time, the Department has no doubt that the SLSDC, with a short review process, will be able to give more timely attention to pilotage issues and make more timely rate adjustments than would the Coast Guard, including the NMC. In addition, a transfer to the SLSDC would guarantee that there would always be a civilian Director of Great Lakes Pilotage.

Some commenters believe that the transfer should not take place during the busiest part of the shipping season, i.e., November and December. These commenters indicated that a transfer at this time will disrupt pilotage operations. They cited the Final Report, which says that a target date for the transfer of March 31 is believed to be necessary to minimize disruption to the operation of the pilotage pools. If the Working Group believed that there would have been disruption had the transfer taken place in April, the commenters argued, how could there not be disruption to the operation of the pilotage pools during the height of the shipping season?

The Department expects no disruption to pilotage operations, notwithstanding the position of the Working Group. The transfer does not in any way represent a shift in pilotage policies or operations. It only affects the internal delegation of responsibilities within the Department. There should be no negative effect on pilotage service. This rule will not change the pilotage rules and the manner in which they are administered, make the pilots employees of the SLSDC, or change the status or organizational structure under which the pilots now function. As it is with the Coast Guard, pilotage safety will remain the paramount concern of the SLSDC and will not become secondary to economic considerations. Since the Great Lakes Pilotage Staff is transferring with the functions, the only expected change is that the phone numbers for the Great Lakes Pilotage Staff will change. The new phone numbers will be widely distributed, and will not cause a disruption to pilotage operations.

The DOT restructuring, if it occurs, will not remove Great Lakes pilotage from Federal government oversight. The Administrator will always exercise authority over Great Lakes pilotage under a delegation from the Secretary of Transportation and his successors. The transfer would not compromise the Secretary's ability to intervene in pilotage issues should that become necessary. Even if the SLSDC were to become separate from the Department, the legislation proposed by the Administration to accomplish this

would provide for continued delegation of Secretarial authority to the SLSDC. The SLSDC would also remain a wholly-owned Federal government agency. The proposed legislation, in pertinent part, reads as follows:

(b) Section 1 of the Act of May 13, 1954, Public Law 358 (33 U.S.C. 981), as amended, is amended to read as follows:

"(a) There is hereby created a body corporate to be known as the Saint Lawrence Seaway Development Corporation (hereinafter referred to as the 'Corporation').

"(b) The Secretary of Transportation may delegate his or her authority to the Administrator as the Secretary deems appropriate or as directed by law."

Thus the Secretary's ability to intervene would continue. If the legislation is enacted, the manner in which the Secretary's oversight of Great Lakes pilotage would be carried out would be set forth in a document to be published in the Federal Register.

In a "voice mail" communication from counsel for the SLSPA to an OST staff attorney, an additional argument against the transfer was posed. A memorandum concerning this communication has been entered into the docket. SLSPA's counsel points out that the Great Lakes Pilotage Act is set forth in section 46 of the United States Code (U.S.C.), which contains the following definition at 46 U.S.C. 2101:

(34) "Secretary", except in part H, means the head of the department in which the Coast Guard is operating.

Since Great Lakes Pilotage is contained in Part F, this definition of "Secretary" pertains to it. The SLSPA maintains that whatever Congress intended to reside within the Coast Guard is contained within Title 46 under this definition and that, therefore, this transfer to the SLSDC would be in contravention of Congressional intent.

Three Members of Congress submitted to the Secretary the House Report for the legislation that defines "Secretary." The report states: "'Section 2101(34) defines 'Secretary' so that maritime safety and seamen's welfare jurisdiction remains within the Coast Guard at all times.' They also refer to 46 U.S.C. 2104(a), which states that "[t]he Secretary may delegate the duties and powers conferred by this subtitle [which includes Great Lakes pilotage] to any officer, employer, or member of the Coast Guard \* \* \*." The Congressmen conclude that the House Report and the statutory section concerning delegation "appear to confirm Congress's determination that [Great Lakes pilotage functions reside with the Coast Guard.

The definition of "Secretary," which is clear on its face, does not change with

the transfer of pilotage authority to the SLSDC. The Secretary of Transportation is still the head of the Department in which the Coast Guard is operating. Upon declaration of war or when the President directs, the Coast Guard would operate in the Navy (14 U.S.C. 3). In that event, the Secretary of Defense would be the head of the Department in which the Coast Guard is operating. (N.B.: even during the Vietnam War and the Persian Gulf War, the Coast Guard remained part of the Department of Transportation.) The House Report explanation is not the statutory definition. Even if it were the statutory definition, it says that maritime safety is to remain in the Coast Guard at all times. While many of the 11 functions to be transferred have safety ramifications, they are still essentially economic. The House Report language did not address where functions should reside that fall outside the parameters of maritime safety and seamen's welfare jurisdiction.

That Congress did not intend that all statutory authority that comes under the above-cited definition of Secretary reside in the Coast Guard is demonstrated by the Port and Tanker Safety Act of 1978. That Act contains the following definition at 33 U.S.C. 1222:

(2) "Secretary" means the Secretary of the department in which the Coast Guard is operating.

Nevertheless, that Act also states that certain authority granted to the Secretary shall not be delegated to any agency other than the Saint Lawrence Seaway Development Corporation (33 USC 1229). Thus, Congress envisioned a situation in which authority residing within the "Department in which the Coast Guard is operating" not only could be delegated to an agency within the Department of Transportation that was not the Coast Guard, but must not be delegated to the Coast Guard. Moreover, by this language, Congress has also demonstrated that, when it intends for authority to remain within one agency and not be delegated elsewhere, it will so state.

Furthermore, had Congress desired that the Great Lakes pilotage function remain solely within the Coast Guard, it could have given the authority directly to the Commandant instead of the Secretary. By contrast, in other circumstances, Congress has given authority, not first to the Secretary to be delegated, but directly to the Federal Aviation Administrator and to the Federal Highway Administrator. For example, the Intermodal Surface Transportation Efficiency Act of 1991