

§ 1.1118 Error claims.

(a) Applications who wish to challenge a staff determination of an insufficient fee may do so in writing. These claims should be addressed to the same location as the original submission marked "Attention Financial Operations."

(b) Actions taken by Financial Operations staff are subject to the reconsideration and review provisions of §§ 1.106 and 1.115 of this part, EXCEPT THAT reconsideration and/or review will only be available where the applicant has made the full and proper payment of the underlying fee as required by this subpart.

* * * * *

16. Section 1.1119 is amended by revising paragraph (a) to read as follows:

§ 1.1119 Billing procedures.

(a) The fees required for the International Telecommunications Settlements (§ 1.1103 of this subpart) and Common Carrier Field Audits (§ 1.1105 of this subpart) should not be paid with the filing or submission of the request. The fees required for requests for Special Temporary Authority (see generally §§ 1.1102, 1.1104, 1.1106, & 1.1107 of this subpart).

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[FR Doc. 00-20517 Filed 8-11-00; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****49 CFR Part 1**

[Docket No. OST-2000-7761]

Organization and Delegation of Powers and Duties; Delegations Concerning the Hazardous Materials Transportation Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Transportation (OST) is updating the delegations of authority from the Secretary to five Operating Administrations and the Associate Deputy Secretary and Director, Office of Intermodalism, in response to the Secretary's determination that hazardous materials safety would be enhanced by placing the focal point for intermodal and cross-modal DOT hazardous materials program issues with the Associate Deputy Secretary. This document revises the current delegations concerning hazardous materials to reflect the primacy of the

Associate Deputy Secretary for cross-modal DOT hazardous materials program issues. Further, this rule broadens each Operating Administration's delegations to allow them to use their respective resources for DOT-wide purposes. Additionally, the rule provides the Director of the Bureau of Transportation Statistics with the authority, in coordination with the Associate Deputy Secretary, to work with the Operating Administrations to determine data needs, collections strategies, and analytical techniques appropriate for implementing DOT's hazardous materials program.

EFFECTIVE DATE: August 15, 2000.

FOR FURTHER INFORMATION CONTACT:

Blane Workie, Regulation and Enforcement, Office of the General Counsel, U.S. Department of Transportation, 400 7th Street SW., Room 10424, Washington, DC 20590. (202) 366-4723.

SUPPLEMENTARY INFORMATION:**A. DOT's Hazardous Materials Program Evaluation**

The Government Performance and Results Act of 1993 (GPRA) (Public Law 103-62; 107 Stat. 285) requires agencies to develop a schedule of program evaluations for inclusion in their strategic plans. In support of GPRA, the Department of Transportation (DOT) committed, in its 1997-2002 strategic plan, to conduct a review of its hazardous materials transportation programs. The objectives of the hazardous materials program evaluation (HMPE) were to (1) document current hazardous materials movements, Operating Administration programs, and program delivery; (2) assess the effectiveness of DOT's overall hazardous materials program as it affects each step in the hazardous materials transportation process; and (3) identify areas for further analysis or other actions.

During 1999, a team of DOT employees from the Office of Inspector General, U.S. Coast Guard, Federal Aviation Administration, Federal Motor Carrier Safety Administration, Federal Railroad Administration, and Research and Special Programs Administration conducted the HMPE. They participated in multi-modal and individual modal administration inspections, visited package-testing facilities, observed shipper-check activities, and addressed safety conferences. To learn from DOT's stakeholders—those interested in the safe transportation of hazardous materials—the HMPE team hosted three public focus group meetings. Representatives of shippers, carriers,

packaging manufacturers, hazardous materials employees, enforcement personnel, emergency responders, trade associations, and organized labor participated in the meetings.

The HMPE team's findings are set out in its March 2000 final report to the Secretary. In summary, the HMPE team made the following five findings. First, the Secretarial delegations do not provide for DOT-wide coordination or oversight of the five DOT Operating Administrations responsible for ensuring hazardous materials safety. Second, shippers of hazardous materials are a common element across the Operating Administrations, perform critical functions early in the transportation stream, and can impact safety system wide. However, shippers generally receive less attention DOT-wide than carriers. Third, human error continues to be the single greatest contributing factor in hazardous materials incidents and DOT has not been effective in changing this trend. In addition, the traveling public is largely unaware of the dangers posed by hazardous materials they may carry with them in checked or carry-on baggage. Also, the traveling public is unaware of the threat to hazardous materials transportation safety posed by passenger vehicles engaged in unsafe driving practices on the nation's highways. Fourth, DOT lacks reliable, accurate, and timely data to measure program effectiveness and make informed program delivery and resource decisions. Fifth, there are numerous cross-modal issues (issues that are relevant to more than one operating administration) and intermodal issues (issues that affect more than one mode of transportation) that require further analysis and other actions, for example, undeclared hazardous materials shipments, the complexity and adequacy of the current hazardous materials regulations, safety gaps related to hazardous materials in the U.S. mail, enhanced inspection authority, and ways to improve DOT's current performance measure.

