



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 2

[Docket No. USCG-2018-0538]

RIN 1625-AC55

User Fees for Inspected Towing Vessels

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is updating its user fees for seagoing towing vessels that are 300 gross tons or more and revising user fees for other inspected towing vessels. The Coast Guard is issuing these updates because it is required to establish and maintain a fair fee for its vessel inspection services and to separate the fees for inspection options that involve third-party auditors and surveyors from inspection options that do not involve third parties. Under this final rule, owners and operators of vessels using the Alternate Compliance Program, Streamlined Inspection Program, or the Towing Safety Management System options will pay a lower fee than vessels that use the traditional Coast Guard inspection option.

DATES: This final rule is effective [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2018-0538 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

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SUPPLEMENTARY INFORMATION:

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I. Abbreviations

ACP	Alternate Compliance Program
CAA 2022	Consolidated Appropriations Act of 2022
CGAA 2018	Frank LoBiondo Coast Guard Authorization Act of 2018
CG-CVC	Office of Commercial Vessel Compliance
COI	Certificate of Inspection
DAPI	Drug and Alcohol Program Inspector
DHS	Department of Homeland Security
FR	Federal Register

FRFA	Final Regulatory Flexibility Analysis
FTE	Full-Time Equivalent
ICR	Information Collection Request
IRFA	Initial Regulatory Flexibility Analysis
MISLE	Marine Information for Safety and Law Enforcement
MTSA	Maritime Transportation Security Act
NAICS	North American Industry Classification System
NPRM	Notice of proposed rulemaking
OMB	Office of Management and Budget
RFA	Regulatory Flexibility Act
SBA	Small Business Administration
§	Section
SIP	Streamlined Inspection Program
SSM	Sector Staffing Model
TSMS	Towing Safety Management System
TVNCOE	Towing Vessel National Center of Expertise
U.S.C.	United States Code

II. Basis and Purpose

In this section, the Coast Guard identifies the problem we intend to address, the well-established statutory authority that enables us to issue this final rule, and the recent legislation that provides additional authority for this rulemaking.

A. *The Problem We Seek to Address*

On June 20, 2016, the Coast Guard published a final rule titled “Inspection of Towing Vessels” (81 FR 40003), in which we stated our plan to begin a rulemaking for annual inspection fees for towing vessels. The updated annual inspection fees in this final rule reflect the program’s costs for two options for towing vessels to document compliance for obtaining a Certificate of Inspection (COI):¹ the Coast Guard option and the Towing Safety Management System (TSMS) option.² As indicated in the 2016 final rule, the existing default fee of \$1,030 was identified as the annual inspection fee for towing vessels subject to 46 CFR subchapter M until new rates were established. The existing fee of \$1,030 is

¹ See 46 CFR 136.130—Options for documenting compliance to obtain a Certificate of Inspection.

² The TSMS option is a voluntary inspection option that permits qualified third-party organizations to conduct certain vessel examinations in place of Coast Guard inspections. See 46 CFR part 138—Towing Safety Management System (TSMS).

found in 46 CFR 2.10-101 and applies to any inspected vessel not listed in table 2.10-101.³

In addition to towing vessels subject to subchapter M that are required to obtain COIs, towing vessels that qualify as seagoing motor vessels (300 gross tons or more) are required to have COIs under regulations in 46 CFR, chapter I, subchapter I for cargo and miscellaneous vessels.⁴ The Coast Guard set the annual inspection fee for these towing vessels at \$2,915 in 1995, and this figure has never been updated.⁵

On January 11, 2022, we published a notice of proposed rulemaking (NPRM) entitled “User Fees for Inspected Towing Vessels” (87 FR 1378). Having considered comments submitted in response to that NPRM, we are issuing this final rule to update inspection fees for subchapter M and I towing vessels.

B. Legal Authority to Address this Problem

The Coast Guard is issuing this final rule based on authority in Section 2110 of Title 46 of the United States Code (U.S.C.) (46 U.S.C. 2110), which has been delegated to the Commandant under Department of Homeland Security (DHS) Delegation No. 00170.1(II)(92), Revision 01.3. These provisions direct the Coast Guard to establish a fee or charge for inspections and related services described in 46 U.S.C. 2110(a)(1). Under the law, the Coast Guard is required to establish a fee for its inspection services that is fair and based on costs to the Government, the value to the recipient, and public interest. The law also requires that we review the costs of inspecting towing vessels for the Government using the Coast Guard option or a third-party option, and revise such fees if there is a

³ See 81 FR 40005. We discuss a recent statutory exception for TSMS-option vessels below.

⁴ See 46 CFR 2.01-7 and 90.05-1. Under 46 U.S.C. 3301, seagoing motor vessels are subject to inspection. Towing vessels are motor vessels (vessels propelled by machinery other than steam), and they fall within the definition of “seagoing motor vessel” if they are at least 300 gross tons and make voyages beyond the Boundary Line. See definitions in 46 U.S.C. 2101.

⁵ See 60 FR 13550, March 13, 1995; 46 CFR 2.10-101.

difference.

C. Recent Legislation

On December 4, 2018, Congress enacted the Frank LoBiondo Coast Guard Authorization Act of 2018 (CGAA 2018).⁶ Section 815 of the CGAA 2018 directs the Coast Guard to review and revise the fees for towing vessel inspections. First, the Coast Guard must compare the costs to the Government for towing vessel inspections performed by the Coast Guard and towing vessel inspections performed by a third party to determine if the costs are different. The Coast Guard interprets “costs to the Government” in Section 815(a) to mean the cost to the Coast Guard for providing inspection and related services to determine whether a vessel meets requirements to maintain its COI. If there is a difference in costs, Section 815 of the CGAA 2018 directs us to revise the fee we assess for such inspections to conform to 31 U.S.C. 9701, and to base the fee on the cost to the Government. We have conducted that comparison and determined that there is a difference in costs to the Government between the inspection options for towing vessels that involve a third party and for those that do not and will revise the fees for these inspections as a result.

On March 15, 2022, Congress enacted the Consolidated Appropriations Act of 2022 (CAA 2022).⁷ Section 231 of the CAA 2022 prohibits the Coast Guard from charging inspection user fees for towing vessels using the TSMS option until the requirements of Section 815 of the CGAA 2018 are met.⁸ Thus, the intent of this final rule is to meet those requirements of Section 815 of the CGAA 2018 by updating its inspection fees for its Alternate Compliance Program (ACP), Streamlined Inspection Program (SIP), and the TSMS option. Until the

⁶ Pub. L. 115-282, 132 Stat. 4192.

⁷ Pub. L. 117-103, 136 Stat. 325.

⁸ See Sec. 231 of CAA 2020, Pub. L. 117-103, 136 Stat. 325.

Coast Guard implements this final rule and updates to the inspection fees become effective, our agency will not charge TSMS option towing vessels an inspection user fee.

III. Background

A. Origins of Annual Vessel Inspection Fees

The provisions of 46 U.S.C. 2110 require the establishment and collection of user fees for Coast Guard services provided under Subtitle II of Title 46, United States Code. On March 13, 1995, the Coast Guard published the final rule on “Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels.”⁹ The fees in that final rule were intended to recover the costs associated with providing Coast Guard vessel inspection services directly or through an alternative reinspection program, although the alternative reinspection program only applied to certain offshore supply vessels. The final rule established user fees for services related to commercial vessel inspection including annual fees for seagoing towing vessels.

On June 20, 2016, the Coast Guard published the “Inspection of Towing Vessels” final rule, in which we indicated that, in a subsequent rulemaking, we would establish specific fees that would reflect program costs associated with the TSMS and Coast Guard inspection options for obtaining COIs. We stated that until those specific fees were established, the annual inspection fee for towing vessels subject to 46 CFR subchapter M would be the existing fee of \$1,030 in 46 CFR 2.10-101 for any inspected vessel not listed in table 2.10-101.¹⁰

B. Current Fees for Towing Vessels Subject to 46 CFR Subchapters I and M

With the noted exception of towing vessels using the TSMS-option, the

⁹ 60 FR 13550.

