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The 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.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, and 336.

2. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by adding Pierce, Channel 248C2.

3. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Coosada, Channel 226A.

4. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Pineview, Channel 226A.

5. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Diamond Lake, Channel 299A.

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 Part 173

[Docket No. RSPA-01-10741 (HM-220C)]

RIN 2137-AC86

#### Hazardous Materials: Filling of Propane Cylinders; Denial of Petition for Rulemaking

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

**ACTION:** Denial of petition for rulemaking and termination of docket HM-220C.

**SUMMARY:** RSPA is denying a petition for rulemaking filed by the Barbecue Industry Association requesting we require the registration of facilities that fill liquefied petroleum gas (LPG) cylinders having a water capacity of less than 200 pounds.

**FOR FURTHER INFORMATION CONTACT:** Gigi Corbin or Eileen Edmonson, (202) 366-8553, Office of Hazardous Materials Standards, Research and Special Programs Administration.

#### SUPPLEMENTARY INFORMATION:

##### Background

On August 23, 1996, the Research and Special Programs Administration (RSPA, we) published an advance notice of proposed rulemaking (ANPRM) (61 FR 43515) to solicit comments on the merits of a petition for rulemaking filed by the Barbecue Industry Association (BIA) (P-1298). In its petition, BIA requested we amend the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) to require the registration of persons who fill DOT specification cylinders that have a water capacity of less than 200 pounds (about 24 gallons); are used for liquefied petroleum gas, a Division 2.1 (flammable) gas; and that come under the jurisdiction of the HMR. To obtain this registration, BIA proposed that the fillers' facilities and qualifications be reviewed by an independent inspection agency approved according to § 173.300a of the HMR. BIA proposed that registrants submit an application containing the following documentation:

(1) A certification of employee training;

(2) A certification that the filling equipment is suitable for use with LPG to provide for accurately filling the cylinders by weight according to current § 173.304(c);

(3) Proof of financial responsibility in the minimum amount of one million dollars; and

(4) An inspection report prepared by an independent inspection agency.

BIA's major concern is overfilling of propane cylinders used for barbecue grills. These cylinders are commonly called 20-pound cylinders, hold about five gallons, and are usually sold directly to consumers. BIA states that more than 5 million barbecue grills were sold in 1993, that the National Petroleum Gas Association (NPGA) estimates 50 million propane cylinders are currently in use, and that an additional 5 to 6 million are produced annually. BIA states that these market conditions have encouraged fill stations to use untrained employees to fill and service 20-pound cylinders. BIA asserts that the wide variations in current training and filling practices and inadequate regulations by state and local jurisdictions result in consumer injuries and deaths. BIA suggests Federal regulation will eliminate these differences and promote safer use of propane cylinders. BIA provided no estimates on the number of fillers that potentially would be affected by the proposal. The text of the petition was published verbatim in the ANPRM.

#### Comment Summary

To determine the possible impacts of BIA's proposal, the ANPRM included a request of commenters to provide estimates of the proposal's anticipated costs and safety benefits, burden hours, and the potential impact on small businesses and the environment. We received 11 comments from persons representing state and local agencies, trade associations, cylinder fillers and requalifiers, and the general public. The commenters unanimously oppose BIA's proposals, primarily because the costs associated with their implementation would be extremely high.

Most commenters agree that training is necessary for propane refillers; however, they object to BIA's training proposal. They state that existing state and Federal requirements cover most propane filling scenarios, including training, and that additional Federal regulations would be duplicative and confusing, and would increase costs. The NPGA states that the National Fire Protection Association (NFPA) Standard 58, titled "Storage and Handling of Liquefied Petroleum Gases," is consistent with the HMR and is used as the basis of LPG regulation "in virtually every state." This pamphlet discusses how to fill and transport these cylinders, even when customer-owned, and how to train employees performing

these operations. The Railroad Commission of Texas (RCT) maintains that the BIA proposal would not enhance safety in Texas; it notes that Texas had only two reported overfilling accidents in the past five years, neither of which was serious.

