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August 9, 1993

FHWA Docket No. 92-4  
Room 4232, HCC-10  
Office of Chief Counsel  
Federal Highway Administration  
400 Seventh Street, S.W.  
Washington, D.C. 20590

FHWA-97-2180-9

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Dear Sir or Madam:

The Institute of Makers of Explosives (IME) welcomes the opportunity to submit comments on the Federal Highway Administration's (FHWA) notice of proposed rulemaking, Docket MC-92-4.

IME is the safety association of the commercial explosives industry in the United States. The 33 IME member companies and their 60 odd subsidiaries manufacture and distribute over 90 percent of the commercial explosives used in the United States.

A non-profit, incorporated association, founded in 1913 to provide technically accurate information and recommendations concerning explosive materials and serve as a source of reliable data about their use, IME is dedicated to the safety and protection of employees, users, the public, and the environment in the manufacture, transportation, storage, handling, use, and disposal of commercial explosive materials.

During its long history IME has been active on the Federal, state, and local level in the development and promotion of explosives regulations that are technically sound, realistic, uniform, and understandable. Based on its extensive experience in the transportation and handling of commercial explosives it is IME's conviction that the primary purpose of rules and regulations should be the promotion of proper and lawful practices that will enhance safety and security. Regulations that institute and encourage duplication, redundancy or generate needless reporting, record keeping, and other "paperwork" are onerous, costly, and lead to confusion and/or misinterpretation.

Presently, a group of state representatives working under the auspices of a U.S. Department of Transportation (DOT) contract are developing requirements for "state" registration and permitting programs. How will the Federal and state permit programs interface? Surely duplicate programs - permitting by FHWA and state agencies - is not a

practice in keeping with governmental edicts to reduce needless regulatory burdens. What safety and/or security benefit would be enhanced by requiring a Federal and state permit? Surely if FHWA feels that its permitting program is designed, "to promote the safe transportation of designated high risk hazardous materials in interstate and intrastate commerce", there is no need for each of the fifty states to have its own program. How will duplicate or redundant permit programs reduce paperwork, eliminate confusion, and promote safety?

Does FHWA and the individual states have that much manpower that they can afford to have separate programs? If a carrier has a SATISFACTORY SAFETY RATING under the provisions of 49 Code of Federal Regulations (CFR), Part 385 is not that sufficient to satisfy compliance with a safety permitting program? Why can't the states, especially since intrastate transport is involved, accept the FHWA program? Why must there be duplication, repetition, and added paperwork? Presently there is one commercial drivers license; why not one safety permit?

Currently, carriers who transport quantities of 1,000 pounds or more of 1.1, 1.2, or 1.3 materials (Class A or B explosives) are generally major manufacturers or are specialty carriers who have had many years of experience in the transportation of explosives over the public highways. They adhere closely to the standard of 49 Code of Federal Regulations Part 385.5 and we feel certain that a review of the carriers would show that they have an excellent safety record.

The financial responsibility requirements for the large carriers of explosives has, for years, been quite demanding. The costs and stipulations to obtain such financial responsibility protection has necessitated strict compliance to the highest safety standards. Are these the carriers who demand priority consideration - **FHWA's** immediate attention - the carriers who must be permitted at the earliest date (November 16, 1993)?

DOT has already required the registration of carriers of more than 25 kg of 1.1, 1.2 or 1.3 materials. Is not this information available as a DOT database? Why an additional form, and additional application, more paperwork?

FHWA provides that a "satisfactory safety rating" is prerequisite for a safety permit. Would it not be more direct, more efficient and less time consuming for FHWA to issue safety permits to those carriers of record to whom DOT has issued a satisfactory rating?

Surely FHWA realizes that the permitting system proposed under Docket MC 92-4 duplicates many existing requirements for carriers of explosives. Also, the rule as proposed at 397.49 duplicates existing requirements. Why?

The mandatory date of November 16, 1993, for the permitting of large carries would be difficult, if not impossible, to comply with if FHWA is planning to review every carrier to ensure a "satisfactory" safety rating. Many carriers may have DOT safety ratings that are over 1 year old. Would a DOT safety rating document be available at time of permit application?

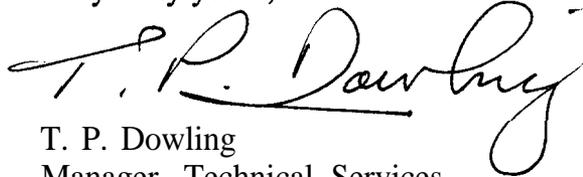
Why must permit numbers be placed on shipping papers? The shipper should insure that the carrier is authorized to haul hazardous materials before they ship. At any time FHWA could check the carrier's DOT number to determine if the permit was current. Most shipping papers are prepared by the shipper and the requirement that permit number be on the shipping paper will require additional effort and time and increase measurably the possibility of error and/or omission.

The rationale for developing the covered quantities of explosives for permit consideration is certainly not based on realistic assessment. How does FHWA justify the permitted quantity breakdowns?

**IME** member companies have been transporting explosives over the public highways for over 80 years and have a safety record that compares most favorably with that of the general trucking industry. If the FHWA permit program would cut out all the duplicative paperwork requirements and require that a carrier have a DOT identification number and a "satisfactory" safety rating this data would adequately cover those carriers transporting explosives and, coupled with current enforcement programs such as compliance reviews and roadside inspections, would assure a high safety standard for the industry.

**IME** believes that the permitting rule as proposed by FHWA is redundant, burdensome, unnecessary, and unwarranted. Although it could certainly be a source for confusion and/or misinterpretation we do not think it would do much to enhance safety for the large carriers of 1.1, 1.2 and 1.3 materials (Class A and B explosives).

Very truly yours,



T. P. Dowling  
Manager, Technical Services