

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

Business and industry, Radio.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

**Rule Changes**

Part 90 of title 47 of the Code of Federal Regulations is amended as follows:

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

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

Authority: Secs. 4, 251–2, 303, 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 251–2, 303, 309 and 332, unless otherwise noted.

2. Section 90.739 is revised to read as follows:

**§ 90.739 Number of systems authorized in a geographical area.**

There is no limit on the number of licenses that may be authorized to a single licensee.

[FR Doc. 97–23187 Filed 8–29–97; 8:45 am]

BILLING CODE 6712–01–P

**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–AD08

**Hazardous Materials: Withdrawal of Radiation Protection Program Requirement**

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

**ACTION:** Direct final rule.

**SUMMARY:** RSPA is removing Radiation Protection Program regulations and related modal provisions that require the development and maintenance of a written radiation protection program for persons who offer, accept for transportation, or transport radioactive materials. This action is necessary to address difficulties and complexities concerning implementation of and compliance with the requirements for a radiation protection program, as evidenced by comments received from the radioactive material transportation industry and other interested parties.

**DATES:** This final rule is effective September 30, 1997, unless an adverse

comment or notice of intent to file an adverse comment is received by September 30, 1997. RSPA will publish in the **Federal Register** a document confirming the effective date of this direct final rule.

**ADDRESSES:** Address comments to the Dockets Unit (DHM–30), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Comments should identify the Docket (HM–169B) and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard showing the docket number. The Docket Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590–0001. Public dockets may be viewed between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Comments may also be submitted by E-mail to “rules@rspa.dot.gov.” In every case, the comment should refer to the Docket Number set forth above.

**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:**

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 operations involving the transportation of radioactive materials.

One of the substantive rules in Docket HM–169A was a requirement to establish a written radiation protection program (RPP). The RPP requirements are found in subpart I of 49 CFR part 172. The RPP implementation provisions for rail, air, vessel and highway are found in §§ 174.705, 175.706, 176.703, and 177.827, respectively. The RPP requirement applies, with certain exceptions, to each person who offers for transportation, accepts for transportation, or transports Class 7 (radioactive) materials. The effective date of the RPP requirement is 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.

Several commenters cited modal differences as a factor which makes application of the RPP regulations difficult. Examples given include difficulties in tracking doses to workers involved in shipping radioactive material by rail because of multiple transfers from one company to another of rail cars during transport, or to ship crews because of ships being registered under foreign flags, or because often their operations are carried out in foreign ports. Several commenters stated that dose to personnel involved in bulk or containerized transport of radioactive material by highway, rail, or vessel is usually much lower than for non-bulk shipments.

Additional comments pointed to ambiguities in the regulations that make honest efforts to develop RPP plans uncertain as to their adequacy. Some of the ambiguities cited are that the regulations do not make clear whether the 200 transport index (TI) threshold to qualify for an exception is to be applied over an entire company or at each site; that concepts such as “approved by a Federal or state agency” and “occupationally exposed hazmat worker” are vague; and that the requirement to monitor occupationally exposed hazmat workers appears to be too inclusive and may be interpreted to extend even to those workers whose doses would be expected to be below the limit of detection of the dosimeters. Most commenters noted the practical impossibility of being able to assure compliance with the requirements cited in the regulations for dose and dose rate limits for members of the general public, and the uncertainty as to which persons are included in the category of “general public.”

Several commenters cited inconsistencies with other regulations. For example, in contrast to the HMR, the Nuclear Regulatory Commission (NRC) regulations and Environmental Protection Agency (EPA) guidelines do not include a quarterly occupational dose limit, or a weekly dose or a dose rate limit for members of the public; the HMR criteria for determining whether monitoring is required differ

appreciably from those in the International Atomic Energy Agency (IAEA) regulations; the HMR annual limit for members of the public is different from that of the NRC and the IAEA regulations; the HMR recordkeeping requirements are different from the NRC's; and the HMR require monitoring of occupationally exposed hazmat workers, while the NRC requires monitoring adult workers with personal dosimetry only if their annual dose is likely to exceed 5 mSv.

Commenters stated that there are also internal inconsistencies in the present RPP requirements. For example, one commenter noted that entities with an RPP are required to comply with the stated limits for dose to members of the general public, while entities which qualify for an exception are not. Another commenter indicated that the monthly limit of 0.5 mSv for a declared pregnant worker renders irrelevant the additional stated limit of 5 mSv during the term of pregnancy.