¹⁰ See 81 FR at 40005.

Coast Guard currently charges an annual vessel inspection fee for U.S. and foreign vessels requiring a COI, following the fee schedule set in 46 CFR 2.10-101.¹¹ The current fee for seagoing towing vessels inspected under subchapter I is \$2,915 for all inspection options—the Coast Guard, the ACP, and the SIP. The current fee for towing vessels inspected under all inspection options under 46 CFR subchapter M is \$1,030, which is the fee for “[a]ny vessel not listed in this table.” As stated above, TSMS fees are not currently being charged, and will not be charged until this final rule is published.

IV. Discussion of Comments and Changes

In response to the NPRM we published January 11, 2022, we received 13 written submissions (plus one duplicate) to our docket. In total, there are 35 comments in response to the proposed rule. These written submissions are available in the public docket for this rulemaking, where indicated under **ADDRESSES** or use the direct link <https://www.regulations.gov/docket/USCG-2018-0538>. The Coast Guard appreciates the comments from the public, as these insights continue to inform Coast Guard actions and programs. Below we summarize the comments and our responses.

The Coast Guard received a number of comments about the proposed fees. Some commenters stated that the proposed fees provided no incentive for choosing the TSMS option, and that the TSMS user fee was unfair due to the third-party costs associated with that option. Some commenters said that the TSMS option offers increased safety, which actually reduces the Coast Guard burden, so this should lead to lower fees. Several commenters requested that the Coast Guard option user fee remain \$1,030. One commenter recommended a reduction of the user fees for both TSMS option vessels and

¹¹ Under 46 CFR 2.01-6(b), foreign vessels from countries which are nonsignatory to the International Convention for the Safety of Life at Sea, 1974, are issued a COI, if the inspector approves the vessel and its equipment as described in § 2.01-5. We have records of COIs issued to foreign vessels in our Marine Information for Safety and Law Enforcement (MISLE) database, but no records of a COI issued to a foreign towing vessel.

Coast Guard option vessels.

After considering these comments, we retain the user fees proposed in the NPRM for this final rule. Our reasons are as follows. The law requires the Coast Guard to establish a fee for its inspection services and the fees must be fair and based on the costs to the Government, value to the recipient, and public interest. *See* 31 U.S.C. 9701. In addition, Section 815 of the CGAA 2018 requires the Coast Guard to review the costs to the Government of Coast Guard and third-party inspections for towing vessels. If there is a difference in the costs to the Government, we must revise the annual inspection fees set by the Coast Guard for towing vessels. To revise the fees, we must comply with the same fee-establishing requirements in 31 U.S.C. 9701. The user fee amounts we set are based on the direct and indirect costs for the Coast Guard to perform specific vessel inspection activities. The “Cost Study to Determine User Fees for Inspected Towing Vessels,” available in the docket where indicated under the **ADDRESSES** section of this preamble, explains in detail how we determine direct and indirect costs and calculate user fees. In developing the Cost Study, Coast Guard program, budget, and field offices¹² specified the cost model elements, provided the data sources, and validated the methodology used to determine towing vessel user fees, as well as the study results.

Furthermore, the user fees vary because the frequency of inspections and the times for inspection activities vary based on vessel class and inspection option. Selecting the TSMS or Coast Guard inspection option is a business decision by the vessel owner or operator.

Currently, owners and operators of about 70 percent of subchapter M inspected towing vessels with a COI have chosen the TSMS option while 30 percent of COIs for

¹² Coast Guard offices and units involved in the Cost Study development include the—Office of Commercial Vessel Compliance (CG-CVC), Office of Standards Evaluation and Development (CG-REG), Office of Resource Management (CG-83) (formerly CG-DCO-83), Office of Shore Forces (CG-741), Towing Vessel National Center of Expertise (TVNCOE), Finance Center (FINCEN) and Marine Safety Unit Paducah, Kentucky.

subchapter M inspected towing vessels are issued under the traditional Coast Guard option. This number has not substantially changed since the implementation of the 2016 “Inspection of Towing Vessels” final rule and the first COIs were issued in 2017. The user fees for the TSMS option account for the cost to the Government to provide inspections services for this vessel class and inspection option. A vessel owner or operator who selects the TSMS option is making a business decision that should account for the cost to contract with a third-party organization. For these reasons, there are no changes to the final rule in response to the comments on the proposed fees.

Several commenters stated that the Cost Study is flawed. We received comments indicating that the fees are duplicative, excessive, do not accurately reflect the Coast Guard workload, and do not represent the commenters’ observed experience.

The Coast Guard disagrees. The fees we proposed for the Coast Guard option and TSMS option accurately estimate the cost to the Government to provide our inspection services. The Cost Study explains how we determine direct and indirect costs. We derive the user fee from the cost to the Coast Guard to perform a specific set of vessel inspection activities. The time it takes to perform any specific inspection activity includes more than just the observed time or “boots on deck” time on a vessel. A typical inspection involves pre-inspection activities (for example, identifying vessel type, safety requirements, and vessel history), in-person assessment activities (for example, verifying the integrity of vessel’s hull and presence of appropriate safety equipment, and assessing proper operation of electrical and mechanical equipment), and follow-up activities (for example, reporting identified deficiencies, updating vessel data into the Coast Guard’s Coast Guard’s Marine Information for Safety and Law Enforcement (MISLE) system, and verifying deficiency rectification).

The Coast Guard periodically validates the duration of these vessel inspection activity times. Concurrent inspection activities are allocated less time than the primary

inspection activities because concurrent inspection activities are conducted together. Additionally, unlike primary inspection activities, concurrent inspection activities are not allocated travel time credit. Because the time for primary inspection activities is recorded and allocated differently from concurrent inspection activities, such concurrent inspection charges are not redundant. For these reasons, the Coast Guard is maintaining its reliance on the Cost Study in this area. As such, there is no change to this final rule based on these comments.

One commenter stated that the Coast Guard has not yet determined the time and resources necessary for the COI renewal process.

The Coast Guard disagrees. As stated above, the Cost Study explains how we determine direct and indirect costs. The fees we proposed for the Coast Guard option and TSMS option accurately estimate the cost to the Government to provide our inspection services. For this reason, we have made no changes from the proposed rule in response to this comment.

Several commenters stated that the proposed fees impose a financial hardship or burden on small business due to the state of the economy, and that the Coast Guard should defer imposition of fees until we study the costs further.

In accordance with 46 U.S.C. 2110, the Coast Guard is required to establish a fee for its inspection services that is fair and based on the costs to the Government, value to the recipient, and public interest. The proposed user fees were developed in accordance with law, and further delay or study is unnecessary. For this reason, we have made no changes from the proposed rule in response to these comments.

One commenter stated that in not applying the inflation factor, the proposed fees result in a significant increase in annual Government revenues from user fees. The commenter said that for the TSMS option, the current user fee of \$1,030 should be increased by the inflation factor of 1.58, and then divided by 5 to account for the 5-year

period between inspections and adjusted for the minimal periods of oversight.

The Coast Guard disagrees. We did not adjust the user fee for towing vessels by an inflation factor since the previous user fee was not specific to subchapter M towing vessels and did not reflect the costs to the Coast Guard for performing inspections on towing vessels. The user fee of \$1,030 in Table 2.10-101 is for inspections on “[a]ny inspected vessel not listed in this table.” The TSMS option user fee in this rule is based on the costs to the Government to provide inspection services. For these reasons, we have made no changes from the proposed rule in response to this comment.

One commenter stated that an inspection visit resulted in lost revenue from a potential barge move.

