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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 15

[CGD 84–060]

RIN 2115–AB67

Licensing of Pilots; Manning of Vessels by Pilots

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the regulations concerning the licensing of pilots and the manning of vessels by pilots. This final rule: defines ''coastwise seagoing vessel'' for pilotage purposes; describes first class pilotage areas where local pilotage expertise is warranted; allows licensed individuals to serve as pilots in areas not identified as first class pilotage areas on vessels that they are otherwise qualified to control; requires a Federal pilot for vessels in excess of 1,600 gross tons, propelled by machinery and subject to inspection under 46 U.S.C. Chapter 33, that are not authorized by their Certificate of Inspection to proceed beyond the Boundary Line; and provides quick reference tables for Federal pilotage requirements. These changes are necessary to eliminate confusion over where and on what vessels pilotage expertise is required.

EFFECTIVE DATE: May 30, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council(G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. John R. Bennett, Merchant Vessel Personnel Division (G–MVP/12), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593–0001, telephone (202) 267–6102.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are: Mr. John R. Bennett, Project Manager, Merchant Vessel Personnel Division, Office of Marine Safety, Security and Environmental Protection, and, Mr. Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

Regulatory History

A notice of proposed rulemaking (NPRM) was published June 24, 1985 (50 FR 26117), addressing unresolved pilotage issues. The comment period was originally scheduled to end on September 23, 1985, however, a notice of extension of comment period (50 FR 38557), published in the **Federal Register** on September 23, 1985, extended the comment period to December 22, 1985. In response to that notice, the Coast Guard received 172 written comments, and held two public meetings. One public meeting was held in New York, hosted by the Maritime Association of New York, on November 12, 1985. The second was a meeting of the Towing Safety Advisory Committee Subcommittee on Personnel Manning and Licensing, which was held at Coast Guard Headquarters in Washington, D.C., on December 12, 1985. On June 6, 1988, the Coast Guard published a supplemental notice of proposed rulemaking (SNPRM) (53 FR 20654) addressing the comments received in response to the NPRM and public meetings. The comment period for the SNPRM ended September 6, 1988. Sixteen written comments were received regarding the 1988 SNPRM. Those comments included several recommendations by the Towing Safety Advisory Committee (TSAC).

On February 2, 1994, the Coast Guard published an interim final rule entitled Licensing of Pilots; Manning of Vessels by Pilots in the **Federal Register** (59 FR 4839). The Coast Guard received six letters commenting on the interim final rule. No public hearing was requested, and none was held.

Background and Purpose

Normally, foreign vessels and U.S. vessels operating on a registry endorsement are under State pilotage authority, and U.S. vessels operating on a coastwise endorsement are under Federal pilotage authority. The regulations addressed in this rule deal only with Federal pilotage.

Discussion of Comments and Changes

Six letters commenting on the interim final rule were received. Some of the comments addressed in these letters raised issues that were not the subject of this rulemaking. The Coast Guard is responding only to those comments relating to this rulemaking.

One comment suggested that there should be only ''designated'' pilotage areas because otherwise the Coast Guard would be reducing pilotage requirements for tank barges. The Coast Guard is not reducing pilotage requirements for tank barges or any other vessels in this rulemaking.

Another comment stated that ''the local pilotage rules are excessive with regard to the round trip required in non-designated areas.'' This rule places a Federal pilotage requirement on inland route self-propelled vessels greater than 1,600 gross tons. The only other change required by this rule is to require the master, mate or operator of a coastwise seagoing vessel to have made one round trip in the non-designated areas of pilotage waters within the past five years in order to satisfy the pilotage requirement for that area. The Coast Guard does not believe these additional pilotage requirements are excessive.

Several members of the small passenger vessel industry indicated that they are opposed to the rule because it places a new pilotage requirement on their vessels. The interim final rule does not establish a new pilotage requirement for small passenger vessels. Existing pilotage regulatory requirements for these vessels were established in the 1985 Final Rule (50 FR 26106) and in earlier rules. A vessel has a Federal pilotage requirement if it is a coastwise seagoing vessel, not sailing on register, and underway, not on the high seas. This rule does not create a pilotage requirement for certain small passenger vessels, the requirement already exists.

Another comment stated that while it is clear in the quick reference table that a coastwise seagoing tank barge requires a pilot, the text of the regulation does not specifically indicate that it is a ''coastwise seagoing'' tank barge that requires a pilot, and suggested that the text of the regulation be modified to agree with the quick reference table. The Coast Guard agrees, and the words ''coastwise seagoing'' are being added to the text of the regulation in § 15.812(a)(1).

