

DEPARTMENT OF HOMELAND SECURITY
UNITED STATES COAST GUARD

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GREAT LAKES PILOTAGE

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PUBLIC MEETING

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Detroit Metro Airport Marriott
30559 Flynn Drive
Romulus, Michigan 48174

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Thursday, September 17, 2015

TODD HAVILAND
Department of Homeland Security
U.S. Coast Guard

DAVID J. DEAN
Department of Homeland Security
U.S. Coast Guard

RICHARD W. WALTER
Department of Homeland Security
U.S. Coast Guard

SHARON HAGEMAN
Department of Homeland Security
U.S. Coast Guard

Also Present:

Robert Lemire

John Swartout

George Quick

Mark K. Ruge

Dan Gallagher

John Boyce

John Loftus

Mark LaValley

Stuart Theis

Paul LaMarre

Jean-Francois Belzile

1 P-R-O-C-E-E-D-I-N-G-S

2 (1:07 p.m.)

3 MR. HAVILAND: I'd like to thank
4 everyone for taking time out of their busy
5 schedules to come participate in today's public
6 meeting. My name's Todd Haviland. I carry out
7 the duties and responsibilities of the Director
8 of Great Lakes Pilotage for the U.S. Coast Guard.

9 Today what we're going to do is, Dave
10 Dean's going to come up and give you a
11 presentation on the changes that occurred from --
12 primarily with the methodology that we're
13 proposing in the 2016 notice of proposed
14 rulemaking of the pilotage rates on the Great
15 Lakes. When Dave's done with his presentation,
16 we'll open it up to the members here or the
17 people here in attendance. If you want to
18 provide comments, feel free. If you have
19 questions or clarification and Rich says we can
20 answer them, then we will.

21 So, with that, I'll ask everyone to
22 please go around and introduce yourselves.

1 MR. DEAN: I'm Dave Dean. I work on
2 the rates for the Great Lakes Pilotage Program.

3 MS. HAGEMAN: Hi. I'm Sharon Hageman.
4 I'm the economist on the Great Lakes rate study.

5 MR. QUICK: George Quick, vice
6 president, Masters, Mates & Pilots.

7 MR. GALLAGHER: Dan Gallagher,
8 president, District 2 Pilots.

9 MR. BOYCE: John Boyce, president,
10 District 1 Pilots.

11 MR. LAVALLEY: Mark LaValley, District
12 2 Pilots.

13 MR. SWARTOUT: John Swartout, District
14 3 Pilots president.

15 MR. RUGE: Mark Ruge, K&L Gates,
16 counsel for pilots.

17 MR. BELZILE: Jean-Francois Belzile,
18 director of marine operation, Shipping Federation
19 of Canada.

20 MR. LEMIRE: Robert Lemire, Great
21 Lakes Pilotage Authority of Canada.

22 MR. THEIS: Stuart Theis, U.S. Great

1 Lakes Shipping Association.

2 MR. LOFTUS: John Loftus, director,
3 Detroit/Wayne County Port Authority.

4 MR. LAMARRE: Paul LaMarre, Port of
5 Monroe and American Great Lakes Ports
6 Association.

7 MR. WALTER: Rich Walter, Coast Guard
8 lawyer for the ruling.

9 MR. HAVILAND: Ma'am, is there
10 anything you need for us to do?

11 COURT REPORTER: When we start public
12 comments, if you folks could come up to the mic
13 here and just state your name again, just for the
14 record. Thanks.

15 MR. HAVILAND: And what we'll do is
16 when the transcripts are prepared, we'll post
17 them on the docket for everyone to review. But
18 with that I'll hand it over to Dave.

19 MR. DEAN: All right. Good afternoon,
20 everyone. We've prepared just a brief
21 presentation with an overview of the changes to
22 the methodology that we've proposed for 2016.

1 I'll go through them quickly and then, as Todd
2 mentioned, we'll open it up to your comments or
3 questions at that point.

4 This is just some basic general
5 information about who we are and what we do and
6 what guides us. 46 USC Chapter 93 and 46 CFR
7 404, 401, is the statute and the regulations, and
8 our proposed changes are specifically to the CFR,
9 the government methodology.

10 Two basic main goals of the 2016 rule
11 that we put out was to, one, change the
12 methodology that we've been using for the last
13 twenty years or so to establish rates for
14 pilotage on the Great Lakes, and also at the same
15 time establish the 2016 rates using that new
16 methodology.

17 The proposed rates using our
18 newly-proposed methodology are estimated to
19 increase costs about 6 1/2 million dollars, which
20 is roughly a 50 percent increase compared to
21 2015. The primary cost drivers are the increased
22 number of pilots and also the increased pilot

1 compensation. In addition, we are also proposing
2 a surcharge which will fund the training of six
3 applicant pilots, which will continue to add to
4 the pilot strength for the Great Lakes. And the
5 other key changes that we're proposing, a
6 permanent change point at Iroquois Lock to
7 improve safety in accordance with some
8 recommendations we received from the National
9 Transportation Safety Board.

10 General overview: We'll talk briefly
11 about the regulatory history, some of the reasons
12 for changing how the current rate is broken down,
13 and then at the end we'll look at the economic
14 analysis.