Lost revenue due to inspections is not within the scope of this rulemaking. In 2004, Congress determined that towing vessels are to be subject to inspection, resulting in the 2016 “Inspection of Towing Vessels” final rule. The costs, including lost revenue, were considered in that rulemaking and its accompanying regulatory analysis. For this reason, we have made no changes from the proposed rule in response to this comment.

A commenter stated that this rule fails to acknowledge those towing vessels on any water that are more than 15 gross tons and carrying cargo for hire. The commenter said those vessels would also fall under subchapter I and they should be addressed in this rulemaking.

The Coast Guard disagrees. Every request for inspection submitted is reviewed on a case-by-case basis. Per 46 CFR 2.01-7, Table 2.01-7(a), a vessel inspected under subchapter I includes “[a]ll vessels >15 gross tons carrying freight-for-hire[.]” However, any vessel that is (1) more than 15 gross tons but less than 300 gross tons and (2) towing and also carrying cargo for hire on board the vessel separate from the tow, would be considered for a multi-service vessel certification. A vessel certificated for more than one service is already covered under 46 CFR 2.10-101. The owner or operator of the

vessel must pay only the higher of the two applicable fees. For this reason, we have made no changes from the proposed rule in response to this comment.

Another commenter stated that audits by Drug and Alcohol Program Inspectors (DAPI) and Maritime Transportation Security Act (MTSA) verifications should be removed from the Cost Study because they are not derived from the requirements of subchapter M.

The Coast Guard disagrees. The Coast Guard included DAPI audits (46 CFR 16.401) and MTSA verifications (46 CFR 140.660) in the Cost Study because compliance with these requirements must be met prior to the Coast Guard issuing a COI, regardless of the vessel inspection option chosen. For this reason, we have made no changes from the proposed rule in response to this comment.

One commenter stated that two categories of indirect costs are not appropriate in an assessment of agency costs to provide towing vessel inspection services: (1) policy and oversight costs, and (2) facility overhead and support costs. The commenter further stated that the operating and personnel costs of billets for staff at the Towing Vessel National Center of Expertise (TVNCOE) and Coast Guard District, Area, and Headquarters predate the publication and implementation of subchapter M. The commenter also stated that they were unaware of any new facilities or Coast Guard units that have been created for the purpose of providing towing vessel inspection services or, more broadly, implementing and enforcing subchapter M. The commenter recommended eliminating the policy and oversight costs, and facility overhead and support costs.

The Coast Guard disagrees. Policy and oversight activities are an essential element to ensure consistent application of nationwide towing vessel inspection requirements. Facility overhead and support costs are included to fairly account for the cost to the Government to provide inspection services. Historically, operating and overhead costs have been included in vessel inspection user fees, as well as other Coast

Guard user fees such as merchant mariner credentialing and vessel documentation. For these reasons, we have made no changes from the proposed rule in response to this comment.

V. Discussion of the Rule

This final rule updates existing annual inspection fees for both seagoing towing vessels (300 gross tons or more) and vessels subject to the towing-vessel regulations in 46 CFR, subchapter M issued in 2016.

The annual inspection fees are located in 46 CFR part 2—Vessel Inspections. In addition to the fees in § 2.10-101, this part contains definitions in § 2.10-25. We are adding the following new defined terms to § 2.10-25:

- Alternate Compliance Program option;
- Annual vessel inspection fee;
- Coast Guard option;
- Streamlined Inspection Program option;
- Towing Safety Management System option; and
- Towing vessel.

We define *annual vessel inspection fee* as the fee charged by the Coast Guard for providing inspection and related services to determine whether a vessel meets the requirements to maintain its COI. The fee charged by the Coast Guard reflects the cost to the Coast Guard. There are several existing options for inspection, which we define in revised § 2.10-25 by referencing the regulations that establish each option. For both seagoing and subchapter M towing vessels, there is a Coast Guard option in which the Coast Guard performs all the relevant inspection activity. For both types of vessels, there is also a third-party option, already established in regulation, in which a third party performs some of the relevant activity, but the Coast Guard still inspects the vessel and examines

evidence of compliance provided by third parties.

For seagoing towing vessels there is an additional option, the SIP. The SIP option does not involve a third party. Under the SIP option, a vessel is inspected in accordance with an approved Vessel Action Plan that the company's SIP agent develops with guidance from the Coast Guard. In our definition of SIP, we point to subpart E of 46 CFR part 8, which spells out SIP program requirements.

We define *towing vessel* as a commercial vessel engaged in or intending to engage in the service of pulling, pushing, or hauling alongside, or any combination of pulling, pushing, or hauling alongside.

We are also modifying the definition of an existing term in § 2.10-25, *Seagoing towing vessel*. We are removing the modifier "seagoing" from the definition itself and inserting a description of what seagoing means. The inserted description is "and that makes voyages beyond the Boundary Line as defined by 46 U.S.C. 103."¹³ The vessel must be 300 gross tons or more, to distinguish seagoing towing vessels from towing vessels subject to subchapter M that travel beyond the Boundary Line. We also remove the hyphen from seagoing.

A. *Categories of Annual Fees*

For towing vessels subject to 46 CFR subchapter M, we added two categories of fees: the Coast Guard option and the TSMS option. For seagoing towing vessels subject to 46 CFR subchapter I, we develop three fee categories: the Coast Guard option, the ACP option, and the SIP option. This fee structure helps to ensure the Coast Guard is able to recover full costs to the Government and to separate annual inspection fees for options involving third-party surveys

¹³ Under 46 U.S.C. 103 and 33 U.S.C. 151(b), boundary lines are used for dividing inland waters of the United States from the high seas to delineate the application of certain U.S. statutes. For a list of boundary lines and the statutes those lines are used to delineate, see 46 CFR part 7, which lists boundary lines for the Atlantic Coast, Gulf Coast, Pacific Coast, and the states of Alaska and Hawaii.

and audits of towing vessels using safety management systems.

B. Amending Annual Inspection Fees for Seagoing Towing Vessels Subject to 46 CFR Subchapter I.

We will be charging one of three annual fees for seagoing towing vessels that are inspected under subchapter I:

- \$2,747 for those using the Coast Guard option;
- \$1,850 for those using the ACP option; and
- \$2,260 for those using the SIP option.

The previous annual fee for seagoing towing vessels that are inspected under subchapter I was \$2,915.

For a detailed discussion of how these fees were derived, see *Methodology for Calculating Fees* in section V.D of this preamble.

C. Establishing Specific Annual Inspection Fees for Towing Vessels Subject to 46 CFR Subchapter M.

We will also be charging one of two fees for towing vessels inspected under subchapter M:

- \$2,184 for those using the Coast Guard option, and
- \$973 for those using the TSMS option.

The previous annual fee applied to subchapter M towing vessels was \$1,030.

For a more detailed discussion of how these fees were derived, see *Methodology for Calculating Fees* in section V.D of this preamble.

D. Methodology for Calculating Fees

This section summarizes the methodology for calculating fees. For more details, see the Cost Study¹⁴ in the docket where indicated under the **ADDRESSES** section of this preamble.

¹⁴ The Cost Study is the same one referenced in the NPRM and has not been changed.

To derive the costs of the various inspection types, we used an activity-based costing¹⁵ approach in conjunction with the Sector Staffing Model (SSM). The SSM is an activity-based model designed to establish human capital requirements and quantify resources at Shore Forces units.¹⁶ The SSM measures specific activity and frequency to determine the Full-Time Equivalent (FTE) workforce needed to meet a particular workload. Data in the model is derived from Coast Guard enterprise databases and surveys conducted at the Coast Guard field unit level. The model also incorporates unit specific travel times for conducting missions, collateral duty workload, and mission required training. In Spring 2012, the SSM was accredited in accordance with official Coast Guard policy and currently serves as the primary decision tool for managing sector enterprise staffing. Table 1 shows the cost of activities for providing COI services to each type of inspection. These costs are derived using SSM FTE calculations; see the Cost Study in the docket for the full derivation of figures.