Commenters also stated that implementation of the RPP requirements would force affected shippers and carriers to adopt the most conservative approach, leading to unnecessarily high costs and potentially serious disruption of the market.

In addition to the comments received, RSPA also received five petitions, three of which were characterized as petitions for reconsideration, but which are considered as petitions for rulemaking because they were received after the thirty day period in 49 CFR 106.35. A discussion of the petitions follows.

Two different parts of Lockheed Martin (Energy Research Corporation and Energy Systems, Inc.), Los Alamos National Laboratories, and the Oak Ridge Operations Office of the Department of Energy requested that implementation of the RPP requirement be postponed, and that an exception to the RPP requirement be allowed for less-than-truckload (LTL) non-exclusive use shipments of radioactive material.

The Radiopharmaceutical Shippers and Carriers Conference requested amendments to various paragraphs of the RPP requirement. These included restricting the 0.02 mSv/hour (2 mrem/hour) limit to members of the public and other non-occupationally exposed individuals to those radioactive material transportation activities which occur at fixed facilities; changing the threshold to qualify for an exception from 200 TI to 1000 TI; and applying the 1000 TI threshold exception for each fixed facility. It was requested, also, that regulations be clarified by specifically stating that certification by the American Board of Health Physics is not

the only acceptable criterion as evidence of competency of the evaluator referred to in 49 CFR 172.803(d)(ii). Finally, it was requested that the wording "200 TI" be changed to "1000 TI" and "worker" changed to "occupationally exposed hazmat employee" in 49 CFR 172.805(d); and that the effective date of October 1, 1997 be postponed until appropriate guidance is available.

The Nuclear Energy Institute petitioned RSPA to rescind the public radiation measurement requirement in 49 CFR 172.803(b)(2).

RSPA agrees that several of the comments discussed above have merit, and has attempted to resolve those concerns by formulation of a guidance document. However, RSPA has decided that not all of the concerns can be resolved through guidance, and new rulemaking is required in order to adequately address these and other comments. Because the necessary rulemaking actions cannot be taken before the October 1, 1997 effective date of the RPP requirements, RSPA has 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. The disposition of the five petitions for rulemaking will be decided at a later date. However, the arguments presented have been considered along with the other comments received.

RSPA notes that many shippers of radioactive material, specifically those who are Department of Energy contractors or NRC or Agreement State licensees, are already subject to a RPP requirement. RSPA also continues to believe that some form of RPP requirement should be established in the HMR, to provide a formal and structured framework for ensuring radiation safety during radioactive material transportation activities.

Until the September 28, 1995 final rule under Docket HM-169A, the HMR had not generally required hazmat employers involved in the transport of radioactive materials to specifically consider the radiation safety of their workers and to take steps to improve that safety, if necessary. Rather, the HMR have sought to minimize radiation hazards to workers and the public by including requirements on: (1) Packagings designed and tested to contain radioactive materials under normal conditions of transportation and under accident conditions; (2) hazard communication requirements, such as shipping paper information, labels, and markings; (3) limitations on permissible rates of external radiation and package contamination; and (4) segregation and

separation of packages from passengers and hazmat employees. This system has worked well, but it can be improved.

Accordingly, RSPA will continue to review criteria, such as those adopted by the IAEA Safety Series Standards Series No. ST-1, that could form the basis of a revised RPP requirement. RSPA may propose in a future rulemaking the establishment of a revised RPP requirement, to provide such a formal and structured framework.

This direct final rule is issued under the procedures set forth in 49 CFR 106.39. Because this direct final rule removes regulatory requirements that otherwise would be effective on October 1, 1997, this direct final rule is effective September 30, 1997, without the customary 30-day delay following publication and unless RSPA receives an adverse comment by September 30, 1997. Interested parties should refer to § 106.39(c) for a discussion of what constitutes an adverse comment.

#### Regulatory Analyses and Notices

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

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). This rule provides relief to persons who offer for transportation, accept for transportation, or transport Class 7 (radioactive) materials by eliminating the need to develop and maintain a radiation protection program.

RSPA did not prepare a regulatory evaluation that specifically addressed the issue of withdrawing requirements for a radiation protection program. However, the regulatory evaluation proposed in support of the final rule issued under Docket HM-169A (60 FR 50292; September 28, 1995) estimated annual costs attributed to radiation protection program requirements in the amount of \$6.6 million. RSPA did not have sufficient data to quantify estimated benefits derived from the radiation protection program requirements.

