

6. Section 252.232-7007, paragraph (a) which precedes the clause, is revised to read as follows:

**252.232-7007 Progress payments**

(a) As prescribed in 232.502-4(S-72)(1) and (S-73), insert the following clause in solicitations and fixed-price contracts under which the Government will provide progress payments based on costs.

7. Section 252.232-7008 is added to read as follows:

**252.232-7008 DoD progress payment rates.**

As described in 232.502-4 (S-71), (S-72(2), and (S-73) insert the following clause:

**DoD Progress Payment Rates (JUL 1991)**

(a) If the contractor is a large business, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), Limitations on *Unfinalized Contract Actions*) to 85 percent.

(b) If the contractor is a small business, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), Limitations on *Unfinalized Contract Actions*) to 90 percent.

(c) If the contractor is a small disadvantaged business, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), Limitations on *Unfinalized Contract Actions*) to 95 percent.

(d) The above rates are the customary uniform progress payment rates for DoD contracts.

(End of Clause)

[FR Doc. 91-16405 Filed 7-9-91; 8:45 am]

BILLING CODE 3810-01-M

**DEPARTMENT OF TRANSPORTATION**

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-245]

**Organization and Delegation of Powers and Duties**

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

**ACTION:** Final rule.

**SUMMARY:** This document delegates authority to the Administrators of the Department of Transportation's Operating Administrations to carry out the provisions of the Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101-615), and

of the Independent Safety Board Act Amendments of 1990 (Pub. L. 101-641), which concerns low-level radioactive waste transportation. In addition, this final rule amends the delegation to the Administrator of the Research and Special Programs Administration under the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.), consistent with current practices, and makes other technical amendments.

**EFFECTIVE DATE:** July 10, 1991.

**FOR FURTHER INFORMATION CONTACT:**

Mary M. Crouter, Senior Attorney, Hazardous Materials Safety Division, Office of the Chief Counsel, Research and Special Programs Administration, DCC-1, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001; telephone number (202) 366-4400, or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement, C-50, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001, telephone number (202) 366-9307.

**SUPPLEMENTARY INFORMATION:**

**I. Hazardous Materials Transportation Uniform Safety Act**

On November 16, 1990, the President signed the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA; Pub. L. 101-615). The I-IMTUSA amended the Hazardous Materials Transportation Act of 1975 (HMTA; 49 App. U.S.C. 1801 et seq.) and included numerous other provisions imposing duties and responsibilities upon the Secretary of Transportation.

This notice briefly describes the amendments made by the HMTUSA, and the delegations of authority to the appropriate Operating Administration within the Department of Transportation. Sections of the HMTUSA that, in and of themselves, do not impose any obligations on the Secretary, have not been delegated. Included in this category are sections setting forth the title, findings, and effective date of the statute.

**Section. 4**

Section 4 of the HMTUSA amends section 105 of the I-IMTA (49 App. U.S.C. 1804) to set forth requirements for regulations governing transportation of hazardous materials. Section 105(a), as amended, requires the Secretary to issue regulations for the safe transportation of hazardous materials in interstate, intrastate, and foreign commerce. This responsibility, subject to exceptions relating to vessel bulk transportation and ships' stores and supplies, has been, and continues to be, delegated to the Administrator of RSPA.

Section 105(b), as amended, provides that the Secretary shall issue Federal standards for States and Indian tribes to use in designating highway routes for the transportation of hazardous materials by motor vehicles, and limitations and requirements with respect to highway routing. Section 105(b) also provides that the Secretary shall issue regulations for resolving disputes between or among States over a matter relating to highway routing. Section 105(c) provides that the Secretary shall periodically update and publish a list of currently effective hazardous materials highway route designations. The responsibilities in sections 105 (b) and (c) are being delegated to the Administrator of the Federal Highway Administration. (FHWA). These responsibilities include regulation of the highway routing of radioactive materials, currently included in 49 CFR 177.625.

Section 105(d), as amended; provides that the Secretary shall participate in international forums and may consult with interested agencies to ensure that regulations issued by the Secretary are consistent with standards adopted by international bodies. This responsibility has been, and continues to be, delegated to the Administrator of RSPA.

**Section 5**

Section 5 of the HMTUSA amends section 105 of the HMTA (49 App. U.S.C. 1804) to prohibit unlawful representations concerning hazardous materials and to prohibit unlawful tampering with any marking, label, or placard, or with any package or container of hazardous materials. The authority to issue regulations with respect to this section is being delegated to the Administrator of RSPA.

**Section 6**

Section 6 of the HMTUSA amends section 105 of the HMTA (49 App. U.S.C. 1804) to add requirements for shipping papers that accompany shipments of hazardous materials. The authority to issue regulations with respect to this section is being delegated to the Administrator of RSPA.

**Section 7**

Section 7 of the HMTUSA amends section 106 of the HMTA (49 App. U.S.C. 1805) to require the Secretary to issue regulations for training to be given by hazardous materials employers to their employees. This responsibility is being delegated to the Administrator of RSPA.

### Section 8

Section 8 of the HMTUSA adds a new subsection (c) to section 106 of the HMTA (49 App. U.S.C. 1805) to require persons transporting or causing to be transported certain hazardous materials to file a registration statement with the Secretary, in accordance with regulations to be issued by the Secretary. This responsibility is being delegated to the Administrator of RSPA.