Most commenters agree that certification of scales to ensure their accuracy is a necessary safety practice, but note that these activities are currently regulated by the states. As the NPGA states:

At present, the Hazardous Materials Regulations do not contain a provision that a company weighing a package as part of a manufacturing or hazmat filling operation must use a scale certified in accordance with NIST/NCWM Handbook 44 *Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*. It has always been understood that such weighing operations are subject to state weights and measure laws and regulations and, therefore, are not a matter of DOT jurisdiction. Consequently, NPGA believes that the amendments proposed by BIA to require certified scales for cylinder filling is beyond the scope of the HMR and should therefore be denied.

Commenters objecting to the BIA proposal to require each propane filler to carry one million dollars in liability insurance state that the proposal is excessive and few small businesses can afford the amount. Three commenters report existing insurance requirements in their states. The Louisiana Liquefied Gas Commission states that it requires propane filling businesses to carry a minimum of \$100,000 in insurance. RTC states that Texas requires licensed small cylinder fillers "to carry a general liability policy including premises and operations in an amount of at least \$25,000 per occurrence and \$300,000 in the aggregate." This latter commenter estimates that carrying one million dollars in liability insurance would increase the insurance costs of its licensees from an average of \$750 a year to \$2,000 a year.

Finally, commenters object to the use of an independent inspection agency for inspecting a filler's qualifications and

operations. They state that these agencies are not prepared to assume these additional responsibilities. One commenter notes that his state's Division of Weights and Measures requires all propane refilling scales to be tested yearly by an independent inspection agency and documented with the state.

#### Discussion

Federal hazardous materials transportation law (federal hazmat law), codified at 49 U.S.C. 5101 *et seq.*, authorizes the Secretary of Transportation to establish regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce. The regulations apply to persons who: (1) Transport hazardous materials in commerce; (2) cause hazardous materials to be transported in commerce; or (3) manufacture, mark, maintain, recondition, repair, or test packagings (or components thereof) that are represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials in commerce. 49 U.S.C. 5103(b)(1)(A).

The HMR apply to hazardous materials in cylinders offered for transportation or transported in commerce. For example, DOT specification cylinders must be designed, manufactured, and maintained in accordance with applicable HMR requirements. In addition, cylinders offered for transportation and transported in commerce must be filled as specified in § 173.304 of the HMR. Further, persons who fill and offer such cylinders for transportation in commerce must be trained. A company that fills cylinders intended for use in barbecue grills and offers such cylinders for transportation to a distribution or retail facility is subject to all applicable HMR requirements.

Many state and local governments have adopted and are enforcing the standards contained in NFPA Standard 58. The 1998 edition of this standard

requires certain propane cylinders having capacities from 4 to 40 pounds to be fitted with overfilling prevention devices (OPDs). The standard defines an OPD as "a safety device that is designed to provide an automatic means to prevent the filling of a container in excess of the maximum permitted filling limit." The standard requires an OPD and a fixed maximum liquid level gauge to be fitted on any cylinder manufactured after September 30, 1998, requalified after September 30, 1998, or filled on or after April 1, 2002. These newer OPDs are easily recognizable by a unique trilobular handwheel. The OPD handwheel is connected to the valve stem in a tamper-proof manner to prevent interchanging with a non-OPD valve. The use of OPDs on propane cylinders is supported by the Consumer Product Safety Commission and the Occupational Safety and Health Administration.

#### Conclusion

We agree with commenters to the ANPRM that the BIA proposal would impose significant costs on the industry. Further, the BIA proposals would not address safety problems involving refilling of consumer-owned barbecue cylinders since these are outside the scope of the Department's jurisdiction. Moreover, as commenters suggest, the BIA proposals unnecessarily duplicate state and local regulations applicable to refilling of cylinders. Finally, the NFPA 58 standard for OPDs on certain propane cylinders appears to address the safety issue of concern to BIA. For these reasons, we are denying BIA's petition. In consideration of the foregoing, Docket No. RSPA-01-10741 (HM-220C) is terminated.

Issued in Washington, DC, on January 2, 2002, under the authority delegated in 49 CFR part 106.

**Frits Wybenga,**

*Deputy Associate Administrator for Hazardous Materials Safety.*

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