15 Very briefly, if everyone hasn't
16 gotten a handout of the slides, there's some
17 additional copies in the back if you'd like to
18 take any of this with you. We can also provide
19 electronic copies later if anyone would like
20 software copies.

21 Basically, the current methodology,
22 before the newly proposed stuff, ran from about

1 1996 until -- through 2015. After 2006, Congress
2 placed the date requirement that every year by
3 March 1st we would establish pilotage rates, and
4 since that point we've used a combination of the
5 Appendix C and the Appendix A methodology. We
6 stopped using the Appendix C about 2011, because
7 it produced erroneous rates. Since 2012 we've
8 been using strictly the Appendix A methodology.

9 This is a breakdown, and I don't want
10 to go into too many details. This is the old
11 Appendix A methodology that we had in place
12 before our newly proposed methodology. The
13 challenges that we had with that methodology
14 we've placed up here. Essentially the reliance
15 on past projections to establish future
16 projections made it difficult to get the rate to
17 reflect what was actually happening. Also, the
18 inflation wasn't necessarily properly accounted
19 for. It tied pilot compensation to current union
20 contracts on the lakes, a whole host of other
21 reasons. The Appendix C methodology refers to
22 the investment base, and there's generally a

1 large number of -- a lot of work and a lot of
2 paperwork, and a lot of it didn't necessarily
3 seem to be necessary or have a definitive outcome
4 on the final rates we proposed.

5 This is our new methodology,
6 simplified for up here. Basically it's broken
7 down to a similar number of steps, but we believe
8 it's hopefully more simple. Essentially it
9 starts with the operating expenses of the pilot
10 association for continuing the annual audits of
11 revenues and operating expenses, and we're
12 adjusting operating expenses for inflation.
13 We're looking at the number of pilots,
14 multiplying by the target pilot compensation in
15 establishing the rates, and then finally taking
16 the total expenses, which combines the operating
17 expenses and target pilot compensation, and
18 applying a return on investment to that total
19 value, and that gives us the total projected
20 revenue that we expect the pilot associations to
21 need to operate for the coming year.

22 To get our hourly charges, we take

1 that projected revenue and we divide it by
2 historic traffic data. Specifically for this
3 rate, we looked at 2010 to 2013 and averaged out
4 the data from what we call the Great Lakes
5 Pilotage Management System, which is also known
6 as the Klein System, that we share with the
7 Canadians to get the bridge hour data, and that
8 establishes an hourly pilot charge for each area.

9 MR. HAVILAND: Just mind if I add a
10 few things?

11 MR. DEAN: Sure.

12 MR. HAVILAND: I just want to talk
13 through -- the operating expenses, that really
14 doesn't change. We'll still determine what's
15 necessary and reasonable. So if it's a necessary
16 expense to provide pilotage service, we'll then
17 test it to see if that charge is reasonable.
18 What changes with the inflation is instead of one
19 year's worth of inflation, what we've done is
20 we've looked at -- for this rule we've got data
21 from 2013, so we know what inflation is for 2013
22 and 2014, and then we went to the IRS website and

1 they projected what inflation should be for 2015.
2 So that allows us to give you guys -- to make you
3 guys whole, or at least the pilots whole on what
4 their operating expenses are.

5 Will you go back to the --

6 MR. DEAN: Oh, sure, sure.

7 MR. HAVILAND: The big change with the
8 number of pilots. We want to make sure that we
9 either minimize, if not eliminate, the delays
10 that we've seen in the system due to pilotage,
11 and one of the shortcomings that we saw was that
12 we were just looking at, you know, once the pilot
13 got on board the vessel, you know, how many hours
14 should a pilot be on a vessel in order to staff.
15 Well, we had the bridge hour study, and the
16 bridge hour study showed us that a lot more goes
17 into providing pilotage service than just a
18 pilot, you know, getting off the pilot boat,
19 getting on board a ship and then disembarking.

20 So the number of pilots we're looking
21 at is using that seasonal work standard, and then
22 we're saying, you know, since traffic is not

1 linear, and we understand that each year we have
2 these peaks and valleys, or really the peaks at
3 the opening and closing of the season, and due to
4 a lack of aids to navigation and then throughout
5 the year the ships seem to come in clumps, we
6 want to make sure that the U.S. pilots are
7 staffed to deal with those historic peaks.

8
9 And then the target pilot
10 compensation, we looked at a number of standards
11 and we thought the best benchmark was the
12 Canadian Great Lakes Pilotage Authority and those
13 pilots that are doing the exact same job on the
14 exact same ships during the exact same time of
15 year. But we're specifically asking with that
16 two things. You know, was the 10 percent
17 differential appropriate, and we'd like to see
18 comment on, is \$355,000 a year appropriate for
19 the pilots to have for target compensation.

20 The total expenses, I'm not sure we've
21 ever looked at this in the past, but that's just
22 adding the operating expenses with the inflation,

1 plus the number of pilots times their
2 compensation, and then we're going to apply that
3 to the Moody's AAA Bond that we use to apply to
4 the investment base. So we think that this is
5 sufficient money, or we're proposing that this is
6 sufficient money to allow the pilots to invest in
7 infrastructure, put money aside for the lean
8 years, and earn a decent profit for the money
9 that they have at risk, with the idea that this
10 will all bring enhanced reliability and
11 efficiency to keep the traffic moving and, you
12 know, eliminate and/or reduce these delays.