Section 8 also adds a new subsection (d) to section 106 of the HMTA to require a motor carrier transporting certain hazardous materials to hold a safety permit issued by the Secretary. The Secretary is required to issue regulations implementing this requirement. This responsibility, with the exception of subsection (d)(3), is being delegated to the Administrator of FHWA.

Section 106(d)(3) provides that each person who offers a hazardous material may offer it to a motor carrier only if the carrier has a safety permit authorizing such transportation. The authority to issue regulations with respect to this section is being delegated to the Administrator of RSPA.

### Section 9

Section 9 of the HMTUSA amends section 107(a) of the HMTA (49 App. U.S.C. 1806(a)) to remove the requirement that a notice be published in the Federal Register of applications received for renewal of exemptions. The authority to issue regulations with respect to this section has been, and continues to be, delegated to the Administrator of RSPA.

### Section 10

Section 10 of the HMTUSA amends section 108(b) of the HMTA (49 App. U.S.C. 1807(b)) to allow certain products containing minor radioactive components to be moved on aircraft without an exemption. The authority to issue regulations with respect to this section has been, and continues to be, delegated to the Administrator of RSPA.

### Section 11

Section 11 of the HMTUSA amends section 109(d)(1)(C) of the HMTA (49 App. U.S.C. 1808(d)(1)(C)) to provide that the Secretary shall conduct a continuing review of all aspects of the transportation of hazardous materials to be able to take, rather than merely recommend, appropriate steps to assure the safe transportation of those materials. This responsibility has been, and continues to be, delegated to the Administrator of RSPA.

### Section 12

Section 12 of the HMTUSA amends section 110 of the HMTA (49 App. U.S.C. 1809) to extend civil and criminal penalties and sanctions to violations of orders issued by the Secretary, increase the maximum civil penalty amount and establish a minimum civil penalty amount, and add a definition of "acting knowingly" for purposes of assessing civil penalties. This authority has been, and continues to be, delegated to the Administrators of the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), FHWA, and RSPA, and the Commandant of the Coast Guard.

### Section 13

Section 13 of the HMTUSA amends section 112 of the HMTA (49 App. U.S.C. 1811) to establish standards for preemption of State, political subdivision, or Indian tribe requirements, and provides for administrative preemption and waiver or preemption determination processes. The authority to issue inconsistency rulings and non-preemption determinations was delegated to the Administrator of RSPA. Consistent with that prior delegation, the authority to issue preemption determinations and waivers of preemption is being delegated to the Administrator of RSPA, with the exception of determinations concerning highway routing of hazardous materials.

The authority to issue determinations concerning highway routing of hazardous materials is being delegated to the Administrator of FHWA, consistent with the responsibilities delegated under section 105 (b) and (c). This authority includes the issuance of preemption determinations and waivers of preemption relating to the highway routing of radioactive materials. However, applications for inconsistency rulings and non-preemption determinations that are currently pending before RSPA are not being delegated to FHWA.

### Section 14

Section 14 of the HMTUSA amends section 115 of the HMTA (49 App. U.S.C. 1812) to authorize appropriations for fiscal years 1991 through 1993, and to authorize the Secretary to credit funds received from non-Federal entities for expenses incurred by the Secretary in training such entities to any appropriation to carry out the HMTA. This authority is being delegated to the Administrator of RSPA.

### Section 15

Section 15 of the HMTUSA amends section 116 of the HMTA (49 App. U.S.C. 1813). Section 116(a), as amended, requires the Secretary to undertake a study comparing the safety of using trains operated exclusively for transporting high-level radioactive waste and spent nuclear fuel with the safety of using other methods of rail transportation. Section 116(b), as amended, requires the Secretary to amend existing regulations as appropriate to provide for the safe transportation by rail of high-level radioactive waste and spent nuclear fuel. The authority under sections 116 (a) and (b) is being delegated to the Administrator of RSPA.

Section 116(c), as amended, requires the Secretary to undertake a study to determine which factors, if any, should be taken into consideration by shippers and carriers in order to select routes and modes which would enhance overall public safety related to the transportation of high-level radioactive waste and spent nuclear fuel. This responsibility is being delegated to the Administrator of RSPA.

Sections 116(d) as amended, requires the Secretary to issue regulations concerning the inspection of vehicles transporting highway route controlled quantity radioactive materials. This responsibility is being delegated to the Administrator of FHWA.

### Section 16

Section 16 of the HMTUSA requires the Secretary to employ and maintain an additional 30 hazardous materials safety inspectors, for FRA, FHWA, and RSPA. This responsibility is being delegated to the Administrators, of FRA, FHWA, and RSPA.

### Section 17

Section 17 of the HMTUSA adds a new section 117A to the HMTA (49 App. U.S.C. 1815) to provide for a public sector planning end training grant program. Section 117A(h) requires the Secretary to assess and collect an annual fee from each person required by or under section 108 to file a registration statement. The responsibilities in section 117A are being delegated to the Administrator of RSPA.

### Section 18

Section 18 of the HMTUSA adds a new section 118 to the HMTA (49 App. U.S.C. 1816) to establish a hazardous materials employee training grant program to be administered by the National Institute of Environmental Health Sciences in consultation with the

Secretary. This responsibility is being delegated to the Administrator of RSPA.

#### Section 19

Section 19 of the HMTUSA adds a new section 119 to the HMTA (49 App. U.S.C. 1817) to prohibit the use of railroad tank cars constructed before January 1, 1971, for the transportation of certain hazardous materials unless the air brake equipment support attachments comply with certain standards. The authority to issue regulations with respect to this section is being delegated to the Administrator of FRA.

