

that the committee could comment on the NPRM.

#### *Schedule for Interim Rule Publication*

Numerous comments stated that the Coast Guard should implement the proposed new rate immediately or at least by the start of the 2003 shipping season. Other comments stated if that was not possible, that the proposed rate should be implemented until corrections can be made.

Many other comments, however, expressed concern that our proposed interim rule publication date of February 14, 2003, was before the end of the comment period deadline. One stated because of the proximity of the NPRM's comment period deadline (March 10, 2003) to the planned IR publication date (February 14, 2003) that comments would not have been given full consideration. Several port authorities stated that implementing an interim rule would violate companies' "right to have their views fairly considered."

One comment stated that a "hasty implementation" of the proposed rate increases would violate the rulemaking provisions of the Administrative Procedures Act (APA; 5 U.S.C. 553) as well as the requirement that the Coast Guard consider the public's interest (46 U.S.C. 9303(f)).

One comment stated that the rush to institute an interim rule would result in significant defects in the ratemaking process.

*Requests for Extension and Public Meetings.* Some comments asked that the comment period be extended. One said the additional extension would provide time for ample scrutiny and the ability to make necessary adjustments before a final rate is established. Another comment stated that if the comment period is extended an interim rate is needed until the final rule is completed.

Another comment stated that placing the independent accountants' reports for Districts One, Two, and Three in the docket five days after the publication of the NPRM did not allow for an extensive review of those documents. Other comments stated that additional public meetings are needed to provide stakeholders sufficient time to analyze the rulemaking and to prepare and submit comments.

We understand the early concerns about not having enough time to respond to the NPRM. However, because two public meetings were held (January 31, 2003, and April 14, 2003), and the comment period was extended through May 1, 2003, the Coast Guard has provided an adequate opportunity

for those wishing to respond to the NPRM and for those needing to review the independent accountant's reports. We do not plan on holding a public meeting on this interim rule.

#### *Boundary Act Treaty*

Several comments stated that the proposed rates violate the Boundary Act Treaty of 1910 that stipulates Canadian boundary waters are to be treated with fairness and equity. Comments from the Shipping Federation of Canada and the Thunder Bay Port Authority stated that the proposed rate violates the spirit of the Boundary Act Treaty of 1910. The Coast Guard disagrees. The treaty between Great Britain and the United States established boundaries and mandated free and open navigation for the vessels of both Canada and the U.S. The treaty further called upon national regulations to apply equally to the citizens and vessels of the other party. While the treaty was silent with respect to Great Lakes pilotage rates, the proposed rates, nonetheless, do not discriminate against Canadian vessels since they will apply equally across the board to all prospective carriers.

#### *Beyond the Scope of the Rulemaking*

Two comments asked that a surcharge be added as part of the final rule to allow pilots to recoup the portion of the rate that has been lost since the start of the 2003 shipping season.

One comment stated that pilotage should be returned to the auspices of the St. Lawrence Seaway Development Corporation (SLSDC).

One comment from a pilots' association stated that shipping companies should be required to open their books to give full and complete disclosure.

Two comments stated the delay in enacting the new rate before the start of the 2003 shipping season continues the "essential punishment" of Great Lakes pilots by denying them the compensation they are "justly" due.

All of these comments raise issues and concerns, resolution of which is beyond the scope of this rulemaking.

#### *Classification of Rulemaking*

Some comments questioned the appropriateness of the Coast Guard's characterizing this rulemaking as non-significant because the NPRM proposed to increase Great Lakes pilotage rates an average of 26 percent. Some comments claimed that the cost of pilotage could constitute over 30 percent of the total cost of a typical vessel transit into and out of the Great Lakes and thus, the Coast Guard's proposed rate increase was both significant and substantial.

Other comments stated that the cost of pilotage is only 2 percent or less of the total cost of Great Lakes transits, and that pilotage fees are an insignificant portion of total vessel costs for operating in the Great Lakes. The Canadian Marine Pilots' Association commented that the cost of pilotage as a percentage cost of shipping in the Great Lakes is 2 percent or less.

One comment stated that the rulemaking should be a "significant action" under the regulatory procedures of DOT (now DHS) & OMB because it involves Canadian businesses and the Canadian government.

We disagree. This rulemaking is not "OMB" significant under Executive Order 12866 and is categorized as "non-significant/substantive". OMB and DHS have reviewed and agreed with the Coast Guard's determination that the rulemaking is substantive, but not significant.

#### *Methodology Used in NPRM*

Some comments suggested that the "significant increase" in the proposed rates was due to a change in the Coast Guard's interpretation of the ratemaking methodology. The Coast Guard's approach to conducting the rate review was consistent with that used in prior years and the proposed rate increase in the NPRM was not attributable to a change in application of the ratemaking methodology.

#### *Difference in U.S. and Canadian Rates*

Several comments suggested that the proposed 26 percent rate increase would further increase the difference between U.S. and Canadian pilotage rates and that the Memorandum of Arrangement (MOA) between the United States and Canada calls for identical rates.

The two countries are aware of the differences in pilotage rates and are working together to minimize and resolve these differences.

#### *Economic Impact Analysis (EIA) of Great Lakes Pilotage*

Some comments stated that the proposed increase in pilotage fees would "chase" vessels out of the Lakes. Another comment stated that the Coast Guard failed to examine how rate increases would affect users and the economy of the Great Lakes region. Several comments stated that a full regulatory evaluation should be done before issuing a rule.

The Coast Guard has contracted with Martin Associates to perform a full economic review of the Great Lakes basin. The report should be completed by February, 2004, and the results will be considered before we calculate the