



QA  
17866

August 16, 1993

1920 N Street NW, Suite 300  
Washington, DC 20036-1662  
202/861-2800  
Fax: 202/861-7535

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

93 AUG 17 11:30 AM  
LEGS./REGS. DIV.

**Officers**

*Chairman:* Allen Born  
*Vice Chairman and Chairman, Finance Committee:*  
Richard de J. Osborne  
*Vice Chairmen:*  
Milton H. Ward \*  
Harry M. Conger  
Gordon R. Parker  
M. Thomas Moore  
Bille B. Turner  
Barry G. McGrath  
Douglas C. Yearley  
*President:* John A. Knebel  
*Secretary:* Edward M. Green  
*Treasurer:* Clarence L. Smith

RE: Federal Highway Administration Proposed Rule on Federal Motor Carrier Safety Regulations: Transportation of Hazardous Materials; 58 FR 33418 (June 17, 1993)

Dear Sir:

FHWA-97-2180-37

This letter represents the comments of the American Mining Congress (AMC) on the Federal Highway Administration's (FHWA) proposal to amend Part 397 of the Federal Motor Carrier Safety Regulations (FMCSRs) by adding a new Subpart B establishing a safety permitting program for motor carriers transporting certain designated hazardous materials. AMC member companies include manufacturers of explosives and other minerals producers that use these products in their operations.

INTRODUCTION

Aspects of the proposal raise concerns for our members. As a preliminary matter, the November 16 deadline is short, especially given the administrative burden that the proposed safety permit program would place on both the carriers and the agency. We are also concerned that these rules would create excessive and redundant paperwork. Not only would such a burden be costly to the carriers, it may hamper the successful implementation of the proposed program. Finally, there are no temporary permit provisions protecting rated carriers who have submitted timely permit applications pending approval. In light of these concerns, we urge FHWA to modify and clarify certain aspects of the proposed rules.

These comments also support the agency's decision to exclude other hazardous materials from this rulemaking and not to assess fees.

continued . . .

**Directors**

Calvin A. Campbell Jr., Chicago  
Harry M. Conger, San Francisco  
Milton H. Ward, Englewood CO  
Allen Born, New York  
R. Gene Dewey, Los Angeles  
Richard de J. Osborne, New York  
Gordon R. Parker, Denver  
W. R. Stamler, Paris KY  
M. Thomas Moore, Cleveland  
Robert T. Spitz, Charlotte NC  
Arthur Brown, Coeur d'Alene ID  
John D. Janak, Dallas  
Wm. G. Mulligan, Woodcliff Lake NJ  
Billie B. Turner, Northbrook IL  
Dana S. Getman, Bangor MI  
J. Burgess Winter, Tucson  
Ian L. White-Thomson, Los Angeles  
Glen A. Barton, Peoria  
Carl E. Elers, Houston  
Michel Schneider-Maunoury, New York  
Robert M. Smith, Toronto  
Marc F. Wray, Pittsburgh  
Robert P. Larkins, Houston  
Thomas W. Garges Jr., Indiana PA  
Anthony G. Femandes, Denver  
Barry G. McGrath, Englewood CO  
Gerard E. Munera, Englewood CO  
Merle D. Wolfe, Knoxville  
Jerry K. Ellis, San Francisco  
Douglas C. Yearley, Phoenix  
Bruce E. Grewcock, Omaha  
John M. Piecuch, Reston VA  
Robert C. Scharp, Oklahoma City  
James A. Todd Jr., Birmingham  
John M. Willson, Vancouver BC  
Jeffrey L. Zelms, St. Louis  
R. Thomas Green Jr., Cleveland  
George A. Mealey, New Orleans  
Nicholas P. Moros, Portland  
Bobby E. Cooper, Salt Lake City  
Sir Ian MacGregor, New York †  
N. T. Camicia, Greenwich †  
Charles F. Barber, New York †  
Ralph E. Bailey, Stamford †

\* Immediate Past Chairman  
† Honorary

FHWA DOCKET MC-92-4-38  
PAGE 1 OF 5

NOVEMBER 16, 1993, EFFECTIVE DATE UNREASONABLE

The mandatory compliance date of November 16, 1993, is unreasonable. It would be difficult to comply with this date considering the fact that FHWA is planning to conduct an "in-depth compliance review" of every carrier in order to ensure a satisfactory rating. 58 FR 33421. Many carriers have DOT safety inspection ratings over one year old. Others, such as intrastate carriers, have never before been subject to FHWA regulations and have never been required to file FORM MSC-150. This deadline would be particularly burdensome for them. Moreover, there is no indication that these regulations, which establish the criteria for permit approval, will be finalized in advance of that date.

Although the Hazardous Material Transportation Uniform Safety Act (HMTUSA) originally set the date of promulgation for these rules on November 16, 1991, it allowed a full year between the promulgation of the safety permit rules and their effective date (November 16, 1992). 49 U.S.C. app. 1805. In the present proposal, FHWA intends to promulgate and implement these regulations within three months. This is, at best, ambitious and unrealistic. The possibility exists that the rules will not be finalized before the mandatory compliance date.

In addition, given the administrative burden these rules will place on motor carriers, it would be unreasonable to expect motor carriers to comply with these regulations in such a short period of time. In the preamble of the proposed rule, the agency recognized that:

Different quantities of class A and/or B explosives are transported daily by a vast number of motor carriers, primarily private motor carriers of property. . . 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 never been subject to the FHWA's regulations. Many of these motor carriers would be required to obtain financial responsibility coverage in the amount of \$5 million. 58 FR 33420.