#### Section 20

Section 20 of the HMTUSA adds a new section 120 to the HMTA (49 App. U.S.C. 1818) to provide that any person who, under contract with the Federal government transports or causes to be transported or shipped a hazardous material, or manufactures repairs, or tests a package or container represented for use in the transportation of hazardous materials shall be subject to all Federal, State, and local laws and regulations. The authority to issue regulations with respect to this section is being delegated to the Administrator of RSPA.

#### Section 21

Section 21 of the HMTUSA requires the Secretary to enter into a contract for a study of railroad tank car design. This responsibility is being delegated to the Administrator of FRA.

#### Section 22

Section 22 of the HMTUSA adds a new section 121 to the HMTA (49 App. U.S.C. 1819) to require the Secretary to establish a working group for the purpose of establishing uniform forms and procedures for States that register persons who transport a hazardous material by motor vehicle. This responsibility is being delegated to the Administrator of FHWA.

#### Section 23

Section 23 of the HMTUSA amends the Motor Carrier Safety Act of 1980 to specify new minimum levels of financial responsibility. This responsibility is being delegated to the Administrator of FHWA.

#### Section 24

Section 24 of the HMTUSA amends the Motor Carrier Safety Act of 1984 to provide that any State receiving Federal financial assistance under the Surface Transportation Assistance Act may apply its commercial motor vehicle safety regulations to vehicles and

operators teased to the United States. The authority to issue regulations with respect to this section is being delegated to the Administrator of FHWA.

#### Section 25

Section 25 of the HMTUSA requires the Secretary to initiate rulemaking to determine methods of improving placarding and for establishing a central reporting system and computerized telecommunications data center. Section 25 also requires the Secretary to enter into a contract with the National Academy & Sciences to study the feasibility and necessity of establishing a central reporting system and data center. This responsibility is being delegated to the Administrator of RSPA.

#### Section 28

Section 28 of the HMTUSA requires the Secretary to initiate a rulemaking on the feasibility of requiring carriers to establish continually monitored telephone systems equipped to provide emergency response information. This responsibility is being delegated to the Administrator of RSPA.

#### Section 27

Section 27 of the HMTUSA requires the Secretary to prepare a report on the benefits of a law requiring shippers to share financial responsibility with carriers for the costs assessed against the carrier for certain hazardous materials incidents. This responsibility is being delegated to the Administrator of FHWA.

#### Section 28

Section 28 of the HMTUSA amends the Federal Railroad Safety Act of 1970 (FRSA) to provide for State participation in hazardous materials investigations and surveillance. Authority under the FRSA is already delegated to the Administrator of FRA (49 CFR 1.49(m)). In a separate notice to be issued under the FRSA, FRA will amend its state participation regulations to give effect to section 28.

#### Section 29

Section 29 of the HMTUSA requires the Secretary of Labor, in consultation with the Secretary, to issue regulations requiring the retention of markings and placards on packages and containers of hazardous materials until the materials have been removed. This responsibility is being delegated to the Administrator of RSPA.

#### II. Independent Safety Board Amendments of 1990

On November 28, 1990, the President signed the Independent Safety Board

Act Amendments of 1990 (Pub. L. 101-641). Section 8 of this statute requires the Secretary to conduct a study and report to Congress on the transportation of low-level radioactive waste. This responsibility is being delegated to the Administrator of RSPA.

#### III. Other Amendments and Technical Corrections

This rule also updates and corrects the Secretary's delegations of authority under the HMTA to the Administrators of FHWA, FRA, and RSPA, and the Commandant of the Coast Guard.

First, to reflect statutory changes, in 49 CFR 1.46(t), reference to 46 U.S.C. 170 is changed to 46 U.S.C. 3306(a)(5).

Second, to reflect statutory changes, in 49 CFR 1.48, paragraph (t) is removed and reserved, and in 49 CFR 1.49, paragraph (r) is removed and reserved.

Third, the heading of 49 CFR 1.53 is corrected by adding the word "Administration" after the words "Research and Special Programs."

Fourth, 49 CFR 1.53(b)(1) is amended by revising the cross-references to other delegations and adding language specifically defining the scope of RSPA's enforcement authority under the HMTA, consistent with current practices.

#### Rulemaking analyses

Since these amendments relate to Departmental management, notice and public comment are unnecessary. For the same reason, good cause exists for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). Therefore, the delegations of authority to the Administrators of the Operating Administrations are effective as of the date of publication of this final rule.

#### 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 as follows:

#### PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

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

Authority: 49 U.S.C. 522.

#### § 1.46 (Amended)

2. In Section 1.46, paragraph (t) is revised to read as follows:

**§ 1.49 Delegations to Commandant of the Coast Guard**

(t) Carry out the functions vested in the Secretary by 49 App. U.S.C. 1801-1819, 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.

**§ 1.47 [Amended]**

3. Section 1.47 is amended by revising paragraph (k) to read as follows:

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

(k) Carry out the functions vested in the Secretary by 49 App. U.S.C. 1808 (a), (b), and (c), 1809, and 1810 relating to investigations, records, inspections, penalties, and specific relief so far as they apply to 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.

