(section 6016) directs the Federal Highway Administrator to conduct certain studies, while legislation concerning nationality and ownership of aircraft as well as safety regulation of civil aeronautics gives authority to the Federal Aviation Administrator (49 U.S.C. 44101 et seq.; 49 U.S.C. 44701 through 44717, 44720 through 44722). (*N.B.*: Within the safety regulation chapter, three sections, 49 U.S.C. 44718, 44719, and 44723, set forth requirements for the Secretary.)

Moreover, the Department of Transportation Act (Public Law 89-670, 1966) (DOT Act), which created the Department, specifically authorized the Federal Railroad Administrator and the Federal Highway Administrator to carry out certain functions, powers, and duties of the Secretary (section 6(f) (3)(A) and (3)(B)). Unlike 46 U.S.C. 2104(a), which states that the Secretary "may" delegate duties and powers to any officer, employee, or member of the Coast Guard, the DOT Act stated that the Federal Railroad and Highway Administrators "shall" carry out the functions, duties, and powers of the Secretary. In addition, the DOT Act did not authorize the Commandant of the Coast Guard to carry out the functions, powers, and duties of the Secretary regarding Great Lakes pilotage. On the contrary, the DOT Act, which transferred the Coast Guard to the Department, also transferred to, and vested in the Secretary, the functions, powers, and duties relating to the Coast Guard (section 6(b)(1)).

In a formal comment to the docket, the SLSPA also argued that the interim final rule violated the notice and comment requirements of the APA. It asserted that the statutory exemption from the notice and comment requirements does not extend to "any action which goes beyond formality and substantially affects the rights of those over whom the agency exercises authority." [citation omitted.] The SLSPA concluded that since this rule affects timeliness and, therefore, substantially affects the rights of pilots, the exemption does not apply. It pointed to the timely adjustments to pilotage rates as demonstrating the effect of the rule on the rights of pilots. It contended that the Department failed to provide a concise general statement of its basis and purpose, as required by the APA, and that no explanation was offered for overturning a regulation that ''has been in place since DÖT was established in 1967.'

The Department disagrees. If the Department were to accept SLSPA's argument that, since the rule affects timeliness and, therefore, substantially

affects the rights of pilots, all delegations of authority would have to be published for notice and comment. One of the paramount reasons for delegations is to reduce delays by eliminating needless work at the top levels. All delegations, therefore, can affect timeliness. Moreover, requesting public comment on delegations of authority is not required by the APA. 5 U.S.C. 553(b)(3)(A) states that the notice and comment requirements of the APA do not apply to rules of agency organization, procedure, or practice.

The Department, therefore, disagrees with SLSPA's contention that notice and comment are required for this delegation. In its discretion, however, the Department did offer a 60-day comment period; it even suspended the effectiveness of the interim final rule to allow the Department additional time to consider all the issues raised in the comments.

The Department disagrees with the SLSPA's APA argument that the Department did not provide a concise general statement of its basis and purpose and did not offer an explanation for overturning a regulation that had been in place since the Department was established. Putting aside the question of whether a concise general statement is even required, the Department provided one. The interim final rule stated that the transfer of responsibilities from the Coast Guard to the SLSDC "will place pilotage under permanent civilian authority, and placing pilotage in a smaller organization with an established presence on the Great Lakes will give pilotage issues greater visibility and more timely attention. In addition, SLSDC is being given authority to negotiate directly with Canada, which will allow timely adjustments to pilotage rates." This statement contains the Department's basis and purpose for the change. A small SLSDC, when compared with the Coast Guard in general or even the NMC within the Coast Guard, will be able to give more timely attention to pilotage issues and make more timely rate adjustments.

Many commenters opposed to the transfer claimed that they were given no opportunity to have input into the process and therefore the interim final rule is invalid. The Department disagrees. As we have demonstrated earlier, a comment period is not required by the APA. Nevertheless, because of public and Congressional interest in Great Lakes pilotage, the Department took the extraordinary step of providing an opportunity for public comment on this rule and provided 60 days for the receipt of public comment.

In accordance with its published procedures, the Department even accepted comments after the 60 days had elapsed. The Department, thus, has provided ample opportunity for public input and has thoroughly considered that input before issuing this rule.

Several commenters, however, requested that the Department hold a public hearing. Even with respect to rulemakings for which notice and comment are required, which this rulemaking is not, the APA gives the agency discretion to hold a public hearing or not. "[T]he agency shall give interested persons an opportunity to participate in the rulemaking . . . with or without the opportunity for oral presentation." (5 U.S.C. 553(c).). By allowing interested persons to submit written views, the Department has provided the public with a greater opportunity to participate in a rule of agency organization, procedure, or practice than the APA requires. Moreover, in addition to providing the 60-day comment period, representatives from the Great Lakes Pilotage Staff and the SLSDC participated in a February 9, 1995, meeting in Chicago, organized by the Great Lakes Shipping Association, which represents vessel owners engaged in the international Great Lakes trades. Also in attendance were representatives from the three Great Lakes pilot associations and a large number of other industry representatives. At that meeting, the Staff and SLSDC representatives responded to questions from pilots and others for several hours concerning the possibility of a transfer.

In addition, during the winter of 1994-95, the Staff also met with the three pilot associations and presented to each of them a draft of the "St. Lawrence Seaway Development Corporation Pilotage Concept," which included the SLSDC's 1995 plan. The plan comprised the SLSDC's 5-year performance goals, its 3-to-5-year business focus, and its 5-to-15-year strategic goals. The document emphasized the importance of the pilotage program and the SLSDC's role in the program, when it said, "[t]he mission of the Great Lakes Pilotage Program is to protect the public, the environment, and the economic interests of foreign trade shippers by assuring that their vessels are safely navigated by competent and qualified U.S. registered pilots." Although the Staff or ally requested that the associations provide reaction to this document, none was forthcoming.

In light of the many opportunities that the pilots have had to voice their opinions about the transfer and the exhaustive public record before the