

Source of flooding	Location	Elevation in feet National Geodetic Vertical Datum	Zone designation
Stream 6D5	Approximately 1200 feet upstream of Keller Springs Road	510	A1.
	Approximately 1900 feet upstream of Keller Springs Road	515	A1.
	Approximately 2800 feet upstream of Keller Springs Road	525	A1.

The proposed 100-year flood through the Summertree II Subdivision is confined to the improved channel and the Carmel Drive right-of-way. The proposed floodway through the above-mentioned reach of Stream 6D5 is confined to the improved channel.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: November 30, 1981.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 81-38274 Filed 12-18-81; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172, 173, and 175

[Docket No. HM-166F; Notice No. 81-8]

Transportation of Limited Quantities of Radioactive Materials and Devices

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Hazardous Materials Regulations applicable to transportation of limited quantities of radioactive materials and radioactive devices, in order to achieve comparable levels of safety in each

mode of transportation and in a fashion that is consistent in regulatory controls and requirements.

DATE: Comments must be received by February 19, 1982.

ADDRESS: Comments should be addressed to Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, D.C. 20590, (202) 426-3148. Comments should identify the docket number and be submitted in five copies. The Dockets Branch is located in Room 8426 of the Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Richard R. Rawl, Office of Hazardous Materials Regulation, Materials Transportation Bureau (MTB), Department of Transportation, Washington, D.C. 20590, (202) 426-2311.

SUPPLEMENTARY INFORMATION: On December 8, 1980, MTB published an advance notice in the *Federal Register* (45 FR 80843) calling for comments on the need for, or possible elimination of, certain regulatory requirements applicable to the transportation of radioactive materials and radioactive devices in limited quantities. That notice identified the glaring inconsistency which has existed between shipments transported by air versus those transported by any of the surface modes, ever since the Hazardous Materials Regulations (HMR) were consolidated in 1976. Rules proposed in this notice are based upon (1) public comments received in response to the previously cited publication, (2) an assessment of risks inherent in the transportation of these radioactive materials, (3) consideration of risks inherent in each of the modes, (4) an evaluation of hazardous materials incidents reported since 1971, and (5) a comparative analysis of radioactive materials and materials belonging to other hazard classes, with respect to the relaxed requirement for transportation of small quantity packages and the favorable safety records generally achieved by each class. A discussion of pertinent issues and comments received in response to the advance notice follows.

I. Adequacy and Suitability of Current Regulations

A review of comments generally confirms MTB's own assessment that requirements for the most frequently used modes (highway and air) are not consistent, and may be excessive for surface modes and too relaxed for air transportation. In its comments, however, 3M Static Control Systems expressed the opinion that requirements for transportation by air do assure protection of public health and safety. 3M points out further that the International Atomic Energy Agency's Regulations for the Safe Transport of Radioactive Materials exempt qualifying packages from regulation by all modes in a fashion similar to MTB's exception for air transportation, and it proposes that the HMR be amended to reflect these less restrictive requirements for shipments transported by highway, rail, and water as well. This opinion and recommendation was shared by several other commenters and supported by a claim from Hoffman-La Roche, Inc., that tens of thousands of such packages were safely transported for them in 1980 with only three known incidents occurring. Of these, none involved release of radioactive materials and the internal containers were simply repackaged and returned for disposition.

A. Technical Requirements

Data supplied in comments filed by Miles Laboratories, Inc. and others support MTB's earlier conclusion that activity limits are so low as to present no significant risk to public health. That conclusion holds true not only for the vast majority of packages that contain a small percentage of the maximum permissible activity limit, but for theoretical packages containing one-hundred percent of the authorized activity limit as well, based on generally accepted release fractions and intake rates. Other commenters, like the American College of Radiology, agree that the present regulatory limit of external radiation levels not exceeding 0.5 millirem per hour at the package surface (2.0 millirem per hour for exclusive use shipments) present no radiation danger to persons handling the packages, even if deformed by damage. No commenter to this docket indicated

either a need or desire to revise the activity limits applicable to limited quantities of radioactive material, radioactive devices, or packages containing more than one radioactive device. Also, MTB believes that current limits adequately provide for the public safety, regardless of the mode in which the packages are transported.