**§ 1.48 [Amended]**

4. Section 1.48 is amended by removing and reserving paragraph (t), revising paragraph (u), and adding new paragraph (ii) as follows:

**§ 1.48 Delegations to Federal Highway Administrator.**

(t) (Reserved)

(u)(1) Carry out the functions vested in the Secretary by 49 App. U.S.C. 1898 (a), (b), and (c), 1809, and 1810 relating to investigations, records, inspections, penalties, and specific relief so far as they apply to 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 App. U.S.C. 1894 (b) and (c); 1805(d), except paragraph (3) (49 App. U.S.C. 1805(d)(3)); 1811 relating to highway routing, except for pending applications for inconsistency rulings

and nonpreemption determinations; 1813(d); and 1819.

(ii) Carry out the functions vested in the Secretary by sections 16, 23, 24, and 27 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101-615; 104 Stat. 3244 (49 App. U.S.C. 1813 note; 49 U.S.C. 10927 note; 49 App. U.S.C. 2509).

**§ 1.49 [Amended]**

5. Section 1.49 is amended by removing and reserving paragraph (r), revising paragraph (s), and adding a new paragraph (gg) as follows:

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

(r) (Reserved)

(s)(1) Carry out the functions vested in the Secretary by 49 App. U.S.C. 1808 (a), (b), and (c), 1809, and 1810 relating to investigations, records, inspections, penalties, and specific relief so far as they apply to 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 App. U.S.C. 1813 (a) and (b); and 1817.

(gg) Carry out the functions vested in the Secretary by sections 16 and 21 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101-615; 104 Stat. 3244 (49 App. U.S.C. 1813 note and 1817 note)).

**§ 1.53 [Amended]**

6. Section 1.53 is amended by revising the section heading, revising paragraph (b)(1), removing paragraph (b)(2), redesignating paragraphs (b)(3) and (b)(4) as paragraphs (b)(2) and (b)(3), respectively, and adding new paragraphs (b)(4) and (j) as follows:

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

(b) Hazardous materials. (1) Sections 101-121 of the Hazardous Materials Transportation Act of 1975 (49 App. U.S.C. 1801-1819), as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990 (104 Stat. 3244), except as delegated by §§ 1.46(t), 1.47(j), 1.48(u)(2), and 1.49(s)(2), and except that the enforcement activities of the Research and Special Programs

Administration (RSPA) shall be limited to any matter relating to or concerning any of the following:

(i) Any violation of an exemption or approval issued under that Act;

(ii) Any violation of any requirement for a telephonic or written report of a hazardous materials incident or any other reporting requirement imposed under that Act;

(iii) Any manufacture, fabrication, marking, maintenance, reconditioning, repair, testing, or retesting of any packaging, except modal-specific bulk packaging, which is represented, marked, certified, or sold for use in the transportation of hazardous materials, including any United Nations standard, or DOT specification or exemption packaging;

(iv) Any manufacture, fabrication, marking, maintenance, reconditioning, repair, testing, or retesting of any modal-specific bulk packaging, which is represented, marked, certified, or sold for use in the transportation of hazardous materials, including any United Nations standard or DOT specification or exemption packaging, only when requested by the modal administration with primary responsibility for such activity;

(v) Any carrier of hazardous materials only when requested by the modal administration with primary responsibility for inspecting such carrier;

(vi) Any offeror of any hazardous material for transportation with respect to its offering of any hazardous material for transportation in:

(A) Any modal-specific bulk packaging only when requested by the modal administration with primary responsibility for inspecting such packaging; or

(B) Any other packaging.

This delegation to the Administrator of RSPA does not limit the enforcement authority of the Administrators of FHWA, FRA, and FAA, and the Commandant of the Coast Guard under the Hazardous Materials Transportation Act, as amended. Those agencies have enforcement authority over all aspects of the transportation or shipment of hazardous materials by their respective modes, including the manufacture, fabrication, marking, maintenance, reconditioning, repair, testing, or retesting of any bulk packaging intended or represented as intended for use in the transportation of hazardous materials by their respective modes.

(4) Section 16, 25, 26, and 29 of the Hazardous Materials Transportation

Uniform Safety Act of 1990 (Pub. L. 101-615; 104 Stat. 3244 (49 app. U.S.C. 1813 note, 1804 note; 29 U.S.C. 655 note)).

(j) Section 8 of the Independent Safety Board Act Amendments of 1990 (Pub. L. 101-641; 104 Stat. 4654 (49 app. USC. 1804 note)).

Issued on June 28, 1991.

Samuel K. Skinner,

Secretary Of Transportation.

[FR Doc. 91-16257 Filed 7-9-91; 8:45 am]

BILLING CODE 4910-62-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR part 630

[Docket No. 910640-1140]

#### Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure of the drift gillnet fishery.

**SUMMARY:** The Secretary of Commerce (Secretary) closes the drift gillnet fishery for swordfish shoreward of the outer boundary of the exclusive economic zone (EEZ) in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. The Secretary has determined that the entire annual quota for swordfish that may be harvested by drift gillnet will be reached on or before July 10, 1991. This closure is necessary to prevent the catch of swordfish by drift gillnet vessels from exceeding their quota.

EFFECTIVE DATE: Closure is effective 0001 hours local time July 10, 1991.

through 2359 hours local time December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301-427-2347.

**SUPPLEMENTARY INFORMATION:** The Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish and its implementing regulations et 50 CFR part 630 under the authority of the Magnuson Fishery Conservation and Management Act.

