Commission's Rules, we will not accept competing expressions of interest for the use of Channel 297A at Westborough, Massachusetts.

DATES: Comments must be filed on or before April 29, 2002, reply comments on or before May 14, 2002.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Elizabeth N. Alexander, Leventhal, Senter & Lerman, P.L.L.C., 2000 K Street, NW, Suite 600, Washington, DC 20006–1809 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 02–49, adopted February 27, 2002, released March 8, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

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.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Massachusetts, is amended by removing Channel 297B at Worcester; and by adding Westborough, Channel 297B.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 02–7189 Filed 3–26–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 215

[FRA Docket No. RSFC–7; Notice No. 4]

RIN 2130–AA68

Freight Car Safety Standards: Maintenance-of-Way Equipment

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Termination of rulemaking proceeding.

SUMMARY: This document terminates the rulemaking action initiated in FRA Docket No. RSFC–7. In its Notice of Proposed Rulemaking (NPRM), FRA proposed an amendment of the Freight Car Safety Standards, which currently do not apply to maintenance-of-way (MOW) equipment if stenciled and not used in revenue service. The NPRM proposed an additional 20 miles per hour (mph) speed restriction on MOW equipment in order for it to be operated without complying with the Freight Car Safety Standards. Termination of this rulemaking is based on consideration of the comments submitted in response to the NPRM, the need to consider and evaluate more current safety and accident data related to MOW equipment, and FRA's desire to potentially reevaluate and develop alternative approaches to the issues, if necessary, based on current fact-based data.

FOR FURTHER INFORMATION CONTACT: Thomas J. Herrmann, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, N.W., Stop 10, Washington, D.C. 20590 (telephone: 202–493–6036).

SUPPLEMENTARY INFORMATION: In March of 1994, FRA issued an NPRM proposing an amendment to the Freight Car Safety Standards (FCSS), codified in 49 CFR Part 215, to make all maintenance-of-way (MOW) equipment subject to the FCSS except such equipment stenciled MOW equipment, not used in revenue service, and restricted to a speed of less than 20 miles per hour (mph). *See* 59 FR 11238 (March 10, 1994). Under the existing regulations, the exception for MOW equipment requires only that it be stenciled and not used in revenue service. Thus, FRA proposed an additional restriction related to the operation of MOW equipment not in compliance with the FCSS, requiring such equipment to be operated at a speed of less than 20 mph.

The preamble to the NPRM discussed the basis of FRA's concerns regarding the need for the proposed speed restriction on MOW equipment. The preamble noted that FRA conducted three surveys between 1983 and 1986 on MOW equipment which resulted in a high percentage of such equipment being found with conditions not in compliance with the FCSS. *See* 59 FR 11239. It should be noted that the conducted surveys disclosed that the percent of MOW equipment found with defective conditions under the FCSS decreased with each successive survey. *See id.* The preamble also discussed a train derailment which occurred on July 18, 1983, in Crystal City, Missouri, the investigation of which indicated that a MOW vehicle with a cracked and displaced centerplate was a major contributing cause to the accident. The NTSB estimated the damages related to this accident at more than $1 million and issued the following recommendation to FRA:

Require that MOW cars meet the Railroad Freight Car Safety Standards or, in the alternative, impose operating restrictions on MOW cars being moved in revenue freight trains to compensate for the actual mechanical conditions of the cars. (R–84–10) (February 22, 1984).

In November of 1994, NTSB closed this 10-year-old recommendation and has not reissued a similar recommendation. The preamble to the NPRM also discussed the potential impact of AAR's 1994 change to its interchange rules, prohibiting the interchange of cars equipped with friction bearings. As a large number of MOW cars were equipped with friction bearings, FRA raised concerns regarding whether the industry's prohibition on interchanging such equipment would result in a reduction in the number of locations on the railroads where personnel are capable of performing frequent inspections and lubrication of these components.

FRA's economic evaluation developed in connection with the NPRM identified the costs and benefits related to the proposed 20-mph speed restriction on

MOW equipment not in compliance with the FCSS. The evaluation identified approximately $1.1 million in safety benefits based on a review of FRA's accident data between 1980 and mid-1987. This review identified 26 accidents caused by MOW equipment which resulted in approximately $1.1 million in damage to railroad property and involved no injuries or fatalities. The evaluation also estimated the costs associated with the proposed restriction based on the assumption that railroads would repair existing equipment to meet the FCSS rather than operate MOW equipment pursuant to the proposed 20-mph restriction. The evaluation identified a 10-year Net Present Value cost associated with the proposed restriction of approximately $4.4 million. The estimate determined that approximately $3.3 million would be required to bring existing MOW equipment into compliance with the FCSS and that an additional $330,000 a year would be required to maintain the equipment consistent with the requirements of the FCSS.