Based on its findings, the HMPE team concluded that while DOT's hazardous materials program works reasonably well, DOT could enhance hazardous materials transportation safety by: (1) Establishing a central focal point to administer and deliver a DOT-wide hazardous materials program aimed at intermodal and cross-modal issues to provide for more effective deployment of resources; (2) developing DOT-wide strategies and actions to focus more on high-risk or problem shippers through targeted outreach activities, technical assistance, and inspections; (3)

strengthening its training standard to improve industry safety practices and compliance with the hazardous materials regulations; (4) developing a coordinated national campaign to increase public awareness of the dangers of hazardous materials in transportation; and (5) improving hazardous materials census, incident, compliance, and budget data DOT-wide, improving the analysis of that data, and developing ways to increase data availability and usefulness.

B. Changes to Secretarial Delegations

To achieve a One-DOT approach to hazardous materials safety, the HMPE team concluded that DOT should establish an institutional capacity, complementary to the Operating Administrations at the Department-wide level, to facilitate program coordination and direction to provide for more effective deployment of DOT's hazardous materials resources. The institutional capacity should administer and deliver a department-wide hazardous materials program to strengthen strategic planning, program coordination, and program delivery. It should have the authority to establish DOT-wide policy, program objectives and priorities, and focus budget and resource strategies.

Based on the HMPE team's findings and recommendations, the Secretary has decided to place the focal point for intermodal and cross-modal DOT hazardous materials program issues with the Associate Deputy Secretary and Director, Office of Intermodalism (Associate Deputy Secretary). That office will be responsible for implementing the HMPE team's recommendations, including the items identified as needing further analysis. Specifically, that office will:

- (1) Serve as the principal adviser to the Secretary on all intermodal and cross-modal hazardous materials matters;
- (2) Act as the focal point for review of hazardous materials policies, priorities, and objectives;
- (3) Provide oversight for planning and budgeting strategies for all departmental hazardous materials activities;
- (4) Resolve disputes among Operating Administrations on hazardous materials issues;
- (5) Provide external reviews and continual monitoring of all departmental hazardous materials activities;
- (6) In coordination with the Assistant Secretary for Budget and Programs, direct that the Operating Administrations apply resources to specific cross-modal initiatives;

(7) Coordinate DOT-wide hazardous materials outreach and data activities; and

(8) Address other regulatory and programmatic cross-modal issues related to hazardous materials, as warranted.

In addition to carrying out the HMPE team's recommendations, the Secretary has delegated to the Director of the Bureau of Transportation Statistics the authority to work with the Operating Administrations to determine data needs, collections strategies, and analytical techniques appropriate for implementing DOT's hazardous materials program. This authority is to be exercised in coordination with the Associate Deputy Secretary.

Finally, to clearly establish the hazardous materials primacy of the Associate Deputy Secretary, the Secretary has made complementary changes to the delegations to the five Operating Administrations with hazardous materials responsibilities. Each Operating Administration's hazardous materials delegation (with the exception of certain single-mode functions) has been made subject to the delegations to the Associate Deputy Secretary. Further, their delegations have been broadened to allow them to use their resources for DOT-wide purposes, such as inspections of shippers by all modes of transportation. Minor revisions are also being made to 49 CFR part 1 to update statutory authority citations where necessary.

C. Public Notice and Comment/Effective Date of Final Rule

This final rule updates the delegations of authority from the Secretary of Transportation to other Departmental officials to represent the organizational posture of the Department. As such, the final rule is ministerial in nature and relates only to Departmental management, organization, procedure, and practice. Since this amendment relates to departmental organization, procedure and practice, notice and comment on it are unnecessary under 5 U.S.C. 553(b).

Furthermore, this rule does not impose substantive requirements on the public and the Department does not expect to receive substantive comments on the rule. Also, this final rule expedites the Department of Transportation's ability to meet the statutory intent of the Federal hazardous materials transportation law, 49 U.S.C. 5101–5127. Consequently, the Department finds that there is good cause under 5 U.S.C. 553(d)(3) to make this rule effective on the date of publication in the **Federal Register**.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). There are no costs associated with this rule.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule does not adopt any regulation that:

- (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government;
- (2) Imposes substantial direct compliance costs on State and local governments; or
- (3) Preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. I hereby certify this final rule, which amends the CFR to reflect delegations of authority from the Secretary of Transportation to Departmental officers and Operating Administrations, will not have a significant economic impact on a substantial number of small businesses.

