



Department of Energy

Washington, DC 20585

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LEADS/REGS. DIV.

The Department of Transportation  
Office of the Chief Counsel  
Federal Highway Administration  
Room 4232, HCC-10  
400 Seventh Street, SW  
Washington, D. C. 20590-0001

Dear Sir or Madam

Docket No. FHWA MC-92-4

FHWA-97-2180-34

These comments are filed on behalf of the Department of Energy (DOE) pursuant to the Notice of Proposed Rulemaking (NPRM) published in the Federal Register dated June 17, 1993, at page 33418, by the Federal Highway Administration (FHWA). This proposal deals with the FHWA proposed amendment to part 397 of the Federal Motor Carrier Safety Regulations (FMCSRs) by adding a new subpart B, Motor Carrier Safety Permits. This is a requirement under the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) for the Secretary of Transportation to provide for motor carrier safety permits and the establishment of procedures to acquire such permits.

These comments are directed at that portion of the NPRM dealing with procedures governing the issuance of a safety permit to transport Highway Route Controlled Quantities (HRCQ) of radioactive materials; more specifically the need to have a safety inspection certified by a motor carrier "official," and the issue of monitoring radioactivity of the package.

I. Conditions of Safety Permit:

The proposed requirement states:

- (e) Motor carriers transporting a highway route controlled quantity of radioactive material shall be subject to the following conditions: (4) The certification statement shall include: (v) Signature of a motor carrier official... (emphasis added).

DOE is interested in achieving safety at the highest possible level for the transportation of all of its wide array of commodities, while at the same time maintaining the necessary operating flexibility to accomplish its mission in a cost effective and efficient manner. We agree that both of these objectives are achieved in the proposed requirement in that it allows the pre-trip inspection to be performed by qualified inspectors from four distinct entities, namely: the Federal government; state governments; motor carriers; and shippers. However, DOE is concerned that the above requirement, in



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Dear Sir or Madam

Docket No. FHWA MC-92-4

Comments were filed on behalf of the Department of Energy in this Docket on August 17, 1993. A further review of those comments reveals that an improper word was used, and we file this correction notice to ensure that the correct word is inserted.

Please make the following correction: delete the word "personal" in the 6th line of the first full paragraph on page 2 and substitute the word "personnel."

Thank you for effecting this correction to the previously filed comments in this Docket.

Michael Maline, Manager  
Regulatory Compliance Program  
Transportation Management Division  
Office of Special Programs  
Office of Technology Development

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Correction sheet

calling for the signature of a motor carrier official, may interfere with or negate the flexibility of allowing inspections to be performed by inspectors from organizations other than the carrier itself, and this limitation would include qualified inspectors provided by DOE.

As the largest shipper of HRCQ radioactive materials in the United States, DOE is confident that it can provide qualified inspectors, but does not necessarily agree that the inspections themselves must be certified with the signature of a motor carrier "official." If the term "official" carries with it the usual definition of a corporate officer or manager, to the exclusion of mechanics, drivers and other ~~personnel~~ <sup>persons</sup> concerned with the inspection process its full benefit will not be realized. All such persons are capable of certifying that the inspection was performed by a qualified inspector, and therefore should not be excluded from so doing.

Consequently, our comment goes to the question of who is considered to be a motor carrier "official." If persons other than corporate officers and or management personnel may be authorized to act as the "official," then DOE has no objection to the language as written. If the intent is to limit those considered to fall within the definition of such an "official," then DOE encourages FHWA to define with specificity those who are deemed to be included in the scope of that term, and to state the circumstances under which the authority to act as an "official" may be granted.

## II. Radiological Monitoring as Part of the Vehicle Inspection:

Radiological monitoring within DOE is a function performed by a certified Health Physicist (HP) Technician. Presently, the shipper is required under the Hazardous Materials Regulations at 49 CFR 5173.441 to ensure that the package is monitored in preparation for shipment. The proposal appears to result in a duplication of effort, but should the FHWA decide to include this additional requirement within its criteria for the inspection of vehicles for HRCQ shipments, it should do so only after a finding of need and that such need would be fulfilled by this activity. In no event should the responsibility for radiological monitoring be placed with a qualified vehicle inspector, unless that person also is qualified as a certified HP. However, to place this requirement within the Motor Carrier Safety Regulations could result in a split in jurisdiction between FHWA and Research and Special Programs Administration on a closely related issue.

## III. Conclusion:

DOE has no basic objection to the subject requirement itself, but has a preference, in terms of allowing greater flexibility (without sacrificing safety), that the term be broadly interpreted. DOE's primary concern in filing its comments is that as written, the term "official" is subject to a wide array of interpretations and is therefore difficult to comply with. Further definition of the term will correct this ambiguity.

DOE supports all regulatory requirements which enhance safety without undue economic and other cost burdens. The monitoring issue raised here is done in the spirit of cooperation with FHWA to determine whether certain consequences have been previously considered, and if not to ensure that they are aired before the proposed requirements take the form of a final rule.



Michael Maline, Manager  
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