

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

**49 CFR Parts 171, 173, 174, 175, 176, 177, and 178**

[Docket No. RSPA-98-4952 (HM-223)]

RIN 2137-AC68

#### Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage; Cancellation of Public Meetings

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

**ACTION:** Proposed rule; cancellation of public meetings

**SUMMARY:** On June 14, 2001, RSPA published a notice of proposed rulemaking to clarify the applicability of the Hazardous Materials Regulations to specific functions and activities, including hazardous materials loading, unloading, and storage operations. On August 2, 2001, we announced two public meetings to facilitate public comment on the proposed rule. One public meeting was scheduled for September 14, 2001, in Washington, D.C.; on September 12, 2001, it was postponed. A second public meeting was scheduled for October 30, 2001, in Diamond Bar, California. The October 30 public meeting is cancelled; the September 14 public meeting will not be rescheduled.

**DATES:** The comment period closing date remains November 30, 2001.

**ADDRESSES:** *Written comments.* Submit comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW., Washington, DC 20590-0001. Comments should identify Docket Number RSPA-98-4952 (HM-223) and be submitted in two copies. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. You may also e-mail comments by accessing the Dockets Management System Web site at <http://dms.dot.gov/> and following the instructions for submitting a document electronically.

The Dockets Management System is located on the Plaza level of the Nassif

Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. You can also review comments on-line at the DOT Dockets Management System Web site at <http://dms.dot.gov/>.

**FOR FURTHER INFORMATION CONTACT:** Michael Johnsen (202) 366-8553, Office of Hazardous Materials Standards, Research and Special Programs Administration; or Susan Gorsky (202) 366-8553, Office of Hazardous Materials Standards, Research and Special Programs Administration.

#### SUPPLEMENTARY INFORMATION:

##### Background

On June 14, 2001, the Research and Special Programs Administration (RSPA, we) published a notice of proposed rulemaking (NPRM) (66 FR 32420) under Docket RSPA-98-4952 (HM-223) to clarify the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to specific functions and activities, including hazardous materials loading and unloading operations and storage of hazardous materials during transportation. The HM-223 rulemaking has four overall goals. First, we want to maintain nationally uniform standards applicable to functions performed in advance of transportation to prepare hazardous materials for transportation. Second, we want to maintain nationally uniform standards applicable to transportation functions. 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 HMR-regulated functions are performed may also be subject to federal, state, or local regulations governing occupational safety and health or environmental protection.

To achieve these goals, the NPRM proposes to list in the HMR pre-transportation and transportation functions to which the HMR apply. Pre-transportation functions are functions performed to prepare hazardous materials for movement in commerce by persons who offer a hazardous material for transportation or cause a hazardous material to be transported.

Transportation functions are functions performed as part of the actual movement of hazardous materials in commerce, including loading, unloading, and storage of hazardous materials that is incidental to their movement. The NPRM also proposes to clarify that "transportation in

commerce," for purposes of applicability of the HMR, begins when a carrier takes possession of a hazardous material and continues until the carrier delivers the package containing the hazardous material to its destination as indicated on shipping papers. In addition, the NPRM proposes to include in the HMR an indication that facilities at which functions regulated by the HMR occur may also be subject to applicable standards and regulations of other federal agencies and state, local, and tribal governments. Finally, the NPRM proposes to include in the HMR the statutory criteria under which non-federal governments may be precluded from regulating in certain areas under the preemption provisions of the federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*)

On August 2, 2001, we announced that we planned to host two public meetings to facilitate public comment on the NPRM (66 FR 40174). The first public meeting was scheduled for September 14, 2001, in Washington, D.C. The second public meeting was to be held in Diamond Bar, California, on October 30, 2001. We also extended the comment period for the NPRM to November 30, 2001.

On September 12, 2001, we announced on our website (<http://hazmat.dot.gov>) and by telephone to registered participants that the September 14 meeting was postponed, but that we likely would reschedule it for a later date. As of September 25, only ten persons had indicated to us that they planned to make presentations at the Washington meeting; only four persons had registered with us to speak at the California meeting on October 30, and two of them were among the ten Washington speakers. Therefore, we decided to cancel the California public meeting. Further, we decided against rescheduling the Washington meeting. The comment period for the NPRM remains open until November 30, 2001. We urge all interested persons to submit written comments on the NPRM. We will consider late-filed comments to the extent possible as we consider whether to proceed to a final rule.

If you believe that written comments are not sufficient to assure that your views on the NPRM are communicated to us and that a public meeting to facilitate comment on the NPRM is necessary, please submit a statement explaining why a public meeting is necessary to the HM-223 docket. If there is sufficient interest, we will reconsider our decision on the public meetings.

Issued in Washington, DC, on September 26, 2001.