By emergency rule effective June 12, 1991 (56 FR 26934, June 12, 1991), the Secretary implemented quotas and closure provisions for Atlantic swordfish. A quota of 40,785 pounds (18,500 kilograms) was established for swordfish that could be harvested by drift gillnet during each of two periods, January 1 through June 30, 1991, and July 1 through December 31, 1991. Under 50 CFR 630.28(a), the Secretary is required to close the drift gillnet fishery for swordfish when its quota is reached, or is projected to be reached, by filing a notice with the Office of the Federal Register at least 5 days before the closure is to become effective.

NMFS estimates that approximately 16,000 pounds (7,258 kilograms) of swordfish were landed by drift gillnet vessels during January 1 through June 30, 1991. An additional 24,000 pounds (10,886 kilograms) of swordfish are estimated to have been landed on July 1. NMFS also estimates that 15 to 17 drift gillnet vessels began fishing between July 1 and July 3, 1991. Based on the number of vessels fishing and recent historical catch rates of approximately 11,000 pounds (4,990 kilograms) per trip for the month of July, the Secretary has determined that the combined drift gillnet quota from the January 1 through June 30 period, and the July 1 through December 31 period, of 81,570 pounds

(37,000 kilograms) will be reached on or before July 10, 1991. Hence, the drift gillnet fishery for Atlantic swordfish is closed effective 0001 hours local time July 10, 1991, through 2359 hours local time December 31, 1991.

During this closure of the drift gillnet fishery, a person aboard a vessel using or having aboard a drift gillnet (1) may not fish for swordfish shoreward of the outer boundary of the EEZ; (2) may not possess shoreward of the outer boundary of the EEZ, or land in an Atlantic, Gulf of Mexico, or Caribbean coastal state, more than two swordfish per trip; and (3) may not transfer a swordfish to another vessel shoreward of the outer boundary of the EEZ.

Any person found fishing for, or in possession of, swordfish in excess of the bycatch amount after the effective date of the closure or contrary to 50 CFR part 630 will be subject to the full force and effect of the Magnuson Fishery Conservation and Management Act. Civil penalties up to \$100,000 per offense, permit sanctions and seizure of illegal catches may result if violations are detected and successfully prosecuted.

#### Other Matters

This action is required by 50 CFR 630.28(a) and complies with EO. 12291.

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

#### List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 3, 1991.

David S. Crestia,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-16318 Filed 7-3-91; 4:47 pm]

BILLING CODE 3510-22-M

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4910-62M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-245 ]

Organization and Delegation of Powers and Duties

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

ACTION: Final rule.

SUMMARY : This document delegates authority to the Administrators of the Department of Transportation's Operating Administrations to carry out the provisions of the Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101-615), and of the Independent Safety Board Act Amendments of 1990 (Pub. L. 101-641), which concerns low-level radioactive waste transportation. In addition, this final rule amends the delegation to the Administrator of the Research and Special Programs Administration under the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et sea.), consistent with current practices, and makes other technical amendments.

EFFECTIVE DATE: [insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Mary M. Crouter, Senior Attorney, Hazardous Materials Safety Division, Office of the Chief Counsel, Research and Special Programs Administration, DCC-1, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590-0001; telephone number (202) 366-4400, or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement, C-50, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590-0001, telephone number (202) 366-9307.

SUPPLEMENTARY INFORMATION:

I. Hazardous Materials Transportation Uniform Safety Act  
On November 16, 1990, the President signed the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA; Pub. L. 101-615). The HMTUSA amended the Hazardous Materials Transportation Act of 1975 (HMTA; 49 App. U.S.C. 1801 et seq.) and includes numerous other provisions imposing duties and responsibilities upon the Secretary of Transportation.

This notice briefly describes the amendments made by the HMTUSA, and the delegations of authority to the appropriate Operating Administration within the Department of Transportation. Sections of the HMTUSA that, in and of

themselves, do not impose any obligations on the Secretary, have not been delegated. Included in this category are sections setting forth the title, findings, and effective date of the statute.

#### Section 4

Section 4 of the HMTUSA amends section 105 of the HMTA (49 App. U.S.C. 1804) to set forth requirements for regulations governing transportation of hazardous materials. Section 105(a), as amended, requires the Secretary to issue regulations for the safe transportation of hazardous materials in interstate, intrastate, and foreign commerce. This responsibility, subject to exceptions relating to vessel bulk transportation and ships' stores and supplies, has been, and continues to be, delegated to the Administrator of RSPA.

Section 105(b), as amended, provides that the Secretary shall issue Federal standards for States and Indian tribes to use in designating highway routes for the transportation of hazardous materials by motor vehicles, and limitations and requirements with respect to highway routing. Section 105(b) also provides that the Secretary shall issue regulations for resolving disputes between or among States over a matter relating to highway routing. Section 105(c) provides that the Secretary

shall periodically update and publish a list of currently effective hazardous materials highway route designations. The responsibilities in sections 105(b) and (c) are being delegated to the Administrator of the Federal Highway Administration (FHWA). These responsibilities include regulation of the highway routing of radioactive materials, currently included in 49 CFR § 177.825.

Section 105(d), as amended, provides that the Secretary shall participate in international forums and may consult with interested agencies to ensure that regulations issued by the Secretary are consistent with standards adopted by international bodies. This responsibility has been, and continues to be, delegated to the Administrator of RSPA.

#### Section 5

Section 5 of the HMTUSA amends section 105 of the HMTA (49 App. U.S.C. 1804) to prohibit unlawful representations concerning hazardous materials and to prohibit unlawful tampering with any marking, label, or placard, or with any package or container of hazardous materials. The authority to issue regulations with respect to this section is being delegated to the Administrator of RSPA.

