

normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

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* contacts.

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.

Michael C. Ruger,

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

[FR Doc. 93-10754 Filed 5-6-93; 8:45 am]

BILLING CODE 0712-01-M

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Parts 171 and 174

[Docket No. HM-197; Notice No. 93-11]

RIN 2137-AC26

#### Hazardous Materials in COFC and TOFC Service

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

ACTION: Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to permit the use of certain portable tanks to transport hazardous materials that pose a relatively low or moderate degree of hazard in container-on-flatcar (COFC) service or trailer-on-flatcar (TOFC) service, without obtaining prior approval from the Associate Administrator for Safety, Federal Railroad Administration (FRA). This notice proposes to require persons holding approvals who are unable to meet the specified standards to submit a new application to the Associate Administrator for Safety, FRA.

The intended effect of this action is to facilitate domestic and international

commerce and to reduce the need for obtaining written approvals for certain COFC and TOFC services.

**DATES:** Comments must be received on or before July 12, 1993.

**ADDRESSES:** Address comments to the Dockets Unit (DHM-30), Research and Special Programs Administration, Department of Transportation, Washington, DC 20590-0001. Comments should identify the docket and notice number 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 Dockets Unit is located in room 8421 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590-0001. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m. Monday through Friday, except Federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Edward W. Pritchard, Telephone (202) 366-9178, Chief, Hazardous Materials Division, RRS-12, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590-0001, Telephone (202) 366-0897 or Hattie L. Mitchell, Telephone (202) 366-4488, Chief, Exemptions and Regulations Termination, DHM-12, 400 Seventh Street, SW., Washington, DC 20590-0001.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Under §§ 174.61 and 174.63 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171 through 180), a rail carrier may not transport a cargo tank, portable tank, IM portable tank or multi-unit tank car tank containing hazardous materials in container-on-flat car (COFC) service or trailer-on-flat-car (TOFC) service, except under conditions approved by the Associate Administrator for Safety, FRA. These approvals generally are issued on a case-by-case basis.

On April 30, 1985, RSPA published in the *Federal Register* an advance notice of proposed rulemaking (ANPRM) titled "Shippers; Use of Cargo Tanks, Portable Tanks, IM Portable Tanks, and Multi-Unit Tank Car Tanks in COFC and TOFC Service," under Docket No. HM-197, Notice No. 85-2 (50 FR 18278). In the ANPRM, RSPA solicited comments and information to assist in the identification and development of safety criteria for COFC and TOFC service of tanks transporting hazardous materials. RSPA stated in the ANPRM that the safety criteria would be used as the basis to guide the case-by-case approval

process or to establish regulatory standards. Specific comments were requested on the adequacy of means used to secure a highway chassis (trailer) or a container to a flatcar, and the trailer's potential vulnerability in COFC/TOFC service. Comments were also requested on other safety issues involving the double stacking of containers, securement and cushioning of trailers and containers, liquid surge prevention, tank thermal protection, tank puncture resistance, and train placement. The ANPRM also announced a public hearing that was held on June 11, 1985.

RSPA received about 20 written comments in response to the ANPRM, and about ten persons made oral presentations at the public hearing. These comments and presentations were made by representatives of trade associations, rail carriers, motor carriers, shippers, a cargo tank manufacturers association, and state enforcement agencies.

Commenters to the ANPRM objected to cargo tanks being allowed to be transported in TOFC service. The reasons most often cited included: (1) Absence of an extended framework offering protection to the cargo tank; (2) large surge forces during "humping" operations; (3) adverse center of gravity; (4) outage concerns; and (5) increased likelihood of lading being released through the safety relief devices. The National Tank Truck Carriers, Inc. (NTTC) pointed out that the rail environment is very different from the highway environment. NTTC stated that the continuous "rock and roll" of a flat car, when translated into lateral surge in the cargo tank, and the relationship to "tie down" mechanisms for securing the cargo tank to the rail car must be studied carefully. NTTC further stated that the humping impacts of partially loaded cargo tanks create large surge forces on the front and rear tank heads, which would need to be of heavier construction to survive these impacts. The Railway Progress Institute (RPI) expressed similar concerns and stated that cargo tanks in TOFC service are less stable and have different centers of gravity than tank cars. RPI and several other commenters recommended further study on the influence of outage on surging and on the release of lading through cargo tanks' pressure relief devices.