Comments submitted in response to RSPA's effort to develop regulatory guidance for development, implementation, and maintenance of an effective radiation protection program conforming to requirements in 49 CFR part 172, subpart I, lead RSPA to conclude that it cannot provide

appropriate guidance, based on the final rule published under Docket No. HM-169A, that meets the needs for safety in transportation through procedures that are consistent with other Federal regulations and at costs that are not unnecessarily high. That being the case, RSPA cannot, at this time, justify the need for persons who offer for transportation, accept for transportation, or transport radioactive materials to develop, implement, and maintain a written radiation protection plan.

#### B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Federal hazardous material transportation law, (49 U.S.C. 5101-5127) contains an express preemption provision that preempts State, local and Indian tribe requirements on certain covered subjects. Covered subjects are:

- (i) The designation, description, and classification of hazardous materials;
- (ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;
- (iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements related to the number, contents, and placement of those documents;
- (iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; and
- (v) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container which is represented, marked, certified or sold as qualified for use in the transportation of hazardous material.

This final rule does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

#### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (Act), as amended, 5 U.S.C. 601-612, directs agencies to consider the potential impact of regulations on small business and other small entities. In the regulatory evaluation originally prepared to consider requirements for a radiation protection program, RSPA estimated a total of 497 carriers (primarily motor carriers) would be subject to those requirements. All but a certain few of those carriers are thought to meet criteria of the Small Business Administration as "small business," e.g., motor freight carriers with annual revenue of less than \$18.5 million. The effect of withdrawing requirements for a

radiation protection program is to allow those carriers to continue to transport radioactive materials without having to develop and implement a written plan that goes beyond what is now required of many of those carriers through RSPA's exemption program, or that of other Federal departments and agencies.

Based upon the above, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

#### D. Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

#### E. Paperwork Reduction Act

This final rule does not impose any information collection burdens. Information collection requirements addressing radioactive materials requirements are currently approved under OMB approval number 2137-0510. This approval expires January 31, 1998. RSPA plans to submit a revised information collection to OMB for renewal prior to the expiration date. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number.

#### F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### 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, 49 CFR parts 172, 174, 175, 176, and 177 are amended 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.

##### Subpart I—[Removed]

2. In part 172, subpart I is removed.

#### 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.

##### § 174.705 [Removed]

4. Section 174.705 is removed.

#### 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.

##### § 175.706 [Removed]

6. Section 175.706 is removed.

#### 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.

##### § 176.703 [Removed]

8. Section 176.703 is removed.

#### 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.

##### § 177.827 [Removed]

10. Section 177.827 is removed.

Issued in Washington, DC, on August 22, 1997, under authority delegated in 49 CFR Part 1.

**Kelley S. Coyner,**  
Acting Administrator.

[FR Doc. 97-23083 Filed 8-29-97; 8:45 am]  
BILLING CODE 4910-60-P

**DEPARTMENT OF TRANSPORTATION**

**Surface Transportation Board**

**49 CFR Parts 1002 and 1108**

[STB Ex Parte No. 560]

**Arbitration of Certain Disputes Subject to the Statutory Jurisdiction of the Surface Transportation Board**

**AGENCY:** Surface Transportation Board.  
**ACTION:** Final rules.

**SUMMARY:** The Surface Transportation Board (Board) adopts rules providing a means for the binding, voluntary arbitration of certain disputes subject to the statutory jurisdiction of the Board.

**EFFECTIVE DATE:** October 2, 1997.  
**FOR FURTHER INFORMATION CONTACT:** Ellen Hanson, (202) 565-1558. (TDD for the hearing impaired: (202) 565-1695.)

**SUPPLEMENTARY INFORMATION:** The Railroad-Shipper Transportation Advisory Council (RSTAC) recommended that the Board adopt rules providing for informal dispute resolution through arbitration. In a notice of proposed rulemaking published March 26, 1997 (62 FR 14385), we proposed rules along the lines of those recommended by the RSTAC. We have received comments on the proposed rules from various shipper, carrier, and other interests, offering suggestions to enhance, modify, or clarify the proposed rules. We have incorporated many, but not all, of their suggestions.

This arbitration is designed for the resolution of specific disputes between specific parties involving the payment of money or involving rates or practices related to rail transportation or service that is subject to the statutory jurisdiction of the Board. We believe that this arbitration alternative will save costs and reduce litigation burdens on parties to disputes that might otherwise have to be brought to the Board for formal resolution. It will enable the parties to resolve those disputes themselves informally, with only limited Board involvement.

