

Memorandum

Date: March 21, 1994

To: Enforcement Services Division

From: **DEPARTMENT OF CALIFORNIA HIGHWAY PATROL**
Hazardous Materials Section

File No.: 66.A9614.A8753.hearings

Subject: PUBLIC HEARING ALTERNATIVES FOR THE PROPOSED REGULATIONS
REGARDING THE THROUGH TRANSPORTATION OF HIGHWAY ROUTE
CONTROLLED QUANTITY SHIPMENTS OF RADIOACTIVE MATERIALS

I. Introduction

The purpose of this memorandum is to brief and gain approval from Enforcement Services Division on Hazardous Materials Section's (HMS) recommendation for public hearings regarding the proposed regulations for the through transportation of highway route controlled quantity (HRCQ) shipments of radioactive materials (RAM).

II. Background

Pursuant to Section 33000 of the California Vehicle Code, HMS is in the process of establishing route designations for the through transportation of HRCQ shipments of RAM. On January 28, 1994, the Office of Administrative Law (OAL) published the CHP's Notice of Proposed Regulatory Action (NPRA) in the *California Regulatory Notice Register* (Attachment A). The NPRA identifies those interstate highways necessary for the through transportation of HRCQ shipments of RAM, as determined by the Department's RAM Routing Study. The NPRA was mailed to over 1,600 interested and/or affected parties. The NPRA clearly stated that public hearings would only be conducted if requested. The required 45 day written comment period for regulations ended on March 14, 1994. During the written comment period only five letters of comment were received, and no public hearings were requested.

III. Issue

Should the Department conduct public hearings for the proposed regulations regarding the through transportation of highway route controlled quantity shipments of radioactive materials.

IV. Alternatives

Conduct public hearings in Sacramento, Redding, San Francisco, and Los Angeles.

Pro: May avoid some criticism by general public, media, and State lawmakers. Since the Department is not required to conduct a public hearing, this alternative would go beyond what is required by California Rulemaking Law and the Code of Federal Regulation, which may be good for public relations.

Con: May generate adverse public comments and could result in a confrontation with militant environmental groups leading to negative publicity for the Department. In addition, the public may then expect more public hearings in other areas of the State where we did not schedule a public hearing. Hearings are not necessary and will be expensive. Costs would include: advertising public hearings in numerous local papers and on the radio, renting of meeting facilities and travel costs for staff to attend meetings.

V. Recommendation

HMS recommends proceeding with the Rulemaking process without conducting a public hearing. The Department has complied with all California administrative rulemaking requirements and federal guidelines. Our compliance with these State and federal mandates has been confirmed with OAL and the Federal Highway Administration (FHWA). Both agencies agree that public hearings are not necessary. HMS staff recommend this choice because it avoids unnecessary expense, as well as the possibility of confronting a disruptive environmental group or individual(s), which may cause adverse negative publicity for the Department.

VI. Discussion

According to the California Rulemaking Law Section 11346.8 (Attachment B), a public hearing is only *required* "if, no later than 15 days prior to the close of the written comment period, an interested person or his or her duly authorized representative submits in writing to the state agency, a request to hold a public hearing." HMS did not receive a single request for a public hearing. Therefore, according to State Regulation, the Department is not required to conduct a public hearing. This was confirmed by contacting OAL and speaking with Sherry Akrawi, Reference Attorney. Ms. Akrawi confirmed that no public hearings are required because the Department's NPRA stated public hearings would only be held if requested, which is consistent with the California Rulemaking Law. It should be noted that

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public hearings have not been held for other rulemaking packages/files (i.e. explosives routes) where no public hearings were requested. Therefore, not holding public hearings would be consistent with past practice in situations where no public hearings were requested.

Title 49, Code of Federal Regulations, Section 177.825 (Attachment C) provides routing requirements for radioactive materials Section 177.825 Sub-section (b)(1)(i) states ". . . Designations must be proceeded by substantive consultation with affected local jurisdiction and with any other affected states to ensure consideration of all impacts and continuity of all designated routes." This requirement has already been fulfilled by HMS in two ways. First, a consultative meeting was held in August 1993 to obtain and gather input from a representative cross section of affected parties. Representatives were invited from: Oregon, Nevada and Arizona routing agencies; federal, state and local government agencies; environmental groups; manufacturers; and shippers. Second, the Notice of Proposed Rulemaking, Initial Statement of Reasons, and proposed regulations were mailed to over 1,600 interested or affected parties, including: all California local law enforcement agencies, all California fire protection districts, all California county boards of supervisors, the designated routing agency in each state adjacent to California, transporters of HRCQ RAM, and other interested parties. Pam Deadrick, Transportation Specialist, Hazardous Materials Routing and Special Studies, FHWA, Washington DC, was contacted for consultation on this issue. The FHWA is the "federal OPI" for routing of radioactive materials. Ms. Deadrick agreed with HMS's assessment that the substantive consultation requirement with affected jurisdictions have been fulfilled, and no public hearing would be necessary.

 - FOR -
M. GOSHERN, Lieutenant
Commander

Attachments