With regard to the transport of multi-unit tank car tanks (DOT specifications 106 and 110), FRA believes that less than ten units are being transported under FRA approval. In testimony presented at the June 11, 1985 public hearing, a representative of the

Association of American Railroads (AAR) stated that AAR was not aware of any COFC/TOFC movement of these units except in dry vans or trailers, where existing blocking and bracing practices are sufficient.

The public hearing and written comments to the ANPRM offered diverse views on the suitability of transporting portable tanks containing hazardous materials in COFC and TOFC service. With regard to COFC service, commenters expressed no opposition to the use of portable tanks to transport hazardous materials with a low or moderate hazard potential. Commenters stated that IM portable tanks in COFC service offer the safest and most economical method of transporting hazardous materials by rail. However, there were diverse opinions on the suitability of using portable tanks to transport hazardous materials with high hazards in COFC service. The reason cited most often by commenters was the need for portable tanks to have insulation or thermal protection and safety relief devices similar to those required for tank cars carrying similar hazardous materials.

With regard to the use of portable tanks in TOFC service, commenters expressed concern because two interface systems are used—the system between the tank and the vehicle chassis and the system between the vehicle chassis and the rail car. Several commenters expressed support for using portable tanks in TOFC service, but several other commenters opposed using this configuration until existing securement practices and end-of-car cushioning devices have been more thoroughly field-tested. Concerns about the securement of portable tanks in TOFC service were also raised in an earlier rulemaking proceeding under Docket HM-177 ("Public Hearing and Request for Comments on Transportation of Hazardous Materials in TOFC," January 26, 1981, 46 FR 8055). The presentations at the public hearing and the written comments to Docket HM-177 failed to document any adverse shipping experience or safety-related problems when transporting hazardous materials in TOFC service. Commenters stated that their own shipping experience revealed no evidence of excessive railcar "rock and roll" or securement problems with the two interface securement systems used for portable tanks. In view of the favorable comments supporting portable tanks in TOFC service, Docket HM-177 was terminated.

## II. The FRA Approval Process

Under procedures followed by FRA, an applicant submits a complete application containing detailed information on a tank, its securement system, and other necessary data to support the application. Upon receipt of an application, FRA staff members review the submitted data to determine the extent to which the requested method offers protection to the tank and the suitability of the securement system.

FRA has issued approvals for transporting portable tanks containing hazardous materials in COFC/TOFC service for approximately 10 years. Since 1984, FRA has issued approvals where the applicant demonstrated use of an authorized portable tank and a proven securement system. For TOFC service, the approvals require the use of portable tanks having equipment for secure mating to a container trailer chassis, and the trailer chassis having standard ISO twist-lock pins and corner castings. For COFC service, the approvals require the use of portable tanks having equipment for secure attachment to a railroad container car equipped with an ISO standard COFC basic pedestal system designed for container support and securement, and the railcars having a cushioning system meeting the requirements of AAR Specification M-952, titled "Intermodal Container Support and Securement Systems for Freight Cars".

## III. Features of This NPRM

Based on the merits of written and oral comments received in response to the ANPRM and the safety record achieved in transporting more than 50,000 portable tanks in COFC and TOFC service, RSPA proposes in this NPRM to authorize the transport of portable tanks containing low-to-moderate hazard materials in COFC and TOFC service under conditions prescribed in the HMR, without the need for an approval. Only those low-to-moderate risk materials having a bulk packaging authorization of § 173.240, 173.241, 173.242, or 173.243 would be authorized for transport in portable tanks in COFC or TOFC service. RSPA and FRA agree with commenters that portable tanks containing higher risk materials in COFC or TOFC service may need to meet certain additional safety standards. Therefore, those portable tanks would remain subject to the approval process for evaluation on a case-by-case basis.

