



STATE OF IDAHO
DEPARTMENT OF LAW ENFORCEMENT
IDAHO STATE POLICE DIVISION



RICHARD L. CADE
Director

CECIL D. ANDRUS
Governor

RONALD L. MOORE
Superintendent

August 11, 1993

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Office of the Chief Counsel
Federal Highway Administration
Department of Transportation
400 Seventh Street, SW.
HCC-10, Room 4232
Washington D.C. 20590

FHWA-97-2180-29

Subject: FHWA Docket No. MC-924

The state of Idaho appreciates the opportunity to comment on the FHWA's Notice of Proposed Rulemaking, Docket No. MC-92-4, establishing the hazardous material motor carrier safety permit program. As the Commander of Idaho's MCSAP Program, I am concerned about motor carrier safety. I am also concerned about effective and efficient enforcement of motor carrier safety regulations and hazardous materials regulations.

On behalf of the state of Idaho, my comments to Docket No. MC-92-4 are as follows:

PHASED APPROACH TO CLASS A AND CLASS B EXPLOSIVES

Regarding class A and B explosives, the rules proposed by the FHWA establish a phased approach regarding application of the safety permit requirement. Specifically, the safety permit requirement would apply to shipments of 1,000 or more pounds of class A and/or B explosives on November 16, 1993. The safety permit requirement would apply to shipments of 500 or more pounds of class A and/or B explosives on November 16, 1994. The safety permit requirement would apply to transportation of 55 or more pounds of class A and/or B explosives on November 16, 1995. FHWA's rationale for the phased approach is that "class A and/or B explosives are transported daily by a vast number of motor carriers, primarily private motor carriers of property. These carriers include operators from a diversity of industry groups, such as explosives magazine operators, quarry operators, farmers and persons involved in fireworks displays. Immediate application of the safety permit requirements to these motor carriers might present an undue economic burden for these industries, especially when many are solely intrastate operations which have

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never been subject to the FHWA's regulations." The FHWA also claims that immediate application to all commercial carriers transporting 55 or more pounds of class A and/or class B explosives would create an administrative burden for FHWA.

I understand the FHWA's desire to avoid placing undue economic burdens upon previously unregulated entities. I urge the FHWA to adhere to what ever phased approach it determines to be necessary. It is likely that at some point in the future, the FHWA will be asked to extend the dates for phasing in safety permits for class A and B explosives. Once FHWA has set reasonable time frames for phasing in regulation of class A and B explosives, FHWA should stick to its time frames and make every effort to avoid attempts to delay implementation of the safety permit program. Adherence to what ever phased approach is adopted will avoid confusion for both the regulated industries and enforcement communities; a better safety permit program will be the result.

H.M. THAT ARE EXTREMELY TOXIC BY INHALATION

Regarding safety permits for transportation of hazardous materials which have been designated by the Secretary of Transportation as extremely toxic by inhalation, the FHWA proposes to require safety permits for the transportation of H.M. meeting the criteria of Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A, if transported in quantities of more than 1 liter. **RSPA's** registration program is applicable to H.M. meeting the criteria of Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A, if transported in quantities of more than 1 liter. The FHWA seeks comment as to whether the safety permit requirement should apply to Hazard Zone B of Divisions 2.3 and 6.1. The FHWA's rationale for not including Hazard Zone B of these divisions is that RSPA has chosen not to include Hazard Zone B in the H.M. registration rule. (57 F.R. 30620, July 9, 1992) FHWA seeks coordination between its safety permit program and **RSPA's** registration program. FHWA rationalizes that Hazard Zone B transportation "mostly involves quantities that are less than 'in bulk'". FHWA seeks input as to whether the safety permit program should be expanded to include Hazard Zone B of Divisions 2.3 and 6.1.

