

*alia*, corrects a **Federal Register** document (70 FR 76704, December 28, 2005). Previously, the FCC released a Memorandum Opinion and Order, which among other things amended the rules governing dispute resolution between licensees who must reconfigure their systems to alleviate interference to public safety communications in the 800 MHz band.

The Memorandum Opinion and Order contained discrepancies between the text of the order and the final rules in § 90.677 of the rules. In this document we correct those discrepancies.

#### List of Subjects in 47 CFR Part 90

Communications.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

■ Accordingly, 47 CFR part 90 is corrected by making the following correcting amendments:

#### PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 1. The authority citation for part 90 continues to read as follows:

**Authority:** Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 2. Amend § 90.677, by revising paragraph (d) to read as follows:

**§ 90.677 Reconfiguration of the 806–824/851–869 MHz band in order to separate cellular systems from non-cellular systems.**

\* \* \* \* \*

(d) *Transition Administrator.* (1) The Transition Administrator, or other mediator, shall attempt to resolve disputes referred to it before the conclusion of the mandatory negotiation period as described in § 90.677(c) within thirty working days after the Transition Administrator has received a submission by one party and a response from the other party. Any party thereafter may seek expedited non-binding arbitration which must be completed within thirty days of the Transition Administrator's, or other mediator's recommended decision or advice. Should issues still remain unresolved after mediation or arbitration they shall be referred to the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau within ten days of the Transition Administrator's or other mediator's advice, or if arbitration has occurred, within ten days of the completion of arbitration. When referring an unresolved matter to the Chief of the Public Safety and

Critical Infrastructure Division, the Transition Administrator shall forward the entire record on any disputed issues, including such dispositions thereof that the Transition Administrator has considered. Upon receipt of such record and advice, the Commission will decide the disputed issues based on the record submitted. The authority to make such decisions is delegated to the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau who may decide the disputed issue or designate it for an evidentiary hearing before an Administrative Law Judge. If the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau decides an issue, any party to the dispute wishing to appeal the decision may do so by filing with the Commission, within ten days of the effective date of the initial decision, a Petition for de novo review; whereupon the matter will be set for an evidentiary hearing before an Administrative Law Judge. Any disputes submitted to the Transition Administrator after the conclusion of the mandatory negotiation period as described in § 90.677(c) shall be resolved as described in § 90.677(d)(2).

(2) If no agreement is reached during either the voluntary or mandatory negotiating periods, all disputed issues shall be referred to the Transition Administrator, or other mediator, who shall attempt to resolve them. If disputed issues remain thirty working days after the end of the mandatory negotiation period, the Transition Administrator shall forward the record to the Chief of the Public Safety and Critical Infrastructure Division, together with advice on how the matter(s) may be resolved. The Chief of the Public Safety and Critical Infrastructure Division is hereby delegated the authority to rule on disputed issues, de novo. If the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau decides an issue, any party to the dispute wishing to appeal the decision may do so by filing with the Commission, within ten days of the effective date of the initial decision, a Petition for de novo review; whereupon the matter will be set for an evidentiary hearing before an Administrative Law Judge.

\* \* \* \* \*

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#### DEPARTMENT OF TRANSPORTATION

##### Office of the Secretary of Transportation

##### 49 CFR Part 1

[Docket No. OST–1999–6189]

RIN 9991–AA50

##### Organization and Delegation of Powers and Duties

**AGENCY:** Office of the Secretary of Transportation (OST), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises delegations of authority to carry out the Federal hazardous material transportation law, as amended by the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005 (Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users or “SAFETEA–LU”), and in accordance with the Norman Y. Mineta Research and Special Programs Improvement Act, Public Law 108–426, 118 Stat. 2423 (November 30, 2004) (Mineta Act) that were previously published in 71 FR 30828 (May 31, 2006). This final rule also adds delegations of authority to the Federal Motor Carrier Safety Administration (FMCSA) and the Research and Innovative Technology Administration (RITA) to carry out certain provisions of SAFETEA–LU.

**DATES:** *Effective Date:* September 7, 2006.

##### FOR FURTHER INFORMATION CONTACT:

Rebecca S. Behraves, Attorney Advisor, Office of General Counsel, Department of Transportation, 400 7th St., SW., Room 10424, Washington, DC 20590–0001; Telephone (202) 366–9314.

