

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Parts 172, 174, 175, 176, and 177**

[Docket No. RSPA-97-2850 (HM-169B)]

RIN 2137-AD14

Hazardous Materials: Radiation Protection Program Requirement**AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Revocation of direct final rule; Reinstatement of regulations.

SUMMARY: This action restores regulatory text that was removed by a September 2, 1997 direct final rule because interested parties submitted adverse comments on it. In the direct final rule, RSPA removed regulations that require persons who offer, accept for transportation, or transport radioactive materials to develop and maintain written radiation protection programs. The effect of this action is that the radiation protection program requirements issued on September 28, 1995 remain in effect. RSPA is publishing a notice of proposed rulemaking elsewhere in this issue of the **Federal Register** inviting further comments on the need to withdraw or revise the radiation protection program requirements.

DATES: The direct final rule published at 62 FR 46214 is revoked and the text of affected provisions in Subpart I of Part 172 and §§ 174.705, 175.706, 176.703 and 177.827 are reinstated as of September 30, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Fred D. Ferate II, Office of Hazardous Materials Technology, (202) 366-4545 or Charles E. Betts, Office of Hazardous Materials Standards, (202) 366-8553; RSPA, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:**I. Background**

On September 28, 1995, RSPA published a final rule in the **Federal Register** under Docket No. HM-169A (60 FR 50292). The changes made in Docket HM-169A were part of RSPA's ongoing effort to harmonize the Hazardous Materials Regulations (HMR; 49 CFR 171-180) with international standards and to improve radiation safety for workers and the public during the transportation of radioactive materials.

One of the substantive regulatory changes under Docket HM-169A is a requirement to develop and maintain a written radiation protection program (RPP). The RPP requirements are found in Subpart I of Part 172 of the HMR. Implementation provisions for rail, air, vessel and highway are found in §§ 174.705, 175.706, 176.703, and 177.827, respectively. The RPP requirements apply, with certain exceptions, to each person who offers for transportation, accepts for transportation, or transports Class 7 (radioactive) materials. Compliance with the RPP requirements was required after October 1, 1997.

Following publication of the September 28, 1995 final rule, many comments were received concerning technical difficulties in implementing the RPP requirements. Subsequently, on April 19, 1996, RSPA published in the **Federal Register** a request for comments on the implementation of the RPP requirements (Notice 96-7; 61 FR 17349). In Notice 96-7, RSPA stated its intention to develop guidance for the radioactive material industry to facilitate compliance with the RPP requirements.

RSPA received 23 comments in response to Notice 96-7. After considering these comments, RSPA decided that the concerns expressed could not all be resolved through guidance; new rulemaking was required in order to adequately address many of the issues raised in the comments. RSPA determined that the current RPP requirements in Subpart I of Part 172, and §§ 174.705, 175.706, 176.703 and 177.827 should be withdrawn, because they could not be corrected through rulemaking action prior to the October 1, 1997 compliance date. Accordingly, RSPA published a direct final rule on September 2, 1997 [62 FR 46214], withdrawing the RPP requirements effective September 30, 1997, unless an adverse comment or notice of intent to file an adverse comment was received by September 30, 1997. The preamble to the direct final rule discussed the concerns expressed in response to Notice 96-7.

II. Revocation of Direct Final Rule

The procedures governing issuance of direct final rules are in 49 CFR 106.39. These procedures provide for public notice and opportunity for comment subsequent to publication of a direct final rule. They also provide that if an adverse comment or notice of intent to file an adverse comment is received, RSPA will issue a timely document in the **Federal Register** to confirm that fact and withdraw the direct final rule in

whole or in part. Under the procedures, RSPA may then incorporate the adverse comment into a subsequent direct final rule or may publish a notice of proposed rulemaking.

Two persons submitted adverse comments on the direct final rule: Caliber System, Inc. and Davis Transport Inc. In summary, these parties asserted that RSPA did not adequately consider worker safety, but had overemphasized the comments on economic ability to comply and overstated the inconsistency and compliance assurance issues associated with the rule.

In this document, RSPA is providing notice that the provisions removed by the September 2, 1997 direct final rule are reinstated because two adverse comments were submitted.

RSPA is publishing a notice of proposed rulemaking (NPRM) elsewhere in this issue of the **Federal Register** to address the merits of the adverse comments and to request additional comments concerning the need to revoke or revise the RPP requirements.

III. Paperwork Reduction Act of 1995

Under regulations implementing the Paperwork Reduction Act of 1995, “* * * an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.” 5 CFR 1320.8(b)(3)(iii)(6). RSPA has reviewed the HM-169A final rule and the information collection approval for radioactive materials transportation requirements. (OMB control number 2137-0510 was issued in January 1995 in anticipation of the final rule to be issued under Docket HM-169A. That approval expires on January 31, 1998, unless renewed.) Based on that review, RSPA concludes that the OMB approval is limited to information collection requirements other than the RPP requirements contained in Subpart I of Part 172.