While the FHWA's desire for coordination is understandable, there may be instances where it must give way to the interests of public safety. The FHWA should take a second look at its decision not to include Hazard Zone B in the safety permit program. In particular, the FHWA should examine whether the purposes behind the safety permit program and the registration program are such that a different treatment of Hazard Zone B is justified. Specifically, is the safety of hazardous materials transportation a greater concern under the safety permit program than it is in the registration program? If it is, then perhaps Hazard Zone B should be

included in the safety permit program. I suggest that safety is a greater concern under the safety permit program than under the registration program. Under the safety permit program, interstate and intrastate carriers transporting subject hazardous materials are required to obtain a safety permit; they must comply with the federal motor carrier safety laws and the **FMCSRs** and the minimum financial responsibility laws and regulations. If the Secretary determines that a permittee has failed to comply with the requisite laws and regulations, the Secretary may revoke the safety permit. Whereas the purpose of the registration program appears to be revenue generation for emergency response training and planning, the purpose behind the safety permit program appears to be safe transportation of hazardous materials.

INSPECTION PROCEDURES - RADIOACTIVE MATERIALS

Section 15 of the HMTUSA requires, in part, inspection of commercial motor vehicles transporting highway route controlled quantities of radioactive material before each trip. In considering the development of inspection requirements for commercial motor vehicles transporting highway route controlled quantities of radioactive material and in trying to determine what type of inspection criteria is needed, the FHWA examined the procedures contained in current inspection methods. The FHWA reviewed, (1) the North American Uniform Driver/Vehicle Inspection Procedure, (2) a draft of a CVSA document entitled, "Recommended National Procedures for the Safety Inspection of Commercial Highway Vehicles Transporting Spent Fuel/Transuranic Waste and High Level Radioactive Wastes", (3) a RSPA document entitled, "A Guide for the Inspection of Radioactive Material Shipments by Motor Vehicle", and (4) a RSPA document entitled, "A Guide for the Inspection of Radioactive Material Shipments by Motor Vehicle or at Freight Facilities".

The FHWA proposes to require the use of the general inspection requirements contained in part 396 and the inspection standards found in Appendix G to subchapter B to meet the requirement that a vehicle transporting highway route controlled quantities of radioactive material be inspected before each trip. The FHWA states that it also believes that a Level 1 North American Uniform Driver/Vehicle Inspection can be used to satisfy the inspection requirement if the inspection is carried out by an inspector who is qualified under § 396.19.

The FHWA solicits comments regarding its selection of inspection criteria. The FHWA also seeks input as to whether radiological monitoring should be included within the inspection criteria. I suggest that the FHWA adopt as its required inspection criteria, the CVSA Enhanced Level 1 Inspection for Radioactive Materials (as set forth in the CVSA document entitled "Recommended National Procedures for the Safety Inspection of Commercial Highway Vehicles Transporting Spent Fuel,

Transuranic Waste and High-Level Radioactive Wastes" September 1991). These criteria were developed by CVSA under a cooperative agreement with the Department of Energy. The Western Governors' Association Technical Group on WIPP Transportation (a group working under agreement with DOE to develop methods and procedures for safe transportation of transuranic waste to the WIPP and of which Idaho is a member), believing that the safety of WIPP shipments could be significantly enhanced through strict compliance with regulatory requirements and development of inspection standards which focused upon the driver, the vehicle and the radiological cargo, participated with CVSA in the development of the CVSA Enhanced Level 1 Inspection criteria. It is the intention of WGA and DOE to utilize the shipments of Transuranic waste to WIPP as a pilot for the application of the CVSA Enhanced Level 1 Inspection criteria. Recognizing that public safety is of primary concern, FHWA should acknowledge the work of CVSA and WGA and adopt as its required inspection criteria, the CVSA Enhanced Level 1 Inspection for Radioactive Materials. FHWA should specify that in order to pass the inspection, the vehicle must be defect free. Inspectors would have to be certified through CVSA criteria and perform the inspections at the point of origin. This could be accomplished through state oversight; of course, this would place an additional burden upon the states.

Concerning FHWA's inquiry regarding radiological monitoring, I am at a loss as to why FHWA would even ask this question; pursuant to regulations promulgated by RSPA covering the transportation of radioactive materials and establishing the "transportation index", 49 C.F.R. 173 Subpart I and 49 C.F.R. 177.842, radiological monitoring of RAM shipments is already required.