### Section 6

Section 6 of the HMTUSA amends section 105 of the HMTA (49 App. U.S.C. 1804) to add requirements for shipping papers that accompany shipments of hazardous materials. The authority to issue regulations with respect to this section is being delegated to the Administrator of RSPA.

### Section 7

Section 7 of the HMTUSA amends section 106 of the HMTA (49 App. U.S.C. 1805) to require the Secretary to issue regulations for training to be given by hazardous materials employers to their employees. This responsibility is being delegated to the Administrator of RSPA.

### Section 8

Section 8 of the HMTUSA adds a new subsection (c) to section 106 of the HMTA (49 App. U.S.C. 1805) to require persons transporting or causing to be transported certain hazardous materials to file a registration statement with the Secretary, in accordance with regulations to be issued by the Secretary. This responsibility is being delegated to the Administrator of RSPA.

Section 8 also adds a new subsection (d) to section 106 of the HMTA to require a motor carrier transporting certain hazardous materials to hold a safety permit issued by the Secretary. The Secretary is required to issue regulations implementing this requirement. This responsibility, with the exception of subsection (d)(3), is being delegated to the Administrator of FHWA.

Section 106(d)(3) provides that each person who offers a hazardous material may offer it to a motor carrier only if the carrier has a safety permit authorizing such transportation. The authority to issue regulations with respect to this section is being delegated to the Administrator of RSPA.

#### Section 9

Section 9 of the HMTUSA amends section 107(a) of the HMTA (49 App. U.S.C. 1806(a)) to remove the requirement that a notice be published in the Federal Register of applications received for renewal of exemptions. The authority to issue regulations with respect to this section has been, and continues to be, delegated to the Administrator of RSPA.

### Section 10

Section 10 of the HMTUSA amends section 108(b) of the HMTA (49 App. U.S.C. 1807(b)) to allow certain products containing minor radioactive components to be moved on aircraft without an exemption. The authority to issue regulations with respect to this section has been, and continues to be, delegated to the Administrator of RSPA.

### Section 11

Section 11 of the HMTUSA amends section 109(d)(1)(C) of the HMTA (49 App. U.S.C. 1808(d)(1)(C)) to provide that the Secretary shall conduct a continuing review of all aspects of the transportation of hazardous materials to be able to take, rather than merely recommend, appropriate steps to assure the safe transportation of those materials. This responsibility has been, and continues to be, delegated to the Administrator of RSPA.

### Section 12

Section 12 of the HMTUSA amends section 110 of the HMTA (49 App. U.S.C. 1809) to extend civil and criminal penalty sanctions to violations of orders issued by the Secretary, increase the maximum civil penalty amount and establish a

minimum civil penalty amount, and add a definition of "acting knowingly" for purposes of assessing civil penalties. This authority has been, and continues to be, delegated to the Administrators of the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), FHWA, and RSPA, and the Commandant of the Coast Guard.

### Section 13

Section 13 of the HMTUSA amends section 112 of the HMTA (49 App. U.S.C. 1811) to establish standards for preemption of State, political subdivision, or Indian tribe requirements, and provides for administrative preemption and waiver of preemption determination processes. The authority to issue inconsistency rulings and non-preemption determinations was delegated to the Administrator of RSPA. Consistent with that prior delegation, the authority to issue preemption determinations and waivers of preemption is being delegated to the Administrator of RSPA, with the exception of determinations concerning highway routing of hazardous materials.

The authority to issue determinations concerning highway routing of hazardous materials is being delegated to the Administrator of FHWA, consistent with the responsibilities delegated under sections 105(b) and (c). This authority

includes the issuance of preemption determinations and waivers of preemption relating to the highway routing of radioactive materials. However, applications for inconsistency rulings and non-preemption determinations that are currently pending before RSPA are not being delegated to FHWA.

#### Section 14

Section 14 of the HMTUSA amends section 115 of the HMTA (49 App. U.S.C. 1812) to authorize appropriations for fiscal years 1991 through 1993, and to authorize the Secretary to credit funds received from non-Federal entities for expenses incurred by the Secretary in training such entities to any appropriation to carry out the HMTA. This authority is being delegated to the Administrator of RSPA.

#### Section 15

Section 15 of the HMTUSA amends section 116 of the HMTA (49 App. U.S.C 1813). Section 116(a), as amended, requires the Secretary to undertake a study comparing the safety of using trains operated exclusively for transporting high-level radioactive waste and spent nuclear fuel with the safety of using other methods of rail transportation. Section 116(b), as amended, requires the Secretary to amend existing regulations

as appropriate to provide for the safe transportation by rail of high-level radioactive waste and spent nuclear fuel. The authority under sections 116(a) and (b) is being delegated to the Administrator of FRA.

Section 116(c), as amended, requires the Secretary to undertake a study to determine which factors, if any, should be taken into consideration by shippers and carriers in order to select routes and modes which would enhance overall public safety related to the transportation of high-level radioactive waste and spent nuclear fuel. This responsibility is being delegated to the Administrator of RSPA.

Section 116(d), as amended, requires the Secretary to issue regulations concerning the inspection of vehicles transporting highway route controlled quantity radioactive materials. This responsibility is being delegated to the Administrator of FHWA.