1. *Classification with other hazardous materials.* Although not discussed in the advance notice or in comments to the docket, MTB believes that consideration must be given to reordering the precedence of hazards listed in § 173.2 to downgrade limited quantity radioactive materials to a level more appropriate to their actual risk. While actual incidents are not documented, the HMR have been criticized for a "loophole" which some persons contend allows flammable liquids and corrosive liquids containing trace amounts of radioactive material to be transported aboard aircraft as completely unregulated materials. To correct this situation, MTB is proposing that radioactive materials in limited quantities be separated from the major classification and downgraded to a position between "corrosive material (solid)" and "irritating materials."

2. *Packaging.* Only one commenter responding to the advance notice addressed the subject of container integrity. The Lawrence Berkeley Laboratory, while acknowledging the low risks associated with limited quantity radioactive materials, suggests measures be taken to preclude any incidental leakage of dispersible radioactive material (from the inner container) in the form of a liquid or an alpha-emitting solid. To achieve this, they propose that DOT 2N metal cans of the sealed or friction-lid type when used as the inner container should be able to withstand atmospheric pressure differentials and the dropping or crushing incurred in minor accidents. They further propose that items too large or not practical for limited quantity radioactive material packaging be shipped as low specific activity radioactive materials. These suggestions have not been included in the proposed rule, since MTB is satisfied that general requirements for packages in §§ 173.6 and 173.24 and provisions of § 173.91 already provide an adequate level of regulatory control.

B. Administrative Requirements

Although MTB received widespread agreement on its standards for the more critical elements of transportation safety (i.e. packaging, quantity limits, and external radiation levels), the same cannot be said for those requirements

which address the communication of hazard warning information (i.e. shipping papers and package markings). As previously indicated, several commenters believe an acceptable level of safety is being achieved in the air mode, and since air is generally considered to be the most critical mode, they imply that requirements for detailed shipping papers, incident reporting and the like for limited quantity radioactive materials transported by surface modes are superfluous.

1. *Shipping papers.* It seems worthy to note that every commenter responding to MTB's inquiry, "In the case of intermodal transfers, do the more restrictive regulations impose an unwarranted economic burden without providing a commensurate increase in safety?" noted that hazardous materials shipping papers are a reason for frustration of shipments or impose a significant economic burden. The frustration of shipments reportedly occurs on occasions when motor carriers interline packages to air carriers. Air carrier personnel sometimes become suspicious when they observe hazardous materials shipping papers in the motor vehicle driver's possession and are then asked to accept the packages without similar documentation. The absence of DOT shipping papers, it is explained, often leads to unnecessary delays while pertinent regulations are researched and, as a result, packages of radioactive materials requiring delivery in a timely manner fail to be loaded on scheduled flights.

Conversely, if a shipper seeks to avoid such delays by preparing a hazardous materials shipping paper to accompany packages during air transportation, it may incur additional freight charges attributed to hazardous materials. Miles Laboratories, Inc. cite an example of increased transportation charges amounting to \$6.00 per shipment whenever they ship via Federal Express. That surcharge is applied whenever the HMR prevent Federal Express from transporting packages in local pick-up and delivery service which is incidental to its air operations, unless the packages are accompanied by detailed shipping papers. Miles Laboratories, Inc. claims its air transportation costs are increased by at least \$27,000.00 per year as an indirect result of MTB's requirement to describe packages of limited quantity radioactive materials in detail on shipping papers, when offered for transportation in the highway mode. Considering that projections for the year 1985 estimate over 800,000 packages of

limited quantity radioactive materials and radioactive devices will be transported by air, the aggregate cost imposed through the hazardous materials surcharge is substantial. In fact, it is estimated that savings in excess of \$1 million per year may be realized by shippers if carriers follow MTB's lead in the deregulation of these materials.

Although there is an identifiable cost associated with the preparation and distribution of shipping papers, most commenters apparently chose to ignore this incidental and relatively small administrative cost of regulatory compliance, in favor of emphasizing the more direct costs. However, calculated savings of more than 15,000 person-hours per year is possible with elimination of the shipping paper requirements, as proposed herein.