SAFETY RATINGS

The FHWA safety permit program will apply to both interstate and intrastate carriers. The decision to issue a permit would be based upon whether a carrier has a "satisfactory" safety rating. I have a number of concerns regarding the use of safety ratings to determine whether to issue a carrier a safety permit. My first concern is based upon the fact that under current procedures, inspection data and SR/CR data are not being uploaded to safetynet for intrastate motor carriers. In fact, FHWA has been reluctant to upload intrastate data. How will FHWA make a determination as to a carrier's safety rating without access to the necessary data. An additional concern I have is that from all indications, FHWA is having a difficult time keeping up with safety ratings for the motor carriers currently under the regulation of FHWA. How will FHWA take on the additional burden of establishing safety ratings for previously unregulated intrastate motor carriers. Considering the daunting task before it, is FHWA realistic in placing a 120 day time period on temporary safety permits. If FHWA intends to utilize MCSAP state agencies for

assistance in determining compliance with the **FMCSRs** for the purpose of issuing a permanent safety permit where a temporary permit has been issued, then another burden will be placed upon the states as a result of the safety permitting program. FHWA states an intention to utilize its field offices in the permit application and safety rating process. I am concerned that this will impose upon FHWA's field offices a burden of such magnitude that other functions of the field offices (such as interaction with states regarding MCSAP) will suffer.

INFORMATION SYSTEM

The notice of proposed rulemaking states that at some point in the future, the FHWA intends to establish an information system which would provide on-line access and response to enforcement personnel for roadside verification of safety permits. Considering that FHWA is having difficulty operating the current Motor Carrier Management Information System with existing funds, I have serious reservations regarding FHWA's ability to implement an information system for roadside verification of safety permits. This is particularly true in light of the fact that FHWA does not intend to charge a fee for safety permits at this time.

PERMIT FEES

The notice of proposed rulemaking states that FHWA does not intend to charge a fee for safety permits at this time. In light of the fact that FHWA will be implementing a new program which will place additional demands upon it and at the same time does not intend to assess a fee, it is apparent that the limited resources available to **FHWA** will be spread thinner amongst its existing programs. The MCSAP program could suffer as a result of this dilution of resources. I question the FHWA's decision not to charge a fee for safety permits.

PERMIT NUMBERS

The FHWA states that safety permit numbers will be a carrier's **USDOT** number. By using the **USDOT** number as the permit number, there is no way that an enforcement officer will know that the carrier has met the requirement for having a safety permit. As soon as a carrier is given a **USDOT** number the officer will have to assume that the carrier has a safety permit when in fact they may not. The rule making suggests that the motor carrier would have to clearly display the assigned safety permit numbers on the shipping paper. Does mean that carriers can simply write the safety permit number on the shipping paper? If so, then enforcement will be difficult if not impossible. FHWA needs to devise an approach which will provide adequate measures for ensuring that safety permit numbers are legitimate and verifiable.

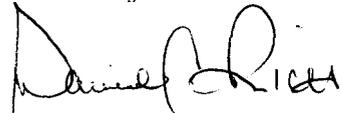
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SAFETY PERMIT PROGRAM - EFFECT ON MCSAP

The FHWA seeks input from MCSAP states as to what effect, if any, the proposed rules would have on their participation in MCSAP. It is apparent that the proposed rules would create additional documentation which MCSAP officers would have to look for during their inspection or **SR/CR** activities. This additional enforcement activity could become burdensome. If enforcement of the safety permit program causes a reordering of priorities during inspection or **SR/CR** activities, or an increase in the number of **CRs** states are required to do, then the safety permit program will adversely affect existing state MCSAP programs. Dilution of **FHWA** resources could adversely affect MCSAP states. If the states are requested to assist in the safety rating process, then state MCSAP programs will be adversely affected. The **FHWA** must be mindful of any increased enforcement burdens placed upon the MCSAP states either now or in the future as a result of the permit program. The MCSAP states are already struggling to maintain current enforcement obligations and activities with reduced federal funding.

If you or your staff have any questions or need additional information, do not hesitate to contact me at (208) 334-3850 or Ms. Sandra K. DeKlotz, State **Manager/MCSAP** at (208) 327-7180.

Sincerely,



Captain David C. Rich,
Idaho State **Police/MCSAP** Commander

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