E. Paperwork Reduction Act

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. 101-552, 104 Stat. 2736; Pub. L. No. 106-159, 113 Stat. 1748.

2. In § 1.46 revise paragraphs (t) and (u) to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(t) Carry out the functions vested in the Secretary by 49 U.S.C. 5101 *et seq.* and 46 App. U.S.C. 3306(a)(5) to the extent they relate to regulations and exemptions governing the bulk transportation of hazardous materials that are loaded or carried on board a vessel without benefit of containers or labels, and received and handled by the vessel carrier without mark or count, and regulations and exemptions governing ships' stores and supplies.

(u) Except as delegated by § 1.74, carry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b) and (c), 5122, 5123, and 5124 relating to investigations, records, inspections, penalties, and specific relief, with particular emphasis on the transportation or shipment of hazardous materials by water.

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3. In § 1.47 revise subparagraph (j) to read as follows:

§ 1.47 Delegations to the Federal Aviation Administrator.

* * * * *

(j)(1) Except as delegated by § 1.74, carry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b) and (c), 5122, 5123, and 5124 relating to investigations, records, inspections, penalties, and specific relief, with particular emphasis on the transportation or shipment of hazardous materials by air, including the manufacture, fabrication, marking, maintenance, reconditioning, repair or

test of containers which are represented, marked, certified, or sold for use in the bulk transportation of hazardous materials by air; and

(2) Carry out the functions vested in the Secretary by 49 U.S.C. 5114 as it relates to the establishment of procedures for monitoring and enforcing provisions of regulations with respect to the transportation of radioactive materials on passenger-carrying aircraft.

* * * * *

4. In § 1.49 revise paragraphs (s)(1) and (s)(2) to read as follows:

§ 1.49 Delegations to Federal Railroad Administrator.

* * * * *

(s)(1) Except as delegated by § 1.74, carry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b) and (c), 5122, 5123, and 5124 relating to investigations, records, inspections, penalties, and specific relief, with particular emphasis on the transportation or shipment of hazardous materials by railroad, including the manufacture, fabrication, marking, maintenance, reconditioning, repair or test of containers which are represented, marked, certified, or sold for use in the bulk transportation of hazardous materials by railroad.

(2) Carry out the functions vested in the Secretary by 49 U.S.C. 5105(b) relating to a rail transportation safety study and 5111 relating to rail tank cars.

* * * * *

5. In § 1.53 revise paragraph (b) to read as follows:

§ 1.53 Delegations to the Administrator of the Research and Special Programs Administration.

* * * * *

(b) *Hazardous materials.* Except as delegated by § 1.74:

(1) Carry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b) and (c), 5122, 5123, and 5124 relating to investigations, records, inspections, penalties, and specific relief, with particular emphasis on the shipment of hazardous materials and the manufacture, fabrication, marking, maintenance, reconditioning, repair or test of multi-modal containers that are represented, marked, certified, or sold for use in the transportation of hazardous materials; and

(2) Carry out the functions vested in the Secretary by all other provisions of the Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, except as delegated by §§ 1.46(t), 1.47(j)(2), 1.49(s)(2), and 1.73(d)(2).

* * * * *

6. In § 1.73 revise paragraphs (d)(1) and (d)(2) to read as follows:

§ 1.73 Delegations to the Administrator of the Federal Motor Carrier Safety Administration.

* * * * *

(d)(1) Except as delegated by § 1.74, carry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b) and (c), 5122, 5123, and 5124 relating to investigations, records, inspections, penalties, and specific relief with particular emphasis on the transportation or shipment of hazardous materials by highway, including the manufacture, fabrication, marking, maintenance, reconditioning, repair or test of containers which are represented, marked, certified, or sold for use in the bulk transportation of hazardous materials by highway.

(2) Carry out the functions vested in the Secretary by 49 U.S.C. 5112 relating to highway routing of hazardous materials; 5109 relating to motor carrier safety permits, except subsection (f); 5113 relating to unsatisfactory safety ratings of motor carriers; 5125(a) and (c)-(f), relating to preemption determinations or waivers of preemption of hazardous materials highway routing requirements; 5105(e) relating to inspections of motor vehicles carrying hazardous material; 5119 relating to uniform forms and procedures; and 5127(f) and (g) relating to credits to appropriations and availability of amounts.

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7. In § 1.71 add paragraph (c) to read as follows:

§ 1.71 Delegations to the Director of the Bureau of Transportation Statistics.

* * * * *

(c) *Hazardous materials information.* In coordination with the Associate Deputy Secretary and Director, Office of Intermodalism, work with the Operating Administrations to determine data needs, collection strategies, and analytical techniques appropriate for implementing 49 U.S.C. 5101 *et seq.*

8. Add a new § 1.74 to read as follows:

§ 1.74 Delegations to the Associate Deputy Secretary and Director, Office of Intermodalism.