The same comment also suggested that the ''designated'' areas be compiled and published in the Code of Federal Regulations. The Coast Guard does not agree. This information can be readily obtained from the local Coast Guard Captain of the Port (COTP).

The Coast Guard is adopting the interim final rule as published with some minor technical changes. First, the

Coast Guard is defining the term ''pilotage waters'' in the definition section as opposed to a footnote in the reference tables.

Second, the **Federal Register** inadvertently omitted five asterisks in the amendatory language in the interim final rule. As a result, paragraphs (f) and (g) from 46 CFR 15.812 were deleted in error. This clerical error has been corrected in the final rule. Third, the Coast Guard is revising the headings to the quick reference tables to clarify that designated and non-designated areas are pilotage waters. Lastly, the Coast Guard has inserted the words ''coastwise seagoing'' in 15.812(a)(1) before the term ''tank barges'' to clarify that the rule applies only to coastwise seagoing tank barges.

Assessment

This rule is a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget under that order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that order. It is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). This rule is significant because it clarifies when a vessel is required to use the services of a Federally licensed pilot, and at one time was controversial.

The Coast Guard expects the economic impact of this rule to be minimal. This rule defines ''coastwise seagoing vessel'' for pilotage purposes, describes first class pilotage areas where local pilotage expertise is warranted, and provides quick reference tables for pilotage requirements. Additionally, this rule clarifies that a Federal pilot is required for vessels in excess of 1,600 gross tons, propelled by machinery and subject to inspection under 46 U.S.C. Chapter 33, that are not authorized by their Certificate of Inspection to proceed beyond the Boundary Line.

This rule codifies current practices, and there are no expected increases in costs. Therefore, no additional assessment is necessary. The Coast Guard anticipates that the rule will not increase crew size or require increased use of pilots since, for the most part, vessels affected by this rule are presently required by their Certificate of Inspection to use a Federal pilot.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). The small entities that could be affected by this final rule are primarily independent operators of tank barges and self-propelled vessels. Since this rule, for the most part, adopts current practices, the Coast Guard believes that there will be no significant economic impact on ''small entities.'' Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule does not affect existing State pilotage requirements, but instead clarifies the Federal pilotage requirements for those vessels which, under 46 U.S.C. 8502, are exclusively subject to Federal pilotage.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. The rule, which clarifies Federal pilotage requirements, is administrative in nature since, by codifying existing practices, it permits vessels to continue to operate according to current industry practice. Therefore, this is included in the categorical exclusion in subsection 2.B.2.1, ''Administrative actions or procedural regulations and policies which clearly do not have any environmental impact.'' A Categorical Exclusion Determination has been placed in the docket.

List of Subjects in 46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

For the reasons set out in the preamble, the Coast Guard is adopting the interim final rule published at 59 FR 4839 on February 22, 1994, as final with the following changes:

PART 15—MANNING REQUIREMENTS

1. The authority citation for part 15 continues to read as follows:

Authority: 46 U.S.C. 2103, 3703, 8101, 8502, 8901, 8902, 8903, 8904, 9102; 50 U.S.C. 198, and 49 CFR 1.46.

1a. In § 15.301(a), the definition for designated areas is revised and a definition for pilotage waters is added in alphabetical order to read as follows:

§ 15.301 Definition of terms used in this part.

* * * * *

Designated areas means those areas within pilotage waters for which first class pilot's licenses or endorsements are issued under part 10, subpart G, of this Chapter, by the Officer in Charge, Marine Inspection (OCMI). The areas for which first class pilot's licenses or endorsements are issued within a particular Marine Inspection Zone and the specific requirements to obtain them may be obtained from the OCMI concerned.

* * * * *

Pilotage waters means the navigable waters of the United States, including all inland waters and offshore waters to a distance of three nautical miles from the baseline from which the Territorial Sea is measured.

* * * * *

2. Section 15.812(a)(1) is revised to read as follows:

§ 15.812 Pilots.

(a) * * *

(1) Coastwise seagoing vessels propelled by machinery and subject to inspection under 46 U.S.C. Chapter 33, and coastwise seagoing tank barges subject to inspection under 46 U.S.C. Chapter 37;

* * * * *

3. Section 15.812(e) is revised to read as follows:

§ 15.812 Plots.

(e) Federal pilotage requirements contained in paragraphs (a) through (d) of this section are summarized in two quick reference tables.

(1) Table 15.812(e)(1) provides a guide to the pilotage requirements for inspected, self-propelled vessels.

