

**DEPARTMENT OF TRANSPORTATION****Research and Special Programs Administration****49 CFR Part 177**

[Docket No. HM-164A; Notice 87-8]

**State Designations of Alternative Routes for Radioactive Materials Transportation****AGENCY:** Office of Hazardous Materials Transportation, Research and Special Programs Administration, DOT.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend 49 CFR 177.825 to require that, when a State routing agency designates an alternative route for the transportation of highway route controlled quantity radioactive materials, the State must give written notice of such designation to the Research and Special Programs Administration (RSPA). The creation of a repository for these designations will provide shippers, carriers, enforcement and emergency response personnel, State agencies, local governments, and RSPA with definitive information concerning those alternative routes. RSPA also proposes to provide greater flexibility to States concerning the manner in which alternative routes are designated.

**DATE:** Comments must be received by August 31, 1987.

**ADDRESS:** Address comments to: Dockets Unit, Office of Hazardous Materials Transportation (DHM-30), U.S. Department of Transportation, Washington, DC 20590. Comments should be submitted, identifying the docket number (Docket HM-164A) and, when possible, in five copies. The Dockets Unit is located in Room 8426 of the Nassif Building, 400 Seventh Street, SW., Washington, DC. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Edward H. Bonekemper III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, 400 7th Street, SW., Washington, DC 20590 (202-366-4362).

**SUPPLEMENTARY INFORMATION:** On January 19, 1981, RSPA promulgated 49 CFR 177.825(b) as a final rule under Docket HM-164 (46 FR 5298) establishing routing and driver training requirements for highway carriers of any package of "large quantity radioactive materials." The regulated quantities later were changed (48 FR 10247, March 10, 1983) to any package of

"highway route controlled quantity radioactive materials" as defined in 49 CFR 173.403(l).

Section 177.825(b) generally requires highway carriers of highway route controlled quantities of radioactive materials to utilize "preferred routes" selected to reduce time in transit. A preferred route is defined as:

- (i) An Interstate System highway for which an alternative route is not designated by State agency as provided in this section, and
- (ii) A State-designated route selected by a State routing agency (see § 171.8 of this subchapter) in accordance with the DOT "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials".

That section also requires use of an Interstate System bypass or beltway around a city when available. Thus, the mandatory "preferred routes" for these radioactive materials shipments consist of Interstate System highways and State-designated alternative routes.

However, under the present system, it is difficult to determine which alternative routes have been designated by State routing agencies because there is no repository, let alone a single central repository, for those designations. Thus, shippers, carriers, enforcement and emergency response personnel, State agencies, local governments, and RSPA itself are unable to determine which alternative routes have been designated and which earlier designations remain in effect or have been changed.

RSPA's records and others' studies of radioactive materials transportation requirements indicate that approximately ten states have designated alternative routes as "preferred routes" under this regulation. The number of actual designations may be greater or less than ten, and there is no satisfactory means of determining how many of those designations currently are in effect.

This situation is not acceptable because shippers and carriers are not able to plan adequately for shipments of highway route controlled quantities of radioactive materials. For example, it is unrealistic to expect that a shipper or carrier planning for an eight-state radioactive materials shipment should have to locate and contact the appropriate official in each of those eight states to determine what designations, if any, exist. Not only do they have no definite means of determining which alternative routes may be available to them, but they are not able to determine which Interstate System highways they may not use because alternatives to them have been

designated. The situation is further confused by the fact that some alternative routes are designated *in lieu of* Interstate System highways while others are designated *in addition to* Interstate System highways.

Similarly, Federal, state and local law enforcement and emergency response personnel are handicapped in their ability to enforce radioactive materials transportation requirements and to plan for adequate emergency response by the absence of a definitive source of information on State-designated alternative preferred routes.