Table 1: Per Vessel Cost of Activities for Providing COI Services by User Fee Segment

	Subchapter M: Coast Guard	Subchapter M: TSMS	Subchapter I: Coast Guard	Subchapter I: ACP	Subchapter I: SIP
Inspection Activity Costs*	\$1,182	\$407	\$1,617	\$873	\$1,213
Travel Costs	\$317	\$40	\$356	\$356	\$356
Supervision and Administration Costs	\$243	\$84	\$332	\$179	\$249
Indirect Costs ¹⁷	\$442	\$442	\$442	\$442	\$442
Total Annual Costs	\$2,184	\$973	\$2,747	\$1,850	\$2,260

¹⁵ Activity-based costing is a method for determining the cost of a service based on the cost of each individual element of that service.

¹⁶ Shore Forces units are Coast Guard sector commands and their subunits or field units. See the Coast Guard Strategic Cost Manual, COMDTINST M7000.4 (February 2005), which is available in the docket.

¹⁷ Indirect Costs are costs such as facility and overhead costs as well as IT costs, since these costs are fixed regardless of inspection type, the costs were divided by the vessel population as of the Cost Study.

*Due to a rounding error in the NPRM, Inspection Activity Costs were overstated by \$1 for four of the inspection types. This does not impact the final user fees.

The Coast Guard intends to collect one of five different user fees from the approximately 4,762 towing vessels that require COIs under subchapters I and M.¹⁸ Table 2 shows the fee charged before the CAA 2022 went into effect, the CAA 2022 fee, the final rule fee, the incremental fee adjustment from the CAA 2022 fee, and the percent change to the user fee from the CAA 2022 fee.¹⁹ The annual cost of services for each vessel class is the final rule user fee for that vessel class.

Table 2: Pre-CAA 2022, CAA 2022 Subchapter M and I User Fees and Final Rule User Fee Adjustment Amounts

Fee Type/User Fee Class	Pre-CAA 2022 Fee	CAA 2022 Fee	Final Rule Fee	Incremental Fee Adjustment	Percent Change
Subchapter M: Coast Guard option	\$1,030	\$1,030	\$2,184	\$1,154	112%
Subchapter M: TSMS option	\$1,030	\$0	\$973	\$973	-
Subchapter I: Coast Guard option	\$2,915	\$2,915	\$2,747	-\$168	-6%
Subchapter I: ACP option	\$2,915	\$2,915	\$1,850	-\$1,065	-37%
Subchapter I: SIP option	\$2,915	\$2,915	\$2,260	-\$655	-22%

VI. Regulatory Analyses

We developed this final rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes or Executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review), as amended

¹⁸ Vessel population data came from MISLE as of 2023. See the *Affected Population* section for more details.

¹⁹ The NPRM for this rule was published prior to the CAA 2022, thus the NPRM refers to the “Current Fee.” The “Current Fee” of the NPRM is now labeled as the “Pre-CAA 2022 Fee” to avoid confusion.

by Executive Order 14094 (Modernizing Regulatory 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 costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. This rule has not been reviewed by OMB. A regulatory analysis follows.

Changes from the Notice of Proposed Rulemaking

This final rule's regulatory analysis has made two changes from the NPRM we published in 2022 (87 FR 1378), but the user fees are not changed from the NPRM's rates. First, we updated the populations to reflect current data from MISLE; the subchapter M population decreased while the subchapter I population remained relatively stable.

Second, the baseline for TSMS fees under subchapter M decreased from \$1,030 to \$0. This is because the CAA 2022 directed the Coast Guard not to charge user fees to TSMS vessels under subchapter M until it follows the steps in Section 815 of the CGAA 2018, and based on its findings reported above, revises its fees. This rule will revise those fees effective [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Baselines

Currently, towing vessels are inspected under subchapter I or subchapter

M, dependent on their size and area of operation. Owners and operators of towing vessels inspected under 46 CFR subchapter I pay a user fee of \$2,915 annually. Owners and operators of towing vessels under 46 CFR subchapter M that choose to be inspected by the Coast Guard pay a user fee of \$1,030 annually. Owners and operators of towing vessels under subchapter M that choose the TSMS option do not pay a user fee because of the CAA 2022. However, as noted earlier, the subchapter M user fee is not specific to towing vessels; rather it is for all inspected vessels that do not have a specific user fee on Table 2.10-101. Prior to the CAA 2022 owners and operators of towing vessels under subchapter M that choose the TSMS option paid a user fee of \$1,030 annually.

Under the current CAA 2022 baseline, we calculate that owners and operators of 43 towing vessels inspected under subchapter I pay \$125,345 annually, and that owners and operators of 4,719 towing vessels inspected under subchapter M pay \$1,458,480 annually for inspection services, respectively. Thus, the current transfer from vessel owners to the Coast Guard for towing vessel inspection services is \$1,583,825 annually. Prior to the CAA 2022, when the TSMS user fee was not suspended, owners and operators of all subchapter M towing vessels (TSMS option and Coast Guard option) paid the \$1,030 user fee. This would have resulted in an annual transfer from subchapter M and I vessel owners and operators to the Coast Guard for towing vessel inspection services of \$4,985,915. Owners and operators of towing vessels choose between several vessel inspection alternatives. Once selected, the inspection option is unlikely to change due to a change in user fees, since there are private business costs associated with changing inspection options. The Coast Guard's COI service

costs are fully funded through annual appropriations.²⁰

This final rule establishes a user fee specific to towing vessels under subchapter M, revises the user fee specific to towing vessels under subchapter I, and establishes user fees for alternatives for vessel inspection that require fewer Coast Guard inspection activities or that take less time and thus have a lower cost to the Coast Guard. This updated structure for user fees will help to ensure the Coast Guard's ability to offset costs to the Government, and to separate annual inspection fees for options involving third-party surveys and audits of towing vessels using safety management systems. From a baseline of the CAA 2022, this final rule results in an estimated \$4.8 million annual transfer payment from owners and operators of towing vessels to the Federal Government for COI services. The 10-year transfers, undiscounted, are \$49,320,822. The discounted annualized figure, at 7 percent, is \$4,918,994. The discounted annualized figure, at 3 percent, is \$4,926,329.

The Coast Guard also does the following in this final rule:

(1) Modifies the definition in § 2.10-25 of *Sea-going towing vessel*. We remove the modifier “seagoing” from the definition and replace it with a description of what “seagoing” means. The updated language is “and that makes voyages beyond the Boundary Line as defined by 46 U.S.C. 103.” Also, we specify that the vessel must be 300 gross tons or more to distinguish seagoing towing vessels from towing vessels that travel beyond the Boundary Line, which may be subject to subchapter M. This is an administrative change, and it would have no economic impact.

(2) Amends the user fees for towing vessels under 46 CFR subchapter I.

²⁰ The user fees collected for these services are offsetting receipts and are deposited to the Department of Treasury and credited to DHS appropriation as proprietary receipts. *See* 46 U.S.C. 2110(h).

The current fee for the 43 seagoing towing vessels inspected under subchapter I is \$2,915 for all inspection options (Coast Guard, ACP, and SIP). This final rule makes the fees specific to each inspection as shown below in table 3. Owners and operators of vessels have already chosen their inspection option and are unlikely to change their current option. This is because there are costs associated with switching inspection options and there are transactions in private industry and business-specific costs²¹ beyond the inspection cost that make the user fee a small portion of the overall cost of inspections.