FRA received written comments from six parties raising various concerns related to the additional restriction proposed in the NPRM. These commenters included:

Association of American Railroads (AAR),
American Short Line and Regional Railroad Association (ASLRRA),
Brotherhood of Railway Carmen, Division of the Transportation Communications International Union (BRC),
Brotherhood of Maintenance of Way Employes (BMWE),
Duluth, Missabe and Iron Range Railway Company (DMIR), and
Norfolk Southern Corporation (NS).

AAR, ASLRRA, and NS all commented that FRA failed to establish a significant safety rationale for proposing the costly operating restrictions on MOW equipment. These commenters did not believe that any change to the FCSS was warranted. AAR objected to the age of the data used by FRA to justify the proposal in 1994 and noted that the data itself showed that the percentage of MOW equipment containing defective conditions under the FCSS was declining into the mid-1980s. AAR also noted that none of the accidents relied on by FRA involved any injury or fatality. AAR further contended that MOW equipment was sufficiently covered by the safety appliance and power brake regulations contained in 49 CFR parts 231 and 232 and that FRA had not established that such equipment comprised a safety threat.

AAR and NS also asserted that FRA's economic evaluation was seriously flawed because it failed to consider the impact of the proposal on MOW equipment over 50 years old. These commenters contended that the proposal to apply the FCSS to MOW equipment would significantly impact MOW equipment which is more than 50 years old because § 215.203 imposes strict limits on the use of such equipment. AAR asserted that the impact on 50-year-old MOW equipment would constitute a significant ''opportunity cost'' to the industry. AAR and NS contended that the cost to replace this older equipment would be in excess of $220 million.

AAR also claimed that FRA's economic analysis significantly underestimated the maintenance costs involved with maintaining MOW equipment in accordance with the FCSS. AAR noted that FRA only assumed $41 per car annually to maintain the equipment consistent with the requirements of the FCSS. AAR asserted that the annual maintenance cost would likely be closer to $300 per car. Thus, AAR claimed that FRA's cost estimates should have been increased by approximately $12 million based on this factor alone.

AAR and NS claimed that FRA could apply the FCSS to MOW equipment in a manner which was much less costly than that proposed by FRA. These commenters recommended that any application of the FCSS to MOW equipment should provide an exception from § 215.203 for cars more than 50 years old. They also recommended an exemption for emergency and specialized MOW equipment (pile drivers, track geometry cars, snow plows, etc.) and suggested that a significant transition period, at least five years, be provided to allow the industry time to upgrade existing equipment. In a second set of comments (August 4, 1995) submitted in response to FRA questions, AAR suggested a further alternative to the proposed 20-mph speed restriction for improving the mechanical state of existing MOW equipment. This alternative involved the creation and application of a System Safety Quality Assurance (SSQA) performance standard based on train accidents per million-train-miles. Under this approach, a railroad's failure to operate within the established SSQA standard would result in FRA's imposition of certain equipment and operational requirements on that railroad, provided there is a link between the imposed requirements and the safety problem.

Although the ASLRRA did not believe any change to part 215 was justified, it recommended that if FRA determines a speed restriction is necessary, that the restriction should be 25 mph rather than 20 mph as proposed. ASLRRA stated that 25 mph would be consistent with operations over FRA Class 2 track and would reduce the burden being imposed on many short line operations because a larger number of such railroads already operate at restricted speeds. ASLRRA asserted that it would be a significant expense for most smaller railroads to bring MOW equipment into compliance with part 215 and, thus, most smaller railroads would comply with any imposed speed restriction. Furthermore, a 25-mph speed limit would avoid confusion with existing federal track standards and would reduce the number of rules with which small railroads must deal.

Comments received from the DMIR, in response to the NPRM, contended that there would be a significant impact on its operation if self-propelled MOW equipment (ballast regulators, tampers, high-rails, yard cleaners, motor cars, etc.) were required to comply with the requirements contained in the FCSS as proposed. DMIR asserted that virtually none of its self-propelled MOW equipment operates in revenue trains and, thus, did not pose the hazard FRA was attempting to address in the NPRM. Consequently, DMIR believed there was no safety benefit in requiring self-propelled MOW equipment to comply with the requirements of the FCSS when operated over 20 mph.

Comments received from BMWE and BRC supported the proposal to the extent that all MOW equipment should be covered by the provisions contained in the FCSS. These commenters generally contended that all equipment operated by the railroads should be required to comply with the FCSS whether or not they are used in revenue service, including equipment used solely in work train service. BRC believed that the proposed 20-mph speed restriction would not improve safety because most MOW equipment is not safe to operate at any speed if it does not comply with the FCSS. They asserted that no operating restrictions justify the use of equipment not in compliance with part 215.