13 And then we'll take historic traffic
14 data. The only data we have is from the Klein
15 system. That was started in 2009. We've also
16 asked if there's any data or any source that
17 anyone may have that could provide us greater
18 fidelity on what this historic demand has been,
19 because we understand that if we over-project the
20 traffic, it decreases the revenues, and that has,
21 you know, caused some challenges that we'd like
22 to eliminate, which has led to, you know, lots of

1 delays and a hard time retaining and recruiting
2 pilots, which seems to be, you know, cyclical.
3 And if we can break that cycle, we can provide
4 the service the industry wants and we can provide
5 working conditions the pilots need for retention
6 and recruitment.

7 MR. DEAN: This is just a step-by-step
8 highlight of the things that Todd just discussed,
9 kind of the changes for each of the different
10 steps of the currently proposed methodology we
11 use as a reference.

12 MR. HAVILAND: Will you talk a little
13 bit about Step 3 and the difference we have with
14 what we project and what we see as far as the --

15 MR. DEAN: Sure. So our staffing
16 model anticipates that we need 50 pilots to meet
17 what we set up as the average peak demand on the
18 Great Lakes, and that's based on the
19 end-of-the-season peaks that Todd was discussing.
20 In reality, we don't think it's feasible for us
21 to get to that level of staffing, given where we
22 currently are as far as number of pilots. So our

1 proposal to get there, and what we have proposed
2 as a projection in the 2016 rate, is that we'll
3 have 42 fully registered pilots in 2016, and
4 that's assuming that some of the applicants can
5 become registered by that time and become seated
6 as registered pilots, with the idea being that
7 we'll continue to fund the applicant surcharge as
8 we build towards the ultimate goal of 50 pilots,
9 but realizing that we can't get there just in one
10 year.

11 And that ultimate staffing model of 50
12 pilots, we believe, will work to minimize delays
13 and also get us towards a goal of providing ten
14 days off per month during the non-peak periods,
15 which we think will also help with recruitment
16 and retention of pilots.

17 These are some of the other steps that
18 Todd just discussed. It highlights our proposed
19 target pilot compensation, as well as the fact
20 that we're soliciting comment on the pilots'
21 proposed compensation level in our dockets. And
22 again, the reference to Moody's AAA Bonds and our

1 projected revenue of roughly 6 1/2 million
2 dollars greater than the 2015 projected revenue.

3 For the historic traffic piece that
4 Todd was discussing, we had essentially set up --
5 our plan was to use a five-year period. We ended
6 up using 2010 through 2013 because of the impacts
7 that we thought would artificially skew the
8 average by looking at 2009 right after the Great
9 Recession, or in 2014, we felt the ice conditions
10 and the traffic spike that followed didn't
11 necessarily track with the four years that line
12 up in the middle there, 2010 to 2013. And again,
13 as Todd mentions, if -- we're also open to public
14 comment about other methodologies, ideas or
15 sources for historic traffic numbers.

16 And then a final step is our training
17 surcharge. We estimate the training costs of a
18 new applicant pilot to be approximately \$150,000.
19 We've proposed a surcharge for each pilotage
20 district to train two pilot applicants, working
21 towards increasing the pilot strength. So you'll
22 see part of the rates include \$300,000 per

1 district, a total of \$900,000 for the training
2 surcharge.

3 This is the regulatory analysis which
4 basically is the economic analysis of our
5 proposed rule. The total cost to shippers at
6 \$7.1 million is a combination of our estimated
7 cost for the rule making, as well as the \$900,000
8 surcharge. That's where the \$7.1 million comes
9 from. And there are some changes to the
10 collection of information activity as well that
11 we're proposing with this rule.

12 And this is just a summary slide that
13 shows the additional costs we're projecting for
14 this rule making. It's broken down by each
15 district, and it has the surcharge and the total
16 costs and then the total, \$7.1 million again.

17 That's the conclusion of our brief
18 presentation on the overview of the 2016 proposed
19 rule. At this time we'd like to open it up to
20 your questions, and we'd be happy to answer
21 anything that we can, or if you have specific
22 comments you'd like to make, we invite you to do

1 so. Thank you.

2 MR. WALTER: Rich Walter, Coast Guard.
3 Just make sure that everyone understands this
4 isn't your only opportunity to comment. You can
5 send us written comments. Our comment period
6 closes, what, 60 days from publication --

7 MR. THEIS: November 9th.

8 MR. WALTER: So -- excuse me?

9 MR. THEIS: November 9th.

10 MR. WALTER: November 9th. Right. So
11 anything you don't say here today, or if you have
12 colleagues who want to say something to us, go
13 ahead and send them to the office, and the
14 address information is in the NPRM.

15 MR. LOFTUS: You want us to go up to
16 the microphone or --

17 MR. DEAN: Yes. If you have comments,
18 if you could make them in the microphone so we
19 can capture it for the record, that would be
20 great.

