

In the NPRM, FHWA proposed to limit the poisonous inhalation (PIH) materials for which a safety permit would be required to those Packing Group I materials in Hazard Zone A. However, it asked for information on materials in Hazard Zone B and whether the safety permit requirement "should be expanded to include the transportation of [PIH] Hazard Zone B hazardous materials," which "include such widely distributed chemicals as chlorine, hydrogen sulfide, ethylene oxide, and nitric oxide, to name a few." (58 FR at 33420). Two State police forces recommended including Hazard Zone B materials (California) or giving further consideration to Hazard Zone B materials (Idaho); with Idaho suggesting that "safety is a greater concern under the safety permit program than under the registration program," so that the reasons for not requiring registration by carriers of smaller amounts of Hazard Zone B materials (in a bulk container with a capacity less than 3,500 gallons) should not apply to the requirement for a safety permit. Three other commenters opposed expanding the safety permit requirement to Hazard Zone B materials, including the Oregon Public Utilities Commission, which stated that safety would not be increased by requiring a safety permit for "all movements of chlorine" and "many pesticide movements."

Many comments addressed the proposal to require a safety permit to transport "liquefied natural gas," including the gases covered by that term. Several persons said that the NPRM was ambiguous and could be read to cover all Division 2.1 materials that can be a "liquid natural gas" and all liquid fuels derived from natural gas. Air Products and Chemicals, Inc. stated that "liquefied petroleum gases and natural gas liquids represent at least comparable safety risks and require at least comparable carrier expertise," while the National Propane Gas Association (NPGA) opined that "propane, also known as liquefied petroleum gas or LP-gas, was not included in the statute as a product to be regulated through a permit," based on "the historical safety of the propane gas transportation system under the existing comprehensive DOT regulatory system." NPGA stated that there is no basis in legislative history or experience to require a safety permit for all Division 2.1 hazardous materials. The American Petroleum Institute recommended that the proper shipping name(s) of the specific materials be set forth in the regulations, rather than references to Division 2.1 materials. Three

commenters stated that the use of the term 'in bulk' to refer to a container with a capacity of 3,500 gallons or more would be confusing, because a "bulk packaging" is defined in 49 CFR 171.8 to include a container having a "maximum capacity greater than 450 L (119 gallons) as a receptacle for a liquid" and a "water capacity greater than 454 kg (1000 pounds) as a receptacle for a gas." Yellow Freight System, Inc. supported the 3,500-gallon capacity threshold for liquefied natural gas, because "[l]ess than 'in bulk' quantities generally are less likely to pose an immediate danger to public safety while in transit compared to 'in bulk' shipments."

In the preliminary cost-benefit analysis of this rulemaking (a copy of which has been placed in the docket), the agency considered three different lists of hazardous materials for which a safety permit would be required:

Option No. 1 is the "statutory" list of the four categories of hazardous materials in 49 U.S.C. 5109(b), at the same threshold quantities for which registration is required. Under this option, almost 2,500 motor carriers (including about 800 intrastate carriers) would be required to obtain a safety permit.

Option No. 2 includes an "expanded" list of the following hazardous materials, which would make approximately 6,500 motor carriers (including about 1,830 intrastate carriers) subject to the safety permit requirement:

—*Explosive materials*: any quantity of Division 1.1 and 1.2 materials; more than 25 kg (55 pounds) of Division 1.3 materials; and more than 454 kg (1,000 pounds) of Division 1.5 materials.

—*PIH materials (in Divisions 2.3 and 6.1)*: Hazard Zone A materials in any quantity; a shipment of Hazard Zone B materials in a bulk packaging (capacity greater than 450 L [119 gallons]); a shipment of Hazard Zone C or D materials in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons).

—*Flammable gases (Division 2.1), anhydrous ammonia (Division 2.2), and poisons (Division 6.1, Packing Group I, other than PIH materials)*: a shipment in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons).

—*Organic peroxides*: any quantity of a Type B, temperature controlled organic peroxide (Division 5.2) material.

—*Infectious substances (Division 6.2)*: any quantity of a select agent or toxin

regulated by the Centers for Disease Control and Prevention (CDC) under 42 CFR part 73, except for laboratory samples.

—*Radioactive (Class 7) materials*: any "exclusive use" shipment of Class 7 materials transported in accordance with 49 CFR 427(a) as well as any highway route controlled quantity.

Option No. 3 would apply the requirement for a safety permit to all motor carriers subject to the security plan requirements in 49 CFR 172.800, adopted in the final rule published by RSPA under docket No. RSPA-02-12064 (HM-232) on March 25, 2003 (67 FR 14521). This would be more than 16,250 motor carriers (including about 4,600 intrastate carriers) that are required to register with RSPA and pay a registration fee or transport a select agent or toxin regulated by the CDC under 42 CFR part 73.

FMCSA continues to believe that the initial requirements for a safety permit should apply to only those motor carriers that transport the materials mandated by Congress (option No. 1). However, expanding the existing statutory list to require a safety permit for motor carriers that transport other hazardous materials (covered by option Nos. 2 or 3) should provide the public with additional safety measures, and FMCSA invites comments on whether the agency should, in the future, apply the requirement for a safety permit to motor carriers that transport the hazardous materials in the "expanded" or "HM-232" lists above.

Intrastate and Foreign Motor Carriers

The requirement to hold a safety permit in 49 U.S.C. 5109 applies to both interstate and intrastate motor carrier operations within the United States. In the 1993 NPRM, FHWA proposed to require that intrastate motor carriers must comply with "all applicable parts of the FMCSRs" in order "to use the provisions of part 385, 'Safety Fitness Procedures,' in making determinations to issue, or deny, a request for a safety permit for either interstate or intrastate motor carriers" (58 FR at 33421). Several commenters raised concerns about applying the financial responsibility requirements in 49 CFR part 387 to intrastate carriers that are subject only to State requirements when they use a smaller vehicle (having a gross vehicle weight rating of less than 10,000 pounds) to transport the hazardous materials for which a safety permit would be required.

As discussed below under "Conditions for issuing a safety permit," FMCSA is still proposing to require that a motor carrier have a "satisfactory"