

49 CFR Parts 171, 173 and 177

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Thursday  
May 12, 1988

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**Part V**

**Department of  
Transportation**

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**Research and Special Programs  
Administration**

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**49 CFR Parts 171, 173 and 177  
Radioactive Materials; State Designations  
of Alternative Routes and Route Plans;  
Final Rules**

## DEPARTMENT OF TRANSPORTATION

Research and Special Programs  
Administration

## 49 CFR Parts 171 and 177

(Docket No. HM-164A)

State Designations of Alternative  
Routes for Radioactive Materials  
TransportationAGENCY: Research and Special Programs  
Administration (RSPA), DOT.

ACTION: Final rule.

**SUMMARY:** This action is being taken to amend 49 CFR 177.825 to provide that State designations, of alternative routes for the transportation of highway route controlled quantity (HRCQ) shipments of radioactive material, become effective only upon notice to RSPA of such designations and to clarify the methods that States are authorized to use in selecting preferred routes. The creation of a repository for route designations within RSPA will provide shippers, carriers, enforcement and emergency response personnel, State agencies, local governments, and RSPA with definitive information concerning the existence of those alternative routes.

**EFFECTIVE DATE:** September 9, 1988.**FOR FURTHER INFORMATION CONTACT:**

John A. Gale, Office of Hazardous Materials Transportation, Research and Special Programs Administration, 400 7th Street SW., Washington, DC 20590 (202-366-4488).

**SUPPLEMENTARY INFORMATION:** On July 16, 1987, RSPA published Notice No. 87-9 (52 FR 26928) under Docket HM-164A which proposed to amend 49 CFR 177.825 to provide that State designations of alternative routes for the transportation of HRCQ shipments of radioactive materials become effective upon written notice of such designations to RSPA. In addition, RSPA proposed to clarify the procedures that States are authorized to use in designating alternative routes. Presently, the definition of "State-designated route" in § 171.8 contains the statement " \* \* \* or an equivalent routing analysis which adequately considers overall risk to the public." However, § 177.825(b)(1)(ii), in describing a State-designated route, fails to mention "an equivalent routing analysis." To clarify this incongruity, RSPA placed the language that currently exists in the definition of "State-designated route" into the proposed § 177.825(b)(1)(ii).

RSPA received twelve comments to HM-164A, all of which supported the proposed changes. However, six of these

commenters requested that additional provisions be added to the rule. For the reasons disclosed in this document, RSPA denies these requests and adopts HM-164A essentially as proposed.

Two commenters requested that RSPA periodically publish in the Federal Register a listing of the States that have notified RSPA of alternative preferred route designations, the routes designated, the appropriate contact person in each such State, and any State modifications or revocations of alternative preferred routes since the last publication. RSPA understands the need for readily available and accurate information concerning route designations. However, periodic Federal Register publication will not ensure the immediate availability of accurate information. Instead, RSPA's Dockets Unit will respond to requests for information concerning precisely which alternative preferred route designations are in effect at any time. In summary, RSPA will be maintaining a "real-time" system and making the information therein available on a "real-time" basis.

One commenter suggested that States submit their designation on particular days of the year (e.g., first days of the month). RSPA believes it is the prerogative of each State to change its routes when a safety need arises and, therefore, States should not be required to submit their designations on particular days of the year.

The National Transportation Safety Board (NTSB) suggested that this rule should encompass routes that are designated for any hazardous material, not just HRCQ of radioactive materials. This recommendation is beyond the scope of this rulemaking and, therefore, no action is taken on it in this final rule. However, RSPA intends to address routing requirements for certain hazardous materials in a forthcoming rulemaking action.

The Iowa Department of Transportation (IODOT) had two concerns about the proposed rule and the present regulations. First, IODOT stated that the regulations for routing designations should be "reworded to clarify" States' authority to designate preferred routes. IODOT expressed the belief that when two interstate highways of equal risk exist, the State is unable to designate one route in lieu of the other under the procedures for designating routes. RSPA disagrees with this interpretation of the current regulations. States have the authority under § 177.825(b)(1) to designate routes *in lieu of* an interstate highway as an alternative route. Therefore, so long as the requirements of § 177.825(b)(1)(ii) are met, States are authorized to

designate one of two interstate routes of equal risk as an alternative route which must be used in lieu of the other.

