trips. However, the additional savings reported above captures the adjustment the shippers would experience as a result of the rate adjustment in this rule. As Table 38 indicates, shippers operating in all areas would experience an annual savings due to this rule. The overall impact of the rule would be a cost savings to shippers of approximately $835,000 across all three districts.

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 2011 ratemaking, District Three experienced a decrease in projected expenses due to an adjustment in bridge hours from the 2010 final rule. That decrease led to a savings for that district and yielded a net savings for the system.

This rule will allow the Coast Guard to meet the statutory requirements to review the rates for pilotage services on the Great Lakes.

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 that entities affected by this rule would be classified under the North American Industry Classification System (NAICS) code subsector 483–Water Transportation, which includes 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.

We reviewed recent company size and ownership data from 2008–2010 Coast Guard MISLE data and business revenue and size data provided by publicly available sources such as Manta and ReferenceUSA. 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 would be comparable in ownership and size to these shippers.

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

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final 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 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. Todd Haviland, Management & Program Analyst, Office of Great Lakes Pilotage, Commandant (CG–5522), Coast Guard; telephone 202–372–2037, email *Todd.A.Haviland@uscg.mil,* or fax 202–372–1909. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This rule does not change the burden in the collection currently approved by the Office of Management and Budget under OMB Control Number 1625–0086, Great Lakes Pilotage Methodology.

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. Congress directed the Coast Guard to establish ''rates and charges for pilotage services.'' 46 U.S.C. 9303(f). This regulation is issued pursuant to that statute and is preemptive of state law as outlined 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.'' Because States may not promulgate rules within this category, preemption is not an issue under Executive Order 13132.

Additionally, President Barack Obama's memorandum of May 20, 2009, titled ''Preemption,'' states that ''preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption.'' To that end, when a department or agency intends to preempt State law, it should do so only if justified under legal principles governing preemption, including those outlined in Executive Order 13132, and it should also include preemption provisions in the codified regulation. As currently stated in 46 CFR § 401.120, states, municipalities, and other local authorities are prohibited from requiring ''the use of pilots or [regulating] any aspect of pilotage in any of the waters specified in the Act.'' Therefore, this regulation complies with the requirements of the memorandum.

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

G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and 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 that 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	[1] $19.02 per kilometer or $33.67 per mile.
Each Lock Transited	[1] $422.
Harbor Movage	[1] $1,381.

[1] The minimum basic rate for assignment of a pilot in the St. Lawrence River is $921, and the maximum basic rate for a through trip is $4,041.

(b) Area 2 (Undesignated Waters):

Service	Lake Ontario
Six-hour Period	$865
Docking or Undocking	826

■ 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	$760	$760
Docking or Undocking	585	585
Any Point on the Niagara River Below the Black Rock Lock	N/A	1,493

(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	$2,317	$1,369	$3,008	$2,317	N/A
Port Huron Change Point	[1] 4,036	[1] 4,675	3,031	2,317	$1,677
St. Clair River	[1] 4,036	N/A	3,031	3,031	1,369
Detroit or Windsor or the Detroit River	2,317	3,008	1,369	N/A	3,031
Detroit Pilot Boat	1,677	2,317	N/A	N/A	3,031

[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	$662
Docking or Undocking	629

(b) Area 7 (Designated Waters):

Area	De Tour	Gros Cap	Any Harbor
Gros Cap	$2,568	N/A	N/A
Algoma Steel Corporation Wharf at Sault Ste. Marie, Ontario	2,568	$967	N/A
Any point in Sault Ste. Marie, Ontario, except the Algoma Steel Corporation Wharf	2,153	967	N/A
Sault Ste. Marie, MI	2,153	967	N/A
Harbor Movage	N/A	N/A	$967

(c) Area 8 (Undesignated Waters):

Service	Lake Superior
Six-hour Period	$577
Docking or Undocking	549

§ 401.420 [Amended]

■ 5. Amend § 401.420 as follows:

■ a. In paragraphs (a) and (b), remove the text ''$127'' and add, in its place, the text ''$124''; and remove the text ''$1,989'' and add, in its place, the text ''$1,942''; and

■ b. In paragraph (c)(1), remove the text ''$751'' and add, in its place, the text ''$733''; and in paragraph (c)(3), remove the text ''$127'' and add, in its place, the text ''$124'', and remove the text ''$1,989'' and add, in its place, the text ''$1,942.''

§ 401.428 [Amended]

■ 6. In § 401.428, remove the text ''$766'' and add, in its place, the text ''$748.''

Dated: February 9, 2012.

Dana A. Goward,

Director, Marine Transportation Systems Management, U.S. Coast Guard.

[FR Doc. 2012–4453 Filed 2–27–12; 8:45 am]

BILLING CODE 9110–04–P