TABLE 15.812(e)(1).—QUICK REFERENCE TABLE FOR FEDERAL PILOTAGE REQUIREMENTS FOR U.S. INSPECTED SELF-PROPELLED VESSELS, NOT SAILING ON REGISTER

	Designated areas of pilotage waters (routes for which First Class Pilot's licenses are issued)	Nondesignated areas of pilotage waters (between the three mile line and the start of traditional pilotage routes)
Inspected self-propelled vessels greater than 1,600 GT, authorized by their Certificate of Inspection (COI) to proceed beyond the Boundary Line, or operating on the Great Lakes.	First Class Pilot	Master or Mate may serve as pilot if the individual: 1. Is at least 21 years old. 2. Has an annual physical exam. 3. Maintains current knowledge of the waters to be navigated.[1]
Inspected self-propelled vessels not more than 1,600 GT, authorized by their Certificate of Inspection to proceed beyond the Boundary Line, or operating on the Great Lakes.	First Class Pilot, *or* Master or Mate may serve as pilot if the individual: 1. Is at least 21 years old. 2. Maintains current knowledge of the waters to be navigated.[1] 3. Has 4 round trips over the route.[2]	Master or Mate may serve as pilot if the individual: 1. Is at least 21 years old. 2. Maintains current knowledge of the waters to be navigated.[1]
Inspected self-propelled vessels greater than 1,600 GT, not authorized by their COI to proceed beyond the Boundary Line (Inland route vessels); other than vessels operating on the Great Lakes.	First Class Pilot	Master or Mate may serve as pilot if the individual: 1. Is at least 21 years old. 2. Has an annual physical exam. 3. Maintains current knowledge of the waters to be navigated.[1]
Inspected self-propelled vessels not more than 1,600 GT, not authorized by their COI to proceed beyond the Boundary Line (Inland route vessels); other than vessels operating on the Great Lakes.	No pilotage requirement	No pilotage requirement.

[1] One round trip within the past 60 months.
[2] If the route is to be traversed during darkness, 1 of the 4 round trips must be made during darkness.

(2) Table 15.812(e)(2) provides a guide to the pilotage requirements for tank barges.

TABLE 15.812(e)(2).—QUICK REFERENCE TABLE FOR FEDERAL PILOTAGE REQUIREMENTS FOR U.S. INSPECTED TANK BARGES, NOT SAILING ON REGISTER

	Designated areas of pilotage waters (routes for which First Class Pilot's licenses are issued)	Nondesignated areas of pilotage waters (between the three mile line and the start of traditional pilotage routes)
Tank Barges greater than 10,000 GT, authorized by their Certificate of Inspection to proceed beyond the Boundary Line, or operating on the Great Lakes.	First Class Pilot	Master, Mate, or Operator may serve as pilot if the individual: 1. Is at least 21 years old. 2. Has an annual physical exam.[1] 3. Maintains current knowledge of the waters to be navigated.[2] 4. Has at least 6 months' service in the deck department on towing vessels engaged in towing.
Tank Barges 10,000 GT or less, authorized by their Certificate of Inspection to proceed beyond the Boundary Line, or operating on the Great Lakes.	First Class Pilot, *or* Master, Mate, or Operator may serve as pilot if the individual: 1. Is at least 21 years old 2. Has an annual physical exam.[1] 3. Maintains current knowledge of the waters to be navigated.[2] 4. Has at least 6 months' service in the deck department on towing vessels engaged in towing operations. 5. Has 12 round trips over the route.[3]	Master, Mate, or Operator may serve as pilot if the individual: 1. Is at least 21 years old. 2. Has an annual physical exam.[1] 3. Maintains current knowledge of the waters to be navigated.[2] 4. Has at least 6 months' service in the deck department on towing vessels engaged in towing operations.
Tank Barges authorized by their Certificate of Inspection for Inland routes only (Lakes, Bays, and Sounds/Rivers); other than vessels operating on the Great Lakes.	No pilotage requirement	No pilotage requirement.

[1] Annual physical exam does not apply to an individual who will serve as a pilot of a Tank Barge of less than 1,600 gross tons.
[2] One round trip within the past 60 months.
[3] If the route is to be traversed during darkness, 3 of the 12 round trips must be made during darkness.

4. Section 15.812(f) is added to read as follows:

(f) In Prince William Sound, Alaska, coastwise seagoing vessels over 1,600 gross tons and propelled by machinery and subject to inspection under 46 U.S.C. Chapter 37 must:

(1) When operating from 60°49′ North latitude to the Port of Valdez be under the direction and control of a federally licensed pilot who:

(i) Is operating under the Federal license;

(ii) Holds a license issued by the State of Alaska; and

(iii) Is not a member of the crew of the vessel.