##### SUPPLEMENTARY INFORMATION:

##### Background

The Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the regulations issued thereunder apply to the transportation of hazardous materials by air, railroad, highway, and water. In 2004, the Mineta Act established the Pipeline and Hazardous Materials Safety Administration (PHMSA) and RITA and transferred Secretarial authorities previously exercised by the Research and Special Programs Administration (RSPA) to PHMSA and RITA. While the Secretary delegated authorities to PHMSA and RITA under the Mineta Act, the Mineta Act did not remove, restrict, divest or restructure any existing authority, including the

authority to regulate the transportation of hazardous materials, that the Federal Aviation Administration (FAA), Federal Railroad Administration (FRA), and FMCSA previously possessed. Accordingly, certain authorities that apply only to a single mode of transportation were previously delegated to a modal transportation agency within DOT, and enforcement authority was delegated to PHMSA and the modal agencies: FAA, FRA, and FMCSA.<sup>1</sup>

The Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005, which is Title VII of SAFETEA-LU, Public Law 109–59, 119 Stat. 1144, 1891 (Aug. 10, 2005), amended 49 U.S.C. 5121 to provide additional authority to enforce the Federal hazardous material transportation law and the regulations issued under that law. The delegations of authority to FAA, FRA, and FMCSA are being revised to reflect that additional authority, which includes inspecting, investigating, and opening outer packages suspected of containing hazardous materials; having suspected hazardous materials tested; removing from transportation in commerce packages that may pose an imminent hazard; issuing emergency orders necessary to abate imminent hazards; and defending the agency's actions before any administrative or adjudicatory board proceedings related to the agency's implementation of this additional inspection and enforcement authority.

This rulemaking revises 49 CFR 1.47(j)(1), 1.49(s)(1), and 1.73(d)(1) to reflect these delegations. In addition, this final rule removes from these provisions the parallel phrases “relating to investigations, records, inspections, penalties, and specific relief” and “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, railroad, and highway, respectively].” This language simply describes the authority conferred by 49 U.S.C. 5121

(administrative authority to conduct inspections and investigations related to the manufacture, fabrication, and maintenance of packagings or containers and the transportation of a hazardous material in commerce); 5122 (civil enforcement); 5123 (civil penalties); and 5124 (criminal penalties), and is being deleted as superfluous. In the final rule published on May 31, 2005, similar superfluous language was removed from the delegations to PHMSA in section 1.53(b)(1). *See* 71 FR 30828, 30833. The removal of this language is intended to simplify the regulatory text and does not amend, change, modify, or revise the underlying statutory authority that is delegated to FAA, FRA, FMCSA, and PHMSA. The authority to delegate the inspection and enforcement authority in the Federal hazardous material transportation law in this manner is conferred by 49 U.S.C. 108(g).

This rule also removes outdated 49 CFR 1.47(k), which essentially duplicates the FAA's authority in § 1.47(j)(1), but refers to the section numbers of the inspection and enforcement authority in the Federal hazardous material transportation law before the statute was recodified in 1994. *See* Public Law 103–272, 108 Stat. 745 (July 5, 1994). Existing subsection 1.49(s)(2) is also removed, and subsection 1.49(s)(1) is redesignated section 1.49(s), because the authorities delegated in paragraph (2) are no longer in effect: The rail transportation study mandated in 49 U.S.C. 5105(b) has been completed and was transmitted to Congress in September 2005 and Congress repealed 49 U.S.C. 5111 in SAFETEA-LU. In addition, this rule delegates to RITA and FMCSA authority to carry out provisions of SAFETEA-LU, beyond the delegations contained in the final rule published in the **Federal Register** on May 31, 2006. *See* 71 FR 30830, 30833.

This rule also revises 49 CFR 1.74(a) to reflect the broad role and authority of the Under Secretary for Transportation Policy in all Departmental policy matters. *See* 49 CFR 1.23(b). The Under Secretary provides leadership in the development of all transportation policy, including, but not limited to, matters involving hazardous materials transportation and intermodal and multimodal transportation. In this capacity, the Under Secretary resolves disputes among DOT's Operating Administrations on transportation matters, provides oversight, review, and coordination of policy functions carried out by the Operating Administrations, and performs all other functions necessary to lead policy development

and advise the Secretary concerning transportation policy.