In April 1996, subsequent to the closing of the comment period on the NPRM in this proceeding, FRA established the Railroad Safety Advisory Committee (RSAC), which is composed of representatives from railroad management, railroad labor, FRA, and other interested organizations. RSAC is designed to cooperatively address safety

problems based upon agreed-upon facts and, where regulation appears necessary, recommend to FRA regulatory options to implement the needed solutions. In September of 1997, FRA proposed that the RSAC accept the task of recommending revisions to part 215 as it pertains to MOW equipment. Had RSAC accepted the task, FRA would have withdrawn the NPRM to permit RSAC to work from a clean slate. The full RSAC could not reach consensus regarding acceptance of the task and, thus, the RSAC rejected the task of revising part 215. Many members of the RSAC did not believe that the issues raised in this proceeding involved a safety priority when compared to other tasks being addressed by the committee. In a late submission to the docket (January 1998), BMWE urged FRA to pursue this issue through traditional rulemaking despite the RSAC's rejection of the task. The BMWE further recommended that an additional amendment be made to part 215 which would prohibit employees or personnel from riding on, occupying, or being transported in equipment not meeting the requirements contained in part 215. BMWE believed this restriction should be imposed on all freight cars including those used exclusively in MOW service. Of course, such requirements would be well beyond the limited scope of the NPRM. After RSAC's rejection of the task, FRA allowed this proceeding to remain open while the agency pursued much higher regulatory priorities, including passenger equipment standards and revised freight power brake rules.

After consideration of all the comments and information noted above and based on general observations made by FRA during the last eight years with regard to MOW equipment and the applicability of part 215 to such equipment, FRA believes that a number of conclusions can be drawn. FRA agrees that the data relied on when developing the NPRM in this proceeding is dated and likely does not represent the condition of MOW equipment currently being operated by most railroads. The data relied on when developing the NPRM was gathered between 1980 and 1987. Thus, much of the data, both inspection and accident, is close to or more than two decades old. Since publication of the NPRM, FRA believes that railroads have made a concerted effort to bring most MOW equipment closer to compliance with the requirements contained in part 215, particularly MOW equipment regularly operated in revenue trains. Moreover, since 1980, FRA is not aware of any accident or incident involving MOW equipment resulting in injury or fatality in which a contributing cause of the accident or incident was a condition not in compliance with part 215 on a piece of MOW equipment. Consequently, while not intending to imply that there is no need to address the mechanical condition of MOW equipment currently in use on the nation's railroad's, FRA does believe that MOW equipment is maintained in better condition, from a mechanical perspective, than it was 15 to 20 years ago.

FRA further believes that any sustainable approach to the issues raised in this proceeding must be based on current, fact-based data which accurately captures both the safety need and the economic consequences of any course of action. Just as the safety benefits associated with this rulemaking have likely declined over time, similarly the costs of compliance have likely declined, as well. Further, many of the costs of concern to the railroads might very well be mitigated by continuing to except such equipment from the 50-year requirement. However, FRA recognizes that such assessments take considerable time and resources. In addition to simply gathering data, the agency must also determine whether the gathered data establishes a need for regulatory action and the form of that action. FRA believes that a rulemaking docket should not be left open and pending indefinitely while the agency determines whether or how such data gathering will be pursued or evaluated. Moreover, it must be stressed that MOW equipment remains subject to the FCSS if it is used in revenue service or is not stenciled and, under all circumstances, is subject to the federal regulations applicable to safety appliances and power brakes contained in parts 231 and 232, respectively. Thus, MOW equipment is continually inspected by railroads and monitored by FRA for compliance with those requirements as well as any other condition that may constitute an imminent safety risk to railroad employees or the public at large.

In addition to FRA's concerns regarding the data relied on in this proceeding, FRA also believes that the NPRM did not fully consider all of the potential economic and operational impacts that the proposed 20-mph speed restriction would have on the industry. FRA believes that several commenters in this proceeding raise valid concerns related to the impact of the proposal on MOW equipment over 50 years in age and the potential impact to the operation of a number of revenue trains. FRA also notes that a number of alternative approaches to the issues were provided in the comments received in response to the NPRM. Furthermore, several commenters recommended that additional restrictions be placed on certain MOW equipment or raised issues which were not fully explored or discussed in the NPRM which relate to the operation of MOW equipment. Therefore, should FRA develop fresh data and analysis which establishes a need for regulatory action, the content of that action is likely to be significantly different from that proposed in this NPRM and may focus on a variety of issues not contemplated in the current proceeding. Consequently, FRA believes that continuance of the present proceeding is neither productive nor useful at this time.

Termination of Rulemaking

Based on the foregoing discussion, FRA has decided to terminate this rulemaking. While we note that this rulemaking has been useful in raising both FRA's and the industry's awareness of the issues related to the operation and safety of MOW equipment, FRA believes that it is not prudent to pursue this rulemaking, based on its present content, at this time. FRA will continue to monitor the condition and operation of MOW equipment and will assess the need, from a safety perspective, to pursue either regulatory or other less formal methods to ensure the safety of both railroad employees and the public as it relates to the use and operation of this equipment. In light of the foregoing, FRA is hereby terminating this rulemaking.

Issued in Washington, DC on March 22, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–7364 Filed 3–26–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. NHTSA–2002–11392]

RIN 2127–AI73

Insurer Reporting Requirements; List of Insurers Required To File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).