

full rate adjustment. When completed, a copy of this EIA will be made part of the public docket.

The EIA will provide an economic overview of the Great Lakes. It will explore the value of maritime commerce, generally, and, more specifically, look at the foreign trade shipping industry on both sides of the Great Lakes. It will develop a demand elasticity curve for pilotage services on board foreign-trade vessels on the Great Lakes. It will explore how, and at what point, an increase in pilotage rates might have a negative impact on shippers' decisions to send vessels into the Great Lakes system. This EIA will also address pilotage fees as a percentage of the total costs incurred by vessels operating in the Great Lakes.

Expenses Allowed

Legal fees. Numerous comments raised concerns about the amount of legal fees approved by the Coast Guard as part of the pilots' expense base. Some stated that the expenses incurred by the pilots pursuing judicial review of the Coast Guard's 2001 rates were neither reasonable nor necessary and were not directly related to pilotage.

Some comments questioned whether the Coast Guard had properly assessed the reasonableness of pilots' legal expenses. Some comments stated that a formula used in the 1999 rate review to judge the reasonableness of the legal expenses should have been used in the NPRM. The Coast Guard did not use an industry standard index to determine the reasonableness of the legal fees. The only time a standard was used was in the 1999 rate review. That standard is not sufficiently related to the pilotage industry or a similar regulated industry and was not used in calculating the proposed rates in the NPRM or the rates contained in this interim rule.

One comment stated that it was inappropriate for the Coast Guard to have approved for inclusion in the expense base legal fees paid by District Three in connection with a labor dispute. This comment stated that by allowing this expense the Office of Great Lakes Pilotage is publicly supporting a party in a labor dispute. The comment also disagrees with the decision to approve a percentage of the legal fees paid by District Three to Preston and Gates, because that percentage represented lobbying fees. The Coast Guard disagrees that allowing legal fees paid by a pilotage association to a law firm in connection with a litigation which involves a labor issue, represents support for a party in a labor dispute. The existing ratemaking methodology recognizes all reasonable and necessary

legal fees with the exception of lobbying fees.

If the expense is necessary to conduct pilotage business and is reasonable in amount, the regulations allow its inclusion. The regulation does not distinguish between litigated matters involving a labor issue or union and other matter related to pilotage. With respect to the issue of whether all lobbyist fees were removed from the expense base, the Coast Guard will re-examine all of the legal fees in accordance with the regulatory requirements to ensure that only appropriate fees were allowed.

One comment suggested that all legal fees be removed from the rate calculation. To do that, the Coast Guard first would need to change the ratemaking regulations. The Coast Guard disagrees with the suggestion and, in any event, such a change is not within the scope of this rulemaking.

The Coast Guard reviewed all legal fees using the guidelines of necessity and reasonableness contained in 46 CFR 404.5. Only reasonable and necessary legal fees were approved as part of the expense base. No legal fees were allowed in connection with lobbying. Legal fees for litigation against the Government were allowed as long as there was no court proceeding in which there had been a finding of bad faith on the part of the pilot organizations.

Recovery of Legal Fees Under Equal Access to Justice Act (EAJA). Some comments stated that the pilots recovered a portion of their legal fees under the Equal Access to Justice Act (EAJA) and that recovery was not taken into consideration by the Coast Guard.

With respect to the comments regarding recovery of legal fees under the EAJA, only the pilots in District 1 have recovered fees under the EAJA. They recovered approximately \$14,000 and the Coast Guard did not allow that amount to be included in their expense base.

Other Expenses

One comment stated that the non-recurring costs of leasing equipment paid by District Two to Erie Leasing, Inc., should be disallowed because the District Two Association terminated many of these leases at the end of the season. During 2001, District Two paid Erie Leasing \$62,950 in lease costs for the rental of two pilot boats. Under 46 CFR 404.5(a)(3), lease costs for both operating and capital leases are recognized for ratemaking purposes to the extent that they conform to market rates. In the absence of a comparable market, lease costs are recognized for ratemaking purposes to the extent that

they conform to depreciation plus an allowance for return on investment (computed as if the asset had been purchased with equity capital). The portion of lease costs that exceed these standards is not recognized for ratemaking purposes. In this case, with the cost of the pilot boats being \$315,000, a market return of 7.04 percent, and a depreciation amount of \$9,450, the result is an allowable lease expense of \$31,626 ($\$315,000 \times 7.04\% = \$22,176 + \$9,450 = \$31,626$). District Two's expense base was thus reduced by the excessive lease fee amount of \$28,124 ($\$59,750 \text{ rental fee} - \$31,626 \text{ allowable fee} = \$28,124$). The Coast Guard will review the issue of recurring and non-recurring costs before calculating a full rate adjustment.

One comment stated that the \$14,289 for health insurance for retired pilots included in the District Two expense base should be disallowed. The Coast Guard is reviewing this issue and will make a determination before calculating the full rate adjustment. Because of its de minimus impact on the rate it was left in the expense base for calculating the partial rate adjustment.

This same comment stated that the augmentation of the District Two and District Three expense bases to allow for employer contributions to employee 401(k) plans was not calculated correctly. This comment stated that the employer should have to contribute based upon daily compensation only that would include no contribution for overtime or extra work days. Under the 2001 American Maritime Officers Union (AMOU) contract, employers are required to make matching contributions to employee 401(k) plans in an amount equal to 50 percent of the employee's contribution, to a maximum of 5 percent of a participating employee's compensation. The Coast Guard will review this issue before calculating the full rate adjustment, but the District Two and Three expense bases have not been changed for calculation of the partial rate adjustment.

Another comment stated that the independent accountant made two mistakes in identifying and classifying expenses—misstating by \$23,000 the total reimbursement for meal expenses allowed pilots in District Three, and subtracting the cost of the employer's portion of taxes from pilot compensation and adding them to operating expenses. The comment stated the actual amount adjusted in each case does not correlate with the current rates and limitations for the calculations of FICA and Medicare. The Coast Guard is reviewing these issues, and adjustments,