The Associate Deputy Secretary and Director, Office of Intermodalism is delegated authority under the Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, to:

(a) Serve as the principal adviser to the Secretary on all intermodal and cross-modal hazardous materials matters;

(b) Act as the focal point for review of hazardous materials policies, priorities, and objectives;

(c) Provide oversight for planning and budgeting strategies for all departmental hazardous materials activities;

(d) Resolve disputes among Operating Administrations on hazardous materials issues;

(e) Provide external reviews and continual monitoring of all departmental hazardous materials activities;

(f) In coordination with the Assistant Secretary for Budget and Programs, direct that the Operating Administrations apply resources to specific cross-modal initiatives;

(g) Coordinate DOT-wide hazardous materials outreach and data activities; and

(h) Address other regulatory and programmatic cross-modal issues related to hazardous materials as warranted.

Issued in Washington, DC on August 10, 2000.

Rodney E. Slater,
Secretary.

[FR Doc. 00-20702 Filed 8-14-00; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991228352-0229-04; I.D. 080800A]

RIN 0648-A044

Fisheries of the Exclusive Economic Zone Off Alaska; Closure of Critical Habitat Pursuant to a Court Order

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Interim rule.

SUMMARY: NMFS issues interim regulations to close waters within critical habitat in the exclusive economic zone off Alaska west of 144°W. long. to all commercial groundfish fishing with trawl gear. This action is necessary to comply with a United States District Court Order.

DATES: Effective 11:00 am A.l.t., August 9, 2000.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907-586-7228 or john.lepore@noaa.gov

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands Management Area (BSAI) and Gulf of Alaska (GOA) under the fishery management plans (FMPs) for groundfish in the respective areas. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR 600.

NMFS also has statutory authority to promulgate regulations to enforce provisions of the Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.* The ESA requires that each Federal agency shall ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of critical habitat of such species.

On July 19, 2000, the United States District Court for the Western District of Washington issued an order that granted a motion for a partial injunction of the North Pacific groundfish fisheries. *Greenpeace et al. v. NMFS*, No. C98-4922 (W.D. Wash.). This motion, filed by Greenpeace, American Oceans Campaign, and the Sierra Club (hereafter the Plaintiffs), requested injunctive relief until NMFS issues a legally adequate biological opinion addressing the combined, overall effects of the North Pacific groundfish fisheries on Steller sea lions and their critical habitat pursuant to the ESA. The population of Steller sea lions west of 144°W. long. (hereafter western population) is listed under the ESA as endangered, while the population of Steller sea lions east of 144°W. long. is listed as threatened.

This rule, promulgated under the authority of Section 11(f) of the ESA and in compliance with the Court's injunction, prohibits all groundfish trawl fishing, as the term fishing is defined at 16 U.S.C. 1802(15) and authorized pursuant to the Fishery Management Plans for the Bering Sea/Aleutian Islands and Gulf of Alaska, within Steller sea lion critical habitat listed in Tables 1 and 2 to 50 CFR 226.202 that is in federally regulated waters west of 144°W. long., as well as the three special aquatic foraging areas defined at 50 CFR 226.202. For the convenience of the affected public, all areas closed to groundfish trawling pursuant to the court order are described below. Please refer to regulations at 50 CFR § 226.202 and § 223.202 for further details concerning designated critical habitat and threatened marine and anadromous species. Steller Sea Lion Critical Habitat Sites Closed:

Site	Latitude	Longitude	Latitude	Longitude
Western Aleutian Rookeries:				
Agattu I.				
—Cape Sabak ¹	52 23.5N	173 43.5E	52 22.0N	173 41.0E
—Gillon Point ¹	52 24.0N	173 21.5E		
Attu I. ¹	52 54.5N	172 28.5E	52 57.5N	172 31.5E
Buldir I. ¹	52 20.5N	175 57.0E	52 23.5N	172 51.0E
Western Aleutian Haulouts:				
Alaid I. ¹	52 45.0N	173 56.5E	52 46.5N	173 51.5E
Attu/Chirikof Pt. ¹	52 30.0N	173 26.7E		
Shemya I. ¹	52 44.0N	174 09.0E		
Central Aleutians Rookeries:				
Adak I. ¹	51 36.5N	176 59.0W	51 38.0N	176 59.5W
Agligadak I. ¹	52 06.5N	172 54.0W		
Amchitka I. ¹				
—Column Rock ¹	51 32.5N	178 49.5E		
—East Cape ¹	51 22.5N	179 28.0E	51 21.5N	179 25.0E
Ayugadak I. ¹	51 45.5N	178 24.5E		
Gramp Rock ¹	51 29.0N	178 20.5W		
Kasatochi I. ¹	52 10.0N	175 31.5W	52 10.5N	175 29.0W