In the NPRM, which RSPA is publishing concerning the need to withdraw or revise the RPP requirements, RSPA is requesting comments concerning the annual information collection burden attributable to those requirements, and RSPA will seek OMB approval if the RPP requirements are retained.

IV. 1997 Edition of 49 CFR Parts 100-185

Title 49 of the Code of Federal Regulations (CFR) was revised effective October 1, 1997. Because of the lateness of this document, Subpart I of Part 172 and §§ 174.705, 175.706, 176.703 and 177.827, do not appear in the 1997

edition of the CFR. RSPA is publishing the full text of the affected regulations in this document, as follows.

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, the following provisions in 49 CFR parts 172, 174, 175, 176, and 177 are reinstated to read as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In Part 172, Subpart I is reinstated to read as follows:

Subpart I—Radiation Protection Program

Sec.

172.801 Applicability of the radiation protection program.

172.803 Radiation protection program.

172.805 Recordkeeping and notifications.

172.807 Transitional provisions.

Subpart I—Radiation Protection Program

§ 172.801 Applicability of the radiation protection program.

(a) *Scope.* This subpart prescribes requirements for developing and maintaining a radiation protection program.

(b) *Applicability.* This subpart applies to persons who offer for transportation, accept for transportation, or transport Class 7 (radioactive) materials.

§ 172.803 Radiation protection program.

Each person who offers for transportation, accepts for transportation, or transports Class 7 (radioactive) materials must develop, implement and maintain a written radiation protection program in accordance with the following:

(a) Radiation exposures must be kept as low as reasonably achievable (ALARA), with economic and social factors being taken into account.

(b) Radiation exposures must be controlled such that:

(1) An occupationally exposed hazmat employee's annual effective dose equivalent for occupational radiation exposure will not exceed 12.5 mSv (1.25 rem) in any 3 month period or 50 mSv (5 rem) in any 12 month period. For workers under the age of eighteen, the radiation dose will not exceed 1.250 mSv (0.125 rem) in any 3 month period or 5.0 mSv (0.5 rem) in any 12 month period;

(2) Radiation exposures to members of the general public must be less than 0.02 mSv (2 mrem) per hour. This level will be measured as if an individual were present for an hour in any area where the general public could be exposed to radiation during the course of transportation, except that, if there is an occurrence where the dose to a member of the general public equals or exceeds 0.02 mSv (2 mrem) in one hour, the program must provide limits that will prevent an individual from receiving cumulative doses totaling 1.0 mSv (100 mrem) in any week or 5.0 mSv (500 mrem) in any twelve-month period;

(3) The radiation dose to an embryo-fetus in a pregnant female occupationally exposed hazmat employee, who has declared her pregnancy to her employer, must not exceed 5.0 mSv (500 mrem) during the pregnancy. This limit is to be achieved by limiting the radiation dose of the declared pregnant worker to not more than 5.0 mSv (500 mrem) during the nine months and not greater than 0.5 mSv (50 mrem) in any one month; and

(4) The radiation doses received by occupationally exposed hazmat employees must be monitored by radiation dosimetry devices.

(c) The Environmental Protection Agency report entitled "Radiation Protection Guidance to Federal Agencies for Occupational Exposure (January 1987)". This document is available from the U.S. Environmental

Protection Agency, Washington, DC 20460.

(d) *Exceptions.* (1) The requirements of this subpart do not apply to:

(i) Persons who offer for transportation or transport less than 200 TI, not including TI calculated for criticality control purposes, of packages in a 12-month period; or

(ii) Those persons whose operations will not result in a hazmat employee receiving an exposure of 5 mSv (500 mrem) or more per year. This evaluation must consider the hazmat employers Class 7 (radioactive) materials transportation activities for a period of at least 12 months. An evaluation must be conducted by a person experienced with radiation protection programs and transportation regulations and programs. The evaluator's competency may be evidenced by being certified by the American Board of Health Physics, or by a letter of recommendation from a State Radiation Official listed in the most current issue of the "Directory of Personnel Responsible For Radiological Health Programs" published annually by the Conference of Radiation Control Program Directors, Frankfort, KY.

(2) The requirements of this subpart may be satisfied by any radiation protection program that has been approved by an appropriate federal or state agency.

(e) *Guidance.* (1) Each hazmat employer should review and follow the guidance provided in the following documents when establishing and maintaining their radiation protection program:

(i) National Council on Radiation Protection and Measurements (NCRP) Report No. 59, "Operational Radiation Safety Program (1978)". The guidance in this report should be tailored to the practical needs and operations of the hazmat employer and their occupationally exposed hazmat employees.