As recommended by commenters, RSPA is proposing in this NPRM that all portable tanks and flatcars used in COFC or TOFC service would have to

meet the requirements contained in AAR.600, "Specifications for Acceptability of Tank Containers", Chapter 4, of the AAR Manual of Standards and Recommended Practices, Section C—Part III. AAR.600 contains requirements on construction, certification of tank containers, approved materials, closures, safety relief devices, and marking. The trailer chassis used in TOFC service and the container support and securement systems used in COFC service would be subject to certain requirements contained in AAR specifications M-943 and M-952, of the AAR Manual of Standards and Recommended Practices, Section I. These performance specifications prescribe securement systems that permit standard ISO twist-locks. Therefore, RSPA and FRA believe that most configurations used in COFC or TOFC service under FRA approval would meet the requirements contained in these AAR standards, which are proposed to be incorporated into § 174.63. A new applicant or any person currently holding an FRA approval for the transport of a portable tank or an IM portable tank in COFC or TOFC service, who is unable to comply with the requirements prescribed in proposed § 174.63(a) and (b), would be required to submit a new request for approval to the Associate Administrator for Safety, FRA, stating the reason for the non-conformance.

Because of the strong concerns raised by commenters on the transport of cargo tank motor vehicles in TOFC service, cargo tanks would continue to be subject to the approval process. Cargo tanks are used on rare occasions in TOFC service. Also, because of the limited availability of experience data, the use of multi-unit tank car tanks in COFC and TOFC service would remain under FRA approval.

On February 28, 1991, FRA published a notice in the Federal Register (56 FR 8388), extending the expiration date of all existing approvals, granted under 49 CFR 174.61 and 174.63 for the movement of multimodal containers in TOFC and/or COFC service, until after issuance of a final rule under this docket. As proposed in this notice, all outstanding approvals issued under these sections will expire on the date stated in the approval letter or six months after the effective date of a final rule, whichever is later. Persons currently holding an FRA approval who are unable to comply with the requirements in proposed § 174.63 would have to re-apply for approval. Such persons would include those holding approvals for portable tanks and IM portable tanks containing hazardous

materials not authorized for packaging under §§ 173.240, 173.241, 173.242, and 173.243, and those holding approvals for cargo tanks or multi-unit tank cars transporting hazardous materials in COFC or TOFC service.

RSPA plans to address other issues raised in the ANPRM (e.g., pressure relief devices, identification/markings, thermal protection, puncture resistance, and special handling requirements) in future rulemaking actions.

#### IV. Section by Section Review

##### Section 171.7

In paragraph (a)(3), the table would be amended by removing the entry "AAR Specification for Tank Cars". The entry for "AAR Specification for Tank Cars, Specification M-1002, Section C" would be revised to show that this standard is contained in the AAR Manual of Standards of Recommended Practices and to include other applicable section references. A new entry would be added to incorporate by reference the AAR standard "Specially Equipped Freight Car and Intermodal Equipment," Section I, which is also contained in the AAR Manual of Standards and Recommended Practices.

##### Section 174.61

This section would be revised to contain requirements for transport vehicles and freight containers containing packages of hazardous materials. The section heading would be revised to read "Transport Vehicles and Freight Containers on Flatcars." Because the term "rupture" generally refers to failure of a packaging from internal pressure rather than the type of damage sustained from improper loading of packages within a transport vehicle or freight container, in paragraph (a), the words "rupture or" would be removed. The requirement currently in paragraph (c) that a cargo tank or multi-unit tank car containing hazardous materials may not be transported in COFC or TOFC service without prior approval would be redesignated as proposed § 174.63(d).