Carriers of other designated materials would be burdened as well. Although they may have been subject to some form of Federal regulation in the past, intrastate shippers of these materials have never had to submit Form MCS-150 or comply with the requirements of the FMCSRs.

By the agency's own admission, it has been unable to determine the precise impact of this proposed rulemaking on intrastate motor carrier operations because the agency has had no regulatory authority over intrastate carriage. 58 FR 33423. Rather than

hastily pushing the implementation of these rules, the agency should first assess the economic impact on this portion of the motor carrier industry and any additional impact which may result from also having to come into compliance with the rest of the FMCSRs.

NO PROVISIONS FOR THE EVENTUALITY OF BUREAUCRATIC DELAY

Even if the carriers could submit timely permit applications, there is no guarantee that the agency can process all submitted applications prior to the November 16 compliance date. FHWA will be handling a large volume of applications, since it plans to review every carrier to ensure a "satisfactory" safety rating. In the preamble to the proposed rule, FHWA recognizes that "the large number of motor carriers applying for safety permits could result in administrative burdens which may adversely affect the successful implementation of the proposed program." 58 FR 33420.

The proposed safety permit program does not provide for the eventuality that the agency is unable to approve all submitted permit applications by previously rated carriers before the mandatory date. Since even rated carriers will be prohibited from transporting the designated materials without a permit after November 16, this may cause some of these carriers to interrupt operations pending approval of their safety permit applications. This result is anomalous since these carriers have already been assigned a "satisfactory" safety rating.

The proposal provides for a 120-day temporary permit period for motor carriers that have not been assigned a safety rating or have not been subject to Federal rules in the past. Previously unrated motor carriers may obtain a temporary permit upon filing a properly executed Form MCS-150 with a certification that it is operating in full compliance with the FMCSRs or comparable state regulation. 58 FR 33422. The proposal also contains a provision which would protect carriers from needless interruption in operations by keeping existing permits in force pending approval of renewal so long as applications are submitted between 90 and 180 days prior to the expiration date. 58 FR 33422.

However, the proposal neglects to address similar safeguards for rated carriers which have already received a "satisfactory" safety rating and have submitted timely applications pending approval. We request that the agency establish provisions to protect carriers from needless interruption in operations pending permit renewal. For instance, the agency may simply allow the rated carrier's current safety rating and DOT identification number to serve as a safety permit and require a full-scale compliance review only where there is an indication of a compliance problem. At minimum, the agency should consider extending a 120-day temporary permit period to rated carriers upon timely submis-

sion of Form MCS-150 so that their operations are not interrupted during the reviewing process.

MULTIPLE SUBMISSION OF INFORMATION

This proposal requires that "motor carriers which have already been assigned DOT identification numbers would have to apply for a safety permit by submitting another Form MCS-150." 58FR 33421. For instance, DOT has already required the registration of carriers of more than 25 kg of 1.1, 1.2 and 1.3 materials. Information regarding these carriers is already on DOT databases.

There is no reason why FHWA cannot utilize the information already on its databases to issue safety permits to carriers already having a DOT identification number. Indeed, carriers who have never filed a MSC-150 before are allowed to file for an identification number and a safety permit simultaneously using a single Form MCS-150.

The agency has coordinated the quantity provisions established and set forth in the definition of the term "designated high risk hazardous materials" with efforts currently ongoing to implement the registration and routing requirements of the HMTUSA. The same forms, criteria and procedures which are currently utilized to ascertain "safety fitness" are being used. In addition, the safety rating notification letter currently being sent to a motor carrier would be modified to serve as the safety permit and the safety permit number would also serve as the motor carrier's DOT identification number. 58FR 33421. It would be far more efficient for the agency to issue safety permits to current DOT number holders based on available information rather than to repeat a review process already complete.

A regulation that encourages duplication, redundancy, unnecessary reporting, and excessive paperwork creates a costly and unjustified burden both for those who must submit this information and those who must receive and process it.

SUPPORT FOR DECISION TO RESTRICT THE APPLICABILITY OF THE RULES AND THE DECISION NOT TO ASSESS PERMIT FEES

In light of the great administrative burden the proposed program would otherwise place on motor carriers of hazardous materials, AMC supports FHWA's decisions to limit the application of the rules to the four classes of designated high-risk hazardous materials and not to assess a permit fee.

These proposed rules limit the coverage of the permit program to the specific classes of high-risk hazardous materials set forth in HMTUSA at 49 U.S.C. app. 1805(d)(5). AMC supports FHWA's decision not to expand the regulations to other materials.

With respect to the issue of fees, FHWA is making extensive use of existing FHWA programs, forms and procedures so that "no measurable cost would be attributable to the administration of the proposed motor carrier safety permit program." 58 FR 33421. Furthermore, the collection of fees for the issuance of a permit would, in itself, add to the government's cost of administration. 58 FR 33421.

CONCLUSION

FHWA's proposed safety permit program is, in part, unduly burdensome to both the carriers and the agency. Accordingly, we request that the agency revise the proposal to postpone the date of implementation, to eliminate redundant paperwork, and to provide safeguards to insure that operations by rated carriers are not unduly interrupted pending permit issuance.

We do, however, support the agency's decision to limit the application of the proposed program to the four designated classes of high-risk hazardous materials and not to assess permit application fees. An expansion of the program or the assessment of fees would only add to the burden on both the carriers and the agency.

Sincerely,

  
Stuart A. Sanderson  
Senior Counsel

  
John T. O'Leary  
Counsel