Because this rule relates to departmental management, organization, procedure, and practice, notice and comment are unnecessary under 5 U.S.C. 553(b). Further, this final rule facilitates enforcement of the laws and regulations covered by this delegation. The Acting Secretary finds good cause under 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register**.

## **Regulatory Analysis and Notices**

### *A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

The 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 have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States. Therefore, the consultation requirements of Executive Order 13132 do not apply.

### *C. Executive Order 13175*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”). Because this 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 13175 do not apply.

### *D. Regulatory Flexibility Act*

Because no notice of proposed rulemaking is required for this rule under the Administrative Procedure Act, 5 U.S.C. 553, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. We also do not believe this rule would impose any costs on small entities because it simply delegates authority from one official to another. Therefore, I certify this final rule will not have a significant economic impact on a substantial number of small entities.

<sup>1</sup> The United States Coast Guard also exercises authority under the Federal hazardous material transportation law under the authority previously delegated to it when it was part of DOT. Under 6 U.S.C. 468(b) “the authorities, functions, personnel, and assets of the Coast Guard \* \* \* including the authorities and functions of the Department of Transportation relating thereto” were transferred to the Department of Homeland Security (DHS). *See also* 6 U.S.C. 551(d)(2) which provides that DHS “shall have all functions relating to the agency [transferred to DHS] that any other official could by law exercise in relation to the agency immediately before such transfer.”

*E. Paperwork Reduction Act*

This final 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).

■ For the reasons set forth in the preamble, the Office of the Secretary of Transportation amends 49 CFR part 1 as follows:

**PART 1—[AMENDED]**

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

**Authority:** 49 U.S.C. 322; 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Public Law 101–552, 104 Stat. 2736; Public Law 106–159, 113 Stat. 1748; Public Law 107–71, 115 Stat. 597; Public Law 107–295, 116 Stat. 2064; Public Law 107–295, 116 Stat. 2065; Public Law 107–296, 116 Stat. 2135; 41 U.S.C. 414; Public Law 108–426, 118 Stat. 2423; Public Law 109–59, 119 Stat. 1144.

■ 2. Amend § 1.46 by adding new paragraph (n) to read as follows:

**§ 1.46 Delegations to the Administrator of the Research and Innovative Technology Administration.**

\* \* \* \* \*

(n) *Transportation research and development strategic planning.* Carry out the function vested in the Secretary by Section 5208 of Public Law 109–59, 119 Stat. 1144 (Aug. 10, 2005).

■ 3–4. Revise § 1.47(j)(1) and remove paragraph (k).

**§ 1.47 Delegations to Federal Aviation Administrator.**

\* \* \* \* \*

(j)(1) Except as delegated by § 1.74(a), carry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b), (c), and (d), 5122, 5123, and 5124, with particular emphasis on the transportation or shipment of hazardous materials by air.

\* \* \* \* \*

■ 5. Revise § 1.49(s) to read as follows:

**§ 1.49 Delegations to Federal Railroad Administrator.**

\* \* \* \* \*

(s) Except as delegated by § 1.74(a), carry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b), (c) and (d), 5122, 5123, and 5124, with

particular emphasis on the transportation or shipment of hazardous materials by railroad.

\* \* \* \* \*

■ 6. Revise § 1.53(b) to read as follows:

**§ 1.53 Delegations to the Administrator of the Pipeline and Hazardous Materials Safety Administration.**

\* \* \* \* \*

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

(1) Carry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b), (c), (d) and (e), 5122, 5123, and 5124, 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 §§ 1.47(j)(2) and 1.73(d)(2) of this chapter and by paragraph 2(99) of Department of Homeland Security Delegation No. 0170.

\* \* \* \* \*

■ 7. Amend § 1.73 as follows:

■ a. Revise paragraphs (a)(7) and (a)(9);

■ b. Revise paragraph (d)(1);

■ c. Revise paragraph (e);

■ d. Revise paragraph (q); and

■ e. Remove paragraphs (r) through (y).