Table 3: Current and Final Rule User Fees for Towing Vessels under 46 CFR Subchapter I

Inspection Type	Current Fee	Revised Fee
Coast Guard option	\$2,915	\$2,747
ACP option		\$1,850
SIP option		\$2,260

(3) Creates a specific user fee category for the 4,719 towing vessels subject to 46 CFR subchapter in the table of fees in § 2.10-101 and updates the current user fees for annual inspection fees for towing vessels to reflect the specific program costs associated with the two subchapter M options: the TSMS option and the Coast Guard inspection option. The Coast Guard inspection option’s current annual fee is \$1,030 for towing vessels subject to subchapter M. The existing fee of \$1,030 is found in 46 CFR 2.10-101 and applies to any inspected vessel not listed in table 2.10-101. Owners and operators of subchapter M vessels that choose the TSMS inspection option do not currently pay a user fee. This final rule makes the fees specific to each inspection type as shown below in table 4. Similar to owners and operators of subchapter I vessels, owners and

²¹ Transaction costs vary by inspection option. Towing vessels that elect to participate in the ACP must comply with the requirements in 46 CFR part 8 subpart D, that includes working with an ACP authorized classification society. Towing vessels that elect to participate in the SIP must comply with the requirements in 46 CFR part 8 subpart E, that includes the development of a Company Action Plan and a Vessel Action Plan.

operators of subchapter M vessels have already chosen their inspection option and are unlikely to change for the same reasons.

Table 4: Current and Revised User Fees for Towing Vessels under Subchapter M

Inspection Type	Current Fee	Revised Fee
Coast Guard option	\$1,030	\$2,184
TSMS option	\$0	\$973

(4) Defines the following new terms added to the table of fees in § 2.10-101: *Annual vessel inspection fee, Alternative Compliance Program option, Coast Guard option, Streamlined Inspection Program option, Towing Safety Management System option, and Towing vessel*. This is an administrative change and has no economic impact. All these points are described in greater detail in the Cost Study.

Affected Population

To obtain the affected population for this final rule, we used the MISLE system. MISLE is the Coast Guard’s vessel and marine activity database and contains the best and most readily available vessel population data. According to MISLE data as of 2023, the total affected population of this final rule is 4,762 inspected towing vessels. There are approximately 4,719 towing vessels that will require inspection under 46 CFR subchapter M and 43 towing vessels that are inspected under 46 CFR subchapter I. Coast Guard subject matter experts in the Office of Commercial Vessel Compliance (CG-CVC) estimate that the subchapter M population will increase by an average of 23 vessels per year because a number of subchapter M vessels began the inspection process to obtain a COI during the 4-year phase-in period but did not complete the process. The Coast Guard believes that, over time, these vessels will obtain new COIs; thus, the subchapter M population will increase. The subchapter I population is expected to remain

stable because it historically has done so.

Rather than a single fee category for all towing vessels covered by a subchapter, the Coast Guard is creating two categories for subchapter M and three categories for subchapter I vessels. For subchapter M, the inspection types are the Coast Guard option and the TSMS option. For subchapter I, the inspection types are the Coast Guard option, the ACP option, and the SIP option. Table 5 presents the total population of inspected towing vessels impacted by this final rule and the current breakdown of inspections within each subchapter. Table 6 presents the projected subchapter M population and their projected counts of inspection type. We assume that the subchapter M towing vessel population will maintain their current split of 70 percent using the TSMS option and 30 percent using the Coast Guard option during the duration of the analysis.

Table 5: Total Affected Population for Inspected Towing Vessels

User Fee Categories Population					
46 CFR Subchapter M	Coast Guard option		TSMS option		Total
Population	1,416		3,303		4,719
% of Population	30%		70%		100%
46 CFR Subchapter I	Coast Guard option	Vessel Inspection Alternatives		Total	
		Alternate Compliance Program (ACP) option	Streamlined Inspection Program (SIP) option		
Population	26	16	1	43	
% of Population	61%	37%	2%	100%	
Total Population					4,762

Table 6: Projected Subchapter M Population by Inspection Option

Estimated Annual Subchapter M Population by Inspection Type		
Year	CG Option	TSMS Option
Year 1	1,416	3,303

Year 2	1,423	3,319
Year 3	1,429	3,336
Year 4	1,436	3,352
Year 5	1,443	3,368
Year 6	1,450	3,384
Year 7	1,457	3,400
Year 8	1,464	3,416
Year 9	1,471	3,432
Year 10	1,478	3,448

Costs and Benefits

This final rule does not impose any new societal costs because all the inspection activities are done by regulated entities and the Coast Guard. Instead, the impacts of this final rule are in the form of transfer payments, which are monetary payments from one group to another that do not affect the total resources available to society.

This final rule does not provide any quantitative benefits; however, revising user fees to reflect the actual cost for the Coast Guard to provide inspection services is a qualitative benefit. The result is a fairer distribution of costs to inspected towing vessels by inspection type. Section 2110 of Title 46 of the U.S.C. directs that the fee or charge be established in accordance with 31 U.S.C. 9701, which specifies that each charge be fair and based on the costs to the Government; the value of the service or thing to the recipient, public policy, or interest served; and other relevant facts. Consistent with these objectives, once a fee or charge is established, Section 2110 allows the fee or charge to be adjusted to accommodate changes in the cost of providing a specific service or thing of value. This final rule aids the Coast Guard in compliance with those statutory requirements.

Transfer Payments

This final rule adjusts the user fees collected from the current entities so

that there are now five different fees based on the towing vessel subchapter and program used for vessel certification. There currently are 4,762 affected towing vessels. Table 7 shows the pre-CAA 2022 baseline fee, CAA 2022 baseline fee, the final rule fee, the change, and the percent change to the user fee from the pre-CAA 2022 and CAA 2022 baseline fees. The annual cost of services for each vessel class is the user fee for that vessel class.

Table 7: Pre-CAA 2022 Baseline Fee, CAA 2022 Baseline Fee, for 46 CFR Subchapter M and I User Fees and Final Rule User Fee Adjustment Amounts

Fee Type/User Fee Class	Pre-CAA 2022 Baseline Fee	CAA 2022 Baseline Fee	Final Rule Fee	Incremental Fee Adjustment from Pre-CAA 2022	Percent Change from Pre-CAA 2022	Incremental Fee Adjustment from CAA 2022	Percent Change from CAA 2022
Subchapter M: Coast Guard option	\$1,030	\$1,030	\$2,184	\$1,154	112%	\$1,154	112%
Subchapter M: TSMS option.	\$1,030	\$0	\$973	-\$57	-6%	\$973	-
Subchapter I: Coast Guard option	\$2,915	\$2,915	\$2,747	-\$168	-6%	-\$168	-6%
Subchapter I: ACP option	\$2,915	\$2,915	\$1,850	-\$1,065	-37%	-\$1,065	-37%
Subchapter I: SIP option	\$2,915	\$2,915	\$2,260	-\$655	-22%	-\$655	-22%

Note: Since there are no distinct categories for TSMS, SIP, or ACP in the current user fee table, all owners and operators of subchapter M vessels would normally pay one fee and all owners and operators of subchapter I vessels pay one fee.

In table 8, we show the total increase in annual transfer payments from each vessel class to the Government and the total increase for all vessels. For example, owners and operators of subchapter M vessels that choose the Coast Guard option will pay an additional \$1,154 per vessel in user fees to the Coast Guard for inspection services. Negative numbers represent a decrease in user fees. Transfer payments are monetary payments from one group to another that do not affect total resources. For this final rule, a user fee is a transfer payment from the vessel's owner or operator to the Government to offset the costs to the Coast Guard for providing COI services. This is calculated by multiplying the

vessel population by the incremental fee change. Because the population of 46 CFR subchapter M vessels is projected to increase, table 9 shows annual incremental transfer payments for this subchapter. Totals are calculated by multiplying the populations in table 6 by the appropriate fees.