#### Section 16

Section 16 of the HMTUSA requires the Secretary to employ and maintain an additional 30 hazardous materials safety inspectors, for FRA, FHWA, and RSPA. This responsibility is being delegated to the Administrators of FRA, FHWA, and RSPA.

### Section 17

Section 17 of the HMTUSA adds a new section 117A to the HMTA (49 App. U.S.C. 1815) to provide for a public sector planning and training grant program. Section 117A(h) requires the Secretary to assess and collect an annual fee from each person required by or under section 106 to file a registration statement. The responsibilities in section 117A are being delegated to the Administrator of RSPA.

### Section 18

Section 18 of the HMTUSA adds a new section 118 to the HMTA (49 App. U.S.C. 1816) to establish a hazardous materials employee training grant program to be administered by the National Institute of Environmental Health Sciences in consultation with the Secretary. This responsibility is being delegated to the Administrator of RSPA.

### Section 19

Section 19 of the HMTUSA adds a new section 119 to the HMTA (49 App. U.S.C. 1817) to prohibit the use of railroad tank cars constructed before January 1, 1971, for the transportation of certain hazardous materials unless the air brake equipment support attachments comply with certain standards. The authority to issue regulations with respect to this section is being delegated to the Administrator of FRA.

Section 20

Section 20 of the HMTUSA adds a new section 120 to the HMTA (49 App. U.S.C. 1818) to provide that any person who, under contract with the Federal government, transports or causes to be transported or shipped a hazardous material, or manufactures, repairs, or tests a package or container represented for use in the transportation of hazardous materials shall be subject to all Federal, State, and local laws and regulations. The authority to issue regulations with respect to this section is being delegated to the Administrator of RSPA.

Section 21

Section 21 of the HMTUSA requires the Secretary to enter into a contract for a study of railroad tank car design. This responsibility is being delegated to the Administrator of FRA.

Section 22

Section 22 of the HMTUSA adds a new section 121 to the HMTA (49 App. U.S.C. 1819) to require the Secretary to establish a working group for the purpose of establishing uniform forms and procedures for States that register persons who transport a hazardous material by motor vehicle. This responsibility is being delegated to the Administrator of FHWA.

Section 23

Section 23 of the HMTUSA amends the Motor Carrier Safety Act of 1980 to specify new minimum levels of financial responsibility. This responsibility is being delegated to the Administrator of FHWA.

Section 24

Section 24 of the HMTUSA amends the Motor Carrier Safety Act of 1984 to provide that any State receiving Federal financial assistance under the Surface Transportation Assistance Act may apply its commercial motor vehicle safety regulations to vehicles and operators leased to the United States. The authority to issue regulations with respect to this section is being delegated to the Administrator of FHWA.

Section 25

Section 25 of the HMTUSA requires the Secretary to initiate rulemaking to determine methods of improving placarding and for establishing a central reporting system and computerized telecommunications data center. Section 25 also requires the Secretary to enter into a contract with the National Academy of Sciences to study the feasibility and necessity of establishing a central reporting system and data center. This responsibility is being delegated to the Administrator of RSPA.

### Section 26

Section 26 of the HMTUSA requires the Secretary to initiate a rulemaking on the feasibility of requiring carriers to establish continually monitored telephone systems equipped to provide emergency response information. This responsibility is being delegated to the Administrator of RSPA.

### Section 27

Section 27 of the HMTUSA requires the Secretary to prepare a report on the benefits of a law requiring shippers to share financial responsibility with carriers for the costs assessed against the carrier for certain hazardous materials incidents. This responsibility is being delegated to the Administrator of FHWA.

### Section 28

Section 28 of the HMTUSA amends the Federal Railroad Safety Act of 1970 (FRSA) to provide for State participation in hazardous materials investigations and surveillance. Authority under the FRSA is already delegated to the Administrator of FRA (49 CFR 1.49(m)). In a separate notice to be issued under the FRSA, FRA will amend its state participation regulations to give effect to Section 28.

### Section 29

Section 29 of the HMTUSA requires the Secretary of Labor, in consultation with the Secretary, to issue regulations requiring the retention of markings and placards on packages and containers of hazardous materials until the materials have been removed. This responsibility is being delegated to the Administrator of RSPA.

### II. Independent Safety Board Act Amendments of 1990

On November 28, 1990, the President signed the Independent Safety Board Act Amendments of 1990 (Pub. L. 101-641).

Section 8 of this statute requires the Secretary to conduct a study and report to Congress on the transportation of low-level radioactive waste. This responsibility is being delegated to the Administrator of RSPA.

### III. Other Amendments and Technical Corrections

This rule also updates and corrects the Secretary's delegations of authority under the HMTA to the Administrators of FHWA, FRA, and RSPA, and the Commandant of the Coast Guard.

First, to reflect statutory changes, in 49 CFR § 1.46(t), reference to 46 U.S.C. 170 is changed to 46 U.S.C. 3306(a)(5).

Second, to reflect statutory changes, in 49 CFR § 1.48, paragraph (t) is removed and reserved, and in 49 CFR § 1.49, paragraph (r) is removed and reserved.

Third, the heading of 49 CFR § 1.53 is corrected by adding the word "Administration" after the words "Research and Special Programs."

Fourth, 49 CFR § 1.53(b)(1) is amended by revising the cross-references to other delegations and adding language specifically defining the scope of RSPA's enforcement authority under the HMTA, consistent with current practices.