The revisions read as follows:

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

\* \* \* \* \*

(a) \* \* \*

(7) Chapter 145, sections 14501, 14502, 14504, and 14504a relating to Federal-State relations, and section 14506 relating to identification of vehicles;

\* \* \* \* \*

(9) Chapter 149, sections 14901 through 14912 and 14915 relating to civil and criminal penalties for violations of 49 U.S.C. subtitle IV, part B.

\* \* \* \* \*

(d)(1) Except as delegated by § 1.74(a), carry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b), (c), and (d), 5122, 5123, and 5124, with particular emphasis on the transportation or shipment of hazardous materials by highway.

\* \* \* \* \*

(e) Carry out the functions vested in the Secretary by:

(1) 49 U.S.C. chapter 313 relating to commercial motor vehicle operators, including the requirement of section 31305(a)(5)(C) that States issue a hazardous materials endorsement to a commercial driver's license only after being informed pursuant to 49 U.S.C. 5103a that the applicant does not pose a security risk warranting denial of the license; and

(2) Section 4123(c), (d) and (e) of Public Law 109–59, 119 Stat. 1735 (Aug. 10, 2005) relating to grants, funding, and contract authority and availability, respectively, for commercial driver's license information system modernization.

\* \* \* \* \*

(q) Carry out the functions vested in the Secretary by the following sections of Public Law 109–59, 119 Stat. 1144 (Aug. 10, 2005):

(1) Section 4105(b)(1) relating to the study concerning predatory tow truck operations;

(2) Section 4126 relating to the commercial vehicle information systems and networks program;

(3) Section 4128 relating to grants under the safety data improvement program;

(4) Section 4129 relating to the operation of commercial motor vehicles by individuals who use insulin to treat diabetes mellitus;

(5) Section 4130 relating to the operators of vehicles transporting agricultural commodities and farm supplies;

(6) Section 4131 relating to the maximum hours of service for operators of ground water well drilling rigs;

(7) Section 4132 relating to hours of service for operators of utility service vehicles;

(8) Section 4133 relating to hours of service rules for operators providing transportation to movie production sites;

(9) Section 4134 relating to the grant program for persons to train operators of commercial motor vehicles;

(10) Section 4135 relating to the task force concerning commercial driver's license program;

(11) Section 4139(a)(1) relating to the training of and outreach to State personnel; section (b)(1) relating to a review of Canadian and Mexican compliance with Federal motor vehicles safety standards; and the first sentence of section (b)(2) relating to the report concerning the findings and conclusions of the review required by section (b)(1);

(12) Section 4146 relating to an hours-of-service exception during harvest periods;

(13) Section 4147 relating to emergency conditions requiring immediate response;

(14) Section 4213 relating to the establishment of a working group for the development of practices and procedures to enhance Federal-State relations;

(15) Section 4214 relating to consumer complaint information;

(16) Section 5503 relating to the motor carrier efficiency study; and

(17) Section 5513(a), under the condition of section (m), relating to the research grant for a thermal imaging inspection system demonstration project.

■ 8. Amend § 1.74 introductory text and paragraph (a) to read as follows:

**§ 1.74 Delegations to the Under Secretary for Transportation Policy.**

The Under Secretary for Transportation Policy is delegated authority to:

(a) Lead the development of transportation policy and serve as the principal adviser to the Secretary on all transportation policy matters.

\* \* \* \* \*

Issued this 24th day of August 2006, at Washington, DC.

**Maria Cino,**

*Acting Secretary of Transportation.*

[FR Doc. E6-14802 Filed 9-6-06; 8:45 am]

BILLING CODE 4910-9X-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 060216044-6044-01; I.D. 090106A]

#### Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2006 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), September 5, 2006, through 1200 hrs, A.l.t., October 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2006 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA is 800 metric tons as established by the 2006 and 2007 harvest specifications for groundfish of the GOA (71 FR 10870, March 3, 2006).

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the 2006 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA.

The species and species groups that comprise the deep-water species fishery are all rockfish of the genera *Sebastes* and *Sebastolobus*, deep-water flatfish,

rex sole, arrowtooth flounder, and sablefish.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the deep-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 31, 2006.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 1, 2006.

**James P. Burgess,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 06-7491 Filed 9-1-06; 1:10 pm]

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