21 MR. LOFTUS: Good afternoon. John
22 Loftus, executive director of the Detroit/Wayne

1 County Port Authority. These comments also will
2 reflect -- and my colleague Paul LaMarre will
3 probably add to this, comments from the American
4 Great Lake Ports Association. So the Port of
5 Detroit and our membership within the Great Lake
6 Ports Association is concerned by the level of
7 the increase that we're talking about today. Our
8 entire association is committed to expanding the
9 operation of shipping within the Great Lakes,
10 jobs at the docks, as well as on board the
11 vessels, and when we consider the level of the
12 rate increase and the methodology that you are
13 supposed to be using about reliability,
14 efficiency and safety, we kind of question how
15 you came to that in terms of the efficiency
16 issue.

17 The rate increase is quite dramatic.
18 We understand there is an interest in adding
19 additional pilots so we eliminate delays, but are
20 there other means of accomplishing those same
21 goals? Is such an incredible rate increase
22 absolutely necessary to add this number of

1 pilots? What impact have you given to the
2 potential loss of business at portside at our
3 terminals? I mean, it's one thing to establish
4 an objective -- or have an objective, but if it
5 chases business away, it does no service to
6 anybody. And I guess the other issue is, on the
7 efficiency side, are there other means of
8 accommodating or accomplishing either (a)
9 savings? Is there a way to bring the pilotage
10 districts into -- under one operation, similar to
11 the way that the Canadians do it? Are there
12 other means of accomplishing these same goals
13 that maybe have not been considered as part of
14 this process?

15 There will be additional comments
16 coming in from our association. Thank you for
17 providing the opportunity to speak today.

18 MR. LAMARRE: Paul LaMarre with the
19 Port of Monroe and also one of the officers of
20 the American Great Lakes Ports Association. To
21 mirror John's comments, the association is
22 extremely troubled by this increase when we are

1 trying to create sustainability within the system
2 and promote new opportunities and new traffic.
3 We're already struggling to be competitive with
4 our coastal counterparts on the rate structure
5 that must exist in order to attract cargo into
6 the Great Lakes/St. Lawrence Seaway System.

7 On one hand, while this could be seen
8 as a benefit to the pilots with increased
9 personnel and rates, it is ultimately going to
10 hurt the system as a whole. It will damage the
11 marketability of the system. It's going to put
12 rates over what is presently barely making them
13 competitive. 126 ships through the seaway system
14 is not exactly what all of us hoped for when the
15 seaway was constructed, nor do any of our
16 organizations see it as our current goal. We, as
17 ports who are trying to facilitate job creation,
18 not only on our docks, but within cargo owners
19 themselves and work with the vessel lines, see
20 this as something that could potentially be the
21 last straw for a lot of shippers to take their
22 cargo elsewhere, and we don't want to see that.

1 When we talk about efficiencies and
2 reliability, economic efficiencies within the
3 system are equally as important and, as John
4 mentioned, our comments will be submitted in much
5 more detail, but all of our American ports on the
6 Great Lakes collectively have a major issue with
7 this.

8 MR. THEIS: I'm just going to turn
9 this way to look at you guys. Okay? I'm Stuart
10 Theis, executive director of the U.S. Great Lakes
11 Shipping Association, and I'm here to say,
12 unfortunately, very little. I think one of the
13 reasons for that, of course, is that there was a
14 very short period of time that was allowed for us
15 to try and digest this work product and make
16 intelligent comments about it, and the
17 consequence, we have begun to develop comments,
18 we have similar comments to what have just been
19 expressed here in terms of economic impact, but
20 also with respect to methodology and the actual
21 (indiscernible) of the filing itself. And so I
22 really -- we made a command decision.

1 Well, I said have said earlier, for
2 those of you who don't know, the Great Lakes
3 Shipping Association is an association of agents
4 that represent principals, and the principals, of
5 course, they really exist (indiscernible) and
6 there's obviously been quite a bit of blow-back,
7 simply that the size of the increase in the
8 nature of 50 percent is a pretty strong number,
9 and there's been -- so, I think one of the common
10 comments was, "What?" We need to find out what a
11 lot of this is supposed to really mean. And so
12 we really made the decision rather than meet and
13 stand here, taking a few things that are in the
14 filing that we have identified that would make no
15 sense for us, we reserve our comments solely at
16 this point to the written comments which we're
17 going to be providing before the 9th of November.

18 And possibly, I don't know if this is
19 administratively possible, but maybe -- this
20 occurred to me that after the written comments
21 were submitted that there might be a useful
22 purpose via a public meeting or some sort of a

1 face-to-face meeting with the pilots and with the
2 Coast Guard to say, look, why don't you say that.
3 I mean I don't know if that's a normal
4 administrative thing that's available, but it's
5 just something we might suggest. Really saying
6 that maybe this meeting would have been better,
7 you know, after the 9th of November. I know
8 there's urgency because of when you're going to
9 have this, this particular rate in effect at the
10 first -- the beginning of the season rather than
11 the first of August. But in any event, what I'm
12 here to say on behalf of my association and the
13 people who are really the stakeholders who are
14 the clients of my members of the association, we
15 really are not prepared to get into any real
16 substantive items. And if we were, it would be
17 only a small part of the situation.

