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Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 174 and 177

[Docket No. HM-212]

RIN 2137-AC24

Hazardous Materials: Tank Cars and Cargo Tank Motor Vehicles; Attendance Requirements

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

ACTION: Proposed rule, withdrawal.

SUMMARY: RSPA is withdrawing the notice of proposed rulemaking (NPRM) issued in 1992 under this docket on attendance requirements for tank cars and cargo tank motor vehicles. RSPA will address the issues raised in that NPRM, including the proposed rewrite of tank car unloading regulations, in rulemaking under RSPA Docket HM-223 (RSPA-98-4952). The HM-223 rulemaking is intended to clarify the applicability of the Hazardous Materials Regulations to specific functions and activities, including hazardous materials loading and unloading operations.

DATES: The proposed rule is withdrawn of March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Susan Gorsky (202) 366-8553, Office of

Hazardous Materials Standards, Research and Special Programs Administration, Department of Transportation

SUPPLEMENTARY INFORMATION:

I. Background

On September 14, 1992, the Research and Special Programs Administration (RSPA, "we") published a notice of proposed rulemaking (NPRM) under Docket HM-212 (57 FR 42466), proposing several changes to the Hazardous Materials Regulations (HMR, 49 CFR Parts 171-180) as they apply to loading and unloading of hazardous materials from rail tank cars and cargo tanks. We proposed to amend the following sections of the HMR:

Section 174.67(i) pertaining to unloading of tank cars and § 177.834(i) pertaining to the loading of cargo tanks to provide for the use of signaling systems to meet attendance requirements.

- Sections 174.67(i) and 174.67(j) to allow a tank car containing hazardous materials, under certain conditions, to remain standing with the unloading connections attached when no hazardous material is being transferred.

- Section 177.834 to remove a requirement that an attendant must be within 25 feet of the cargo tank motor vehicle during loading operations that are monitored by a signaling system.

II. HM-225 and -225A Cargo Tank Rulemaking

Because of safety concerns, we addressed cargo tank attendance requirements in separate rulemakings under Docket Nos. RSPA-97-2133 (HM-225) and RSPA-97-2718 (HM-225A). In a final rule published May 24, 1999 (64 FR 28030), we revised the regulations applicable to transportation and unloading of liquefied compressed gases in cargo tank motor vehicles. The final rule, which became effective on July 1, 1999, established a comprehensive safety program intended to reduce the risk of an unintentional release of a liquefied compressed gas during unloading, assure prompt detection and control of an unintentional release, and make the regulatory requirements easier to understand and comply with. Among the changes effected by that final rule were revisions to the attendance requirements in § 177.834(i). We do not believe that it is appropriate to implement changes to the cargo tank loading requirements before we have had an opportunity to evaluate industry experience under that recent rule.

III. HM-223 Rulemaking on Applicability of the HMR

Since the HM-212 NPRM was issued in 1992, we have initiated a broad rulemaking under HM-223 (Docket No. RSPA-98-4952) designed to clarify the meaning of "transportation in commerce" as it is used in federal hazardous material transportation law (49 U.S.C. 5101-5127) and to delineate specific activities that are included in that term and, therefore, subject to regulation under the HMR. In developing this rulemaking, we have four goals. First, we want to ensure that there are uniform national standards applicable to functions performed in advance of transportation that affect the safe transportation of hazardous materials in commerce. Second, we want to ensure that there are uniform national standards applicable to the actual transportation of hazardous materials in commerce. Third, we want to distinguish functions that are subject to the HMR from functions that are not subject to the HMR. Finally, we want to clarify that facilities within which functions subject to the HMR occur may be subject to federal, state, or local regulations governing occupational safety and health and environmental protection.

In 1996, we issued an advance notice of proposed rulemaking (ANPRM, 61 FR 39522) under HM-223 and hosted a series of public meetings to elicit ideas, proposals, and recommendations on the applicability of the HMR. The ANPRM identified loading, unloading, and storage of hazardous materials as areas of particular confusion and concern. On April 27, 1999, we published a supplemental ANPRM (64 FR 22718) requesting additional information on these issues.

We are currently evaluating comments submitted in response to the two ANPRMs and at the public meetings. We expect to issue an NPRM later this year. The NPRM may propose to interpret the statutory definition of "transportation in commerce" in a way that could affect how the HMR apply to certain loading, unloading, and storage operations, particularly loading, unloading, and storage of hazardous materials in bulk packages, such as tank cars. Thus, we believe it is more appropriate to address tank car unloading issues in the context of the HM-223 rulemaking. Indeed, commenters to the HM-212 docket recommended that the scope of the 1992 NPRM should be broadened. Several commenters suggested that the tank car unloading requirements in Part 174 be moved to Part 173 because unloading is

not typically performed by rail carriers, but by non-transportation entities. Commenters also suggested that we revise the HMR to more clearly define the term "in transportation" and to clarify the regulatory jurisdiction of the Occupational Safety and Health Administration (OSHA) and RSPA with respect to the transfer of hazardous materials.

IV Withdrawal of NPRM

For the reasons outlined above, we are withdrawing the 1992 NPRM published

on September 14, 1992 (57 FR 42466), concerning cargo tank and tank car loading and unloading operations that was issued under HM-212 and closing the HM-212 docket. We are deferring action on the overall rewrite of § 174.67 that was proposed in the 1992 NPRM. Changes to this section will be considered as part of HM-223. Comments submitted to the HM-212 docket will be placed in the HM-223 docket. This action should not be read as an indication of how we intend to

resolve the questions at issue in HM-223.

Issued in Washington, DC on March 20, 2000, under authority delegated in 49 CFR Part 106.

Robert A. McGuire,

*Acting Associate Administrator for
Hazardous Materials Safety, Research and
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