Without exception, every comment filed in response to MTB's query on possible adverse impact to emergency response activities, if detailed shipping paper requirements are waived for surface modes, very boldly proclaim that such activities would not suffer, and some in fact suggest that the impact may be positive. The latter conclusion is based upon several commenters' assessments that the risks presented by limited quantity radioactive materials are so low as to not even warrant notification of traditional emergency response personnel such as firefighters, but instead rely on in-house safety personnel to take appropriate measures which further reduce the already low risk. These commenters reason that calling on emergency service personnel, who are trained and equipped to handle acutely hazardous incidents, is a poor utilization of their resources. However, it was not explained how the absence of detailed shipping papers would alleviate any overreaction of this sort.

While acknowledging that detailed shipping papers for packages of limited quantity radioactive materials and radioactive devices provide benefits which only increase public safety by a slight margin, MTB believes that an indication of the presence of a radioactive material must be communicated in some general fashion if a damaged or a stray package is discovered during transportation. Consequently, the proposed rules contain a new provision for qualifying packages under the limited quantity exception which specifies that the shipper must furnish a written notice on or with the package which reads "Radioactive material, limited quantity, n.o.s., UN 2910" or "Radioactive device, n.o.s., UN 2911", as appropriate,

followed by the statement "This package meets all requirements of 49 CFR 173.391 for limited quantity radioactive materials."

2. Package markings. Unlike the general agreement reached by most commenters on the need for and value of detailed shipping papers, package markings involve a more diverse range of opinions. Those persons in favor of maintaining the status quo point to the long history of safety in transportation for packages of limited quantity radioactive materials and radioactive devices. They contend that the absence of external markings has not resulted in any mishandling of packages to the extent that there was ever a serious threat to public health or the environment and, therefore, question the justification for a new requirement at this time. In addition, they also worry that markings which include the word "radioactive" may in fact delay the otherwise speedy delivery of these packages by unnecessarily alarming carrier personnel.

In their comments, the Lawrence Berkeley Laboratory supports a requirement for marking packages as "Radioactive material, limited quantity, n.o.s." However, their concern does not seem to be so much with the communication of hazard warning information as it is with expediting delivery. MTB agrees that some small benefits in the form of reduced normal dose may be gained by minimizing the period of time these radioactive materials packages spend in transit. It does not, however, believe that such a package marking would have the effect of shortening transit times.

United Parcel Service indicated support for the elimination of detailed shipping paper requirements but suggested instead inclusion of those presently required entries as package markings. In this way they believe sufficient information would be available to properly handle damaged packages. Obviously this approach goes far beyond all other existing requirements for package markings and

its relative merits appear dubious while the burden on shippers would be considerable.

In consideration of the above it is the determination of MTB that current marking requirements prescribed in § 173.391(a)(4) provide an adequate level of safety without unduly burdening shippers and that regulation should, therefore, remain unchanged.

3. Incident reporting. One of the principal means available to MTB for assessing the effectiveness of the Hazardous Materials Regulations is the incident reporting system. Information accumulated in that system over the past ten years suggests that limited quantity radioactive materials and radioactive devices are being safely transported. In fact, while it is estimated that several million such packages have been transported during this past decade, MTB has records on only fourteen reported incidents involving these materials. However, since air carriers are presently exempted from reporting requirements when limited quantity radioactive materials are involved in an accident, MTB must acknowledge that it does not have total confidence in its data and resulting conclusions. (Note.—Of the fourteen incident reports discussed above, more than half were submitted by carriers operating in the air mode, even though they are not required to do so.) As no carriers responding to the advance notice chose to address the matter of incident reports, MTB is of the opinion that present requirements applicable to the surface modes are reasonable and necessary and should be extended to include air carriers as well. Appropriate revisions are proposed for §§ 173.391 and 175.10. A conservative estimate of 10 person-hours per year (10 reports at one hour each) is the additional paperwork burden which MTB believes would be imposed if the proposed rule change is adopted. The burden would be shared by approximately 73 of the more than 340 for-hire air carriers now operating in the U.S. MTB solicits specific comments on the accuracy of its

estimates for the actual number of additional Hazardous Material Incident Reports which may be required, the time required for their preparation, and the affected population. Carrier estimates of the number of incidents occurring within their system over the past several years and not reported because of the current exception from §§ 171.15 and 171.16 would be most useful.