Consequently, RSPA deems unnecessary IODOT's request to reword this rule to provide clarification of States' authority to designate preferred routes.

In addition, IODOT contended that the system RSPA proposes for effecting State route designations is unresponsive to emergency situations (e.g., unforeseen road construction). RSPA believes that such situations should not present a problem because § 177.825(b)(2) authorizes deviations from preferred routes for emergency conditions that would make continued use of the preferred route unsafe.

The Yankee Atomic Electric Company recommended that RSPA require any State, which uses an approach other than the DOT Guidelines for selecting routes, to prove equivalency of its method to that of the DOT Guidelines. This comment relates to the proposal in the NPRM to amend § 177.825 to authorize States to use an "equivalent" routing analysis. That proposal constitutes a mere editorial change to the regulations. The language proposed for § 177.825 is equivalent to that which currently exists in the definition of a "State-designated route" in § 171.8. Thus, no substantive rule change is occurring. RSPA believes that the recommendation to require proof of equivalency for selection methods is beyond the scope of this rulemaking.

The Northeast Ohio Area-wide Coordinating Agency (NOACA) recommended that RSPA spell out an "obligatory method of substantive State consultation with local jurisdictions." In the original HM-164 final rule published on January 19, 1981 (46 FR 5296), RSPA thoroughly addressed this issue. In fact, the regulations currently require consultations with affected local jurisdictions (and other affected States) as prerequisites to designations of alternative routes. RSPA does not believe that there is any need for it to specify procedures which must be used in consultations between States and local jurisdictions. The action described in the next paragraph may alleviate any perceived problems in this area.

Except for a minor editorial change to § 177.825, RSPA is adopting the proposed rule unchanged. The second sentence of the definition of "State-designated route" in § 171.8 contains the substantive consultation requirements described above; substantive requirements are inappropriate for a "definitions" section. Therefore, RSPA is removing the sentence from the "definitions" section and placing it in

the new § 177.825(b)(1)(ii). RSPA believes that this will facilitate a better understanding of the requirements for State consultation with affected jurisdictions prior to designating alternative routes.

#### Administrative Notices

RSPA has determined that this final rule: (1) Is not a "major rule" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not adversely affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 *et seq.*). A regulatory evaluation is available for review in the docket.

Based on limited information concerning the size and nature of entities likely affected, I certify that this regulation will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. I have reviewed this regulation in accordance with Executive Order 12612 ("Federalism"). Although this regulation requires State notification to RSPA as a prerequisite to designation of alternative preferred routes, it has no substantial direct effects on the States, on the Federal-State relationship or the distribution of power and responsibilities among levels of government. Thus, this regulation contains no policies that have Federalism implications, as defined in Executive Order 12612.

#### Paperwork Reduction Act

Information collection requirements contained in § 177.825 herein, pertaining to requirements for designating alternative routes, have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and assigned control number, OMB No. 2137-0510.

#### List of Subjects

##### 49 CFR Part 171

Hazardous materials transportation, Definitions.

##### 49 CFR Part 177

Hazardous materials transportation, Radioactive materials, Alternative routes.

In consideration of the foregoing, 49 CFR Parts 171 and 177 are amended to read as follows:

#### PART 171—DEFINITIONS AND ABBREVIATIONS

1. The authority citation for Part 171 is revised to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted.

2. In § 171.8, the definition "State-designated route" is revised to read as follows:

##### § 171.8 Definitions and abbreviations.

"State-designated route" means a preferred route selected in accordance with U.S. DOT "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantities of Radioactive Materials" or an equivalent routing analysis which adequately considers overall risk to the public.

#### PART 177—CARRIAGE BY PUBLIC HIGHWAY

3. The authority citation for Part 177 continues to read as follows:

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

4. In § 177.825, paragraph (b)(1) is revised to read as follows:

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

(b)

(1) A preferred route consists of either or both:

(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.

Designations must have been preceded by substantive consultation with affected local jurisdictions and with any other affected States to ensure consideration of all impacts and continuity of designated routes. A State designated route is not effective until written notice has been given by the State, by certified mail, return receipt requested, to, and receipt acknowledged by, the 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).

Issued in Washington, DC on May 6, 1988, under authority delegated in 49 CFR, Part 1.

M. Cynthia Douglass,  
Administrator, Research and Special  
Programs Administration.

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