18 But I must say in closing that there's
19 a lot of consternation, there's a lot of --
20 similar to what the other gentleman said. This
21 is something that is a great concern to the
22 principals and where the future of their business

1 is going to lie with respect to other boat
2 transportation which carry this cargo in North
3 America. Thank you very much.

4 MR. WALTER: Stu, I can respond to
5 your procedural question. We are sorry for the
6 short notice for this meeting. There's a reason
7 for it, which is that when we announce a public
8 meeting, that in itself requires agency
9 clearance, and there's inevitably a delay in
10 announcing a public meeting. So the most
11 efficient way for us to announce today's meeting
12 was to be able to place the meeting notice right
13 in the NPRM, and we couldn't plan the meeting too
14 far ahead. We didn't -- you know, we knew for
15 only about a week when the NPRM would actually
16 publish and we wanted to make sure that we as
17 quickly as possible got some preliminary sense of
18 the type of comments that we would receive by
19 November 9th.

20 It is possible for us to think about
21 a follow-up public meeting. That will be subject
22 to the same clearance process I described. So we

1 can't promise at this point that we will do a
2 follow-up. If we do, it would most likely be
3 before November 9th, because if it takes place
4 after November 9th, then we would need to extend
5 the public comment period. And as you pointed
6 out, because of the statutory deadline of March
7 1, 2016, for setting next year's rates, it's
8 important for us to be able to move quickly from
9 the public comment period into development of the
10 final rule, and that takes several months. Hope
11 that answers your question.

12 MR. THEIS: Thank you.

13 MR. BELZILE: Jean-Francois Belzile
14 for the Shipping Federation of Canada. To our
15 members, this NPRM is -- excuse my strong words,
16 but it's simply outrageous, it's not acceptable
17 and unsustainable to business, and should be
18 retracted altogether. We have submitted some
19 constructive proposal for improving vital
20 services on the Great Lakes on our letter dated
21 July 8, 2014, and some of those suggestions being
22 trying to identify synergies between the GLP

1 pilotage system and the U.S. Coast Guard NPRM and
2 the actual American systems of the Great Lakes.
3 We also proposed looking after the need for
4 double pilotage (indiscernible) new technology
5 developments. We also suggested looking at the
6 need for undesignate -- pilotage on undesignated
7 waters. So those are some suggestions that we
8 put forward, but for which I didn't receive any
9 feedback from Coast Guard. And also, it doesn't
10 seem that our comments have been acknowledged
11 into the NPRM. So for those reasons, we would
12 like the Coast Guard to retract this NPRM.

13 MR. QUICK: Good afternoon. My name
14 is George Quick. I'm the vice president of the
15 International Organization of Masters, Mates &
16 Pilots, and I represent the state pilots in the
17 24 coastal states in the United States. I'm a
18 former pilot and pilot regulator and
19 administrator, so I'm familiar with the process
20 that we we're going through at this time. I have
21 no objection to the relatively short notice,
22 because I understand the timelines and

1 constraints that the Coast Guard is working
2 under, and we have until November 9 to get public
3 comments into the docket, which seems to be more
4 than adequate for our purposes.

5 I appreciate the efforts the Coast
6 Guard has put into coming up with this change in
7 methodology. It's long overdue and needs
8 simplification and to reflect reality, which the
9 past process did not do. But after reviewing the
10 proposed regulations, it's very apparent to me
11 it's still a work in progress that needs
12 considerable input and a need for clarification
13 and better understanding of what the Coast Guard
14 intends to -- or how the Coast Guard intends to
15 implement their proposed regulations.

16 We do have one major concern and
17 that's the linkage with the Canadian pilot
18 compensation. The check of the currency exchange
19 rates between Canada -- Canadian dollar and the
20 U.S. dollar over the last ten years reflect a 45
21 percent swing, and that type of volatility being
22 applied to U.S. revenues that are unrelated to

1 workload or expenses makes the U.S. system
2 unsustainable. We don't believe we can live with
3 a 45 percent swing that's totally unrelated to
4 anything other than currency exchanges. We think
5 a better approach would be to use comparable U.S.
6 pilot compensation where we have adequate data
7 provided, and that would be working in the U.S.
8 system and the U.S. economic and social taxes and
9 similar administrative structure and management
10 structure of the pilot associations.

11 We have a problem with comparing U.S.
12 pilots with Canadian pilots, because there is
13 quite a difference between U.S. pilots, who are
14 contractors and have to maintain the system and
15 manage the system and have legal liabilities as
16 contractors, with Canadian pilots holding
17 (indiscernible) status and have no management
18 responsibility. So even if we could solve the
19 currency fluctuation problem, we still have to
20 adjust in some way for the difference in workload
21 and social and economic conditions between the
22 U.S. and Canada and the structure of U.S.

1 pilotage versus Canadian pilotage.

2 I think that we prefer not to go into
3 any great amount of detail at this time. We have
4 a docket that's open until November 9. We are
5 going to go through the proposed rate very
6 carefully and present very comprehensive comments
7 to the docket. Thank you.

8 MR. SWARTOUT: John Swartout,
9 president, Western Great Lakes Pilots
10 Association, District 3. I just have a few
11 questions. David, you said that the Appendix C
12 rates haven't been used since 2011 because they
13 produce erroneous results. Are you proposing to
14 delete Appendix C, just get rid of it, or --

15 MR. DEAN: Yes.

16 MR. SWARTOUT: Okay. So it wouldn't
17 -- if you start doing multi-year rates, that
18 wouldn't be something that Appendix C would have
19 anything to do with?