**Robert A. McGuire,**

*Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.*

[FR Doc. 01-24539 Filed 10-1-01; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 222 and 223

[Docket No.000320077-1177-02;  
I.D.062501B]

#### Endangered and Threatened Wildlife; Sea Turtle Conservation Requirements

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to amend the regulations protecting sea turtles to enhance their effectiveness in reducing sea turtle mortality resulting from shrimp trawling in the Atlantic and Gulf Areas of the southeastern United States. Turtle excluder devices (TEDs) have proven to be effective at excluding sea turtles from shrimp trawls; however, NMFS has determined that modifications to the design of TEDs need to be made to exclude leatherbacks and large, sexually mature loggerhead and green turtles; several approved TED designs are structurally weak and do not function properly under normal fishing conditions; and modifications to the trynet and bait shrimp exemptions to the TED requirements are necessary to decrease lethal take of sea turtles. These proposed amendments are necessary to protect endangered and threatened sea turtles in the Atlantic and Gulf Areas.

**DATES:** Written comments will be accepted through November 16, 2001.

**ADDRESSES:** Written comments on this action, the draft Environmental Assessment/Regulatory Impact Review Regulatory Flexibility Act Analysis (EA/RIR) and request for copies of the 1999 TED opening evaluation report should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301-713-0376. Comments will not be accepted if submitted via e-mail or the Internet.

#### FOR FURTHER INFORMATION CONTACT:

Robert Hoffman (ph. 727-570-5312, fax 727-570-5517, e-mail

Robert.Hoffman@noaa.gov), or Therese A. Conant (ph. 301-713-1401, fax 301-713-0376, e-mail

Therese.Conant@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. The loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take and mortality of sea turtles as a result of trawling activities, have been documented in the Gulf of Mexico and along the Atlantic seaboard. In 1990 the National Academy of Sciences, in a report titled Decline of the Sea Turtle: Causes and Prevention, estimated that between 33,000 and 44,000 loggerhead and Kemp's ridley sea turtles were being killed, per year, as a result of shrimp trawling activities. On June 27, 1987, (52 FR 24244) NMFS required TEDs in certain areas during certain times and further defined and expanded the required use of TEDs in the shrimp fishery on December 4, 1992, (57 FR 57348). These rules and subsequent modifications are codified in 50 CFR 223.206 and 50 CFR 223.207 and require most shrimp and summer flounder trawlers operating in the Southeastern U.S. (Atlantic Area, Gulf Area, and summer flounder sea turtle protection area) to have a NMFS-approved TED installed in each net that is rigged for fishing to provide for the escape of sea turtles. TEDs currently approved by NMFS include single-grid hard TEDs and hooped hard TEDs conforming to a generic description, two types of special hard TEDs, the flounder TED and the Jones TED, and one type of soft TED, the Parker soft TED.

The use of TEDs has contributed to the strong population increase for Kemp's ridley sea turtles. Kemp's ridleys are the smallest sea turtles, and adult size animals can pass through the current TED opening dimensions. Once the most critically endangered sea turtle, their nesting levels have increased from 700-800 per year in the mid-1980's to over 6,000 nests in 2000. Since 1990, corresponding with the

more widespread use of TEDs in U.S. waters, the total annual mortality (including natural mortality that cannot be controlled) for coastal Kemp's ridleys has been reduced by 44-50 percent (TEWG, 2000). NMFS believes that this demonstrates that the use of TEDs can have a significant impact on the survival and recovery of sea turtle species.

Despite the demonstrated success of TEDs for some species of sea turtles, NMFS is concerned that TEDs are not adequately protecting all species and size classes of turtles. There is new information showing 47 percent of stranded loggerheads and 1-7 percent of stranded green turtles are too large to fit through the current TED openings. Comprehensive scientific data on the body depths of these turtles were not available when the original TED sizes were specified. The original TED sizes were also much too small to allow leatherback sea turtles, the largest species, to escape. Instead, NMFS has attempted to address the incidental catch of leatherback turtles by trawlers through a regime of reactive closures that has proven complicated and incomprehensive. There is also concern about the status of these populations with stable or declining nesting numbers for the northern nesting population of loggerhead sea turtles (TEWG, 2000) and dramatically declining nesting of leatherback sea turtles on their main nesting grounds (NMFS SEFSC, 2001). NMFS is therefore proposing to modify the TED regulations to insure TEDs are capable of releasing large leatherback sea turtles and adult loggerhead and green turtles. These modifications will extend the protection TEDs afford smaller turtle species to all size classes of all sea turtle species.

#### Summary of Proposed Changes to the Sea Turtle Regulations

NMFS is proposing to amend the regulations applicable to shrimp trawling in all inshore and offshore waters of the Atlantic and Gulf Areas to:

- Require all hard TEDs to have a grid with a minimum inside measurement of 32-inch (81-cm) by 32-inch (81-cm);
- require the use of either the double cover flap TED or a TED opening with a minimum of 71 inch (180 cm) straight-line stretched mesh;
- disallow the use of the hooped hard TED;
- disallow the use of weedless TEDs and Jones TEDs;
- disallow the use of accelerator funnels;
- require bait shrimpers to use TEDs in states where a state-issued bait shrimp license holder can also fish for food shrimp from the same vessel;
- and require the use of tow times on small try nets. These changes are