To address this problem, RSPA is proposing to create a Registry of State-designated routes. Under this proposal, states planning to designate alternative routes would have to give written notice of such designations by certified mail, return receipt requested, as a prerequisite to those designations becoming effective. A designation would become effective when written notice thereof has been received and acknowledged on the return by RSPA's Dockets Unit. The written notice would specify whether the alternative route is *in lieu of*, or *in addition to*, one or more Interstate System highways. A designation acknowledged by RSPA would remain effective until RSPA receives and acknowledges receipt of written notice of a designation's revocation or of a change to it. RSPA's acknowledgement would simply indicate that the designation had been received and a copy placed in the Registry. The public would have access to the Registry in RSPA's Dockets Unit and would be able to request copies of State routing agency designations from RSPA.

As proposed, after the effective date of this rule, no State routing agency designation of an alternative preferred route under § 177.825(b) would be effective until the State's written notice thereof is received and acknowledged by RSPA's Dockets Unit. Thus, to make their designations effective, States would have to give notice of all existing designations and those being designated in the future. This would be necessary in order to provide the definitive information lacking in the present system. Under the proposed rule, therefore, no present or future designation would be effective without the required notice being given by the designating State to RSPA and being acknowledged by RSPA. RSPA contemplates establishing a delayed effective date to provide states with adequate time to file notices concerning existing designations.

RSPA is interested in improving its system to eliminate this deficiency and solicits comments which will assist in solving this problem effectively and efficiently. RSPA desires to minimize reporting burdens while providing a source of information which is vital to all parties involved with the transportation of radioactive materials.

In a related action designated to improve the designation process, RSPA proposes that States be given greater flexibility in the manner of selecting State-designated routes. Section 177.825(b)(1) presently requires that State-designated alternative routes be selected in accordance with the DOT "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials." However, the definition of "state-designated route" in § 171.8 indicates that such a route may be selected in accordance with DOT Guidelines or "an equivalent routing analysis which adequately considers overall risk to the public."

RSPA proposes to eliminate this incongruity by modifying § 177.825(b)(1) to allow States to select alternative preferred routes in accordance with the DOT Guidelines or an equivalent routing analysis adequately considering overall risk to the public. RSPA acknowledges that its own Guidelines are not flawless and is willing to consider rational, sophisticated alternative risk analysis approaches to the issue of hazardous materials routing. The proposed change would synchronize §§ 177.825(b)(1) and 171.8 and provide States with greater, but controlled, flexibility in designating alternative routes for highway route controlled quantities of radioactive materials.

## Administrative Notices

### A. Executive Order 12291

RSPA has determined that the effect of this regulatory proposal would not meet the criteria specified in section 1(b) of Executive Order 12291 and, therefore, is not a major rule. This is not a significant rule under DOT regulatory procedures (44 FR 11034) and requires neither a Regulatory Impact Analysis nor an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 et seq.). A regulatory evaluation is available for review in the Docket.

### B. Impact on Small Entities

I certify that the proposal in this notice will not, if promulgated, have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### C. Paperwork Reduction Act

Information collection requirements contained in this proposal are being submitted for approval to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

### List of Subjects in 49 CFR Part 177

Hazardous materials transportation, Radioactive materials, Alternative routes.

In consideration of the foregoing, 49 CFR Part 177 would be amended as follows:

## PART 177—CARRIAGE BY PUBLIC HIGHWAY

1. The authority citation for Part 177 would be revised to read:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 49 CFR Part 1, unless otherwise noted.

2. In § 177.825, paragraph (b)(1) would be revised to read:

### § 177.825 Routing and training requirements for radioactive materials.

\* \* \* \* \*

(b) \* \* \*

(1) A preferred route consists of:

(i) An Interstate System highway for which an alternative route is not designated by a State routing agency as provided in this section; and

(ii) A State-designated route selected by a State routing agency (see § 171.8 of this subchapter), in accordance with the DOT "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials," or an equivalent routing analysis which adequately considers overall risk to the public. For the designated route to be effective, written notice by certified mail, return receipt requested, must be given by the State to, and receipt be acknowledged by, Dockets Unit (DHM-30), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590 (Attention: Registry of State-designated Routes, Docket HM-164A).

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Issued in Washington, DC, on July 10, 1987, under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

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