##### Section 174.63

This section would be revised to contain requirements for portable tanks, IM portable tanks, cargo tanks, and multi-unit tank car tanks transported by rail. In paragraph (a), certain minor editorial changes would be made to requirements that portable tanks and IM portable tanks must be designed and loaded so that they maintain their integrity during transportation. In addition, this paragraph would incorporate requirements for DOT 51,

52, 53, 56 and 57 portable tanks that are currently contained in paragraph (c). Proposed paragraph (b) would contain requirements for the transport of portable tanks and IM portable tanks in COFC or TOFC service. Paragraph (c), containing the proposed requirement that approval by the Associate Administrator for Safety, FRA, must be obtained for COFC or TOFC movements of portable tanks and IM portable tanks, would limit such approval to tanks not meeting the requirements specified in paragraph (a) or (b). Proposed paragraph (d) would retain the requirement currently contained in § 174.61(d) that cargo tanks and multi-unit tank cars tanks containing hazardous materials may only be transported in COFC or TOFC service after receiving approval of the Associate Administrator for Safety, FRA.

#### V. Regulatory Analyses and Notices

##### A. Executive Order 12291 and DOT Regulatory Policies

This proposed rule has been reviewed under the criteria specified in section 1(b) of Executive Order 12291 and (1) is determined not to be "major" under Executive Order 12291; (2) is not "significant" under DOT Regulatory Policies and Procedures (44 FR 11034); and (3) does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). The rule proposed in this docket will impose no additional costs on the regulated industry and will bring benefit in the form of reduced information collection. A regulatory evaluation is available for review in the public docket.

##### B. Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism").

The Hazardous Materials Transportation Act (49 App. U.S.C. 1801-1819) contains express preemption provisions (49 App. U.S.C. 1811) that preempt a non-Federal requirement if (1) compliance with both the non-Federal and the Federal requirement is not possible; (2) the non-Federal requirement creates an obstacle to accomplishment of the Federal law or regulations; or (3) it is preempted under section 105(a)(4), concerning certain covered subjects, or section 105(b), concerning highway routing. Covered subjects include:

(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 respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

49 App. U.S.C. 1804(a)(4)(A) and (B).

This proposed rule concerns the handling of hazardous materials. If adopted as final, this rule would preempt any State, local, or Indian tribe requirements concerning this subject unless the non-Federal requirements are "substantively the same" (56 FR 20424, May 13, 1992) as the Federal requirements. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

##### C. Regulatory Flexibility Act

The provisions of this proposed rule would impact shippers of hazardous materials by COFC/TOFC service and would have the net result of reducing costs to persons affected by a final rule. Based on available information, I certify that this rule would not have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act. The need to further evaluate economic consequences will be reviewed on the basis of comments submitted in response to this notice.

##### D. Paperwork Reduction Act

The requirements for information collection contained in current §§ 174.61 and 174.63 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) under OMB Control number 2137-0558. The proposed revised information collection requirements are being submitted for approval to OMB. Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Department of Transportation. All comments must reference the title for

this notice "Hazardous Materials in COFC and TOFC Service."

#### List of Subjects

##### 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

##### 49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

In consideration of the foregoing, 49 CFR parts 171 and 174 would be amended as follows:

#### PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 would continue to read as follows:

**Authority:** 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, and 1818; 33 U.S.C. 1321; 49 CFR part 1.

##### § 171.7 [Amended]

2. In § 171.7, in the table in paragraph (a)(3), the following changes would be made:

a. The entry "AAR Specification for Tank Cars, Specification M-1002, 1988" would be removed from Column 1 and, in Column 2, captioned "49 CFR reference," the entries "173.31; 179.100" would be removed.

b. The entry "AAR Specification for Tank Cars, Specification M-1002, Section C—Part III, September, 1988" in column 1 would be revised to read "AAR Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Specification M-1002, 1990", and the entry in column 2 would be revised to read: "173.31; 174.63; 179.6; 179.12; 179.100; 179.101; 179.102; 179.103; 179.105; 179.200; 179.201; 179.220; 179.300; 179.400."

c. The entry "AAR Manual of Standards and Recommended Practices, Section I, Specially Equipped Freight Car and Intermodal Equipment, (800 Series), 1990" would be added in column 1 and the entry "174.63" would be added in column 2.