#### RULEMAKING ANALYSES

Since these amendments relate to Departmental management, notice and public comment are unnecessary. For the same reason, good cause exists for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). Therefore, the delegations of authority to the Administrators of the Operating Administrations are effective as of the date of publication of this final rule.

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 as follows:

PART 1 -- ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

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

Authority: 49 U.S.C. 322.

## § 1.46 [Amended]

2. In Section 1.46, paragraph (t) is revised 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. 1801-1819, and 46 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.

\* \* \* \* \*

§ 1.47 [Amended]

3. Section 1.47 is amended by revising paragraph (k) to read as follows:

§ 1.47 Delegations to Federal Aviation Administrator.

\* \* \* \* \*

(k) Carry out the functions vested in the Secretary by 49 U.S.C. 1808(a), (b), and (c), 1809, and 1810 relating to investigations, records, inspections, penalties, and specific relief so far as they apply to 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.

\* \* \* \* \*

§ 1.48 [Amended]

4. Section 1.48 is amended by removing and reserving paragraph (t) , revising paragraph (u), and adding new paragraph (ii) as follows:

§ 1.48 Delegations to Federal Highway Administrator.

\* \* \* \* \*

(t) [Reserved]

(u)(1) Carry out the functions vested in the Secretary by 49 U.S.C. 1808(a), (b), and (c), 1809, and 1810 relating to

investigations, records, inspections, penalties, and specific relief so far as they apply to 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. 1804(b) and (c); 1805(d), except paragraph (3) (49 U.S.C. 1805(d)(3)); 1811 relating to highway routing, except for pending applications for inconsistency rulings and nonpreemption determinations; 1813(d); and 1819.

\* \* \* \* \*

(ii) Carry out the functions vested in the Secretary by sections 16, 23, 24, and 27 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101-615; 104 Stat. 3244).

#### § 1.49 [Amended]

5. Section 1.49 is amended by removing and reserving paragraph (r), revising paragraph (s), and adding a new paragraph (gg) as follows:

§ 1.49 Delegations to Federal Railroad Administrator.

\* \* \* \* \*

(r) [Reserved]

(s)(1) Carry out the functions vested in the Secretary by 49 U.S.C. 1808(a), (b), and (c), 1809, and 1810 relating to investigations, records, inspections, penalties, and specific relief so far as they apply to 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. 1813(a) and (b); and 1817.

\* \* \* \* \*

(gg) Carry out the functions vested in the Secretary by sections 16 and 21 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101-615; 104 Stat. 3244).

#### § 1.53 [Amended]

6. Section 1.53 is amended by revising the section heading, revising paragraph (b)(1), removing paragraph (b)(2), redesignating paragraphs (b)(3) and (b)(4) as paragraphs (b)(2) and (b)(3), respectively, and adding new paragraphs (b)(4) and (j) as follows:

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

\* \* \* \* \*

(b) Hazardous materials. (1) Sections 101-121 of the Hazardous Materials Transportation Act of 1975 (49 U.S.C. 1801-1819), as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990 (104 Stat. 3244), except as delegated by §§ 1.46(t), 1.47(j), 1.48(u)(2), and 1.49(s)(2), and except that the enforcement activities of the Research and Special Programs Administration (RSPA) shall be limited to any matter relating to or concerning any of the following:

(i) Any violation of an exemption or approval issued under that Act:

(ii) Any violation of any requirement for a telephonic or written report of a hazardous materials incident or any other reporting requirement imposed under that Act;

(iii) Any manufacture, fabrication, marking, maintenance, reconditioning, repair, testing, or retesting of any packaging, except modal-specific bulk packaging, which is represented, marked, certified, or sold for use in the transportation of hazardous materials, including any United Nations standard or DOT specification or exemption packaging:

(iv) Any manufacture, fabrication, marking, maintenance, reconditioning, repair, testing, or retesting of any modal-specific bulk packaging, which is represented, marked, certified, or sold for use in the transportation of hazardous materials, including any United Nations standard or DOT specification or exemption packaging, only when requested by the modal administration with primary responsibility for such activity;

(v) Any carrier of hazardous materials only when requested by the modal administration with primary responsibility for inspecting such carrier;

(vi) Any offeror of any hazardous material for transportation with respect to its offering of any hazardous material for transportation in:

(A) Any modal-specific bulk packaging only when requested by the modal administration with primary responsibility for inspecting such packaging; or

(B) Any other packaging.

This delegation to the Administrator of RSPA does not limit the enforcement authority of the Administrators of FHWA, FRA, and FAA, and the Commandant of the Coast Guard under the Hazardous Materials Transportation Act, as amended. Those agencies have enforcement authority over all aspects of the transportation or shipment of hazardous materials by their respective modes, including the manufacture,

fabrication, marking, maintenance, reconditioning, repair, testing, or retesting of any bulk packaging intended or represented as intended for use in the transportation of hazardous materials by their respective modes.

\* \* \*

(4) Sections 16, 25, 26, and 29 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101-615; 104 Stat. 3244).

\* \* \* \* \*

(j) Section 8 of the Independent Safety Board Act Amendments of 1990 (Pub. L. 101-641: 104 Stat. 4654).

Issued on June 28, 1991

  
\_\_\_\_\_  
Samuel K. Skinner  
Secretary of Transportation

CERTIFIED TO BE A TRUE  
COPY OF **THE** ORIGINAL

  
\_\_\_\_\_  
Norman V. Treadwell  
Alternate Certifying Officer