Table 8: First Year Annual Incremental Fee Amounts²²

Fee Type/User Fee Class	Estimated Population	Incremental Fee Change from Pre-CAA 2022 baseline	First Year Fee Transfer Payments from Pre-CAA 2022 baseline	Incremental Fee Change from CAA 2022 baseline	First Year Fee Transfer Payments from CAA 2022 baseline
Subchapter M: Coast Guard option	1,416	\$1,154	\$1,634,064	\$1,154	\$1,634,064
Subchapter M: TSMS option	3,303	-\$57	-\$188,271	\$973	\$3,213,819
Subtotal	4,719		\$1,445,793		\$4,847,883
Subchapter I: Coast Guard option	26	-\$168	-\$4,368	-\$168	-\$4,368
Subchapter I: ACP option	16	-\$1,065	-\$17,040	-\$1,065	-\$17,040
Subchapter I: SIP option	1	-\$655	-\$655	-\$655	-\$655
Subtotal	43		-\$22,063		-\$22,063
Annual Total			\$1,423,730		\$4,825,820

Table 9: Subchapter M Annual Incremental Transfer Payments²³

Year	CG Option Pre-CAA 2022 baseline	TSMS Option Pre-CAA 2022 baseline	Subchapter M Total from Pre-CAA 2022 baseline	CG Option CAA 2022 baseline	TSMS Option CAA 2022 baseline	Subchapter M Total from CAA 2022 baseline
Year 1	\$1,634,064	-\$188,271	\$1,445,793	\$1,634,064	\$3,213,819	\$4,847,883
Year 2	\$1,642,142	-\$189,183	\$1,452,959	\$1,642,142	\$3,229,387	\$4,871,529
Year 3	\$1,649,066	-\$190,152	\$1,458,914	\$1,649,066	\$3,245,928	\$4,894,994
Year 4	\$1,657,144	-\$191,064	\$1,466,080	\$1,657,144	\$3,261,496	\$4,918,640
Year 5	\$1,665,222	-\$191,976	\$1,473,246	\$1,665,222	\$3,277,064	\$4,942,286
Year 6	\$1,673,300	-\$192,888	\$1,480,412	\$1,673,300	\$3,292,632	\$4,965,932
Year 7	\$1,681,378	-\$193,800	\$1,487,578	\$1,681,378	\$3,308,200	\$4,989,578
Year 8	\$1,689,456	-\$194,712	\$1,494,744	\$1,689,456	\$3,323,768	\$5,013,224

²² The incremental changes in transfers are from the specified baseline to the Final Rule user fee.

²³ The incremental changes in transfers are from the specified baseline to the Final Rule user fee.

Year 9	\$1,697,534	-\$195,624	\$1,501,910	\$1,697,534	\$3,339,336	\$5,036,870
Year 10	\$1,705,612	-\$196,536	\$1,509,076	\$1,705,612	\$3,354,904	\$5,060,516

Note: The total transfer payments for subchapter M vessels rise annually due to an estimated annual increase in the population of 23 vessels.

The reduction in fees for owners and operators of vessels under 46 CFR subchapter I will result in a decrease in transfer payments in the first year from the subchapter I towing vessel industry to the Government of \$22,063. Relative to the CAA 2022 baseline, the Coast Guard expects to have an increase in transfer payments from owners and operators of subchapter M towing vessels for the COI services of \$4,847,883 in the first year to the Government. The net change in transfer payments is \$4,825,820 in the first year. The 10-year transfer payments, undiscounted, total \$49,320,822. The discounted annualized figure, at 7 percent, is \$4,918,994.

Relative to the Pre-CAA 2022 baseline, the Coast Guard expects to have an increase in transfer payments from owners and operators of subchapter M towing vessels for the COI services of \$1,445,793 in the first year to the Government as shown in table 9. The sum of transfer payments for vessels under subchapter I and M is \$1,423,730 in the first year from the subchapter I towing vessel industry to the Government since subchapter I user fees are decreasing. The total 10-year change in transfer payments, undiscounted, is \$14,550,082. The discounted annualized figure, at 7 percent, is \$1,451,108. Table 10 summarizes the total 10-year change in transfer payments from the towing vessel industry to the Government.

Table 10: Discounted Transfer Payments from Towing Vessel Operators to the Government

Year	Pre-CAA 2022 Baseline			CAA 2022 Baseline		
	Undiscounted	Discounted		Undiscounted	Discounted	
		7%	3%		7%	3%
1	\$1,423,730	\$1,330,589	\$1,382,262	\$4,825,820	\$4,510,112	\$4,685,262
2	\$1,430,896	\$1,249,800	\$1,348,757	\$4,849,466	\$4,235,711	\$4,571,087

3	\$1,436,851	\$1,172,898	\$1,314,922	\$4,872,931	\$3,977,763	\$4,459,422
4	\$1,444,017	\$1,101,634	\$1,282,990	\$4,896,577	\$3,735,575	\$4,350,545
5	\$1,451,183	\$1,034,673	\$1,251,803	\$4,920,223	\$3,508,051	\$4,244,228
6	\$1,458,349	\$971,760	\$1,221,344	\$4,943,869	\$3,294,309	\$4,140,412
7	\$1,465,515	\$912,649	\$1,191,598	\$4,967,515	\$3,093,519	\$4,039,044
8	\$1,472,681	\$857,114	\$1,162,548	\$4,991,161	\$2,904,901	\$3,940,069
9	\$1,479,847	\$804,939	\$1,134,180	\$5,014,807	\$2,727,723	\$3,843,432
10	\$1,487,013	\$755,922	\$1,106,477	\$5,038,453	\$2,561,294	\$3,749,082
Total*	\$14,550,082	\$10,191,977	\$12,396,882	\$49,320,822	\$34,548,958	\$42,022,583
Annualized		\$1,451,108	\$1,453,293		\$4,918,994	\$4,926,329

Note: Totals may not sum due to rounding.

Regulatory Alternatives

Alternatives considered include adjusting our current user fees for inflation, updating only the Coast Guard option user fees, or continuing with the current user fees. Each of these options will be considered in the following discussion.

Under the first alternative, Coast Guard considered adjusting the 1995 user fees for inflation from 1995 dollars to 2022 dollars. To adjust for inflation, we use an inflation factor from the annual gross domestic product deflator data.²⁴ We calculate the inflation factor of 1.76 by dividing the annual 2022 index number (117.996) by the annual 1995 index number (66.993). We then multiply the current fees for 46 CFR subchapters I and M by the inflation factor and round it to the nearest dollar. If we simply adjusted the user fees for inflation, the annual fees charged under subchapters I and M would increase 76 percent, by \$2,215 and \$783, respectively. These fees, when multiplied by the number of annual COI renewals, would yield a total annual revenue of approximately \$8.8 million and an increase in transfer payments of \$3.8 million. We rejected this alternative because the annual revenue collected under this methodology would not reflect

²⁴ U.S. Bureau of Economic Analysis, "Table 1.1.4. Price Indexes for Gross Domestic Product," <https://apps.bea.gov/iTable/?reqid=19&step=3&isuri=1&1910=x&0=-99&1921=survey&1903=4&1904=2009&1905=2018&1906=a&1911=0> (accessed December 1, 2023).

the full cost to the Coast Guard of providing the COI-related services. Table 11 shows the inflation adjusted user fees for subchapter I and M vessels.

Table 11: Comparison of User Fees in 1995 Dollars and 2022 Dollars (Alternative 1) *

Fee Category	1995 \$ Fee	Inflation Factor	2022 Dollars	Population	Incremental Fee Adjustment	Annual Fee Transfer Payments	Annual Revenue Collected from User Fees
Subchapter I vessels	\$2,915	1.76	\$5,130	43	\$2,215	\$95,245	\$220,590
Subchapter M vessels	\$1,030	1.76	\$1,813	4,719	\$783	\$3,694,977	\$8,555,547
Total						\$3,790,222	\$8,776,137

*Note: All dollar figures rounded to the closest whole dollar.