20 MR. DEAN: Not that we see.

21 MR. SWARTOUT: Okay. Any change to
22 Appendix B, the definitions section?

1 MR. DEAN: Regarding the investment
2 base?

3 MR. SWARTOUT: Any of the definitions.

4 MR. DEAN: In our new methodology, we
5 removed the investment base in one of the
6 calculations.

7 MR. WALTER: John, let me give you
8 some information on that. What we're proposing
9 is the elimination of A, B and C. We would
10 replace the current appendices entirely with a
11 new Part 404 rate-making methodology, and that
12 would be the only methodology in our regs.

13 MR. SWARTOUT: Okay. Thanks. In
14 Section 7 of the NPRM, that's the regulatory
15 analysis.

16 MR. DEAN: Okay.

17 MR. SWARTOUT: Part D, Collection of
18 Information, the paragraph Estimate of Annual
19 Burdens says from 19 to 2,129.5. I assume that's
20 hours. It doesn't say that, though.

21 Can you explain what the increased
22 burden consists of? That's a big change in that

1 collection of information burden. I assume that
2 has to do with the Klein, but we're --

3 MR. DEAN: It does, yes.

4 MR. SWARTOUT: -- already doing Klein,
5 so I'm just wondering why it would take so much
6 more time to do.

7 MR. HAVILAND: Let's let Sharon answer
8 that for us.

9 MR. DEAN: Okay.

10 MS. HAGEMAN: So what that's doing is
11 -- so basically what it wasn't included before,
12 like -- so we have this information. It's just
13 it wasn't captured in our current COI. So what
14 this is just doing is, because it wasn't
15 captured, we now have to. So it's not
16 necessarily the burden is increasing so much.
17 This is being done already. It's just now we
18 have to include it as a burden, so --

19 MR. SWARTOUT: Just you're recognizing
20 that burden.

21 MS. HAGEMAN: Yes.

22 MR. SWARTOUT: Okay.

1 MR. DEAN: And the additional
2 exhibits, you know, we were discussing with
3 Klein, with potentially upgrading to a new
4 version of Klein that might allow more electronic
5 access for other people to do. So this -- the
6 burden increase reflects the potential that
7 pilots could possibly use to set a base as well,
8 in addition to establishing (indiscernible).

9 MR. SWARTOUT: Okay. That's all I
10 have. Thanks.

11 MR. LOFTUS: Just a follow-up question
12 kind of. John Loftus with the Detroit Port
13 Authority. Is there a statutory requirement that
14 says only the Coast Guard is involved in the
15 rate-making process from an agency standpoint?

16 MR. WALTER: Yes.

17 MR. LOFTUS: It is statutorily
18 required that --

19 MR. WALTER: It is statutory.

20 MR. LOFTUS: So if --

21 MR. WALTER: It's statutory in the
22 sense that it -- that it gives the authority only

1 to the Secretary of Homeland Security, and even
2 back when we were under the Department of
3 Commerce, the Secretary has always delegated that
4 authority to the Coast Guard and we're the only
5 agency involved.

6 MR. LOFTUS: So it's the Secretary of
7 Homeland Secretary that is delegated the
8 responsibility? It's up to the Secretary to
9 determine which agency is going to be the one
10 doing that?

11 MR. WALTER: Correct.

12 MR. LOFTUS: Would he be allowed to,
13 you know, bring in other departments within the
14 federal government?

15 MR. HAVILAND: Can I answer this?

16 I'll give you a quick history lesson.
17 Back in 1960 the Great Lakes Pilotage Office was
18 known as the Great Lakes Pilotage Administration.
19 It was under the Department of Commerce. At the
20 time, the Coast Guard was under the Department of
21 Treasury. When Lyndon Johnson decided to create
22 the Department of Transportation, the Coast Guard

1 went there and the Great Lakes Pilotage Authority
2 was then transferred from Commerce to
3 Transportation, but directly to the Coast Guard.
4 So when the law says that, you know, the federal
5 government is the only one that can do these
6 rates, back in the '90s the Coast Guard
7 transferred this office to the St. Lawrence
8 Seaway Development Corporation. The pilots sued
9 and the government won the first round, but lost
10 on appeal. So the federal courts say that the
11 only people that can administer this program is
12 the United States Coast Guard.

13 MR. LOFTUS: Okay.

14 MR. LEMIRE: Robert Lemire, Great
15 Lakes Pilotage. Point of clarification. In the
16 NPRM there's mention of introducing a change
17 point at Iroquois. Is it Iroquois Lock or around
18 Iroquois or could there be more clarification in
19 your final rule? From what I understand in the
20 memorandum of agreement, the change point in
21 that, this would need to be on U.S. side, or
22 maybe -- maybe just a discussion on that, Todd?

1 MR. HAVILAND: Yeah. We've been
2 pretty public about this. Our change points are
3 just general geographic areas, so we don't think
4 it's possible nor practical to say, "Here's a
5 lat/long. This is exactly where the pilot has to
6 change." So the idea is we've got a 10.8-hour
7 transit and it needs to be broken up for safety
8 reasons, and we think that Iroquois Lock, in that
9 general area, is the best place to do it. Now,
10 if we can't do it at the lock, then we'll have to
11 look at other alternatives, but the idea is to
12 break that transit up.