4. Shipping descriptions. In its formulation of these proposed rules, MTB was once again made aware of problems faced by carriers who transport radiopharmaceuticals. They claim that the proper shipping names "Radioactive material, n.o.s." and "Radioactive material, limited quantity, n.o.s." trigger responses by Federal, State, and local enforcement personnel which are quite often inappropriate to any risks associated with these materials. After confirming that the carrier is not transporting particularly objectionable materials, it is generally allowed to proceed but only after a sometimes lengthy delay. These carriers reason that if the DOT proper shipping name more clearly identified the materials by their intended use, such problems would be greatly reduced without compromising safety. As MTB's experience with materials belonging to the hazard classes flammable liquid, corrosive material, poison B, and others reflects no adverse effects in transportation which can be attributed to their use for, and description as, "Medicines, n.o.s.," it is proposing in § 172.101 to introduce a similar proper shipping name, "Radiopharmaceuticals, n.o.s.," for hazard class radioactive material.

In consideration of the foregoing, 49 CFR Parts 172, 173, and 175 would be amended as follows:

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

1. The Hazardous Materials Table in § 172.101 would be amended as follows:

§ 172.101 Purpose and use of hazardous materials table.

HAZARDOUS MATERIALS TABLE

(1) E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3 A) Identification number	(4) Label(s) required (if not excepted)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
					Excep- tions	Specific require- ments	Passenger carrying aircraft or raicar	Cargo only aircraft	Cargo ves- sel	Pas- senger vessel	Other requirements
					(a)	(b)	(a)	(b)	(a)	(b)	(c)
ADDITION											
	Radio pharmaceuticals, n.o.s. (normal form, nonflammable materials).	Radioactive material.	NA 9181	Radioactive	173.391	173.398			1,2	1,2	
REVISIONS											
	Radioactive device, n.o.s. See § 173.391.										
	Radioactive material, limited quantity, n.o.s. See § 173.391.										

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

2. In § 173.2 paragraphs (a)(11)–(16) would be redesignated as paragraphs (a)(12)–(17) and a new paragraph (a)(11) would be added to read as follows:

§ 173.2 Classification of a material having more than one hazard as defined in this part.

(a) * * *
(11) Radioactive materials (in limited quantity per § 173.391).

3. In § 173.391 paragraphs (a), (b), and (c) would be amended by adding the words "shipping paper and certification requirements," immediately following "packaging,"; and paragraph (d) would be revised to read as follows:

§ 173.391 Limited quantities of radioactive materials and radioactive devices.

(d) In addition to the requirements specified in paragraphs (a), (b), or (c) of this section, packages offered and accepted for transportation under this section must have an associated notice enclosed in or on the package, included with the packing list, or otherwise forwarded with the consignment. The notice must include the name and address of the consignor or consignee, and the description "Radioactive material, limited quantity, n.o.s., UN 2910" or "Radioactive device, n.o.s., UN 2911", as appropriate, followed by the statement "This package meets all requirements of 49 CFR 173.391 for limited quantity radioactive materials". Packages shipped under provisions of this section (except when offered for transportation by air) are not otherwise subject to the requirements of this subchapter, except for §§ 171.15, 171.16, 174.750, 176.710, and 177.861 pertaining to the reporting of incidents and decontamination. Prior to May 3, 1983,

packages shipped under provisions of this section and transported by air are not otherwise subject to the requirements of this subchapter, except for §§ 171.15, 171.16, 175.45, and 175.700(b) pertaining to the reporting of incidents and decontamination.