(2) Navigate with either two licensed deck officers on the bridge or a federally licensed pilot when operating South of 60°49′ North latitude and in the approaches through Hinchinbrook Entrance and in the area bounded:

(i) On the West by a line one mile west of the western boundary of the Traffic Separation Scheme;

(ii) On the East by 146°00′ West longitude;

(iii) On the North by 60°49′ North latitude; and

(iv) On the South by that area of Hinchinbrook Entrance within the territorial sea bounded by 60° 07′ North latitude and 146°31.5′ West longitude.

Dated: March 17, 1995.

Robert E. Kramek,

Admiral, U.S. Coast Guard Commandant.

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Federal Railroad Administration

49 CFR Part 213

[Docket No. RST–94–3, Notice No. 1]

Policy on the Safety of Railroad Bridges

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Interim statement of policy.

SUMMARY: FRA issues an interim statement of policy for the safety of railroad bridges. FRA establishes suggested criteria for railroads to use to ensure the structural integrity of bridges that carry railroad tracks. FRA will subsequently make the interim statement of policy part of the final rule amending 49 CFR part 213 (See 57 FR 54038, November 16, 1992). This final rule will reflect any changes that appear necessary following public comment on the interim statement of policy.

DATES: *Effective Date:* The interim statement of policy is effective May 30, 1995. Written comments must be received no later than June 26, 1995. Comments received after that date will be considered to the extent possible without incurring additional delay or expense.

ADDRESSES: Written comments on this policy should be submitted to the Docket Clerk (RCC–30), Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date the comments were received and return the postcard to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in Room 8201 of the Nassif Building at the above address.

FOR FURTHER INFORMATION CONTACT: Gordon A. Davids, P.E., Bridge Engineer, Office of Safety Enforcement, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590, (Telephone: 202–366–0507), or Nancy Lummen Lewis, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590, (Telephone 202–366–0635).

SUPPLEMENTARY INFORMATION: Beginning in 1991, FRA conducted a review of the safety of railroad bridges. The review was prompted by the agency's perception that the bridge population was aging, traffic density and loads were increasing on many routes, and the consequences of a bridge failure could be catastrophic.

I. Bridge Safety Survey

FRA counted the approximate number of bridges that carry railroad track in the United States, and then surveyed the safety of those bridges. The count revealed that

a. Approximately 100,700 bridges carried railroad tracks in 1991,

b. Approximately 10 bridges exist for every 14 miles of railroad, and

c. Approximately 120 feet of track per mile is located on a bridge.

The safety survey accomplished several objectives. It determined whether the condition of railroad bridges posed a significant hazard to the safety of the public. It documented the methods used by the railroad industry for the inspection, management and assurance of safety of those bridges. It provided information with which FRA could evaluate the need for federal action to improve the safety of railroad bridges.

The survey assessed the policies and practices used by 80 railroads to ensure the integrity of their bridges. The railroads surveyed included 21 major railroads (including 14 class I railroads and seven major passenger or commuter railroads), 20 class II regional railroads, and 39 class III shortline railroads. The 21 class I and passenger railroads are termed ''major railroads'' because they own most of the railroad bridges and handle the majority of freight and passenger traffic. In the course of the survey, FRA inspectors observed railroad inspections of more than 8,000 bridges.

The survey showed that all of the 21 major railroads have conducted comprehensive, effective bridge inspection programs for several decades. The survey demonstrated that these railroads are acting to safeguard the integrity of their bridges. The railroad managers know the condition of their bridges, and they are taking appropriate action to prevent structural failure. The findings for the 20 regional railroads were similar to those of the major railroads.

The survey showed the major and regional railroads use a variety of methods to inspect and manage their bridges. The degree to which inspectors are supervised, the levels at which certain decisions are made, and the methods used to record and report inspections vary considerably among railroads. Nevertheless, these programs share certain basic principles that characterize effective bridge management practices.

The consistency of findings among the Class I and II railroads, passenger operators, and many smaller railroads indicates that railroads are following a course of action that corresponds with the public interest in prevention of bridge failures. The railroads' actions are driven by a need to prevent the significant economic harm that result from the loss of a valuable bridge and the cost of associated casualties.

On shortline railroads, however, FRA found considerable variation in the quality of bridge management programs and bridge conditions. Many shortlines have exemplary programs, well-suited to their size and the nature of their structures and traffic. A few, however, did not address all of their responsibilities for the safety of their bridges.

These smaller railroads with minimal bridge management programs typically move low levels of traffic over a small number of bridges. Nevertheless, the consequences of a bridge failure on one of these railroads could be as severe as a failure occurring anywhere. The risk of human casualty or environmental damage would be the same for each, and the cost of the failure could be ruinous to a railroad with limited resources. This finding indicates a situation that FRA must address.