

its safety monitoring of carriers transporting hazardous materials and consider alternative means of enhancing safety in motor carrier transportation of hazardous materials, by such means as additional monitoring of the safety performance of carriers and performing a safety review of "new entrants" within 18 months of the date when the carrier begins operations. (On May 13, 2002, FMCSA published an interim final rule in the **Federal Register** establishing minimum requirements for new entrant motor carriers. The rulemaking seeks to ensure that they are knowledgeable about the applicable Federal regulations and advises that FMCSA will conduct a safety audit as soon as the new entrant has been in operation for enough time (generally, at least three months) to have sufficient records to evaluate the carrier's basic safety management controls. 67 FR 31978.)

The SNPRM

Congress has not eliminated the statutory requirement for a Federal safety permit. Accordingly, the FMCSA is issuing a revised proposal in this SNPRM. The FMCSA invites all interested persons to comment on this revised proposal and hopes to issue a final rule that will phase in the requirement for a safety permit over the 2005–2006 time period as motor carriers submit or update their Motor Carrier Identification Report (Form MCS–150) (according to the schedule set forth in 49 CFR 390.19(a)).

Hazardous Materials for Which a Safety Permit Would Be Required

In the 1993 NPRM, FHWA proposed that a motor carrier would be required to hold a safety permit in order to transport in commerce any of the four hazardous materials specified in 49 U.S.C. 5109(b), in the same threshold quantities for which the carrier must submit a registration statement and pay a registration fee under 49 U.S.C. 5108(a)(1)(A)–(D):

1. A highway route-controlled quantity of a Class 7 (radioactive) material;
2. more than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material;
3. more than one liter (1.08 quarts) per package of a poisonous-by-inhalation (PIH) material in Division 2.3, Packing Group I, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A; and
4. a shipment of compressed or refrigerated liquid methane or natural gas in bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases.

Accordingly, the motor carriers required to hold a safety permit would be a subset of the carriers required to register and pay a registration fee, and no carrier that did not have to register would be required to hold a safety permit. In this SNPRM, FMCSA is proposing the same scope of the safety permit requirement, with the following modifications from the proposals in the NPRM:

—For motor carriers already transporting these materials in interstate or intrastate commerce, there would be a two-year phase-in period to obtain a safety permit based on the schedule in 49 CFR 390.19(a) for submitting or updating the Motor Carrier Identification Report (Form MCS–150). Also, there would not be a separate three-year phase-in period for motor carriers who transport explosives, based on the amount of explosives transported in a single shipment, as proposed in the 1993 NPRM.

—Liquefied natural gas would include all liquefied gases having a methane content of at least 85%.

In response to the 1993 NPRM, several commenters supported limiting the scope of the safety permit requirement to the materials specified in the statute. The Edison Electric Institute (EEI) stated that the requirement to hold a safety permit should not be extended to additional classes and quantities of hazardous materials "unless and until DOT gathers substantial evidence that such extension would significantly enhance transportation safety," based on its view that this requirement "would impose additional administrative burdens on affected motor carriers and on FHWA." EEI quoted the statement from DOT's comments on H.R. 3520, which became the Hazardous Materials Transportation Uniform Safety Act of 1990, Public Law 101–615, 104 Stat. 3244 (Nov. 16, 1990), that "it is essential to begin with a limited permitting program that is administratively practicable, and then consider expanding the program, as determined necessary." House Report No. 101–444, Committee on Energy and Commerce, 101st Cong., 2d Sess., pp. 66–67 (April 3, 1990).

The Chemical Waste Transportation Institute (CWTI) recommended that the requirement for a safety permit be broadened to cover all motor carriers required to register and pay a registration fee under 49 U.S.C. 5108. CWTI stated that any motor carrier that transports a quantity of hazardous material for which a placard is required "should have a safety rating to

demonstrate that [its] safety rating is above "unsatisfactory," and the "only 'new' administrative burden would be that created by the requirement to 'review' each subject motor carrier's rating every three years."

Two commenters, Tri-State Motor Transport Co. (Tri-State) and the International Brotherhood of Teamsters, suggested that a safety permit should be required for motor carriers that transport any hazardous materials, without specifying any threshold amounts. According to Tri-State, "the sooner the program is expanded to cover all hazardous materials the more effect it will have in reaching this goal." The Teamsters noted that "all classes of hazmat" are involved in hazardous materials incidents.

Additional comments addressed the specific hazardous materials for which a safety permit would be required. With respect to explosives, a construction industry association stated that a safety permit should be required only for a carrier that transports large quantities of explosives "from manufacturer to the supplier," and that "[e]xisting OSHA regulations can cover the transportation" by a contractor who used explosives at a specific jobsite, because the 25 kg threshold "is often transported in a small 'pick-up' type truck." The American Pyrotechnics Association (APA) stated that requiring a safety permit to transport more than 25 kg of Division 1.3 G explosives (including "display" fireworks) would present "unnecessary burdens" for this industry. APA referred to the seasonal nature of this industry (around July 4), its "excellent safety record" as reflected in the few incidents in RSPA's Hazardous Materials Information System, and other requirements such as: (1) provisions in the Hazardous Materials Regulations (HMRs, 49 CFR parts 171–180) on training of hazmat employees, and (2) the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399) for the driver to have a commercial driver's license with a hazmat endorsement. APA stated that a requirement for a safety permit "will do nothing to enhance public safety beyond that which will be achieved through the [hazmat] training," and it expressed concerns that States will develop separate programs "with duplicative permit requirements and unnecessary, burdensome paperwork." APA asked for a delay in the effective date of the safety permit program for carriers of explosives, while the Idaho State Police opposed any extension of the three-year phase-in period. Tri-State also recommended reducing the three-year phase-in period.