In the second alternative, we considered updating only the Coast Guard option user fees. We rejected this alternative because it would not comply with Section 815 of the CGAA 2018. Section 815 directs the Coast Guard to review and, based on our findings, revise the fee for towing vessel inspections. First, the Coast Guard must compare the costs to the Government of towing vessel inspections performed by the Coast Guard and towing vessel inspections performed by a third party, to determine if they are different. We have conducted that comparison and determined that there is a difference in costs to the Government between the inspection options for towing vessels that involve a third party and those that do not. If there is a difference in costs, Section 815 of the CGAA 2018 directs us to revise the fees we assess for towing vessel inspections to conform to 31 U.S.C. 9701 and to base the fee on the cost to the Government.

In our third alternative, we considered maintaining the current user fee²⁵ without an adjustment. We rejected this alternative because the annual revenue collected under this methodology would not cover the full cost to the Coast Guard of providing the COI-related services.

²⁵ Per the CAA 2022, towing vessels using the TSMS option would continue to pay no annual inspection user fee.

B. Small Entities

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, we have considered the impact of this rule on 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.

A Final Regulatory Flexibility Analysis (FRFA) discussing the impact of this rule on small entities follows. An FRFA addresses the following:

- (1) A statement of the need for, and objectives of, the rule;
- (2) A statement of the significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis (IRFA), a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
- (3) The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;
- (4) A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
- (5) A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
- (6) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal

reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.²⁶

Below is a discussion of the FRFA analysis for each of these six elements.

(1) A statement of the need for, and objectives of, the rule.

The Coast Guard is updating the user fees for inspected towing vessels because after reviewing the costs to the Government of inspections under the Coast Guard option or options using a third party, the Coast Guard has determined that updates are necessary to ensure that fees for all options are fair and based on costs to the Government. User fees for towing vessels inspected under 46 CFR subchapter I have not been updated since 1995. The changes to the fees are also consistent with the 2016 “Inspection of Towing Vessels” final rule, in which we stated that we planned to issue a separate rulemaking for annual inspection fees for towing vessels that would reflect the specific program costs associated with the two 46 CFR subchapter M options—the TSMS option and the Coast Guard inspection option.

The objective of this final rule is to comply with the law, which requires the Coast Guard to establish a fee or charge for inspections and related services described in 46 U.S.C. 2110(a)(1). Under this law, the Coast Guard is required to establish a fee for its inspection services that is fair and based on costs to the Government, the value to the recipient, and public interest.

(2) A statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

²⁶ 5 U.S.C. 604(a)(1) through (6).

This regulatory action received no comments directly related to the IRFA analysis. However, we received several comments regarding financial hardship due to the fee increase. The Coast Guard, in accordance with 46 U.S.C. 2110, is required to establish a fee for its inspection services that is fair and based on the costs to the Government, value to the recipient, and public interest. The user fees were developed in accordance with law. Each entity chooses its inspection option and corresponding fee according to its business needs. For a review of all the public comments received on the rulemaking, see section IV., *Discussion of Public Comments*.

(3) The response of the agency to any comments filed by the Chief Counsel for Advocacy of the SBA in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments.

This regulatory action received no comments from the Chief Counsel for the Advocacy of the SBA.

(4) A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

This final rule will affect the owners and operators of certain towing vessels under 46 CFR subchapters I and M. We retrieved this towing vessel population from the Coast Guard's MISLE system. From this database, we identified 4,762 vessels affected by this final rule—4,719 subchapter M towing vessels and 43 subchapter I towing vessels (see table 5). There are 1,223 unique companies that own or operate these vessels. Eight companies own vessels under both subchapters I and M. One company owns only subchapter I vessels.

We used available information on operator names and addresses to research public and proprietary databases for entity type (subsidiary or parent

company), primary line of business, employee size, revenue, and other information.²⁷ We found vessels owned by 21 government entities and 4 nonprofit entities. The remaining 1,211 vessels are owned by business entities. For governmental jurisdictions, we determined whether the jurisdiction had populations of less than 50,000 as per the criteria in the RFA. For nonprofits, we evaluated whether the nonprofit was independently owned and operated and if it was not dominant in its field.²⁸ For the business entities, we matched their information with the SBA’s latest *Table of Small Business Size Standards* to determine if a business entity is small in its primary line of business as classified in the North American Industry Classification System (NAICS).²⁹

We broke the population down into 46 CFR subchapters I and M. For subchapter M, we used a random sample from the unique towing vessel companies to reach the 95-percent confidence level. Using Cochran’s Formula, the Coast Guard chose a statistically valid random sample of 385 entities that own and operate towing vessels.³⁰

There are a total of 97 NAICS-coded industries in this final rule’s sample affected population. Table 12 displays the 10 industries that appear most frequently in the affected population of owners or operators of towing vessels in subchapters I and M.

Table 12: Most Common NAICS Codes

NAICS Code	Description	Small Entity Definition	Count of Towing Vessel Owners or Operators	Percent of Total*
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²⁷ <https://www.cortera.com/>, <https://www.manta.com/>, and <https://www.referenceusagov.com> (accessed July 10, 2023).

²⁸ We used <https://www.guidestar.org> to evaluate nonprofits (accessed July 10, 2023).

²⁹ <https://www.sba.gov/document/support-table-size-standards> (accessed July 10, 2023).

³⁰ A statistically valid random sample size of 292 businesses would be required to achieve a 95-percent confidence level out of the 1,222 unique towing vessel companies. In this analysis, the Coast Guard oversampled to analyze 385 businesses to ensure enough data and information was available on the businesses to meet the sampling requirements.

488330	Navigational Services to Shipping	< \$47,000,000	45	11%
238910	Site Preparation Contractors	< \$19,000,000	33	8%
441222	Boat Dealers	< \$40,000,000	29	7%
488410	Motor Vehicle Towing	< \$9,000,000	18	5%
236115	New Single-family Housing Construction (Except For-Sale Builders)	< \$45,000,000	16	4%
336611	Ship Building and Repairing	< 1,300 Employees	9	2%
237990	Other Heavy and Civil Engineering Construction	< \$45,000,000	8	2%
713930	Marinas	< \$11,000,000	8	2%
483211	Inland Water Freight Transportation	< 1,050 Employees	7	2%
551111	Offices of Bank Holding Companies	< \$38,500,000	6	2%

Note: Total does not sum to 100 percent, since these percentages reflect only the top 10 most common NAICS codes of the sample. The remaining 55 percent of NAICS codes were not within the 10 most commonly occurring.

For subchapter M, the Coast Guard chose a sample of 385 businesses that own and operate the towing vessels. Of the 385 businesses, 33 exceeded the SBA small business size standards, 271 companies were considered to be small businesses by the SBA size standards, and 81 companies had no information available. Consistent with DHS's practices, entities with no information available are considered small entities. Thus, there are 352 businesses in our sample that we consider to be small entities. Based on our random sample, 91.4 percent of subchapter M entities are considered small and therefore when applied to the population of unique towing vessel companies, 1,118 subchapter M entities are considered small.

For subchapter I, we searched all nine unique towing vessel companies in the available databases. All had available revenue and employee data. Of these nine unique towing vessel companies, eight exceeded the SBA small business size

standards and one was considered a small entity by the SBA size standards.