(ii) NCRP Report No. 116, "Limitation of Exposure to Ionizing Radiation (1993)".

(2) The reports referenced in paragraph (e)(1) of this section are available from NCRP Publications, 7910 Woodmont Avenue, Bethesda, MD 20814.

§ 172.805 Recordkeeping and notifications.

(a) A hazmat employer must document their radiation protection program and maintain written records of the radiation protection program activities, including dosimetry records, described in this subpart. These records must be made available to the Associate Administrator for Hazardous Materials

Safety or other authorized officials in written form within seven days of a written request.

(b) A hazmat employer must keep a record of the radiation dose that each hazmat employee has received and provide it to the employee in reasonable time following a request during employment and no more than three months after end of employment.

(c) Each hazmat employer must notify the Associate Administrator for Hazardous Materials Safety, in writing, if a hazmat employee receives a dose exceeding 12.5 mSv (1250 mrem) in any calendar quarter or 50 mSv (5,000 mrem) in one year, or if a member of the general public is likely to receive a dose exceeding 5 mSv (500 mrem) in one year as a result of the hazmat employer's transportation activities. Such a notification must be made as soon as practicable following awareness of the occurrence.

(d) If an offeror or carrier of Class 7 (radioactive) materials is not required to establish a radiation protection program, they must develop and keep records which demonstrate why a program is not required (i.e., either the total TI of packages transported in any 12 month period is less than 200, or that the current Class 7 (radioactive) materials transport activities are the same as the activities that were reviewed by a competent radiation protection specialist whose evaluation demonstrated that no worker will receive a dose exceeding 5 mSv (500 mrem) in one year).

§ 172.807 Transitional provisions.

Compliance with the requirements of this subpart is required after October 1, 1997.

PART 174—CARRIAGE BY RAIL

3. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

4. Section 174.705 is reinstated to read as follows:

§ 174.705 Radiation protection program.

Unless otherwise excepted, a carrier shall not transport a Class 7 (radioactive) material by rail unless each of its occupationally exposed hazmat employees is under a radiation protection program that complies with the requirements of subpart I of part 172 of this subchapter.

PART 175—CARRIAGE BY AIRCRAFT

5. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

6. Section 175.706 is reinstated to read as follows:

§ 175.706 Radiation protection program.

Unless otherwise excepted, a carrier shall not transport a Class 7 (radioactive) material by aircraft unless each of its occupationally exposed hazmat employees is under a radiation protection program that complies with the requirements of subpart I of part 172 of this subchapter.

PART 176—CARRIAGE BY VESSEL

7. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

8. Section 176.703 is reinstated to read as follows:

§ 176.703 Radiation protection program.

Unless otherwise excepted, a carrier shall not transport a Class 7 (radioactive) material by vessel unless each of its occupationally exposed hazmat employees is under a radiation protection program that complies with the requirements of subpart I of part 172 of this subchapter.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

9. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

10. Section 177.827 is reinstated to read as follows:

§ 177.827 Radiation protection program.

Unless otherwise excepted, a carrier shall not transport a Class 7 (radioactive) material by motor vehicle unless each of its occupationally exposed hazmat employees is under a radiation protection program that complies with the requirements of subpart I of part 172 of this subchapter.

Issued in Washington, DC on December 12, 1997, under authority delegated in 49 CFR Part 1.

Kelley S. Coyner,

Acting Administrator.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. RSPA–97–2850 (HM–169B)]

RIN 2137–AD14

Hazardous Materials: Radiation Protection Program Requirement

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final Rule; extension of compliance date.

SUMMARY: RSPA is extending until October 1, 1999, the date for mandatory compliance with the Radiation Protection Program (RPP) requirements adopted in the final rule issued September 28, 1995. During this period, RSPA intends to consider in a separate rulemaking whether the RPP requirements should be withdrawn or revised because of the difficulties and complexities concerning implementation of and compliance with the RPP requirements. RSPA believes that compliance should not be required with requirements that may be withdrawn or substantially revised, and that overall safety in the transportation of radioactive materials will be advanced by reexamining the RPP requirements before requiring compliance with the current requirements.

EFFECTIVE DATE: December 22, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Fred Ferate II, Office of Hazardous Materials Technology, 202–366–4545, or Charles E. Betts, Office of Hazardous Materials Standards, 202–366–8553, RSPA, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On September 28, 1995, RSPA published a final rule in the *Federal Register* in this docket as part of RSPA's ongoing effort to harmonize the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180, with international standards and to improve safety for workers and the public during the transportation of radioactive materials. (60 FR 50292). One of the substantive regulatory changes in the September 28, 1995 final rule is the requirement to develop and maintain a written radiation protection program (RPP).

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