13 MR. LEMIRE: Okay.

14 MR. HAVILAND: Are there any other
15 questions or comments?

16 (No response.)

17 MR. WALTER: What I would suggest is
18 that we take a short break and it may be that
19 after the break people will have some additional
20 thoughts.

21 MR. HAVILAND: Sure. Let's take
22 fifteen minutes.

1 (Off the record from 1:48 p.m. until
2 2:12 p.m.)

3 MR. HAVILAND: Good afternoon again.
4 We'd like to re-open the question and comment
5 period. If anyone has any questions or comments,
6 please come to the front.

7 MR. GALLAGHER: Dan Gallagher,
8 president of District 2 Pilots Association. I
9 want to comment on the confusion regarding the
10 director's adjustment to the 2013 independent
11 audit report regarding the disallowance of a
12 hundred percent of K&L Gates' legal fees.

13 Lobby fees are clearly defined by
14 Congress. We've given the independent auditors
15 the amount attributed to the lobbying fees, which
16 they never -- the independent auditors never made
17 any adjustments. Nowhere in the United States in
18 any pilotage organization are legal fees
19 disallowed in any rate making. Mr. Frank Flynn
20 (ph.), the previous couple directors past, made a
21 disallowance for legal fees. He substantially
22 cut the amounts and he used the underground --

1 underwater divers' legal fees basically for a
2 basis. That was overturned by the Coast Guard.
3 So we'd like the director to look at that. And
4 if needed, we provided all the fees and
5 everything in a breakdown. If you need more,
6 we'd be more than happy to provide those. Thank
7 you.

8 MR. BOYCE: John Boyce, president of
9 District 1. The new proposed rate has some
10 changes in what would be billable under the rate,
11 and we need more clarification onto what those
12 changes are and what would and would not be
13 billable. And also, in the calculation to derive
14 a bridge hour cost, what would now be considered
15 an unbillable hour, those hours would need to be
16 removed from the bridge hours to arrive at a cost
17 which we would bill.

18 MR. HAVILAND: Can you expand on that?
19 I think I understand what you're saying, but I
20 don't want to assume that.

21 MR. BOYCE: In the -- I'm not -- I
22 don't recall what step it is in the rate or what

1 table, but there's one that has the total needed
2 revenue divided by, I think it's called time on
3 task, gives you a bridge hour cost.

4 MR. HAVILAND: Um-hmm.

5 MR. BOYCE: In that time on task,
6 numbers that admittedly previously were not
7 tracked because they weren't looked at quite this
8 way, in that number for 2016 there are hours that
9 would be considered unbillable. Those hours
10 would need to be removed from that time on task
11 to arrive at a billable hour, so we work from
12 that backwards. Does that make sense?

13 MR. HAVILAND: Do you mind if I say a
14 few things?

15 MR. WALTER: Go ahead. For
16 clarification, sure.

17 MR. HAVILAND: Sure. As far as what's
18 billable, we believe that from the time you get
19 on board the ship until the time you get off is
20 billable. Now, if some things happen that causes
21 the pilot to stay on board that ship that are a
22 result of pilot inefficiencies, we don't think

1 that the industry should have to pay for those
2 things.

3 MR. BOYCE: I apologize. I forget
4 what the new dates are. It used to be the April
5 and December. Now it's November and April.
6 Outside those dates, weather, traffic are
7 billable. The summer side of those dates are
8 not. So, for example, a ship anchors for fog in
9 June. That would be an hour workload that you're
10 on the ship, but would be an unbillable delay.
11 Hours such as that would need --

12 MR. HAVILAND: Okay.

13 MR. BOYCE: -- to be removed from the
14 calculation. That make sense?

15 MR. HAVILAND: Does it make sense to
16 you, Dave?

17 MR. DEAN: Sure.

18 MR. HAVILAND: So tell me if I'm
19 correct in what you're saying. So if a ship has
20 to go to anchor because there's fog, you don't
21 want us to include that in the historic time
22 because we're not going to allow you to bill for

1 it.

2 MR. BOYCE: It would be on the
3 workload side because you have a person there,
4 but you wouldn't be able to bill for that delay.

5 MR. HAVILAND: So you want us to
6 include that in the pilot assigned cycle to
7 determine that, and also to remove that time away
8 from the billable hours because --

9 MR. BOYCE: Yes.

10 MR. HAVILAND: -- it's going to, in
11 your opinion -- and I'm not -- it's going to
12 artificially increase --

13 MR. BOYCE: Billable hours.

14 MR. HAVILAND: -- billable hours. I
15 think I understand what you're saying.

16 Does Sharon or Dave or Rich --

17 MR. BOYCE: I don't think it's going
18 to be a huge amount, but in correctness, it would
19 be affected.

20 MR. HAVILAND: Understood.

21 MR. SWARTOUT: John Swartout again,
22 Western Great Lakes Pilots Association. I've got

1 a question about -- it's not clear to me from the
2 NPRM how you'll use the revenue audits to
3 determine whether the rate is effective. Are you
4 going to look at was the projected revenue
5 achieved, or was the revenue per bridge hour
6 achieved? Because revenue is going to go up and
7 down with bridge hours. Total revenue is going
8 to go up and down with bridge hours. But dollars
9 per bridge hours should be what the rate says
10 it's going to be.