#### PART 174—CARRIAGE BY RAIL

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

**Authority:** 49 U.S.C. App. 1803, 1804, 1808; 33 U.S.C. 1321; 49 CFR 1.53(e), 1.53, sp. A to part 1.

4. In § 174.61, paragraph (c) would be removed and the section heading and the first sentence in paragraph (a) would be revised to read as follows:

§ 174.61 Transport vehicles and freight containers on flat cars.

(a) A transport vehicle or freight container containing a hazardous material must be designed and loaded so that it will not become seriously damaged under conditions normally incident to transportation. \* \* \*

5. Section 174.63 would be revised to read as follows:

§ 174.63 Cargo tanks, multi-unit tank car tanks, portable tanks, and IM portable tanks.

(a) A Specification 51, 52, 53, 56, 57, IM 101, or IM 102 portable tank may be transported inside a transport vehicle or container body provided the tank is secured with a restraint system that will prevent the tank from changing position, sliding into other tanks, or contacting the side or end walls (including doors) under conditions normally incident to transportation.

(b) A portable tank or IM portable tank may be transported in COFC service or TOFC service subject to the following conditions:

(1) The tank contains a material authorized to be packaged in accordance with § 173.240, 173.241, 173.242, or 173.243;

(2) The tank and flatcar conform to requirements in "Specifications for Acceptability of Tank Containers", (AAR 600), Section C-Part III, Chapter 4, of the "Specifications for Tank Cars", AAR Manual of Standards and Recommended Practices;

(3) The tank may not be in a double-stack;

(4) For TOFC service, the trailer chassis conforms to requirements in paragraphs 3, 4, 5, and 6 of AAR Specification M-943 "Container Chassis For TOFC Service", and the AAR Specification M-952 "Intermodal Container Support and Securement Systems for Freight Cars", of the AAR specification for "Specially Equipped Freight Car and Intermodal Equipment";

(5) For COFC service, the container support and securement systems conform to requirements in Specification M-952 "Intermodal Container Support and Securement Systems for Freight Cars", of the AAR specification for "Specially Equipped Freight Car and Intermodal Equipment"; and

(6) All securement fittings are fully engaged and in the locked position.

(c) A carrier may not transport a portable tank or IM portable tank that does not conform to paragraph (a) or (b) of this section unless approved for transportation by the Associate Administrator for Safety, FRA.

Approvals in effect on February 28, 1991 for the transportation of portable tanks or IM portable tanks in TOFC or COFC service expire on the date stated in the approval letter or [6 MONTHS FROM THE DATE THE FINAL RULE IS ISSUED], whichever is later.

(d) A carrier may not transport a cargo tank or multi-unit tank car tank containing a hazardous material in TOFC or COFC service unless approved for transportation by the Associate Administrator for Safety, FRA.

Issued in Washington, DC on May 4, 1993, under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 93-10829 Filed 5-6-93; 8:45 am]

BILLING CODE 4910-00-P

#### DEPARTMENT OF THE INTERIOR

##### Fish and Wildlife Service

##### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; Finding on Petition to List the Spotted Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces a 12-month finding on a petition to amend the List of Endangered and Threatened Wildlife and Plants. The Service finds that listing of the spotted frog (*Rana pretiosa*) as threatened in some portions of its range is warranted but precluded by other higher priority listing actions.

**DATES:** The finding announced in this notice was approved on April 23, 1993. Comments and information may be submitted until further notice.

**ADDRESSES:** Questions, comments and additional information regarding this finding should be sent to Mr. Larry Shanks, Chief, Endangered Species and Environmental Contaminants, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the Service's Denver Regional Office, 134 Union Boulevard, Lakewood, Colorado 80225.

**FOR FURTHER INFORMATION CONTACT:** Patricia Worthing at the Denver Regional Office (see ADDRESSES above), telephone (303) 236-7398.