For this analysis, we considered the annual weighted average transfer from industry to the Coast Guard by subchapter. For subchapter M vessels, we found the average fleet size for small entities is two vessels and multiplied it by the weighted average of incremental changes in user fees. According to our analysis of small subchapter M vessels, 98 percent of entities choose the Coast Guard option for their inspection option and 2 percent choose the TSMS option. Thus, we multiplied the rates for entities choosing their inspection option by the incremental change in user fees compared to the CAA 2022 baseline and the average fleet size for small subchapter M entities, which yielded an average increase in impact of \$1,150 per subchapter M vessel and \$2,300 per small subchapter M entity due to the incremental change in subchapter M fees.³¹ We repeated this process for subchapter I entities. We found that each small entity had an average fleet size of two vessels and multiplied it by the weighted average of incremental changes in user fees. According to our analysis of small subchapter I vessels, all entities chose the ACP inspection option. This final rule will save subchapter I entities \$2,130. Tables 13 and 14 show the impact on revenues for small entities that we had revenue data for under each subchapter.

Table 13: Estimated Annual Revenue Impact for Small Entities under 46 CFR Subchapter M

Revenue Impact Range	Number of Entities	Percent of Entities
0% < 1%	170	80.6%
1% < 3%	31	14.7%

³¹ The incremental change in subchapter M Coast Guard option user fees is \$1,154, while the incremental change in subchapter M TSMS option user fee is \$973. Thus, the average impact of \$2,300 was found by taking the weighted average of their inspection options by the fleet size. $(\$1,154 \times 98\%) + (\$973 \times 2\%) = \$1,150$. $\$1,150 \times 2 = \$2,300$.

3% < 5%	7	3.3%
5% < 10%	3	1.4%
Above 10%	0	0%
Total	211	100%

Table 14: Estimated Annual Revenue Impact for Small Entities under 46 CFR Subchapter I

Revenue Impact Range	Number of Small Entities	Percent of Small Entities
0% <= 1%	1	100%
1% <= 3%	0	0%
Above 3%	0	0%
Total	1	100%

According to our analysis, 80.6 percent of subchapter M entities will have an annual impact to revenue of 1 percent or less. Approximately 14.7 percent will have an annual impact to revenue between 1 and 3 percent. The remaining 4.7 percent will have an annual impact to revenue greater than 3 percent. For subchapter I entities, our analysis shows a less than 1 percent impact to annual revenue for all small entities.

(5) A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

This final rule calls for no new reporting, recordkeeping, or other compliance requirements.

(6) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

This final rule implements section 815 of CGAA 2018. The CGAA 2018 mandates the revision of towing vessel inspection user fees if there are differences in costs to the Government. As such, the Coast Guard has no discretion to offer alternatives that minimize the impact on small entities while accomplishing the stated objective of the statute.

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).

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.

Conclusion

In conclusion, we estimate that 80.6 percent of entities under 46 CFR subchapter M with revenue data will have an annual impact to revenue of 1 percent or less. Approximately 14.7 percent will have an annual impact to revenue between 1 and 3 percent. The remaining 4.7 percent will have an annual impact to revenue greater than 3 percent. For entities under 46 CFR subchapter I,

our analysis shows a less than 1 percent impact to annual revenue for all small entities. We also discussed several regulatory alternatives, including our preferred alternative. Our preferred alternative is to: (1) update the user fee for seagoing towing vessels; (2) revise the user fee for other inspected towing vessels; and (3) establish fees for towing vessels using the ACP, SIP, or TSMS options. Owners and operators of vessels using the ACP, SIP, or TSMS option will pay a lower fee than owners and operators of vessels that use the traditional Coast Guard inspection option.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, we offer to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this final 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 final rule calls for no new or revised collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

E. Federalism

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on States, on the relationship between the National

Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis follows.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. *See* the Supreme Court's decision in *United States v. Locke* and *Intertanko v. Locke*, 529 U.S. 89, 120 S.Ct. 1135 (2000). Therefore, because the States may not regulate within these categories, this rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

F. Unfunded Mandates

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

G. Taking of Private Property

This final 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 final 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 final rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This final rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it will 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 final 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.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example,

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 final rule under Department of Homeland Security Management Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. This final rule is categorically excluded under paragraphs L54 and L57 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev 1.³² Paragraph L54 pertains to regulations that are editorial or procedural. Paragraph L57 pertains to regulations concerning manning, documentation, admeasurement, inspection, and equipping of vessels.

This final rule updates the existing user fee for seagoing towing vessels that are 300 gross tons or more and establishes specific user fees for other towing vessels that have more recently become subject to inspection.

List of Subjects in 46 CFR Part 2

³² https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%202023-01-001-01%20Rev%2001_508%20Admin%20Rev.pdf (accessed July 10, 2023).

Marine safety, Reporting and recordkeeping requirements, Vessels.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 2 as follows:

PART 2—VESSEL INSPECTIONS

The authority citation for part 2 is revised to read as follows:

Authority: Sec. 622, Pub. L. 111-281; 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 2103, 2110, 3306, 3703, 70034; DHS Delegation No. 00170.1, Revision No. 01.3, paragraph (II)(77), (90), (92)(a), (92)(b); E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277, sec. 1-105.

2. Amend § 2.10-25 by:

a. Revising the definition of “*Sea-going towing vessel*”; and

b. Adding the definitions in alphabetical order for “*Alternative Compliance Program option*”, “*Annual vessel inspection fee*”, “*Coast Guard option*”, “*Streamlined Inspection Program option*”, “*Towing Safety Management System option*”, and “*Towing vessel*”.

The additions and revision read as follows:

§ 2.10-25 Definitions.

* * * * *

Alternative Compliance Program option means the option described in 46 CFR part 8, subpart D.

Annual vessel inspection fee means the fee charged for inspection and related services provided by the Coast Guard to determine whether a vessel meets the requirements to maintain its Certificate of Inspection.

Coast Guard option means an option used by—

(1) A vessel inspected under a 46 CFR subchapter that is not participating in the Alternative Compliance Program described in 46 CFR part 8, subpart D;

(2) A vessel inspected under a 46 CFR subchapter that is not participating in the Streamlined Inspection Program described in 46 CFR part 8, subpart E; or

(3) A vessel inspected under 46 CFR subchapter M that is not participating in the Towing Safety Management System option described in 46 CFR part 138.

* * * * *

Seagoing towing vessel means a commercial vessel 300 gross tons or more engaged in or intending to engage in the service of pulling, pushing, or hauling alongside, or any combination of pulling, pushing, or hauling alongside, and that makes voyages beyond the Boundary Line as defined by 46 U.S.C. 103, and has been issued a Certificate of Inspection under the provisions of subchapter I of this chapter.

* * * * *

Streamlined Inspection Program option means the option described in 46 CFR part 8, subpart E.

* * * * *

Towing Safety Management System option means the option described in 46 CFR part 138 for towing vessels subject to 46 CFR subchapter M.

Towing vessel means a commercial vessel engaged in or intending to engage in the service of pulling, pushing, or hauling alongside, or any combination of pulling, pushing, or hauling alongside.

* * * * *

3. Amend § 2.10-101, in Table 2.10-101, by:

a. Revising the “Sea-going Towing Vessels” entry and, in order, adding the subentries “Coast Guard option”, “Alternative Compliance option”, and “Streamlined Inspection Program option”; and

b. Adding an entry for “Towing Vessels (Inspected under 46 CFR Subchapter M)” and, in order, adding the subentries “Coast Guard option” and “Towing Safety Management System option”.

The addition and revision read as follows:

§ 2.10-101 Annual vessel inspection fee.

* * * * *

Table 2.10-101—Annual Vessel Inspection Fees for U.S. and Foreign Vessels Requiring a Certificate of Inspection

* * * * *	
Seagoing Towing Vessels (Inspected under 46 CFR Subchapter I):	
Coast Guard option	2,747
Alternative Compliance Program option	1,850
Streamlined Inspection Program option	2,260
* * * * *	
Towing Vessels (Inspected under 46 CFR Subchapter M):	
Coast Guard option	2,184
Towing Safety Management System option	973
* * * * *	

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Dated: December 18, 2023.

W. R. Arguin,
Rear Admiral, U. S. Coast Guard,
Assistant Commandant for Prevention Policy.

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