11 MR. HAVILAND: Is that something we
12 can answer?

13 MR. WALTER: If you want to clarify
14 how you determined that.

15 MR. HAVILAND: The primary purpose of
16 the revenue audits is to write another level of
17 transparency. Up until the 2013 audits, there
18 was a lot of discussion about what the
19 associations may or may not be generating for
20 revenue. And once that amount came in, at least
21 for me it was real easy to take this is the
22 revenue they generated, these were their

1 expenses, this is what was left over for pilot
2 compensation, and this is what was left over, I
3 believe, you know, for training, for
4 infrastructure development or investment, for
5 capital investment.

6 So for us, we believe, if we look at
7 revenue audits and the expense audits, over time
8 it will provide the level of transparency that we
9 all need to sit down and have adult conversations
10 about these rates, but it will also tell us, you
11 know, is the billing scheme correct, you know, is
12 our goal of trying to, you know, over time get
13 you -- get the pilots to gain some level of
14 predictability on how much a pilot can make, and
15 also, as much as we can, to stabilize rates. Did
16 I answer your question or --

17 MR. SWARTOUT: Well, the question is
18 specifically about the revenue audits and, you
19 know, how they'll be used to decide if the rate
20 did what it was supposed to do. And I know I've
21 asked you the question before and I'm still --

22 MR. HAVILAND: No, but we should -- if

1 traffic is up 20 percent, we should expect, you
2 know, about 20 percent more revenue. If
3 traffic's down, you know, 10 percent, revenue
4 should be down about 10 percent. And if those
5 things aren't correlating, then there's probably
6 something we need to adjust.

7 MR. SWARTOUT: Okay. Thanks.

8 MR. GALLAGHER: I was wondering if you
9 could give us some clarification on the pilot
10 training fees that you're allowing for each
11 district, \$150,000 per person for an applicant
12 pilot to bring on board, and also for continuing
13 education. If, for example, in a year we were to
14 collect in excess of the \$300,000, but our
15 expenses far exceeded the \$300,000, would that be
16 subtracted from the future revenues?

17 MR. WALTER: Go ahead.

18 MR. HAVILAND: Oh, sure. The
19 intention of the surcharge is to accelerate
20 expenses that we would probably see in three to
21 four years into the following year's rate, and
22 the other idea behind that is the things that

1 we're allowing to be surcharged, we want to make
2 sure that you're made whole on those big
3 expenditures. So for the training and hiring of
4 applicant pilots, which facilitates moving ships
5 and, you know, minimizes or limits delays, is
6 something that we think when you incur that cost,
7 you should be reimbursed a hundred percent,
8 regardless of what traffic is. So what we'll do
9 is -- we just view it as almost like an advance
10 on, you know, a future rate. So if you collect
11 "X" in this year for an expense that we see in a
12 future audit, then we'll reconcile those numbers
13 and make sure that we either add money to the
14 rate or subtract money from the rate. But the
15 goal is, you know, not to allow you to collect
16 twice for the same expense.

17 MR. GALLAGHER: But we could --
18 because year to year, you know, one year we may
19 be under the 300 and the next year we may be
20 over. So if we go over one year and we have the
21 excess amount, it won't be held against us.
22 Likewise, if we do go under, you know, we

1 shouldn't be -- we shouldn't benefit from that.

2 MR. HAVILAND: Yeah. There's no need
3 -- there's no reason for you to benefit or be
4 penalized. It's just we want to make sure that
5 if you're doing the things that are helping to
6 improve efficiency, improve reliability and
7 improve safety, that your associations get a
8 hundred percent of that money back.

9 MR. GALLAGHER: Okay. Thank you.

10 MR. WALTER: We could do it like an
11 auction: going once, going twice.

12 MR. HAVILAND: Sure. Good idea.

13 MR. LEMIRE: One comment. Robert
14 Lemire, Great Lakes. We'll save you from sending
15 you a letter. Your estimate, you're knocking off
16 2009, which I agree with. Traffic was terrible.
17 But you're omitting 2014. We're now seeing in
18 Canada we're going to keep 2014, because 2015 is
19 similar in traffic. Just a comment. Maybe you
20 want to revisit that, because I think if you omit
21 2014, your numbers might again be short on how
22 many pilots you need in each district. Just a

1 comment. Because we're finding traffic in 2014,
2 15 percent up and another 3 or 4 this year, so if
3 you're using just 2013, you might be short. Just
4 a comment.

5 MR. HAVILAND: If that's it, is there
6 anything we have to do to close the meeting?

7 MR. WALTER: You just have to say,
8 "We're closed."

9 MR. HAVILAND: All right. Thank you
10 very much for your attendance today. We look
11 forward to receiving your written comments.

12 (Meeting concluded at 2:25 p.m.)
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In the matter of: Great Lakes Pilotage

Before: US Coast Guard

Date: 09-17-15

Place: Romulus, MI

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