PART 175—CARRIAGE BY AIRCRAFT

§ 175.700 [Amended]

4. In § 175.10 paragraph (a)(6) is removed and reserved.

§ 175.10 [Amended]

5. In § 175.700 paragraph (c) is amended by removing the last sentence. (49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App. A to Part 1, and paragraph (a)(4) of App. A Part 106)

Note.—The Materials Transportation Bureau has determined that this document will not result in a "major rule" under the terms of Executive Order 12291 and DOT procedures (44 FR 11034) nor require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). Based on limited information available concerning size and nature of entities likely to be affected by this proposal, I certify that this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposal will not affect not-for-profit enterprises or small governmental jurisdictions. Small businesses potentially affected include air carriers and radioactive materials suppliers. The economic impact on such small entities will be minimal. A regulatory evaluation and environmental assessment are available for review in the Docket.

Issued in Washington, D.C. on December 11, 1981.

Alan I Roberts,
Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.
[FR Doc. 81-36288 Filed 12-18-81; 8:45 am]
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 657

Atlantic Butterfish Foreign Fishery; Notice

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent.

SUMMARY: This notice announces NOAA's intent to determine whether any portion of the optimum yield (OY) for Atlantic butterfish, in addition to the annual fishing level certified by the Mid-Atlantic Fishery Management Council, will be available for allocation to foreign fishing vessels during the 1981–82 fishing year. The notice solicits factual data relevant to the factors NOAA will consider in making the determination.

DATE: Information may be submitted until January 5, 1982.

ADDRESS: Submit information to Roland A. Finch, Chief, Plan Review Division, National Marine Fisheries Service, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Roland A. Finch (address above); telephone (202) 634-7449.

SUPPLEMENTARY INFORMATION: The American Fisheries Promotion Act amended the Magnuson Fishery Conservation and Management Act (Magnuson Act) to provide an alternate method of determining the amount of fish available for foreign harvest each year. Under section 201(d) of the Magnuson Act, a Regional Fishery Management Council may certify an annual fishing level (AFL), based on an elaborate formula, for allocation to foreign fishing vessels. This year the Mid-Atlantic Council certified an AFL of 759 metric tons (mt) for Atlantic

butterfish. (The fishery is governed by regulations contained in 50 CFR Parts 611 and 657).

NOAA has accepted the AFL and made the 759 mt of butterfish available for allocation to foreign fishing vessels. Under section 201(d)(4) of the Magnuson Act, the portion of OY (beyond the AFL already made available) that will not be harvested by U.S. vessels must be allocated to foreign vessels unless NOAA makes the findings specified in that paragraph. OY in the butterfish fishery is 11,000 mt; the estimate of domestic annual harvest (DAH) in the fishery management plan is 7,000 mt. Thus the portion of OY in that could be made available for foreign fishing during this fishing year (April 1, 1981-March 31, 1982) is 3,241 mt (11,000 mt - 7,000 mt - 759 mt).¹

¹(An additional amount could be made available if the Regional Director transfers some of the DAH to TALFF this year, pursuant to 50 CFR 657.22).

If the findings in paragraph 201(d)(4) are made, some or all of the 3,241 mt may be "deferred" for allocation during the 1982-83 fishing season (April 1, 1982-March 31, 1983). The deferred portion would automatically be made available for allocation to foreign fishing vessels on April 1, 1982, over and above the 1982-83 total allowable level of foreign fishing (TALFF).

The Mid-Atlantic Council has recommended that none of the 3,241 mt be made available during the current fishing year. In making the determination whether to defer or allocate any of the surplus butterfish, NOAA will consider factual information relevant to the following questions:

1. Would allocation of any of the 3,241 mt during the 1981-82 fishing year be detrimental to the development of the U.S. fishing industry? NOAA will consider the impact on all segments of the industry.

2. What part of the 3,241 mt will be

available for harvest in the 1982-83 fishing season? NOAA will consider natural mortality and the status of the butterfish stock in determining the degree of survivability.

3. Would deferral of any part of the 3,241 mt constrain the foreign harvest of 1981-82 allocations of species for which butterfish is an incidental catch? The Magnuson Act's standards of achieving OY and coordinating management of interrelated stocks require consideration of the impact of any deferral on the foreign fleet's ability to harvest TALFFs of related species such as *Loligo* and *Illex* squid.

NOAA invites the submission of information concerning these questions by January 5, 1982.

Dated: December 15, 1981.

Robert K. Crowell,
Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 81-38232 Filed 12-18-81; 8:45 am]

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