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**SOCIETY OF EXPLOSIVES ENGINEERS**

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August 13, 1993

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FHWA , Office of the Chief Counsel  
Federal Highway Administration

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*FHWA-97-2180-43*

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*TRANS. REGS. DIV.*  
*ALM...*

Re: Docket # MC 92-4, Room 4232, HCC-10

Subject: Comments on DOT's Notice of Proposed Rulemaking on the Federal Motor Carrier Safety Regulations; Transportation of Hazardous Materials. 49 CFR 397, 58 CFR 33418 (June 17, 1993)

Dear Sirs:

The International Society of Explosives Engineers (S.E.E.) appreciates having the opportunity to present these comments in response to the above captioned Notice of Proposed Rulemaking.

The S.E.E. is an association of engineers who use explosives on a day to day basis. The Society is dedicated to advancing the science and art of the use of commercial explosives and promoting the safe use of explosives in the industry. More than 2000 of our members throughout the United States are engaged in the fields of mining, construction, manufacturing, agriculture, demolition, aerospace, forestry, seismology, etc.

The Society believes that DOT should not go forward with the proposed rules for the following reasons:

**The proposed rules are redundant and duplicative of existing regulation with no offsetting benefit and will not result in a greater degree of safety and security to the public.**

The explosives industry is currently heavily regulated by dozens of agencies of the federal government, including the Department of Transportation, that promote and maintain stringent safety requirements in order to mitigate potential consequences of an explosives accident. Together, these agencies oversee an effective, proven regulatory scheme that protects the public from potential hazards.

The addition of another layer of red tape, with no offsetting increase in the level of safety to the public, constitutes a financial and administrative burden to the industry, especially to the small business people that do drilling, blasting and hauling of explosives.

The proposed rules will require carriers to obtain a separate federal safety permit and to add even more layers of records regarding shipments of explosives. The current registration program already provides the same information as the proposed permit program, therefore the permit program will be redundant and contain duplicate information.

The vast majority of shippers of commercially used explosives ship with a limited number of carriers or, in many instances, carry their own products. This limited number of carriers are carefully screened for their safety procedures. In fact, most shippers of commercial explosives in the United States are members of the **IME** and require, as standard procedure, that a carrier submit proof of insurance and a satisfactory safety rating before transporting any explosives.

These carriers currently have a very good record of safety. Current enforcement programs such as compliance reviews and roadside inspections already insure the highest standards of safety in the shipping industry.

**We question whether DOT will have the ability to implement the rules.**

We are concerned that DOT may not be able to perform all of the necessary inspections or take time to monitor and grant permits that will be required by the proposed rules. The cost to industry for resulting delays could be substantial.

The mandatory date of 1 **1/16/93** will be difficult to comply with if FHWA is planning to inspect every carrier in order to ensure a satisfactory rating. Many carriers have DOT safety inspection ratings over 1 year old. Will a DOT safety rating document be available at time of permit application?

**The proposed rule would impose an undue burden on carriers. Smaller intrastate carriers that are now regulated by state law would encounter a stiff financial burden.**

The addition of another layer of regulation, with no offsetting increase in the level of safety or security to the public, will be a financial and administrative burden to the industry, especially to the small business people that do drilling, blasting and hauling of explosives.

Under the proposal, shipments that were once covered only by intrastate rules will now be subject to federal rules. In many cases this means that smaller intrastate carriers will suffer an unfair financial burden since they will be subject to increased permit fees and insurance coverage requirements - resulting in stiff increases in premiums.

**The proposed rule is unclear and will cause confusion.**

With the addition of the federal permit **there** will be additional forms, a new application, more paperwork, and duplication of many existing requirements for carriers. If a carrier has a satisfactory safety rating, will they automatically obtain a permit? If so, then the permit requirement is duplicative and unnecessary.

Why is a permit number to be placed on the shipping papers? The shipper will insure that the carrier is authorized to haul hazardous materials before they ship. If stopped, the carrier's DOT number could be checked for a current permit.

Even though the discussion portion of the NPRM indicates that the carrier is responsible for putting the permit number on the shipping papers, the printed regulations are not clear, and since most shipping papers are prepared by the shipper, this requirement may be transferred by the

carrier to the shipper. Since many shippers of explosives are small companies, this potential, additional requirement to add something else to shipping papers, without any apparent benefit, is uncalled for and will surely result in inadvertent error of omission.

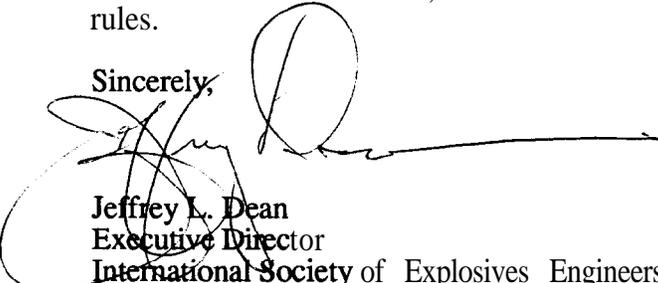
We feel that, in order to avoid confusion and ensure that the highest standards of safety are maintained, the regulations should require one ID # and one satisfactory rating rather than duplicate paperwork and redundant regulations.

**DOT needs to consider public policy and national security questions regarding the release and availability of explosives information to the public through the inclusion of carrier permit information on the MCMIS.**

The question of whether the information provided under the current proposal, including names and locations of facilities of carriers of explosives, should become public domain under the proposal to include permit information in the **FHWA's** Motor Carrier Management Information System (MCMIS), seems to have been overlooked. Law enforcement, fire prevention, and intelligence agencies should be consulted on the issues of public policy and national security before proceeding further with this particular proposal.

For the above reasons, S.E.E. believes that DOT should not go forward with the **proposed** rules.

Sincerely,



Jeffrey L. Dean  
Executive Director  
International Society of Explosives Engineers