Additional information is contained in the Board's decision served on September 2, 1997. To purchase a copy of the decision, write to, call, or pick up in person from DC New & Data, Inc.,

Room 210, 1925 K St. NW., Washington DC 20423, phone (202) 289-4357.

**List of Subjects**

**49 CFR Part 1002**

Administrative practice and procedure, User fees.

**49 CFR Part 1008**

Administrative practice and procedure, Railroads.

Decided: August 25, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

**Vernon A. Williams,**  
Secretary.

For the reasons set forth in the preamble, and under the authority of 49 U.S.C. 721(a), title 49, chapter X, of the Code of Federal Regulations is amended as follows:

**PART 1002—FEES**

1. The authority citation for part 1002 continues to read as follows:

**Authority:** 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701; and 49 U.S.C. 721(a).

2. Section 1002.2 is amended by adding a new paragraph (f)(87) to read as follows:

**§ 1002.2 Filing fees.**

\* \* \* \* \*

(f) \* \* \*

(87) Arbitration of Certain Disputes Subject to the Statutory Jurisdiction of the Surface Transportation Board under 49 CFR part 1108:

(i) Complaint .....	\$75
(ii) Answer (per defendant), Unless Declining to Submit to Any Arbitration .....	\$75
(iii) Third Party Complaint .....	\$75
(iv) Third Party Answer (per defendant), Unless Declining to Submit to Any Arbitration .....	\$75
(v) Appeals of Arbitration Decisions or Petitions to Modify or Vacate an Arbitration Award .....	\$150

\* \* \* \* \*

3. A new part 1108 is added to read as follows:

**PART 1108—ARBITRATION OF CERTAIN DISPUTES SUBJECT TO THE STATUTORY JURISDICTION OF THE SURFACE TRANSPORTATION BOARD**

Sec.

- 1108.1 Definitions.
- 1108.2 Statement of purpose, organization, and jurisdiction.
- 1108.3 Matters subject to arbitration.
- 1108.4 Relief.
- 1108.5 Fees and costs.
- 1108.6 Arbitrators.
- 1108.7 Arbitration commencement procedures.

- 1108.8 Arbitration procedures.
- 1108.9 Decisions.
- 1108.10 Precedent.
- 1108.11 Enforcement and appeals.
- 1108.12 Additional matters.

**Authority:** 49 U.S.C. 721(a).

**§ 1108.1 Definitions.**

(a) *Arbitrator* means an arbitrator appointed pursuant to these provisions.

(b) *ICC* means the Interstate Commerce Commission.

(c) *Interstate Commerce Act* means the Interstate Commerce Act as amended from time to time, including the amendments made by the ICC Termination Act of 1995.

(d) *RSTAC* means the Rail-Shipper Transportation Advisory Council established pursuant to 49 U.S.C. 726.

(e) *STB* means the Surface Transportation Board.

(f) *Statutory jurisdiction* means the jurisdiction conferred on the STB by the Interstate Commerce Act, including jurisdiction over rail transportation or services that have been exempted from regulation.

**§ 1108.2 Statement of purpose, organization, and jurisdiction.**

(a) These provisions are intended to provide a means for the binding, voluntary arbitration of certain disputes subject to the statutory jurisdiction of the STB, either between two or more railroads subject to the jurisdiction of the STB or between any such railroad and any other person.

(b) These procedures shall not be available to obtain the grant, denial, stay or revocation of any license, authorization (e.g., construction, abandonment, purchase, trackage rights, merger, pooling) or exemption, or to prescribe for the future any conduct, rules, or results of general, industry-wide applicability. Nor are they available for arbitration that is conducted pursuant to labor protective conditions. These procedures are intended for the resolution of specific disputes between specific parties involving the payment of money or involving rates or practices related to rail transportation or service subject to the statutory jurisdiction of the STB.

(c) The alternative means of dispute resolution provided for herein are established pursuant to the authority of the STB to take such actions as are necessary and appropriate to fulfill its jurisdictional mandate and not pursuant to the Administrative Dispute Resolution Act, 5 U.S.C. 571, *et seq.*

(d) On January 1, 1996, the STB replaced the ICC. For purposes of these procedures, it is immaterial whether an exemption from regulation was granted by the ICC or the STB.