

safety rating in order to obtain a safety permit. Accordingly, an intrastate carrier would be required to apply for a U.S. DOT number as a "new entrant" and subject itself to a compliance review. The safety rating issued by FMCSA to an intrastate carrier would be used only for purposes of issuing a safety permit; the safety rating issued to an intrastate carrier would not be posted on FMCSA's Web site nor would it be used by FMCSA for any purpose other than determining whether the carrier is entitled to a safety permit.

FMCSA does not consider that section 5109 is a mandate to make all intrastate motor carriers subject to provisions in the FMCSRs that do not already apply to them, including the financial responsibility requirements in 49 CFR part 387. Except for the requirement to hold a safety permit, in order to transport any of the designated hazardous materials, and to undergo a compliance review in order to demonstrate its fitness to hold a safety permit, an intrastate carrier would not become subject to other requirements in the FMCSRs that do not already apply.

The definition of "interstate commerce" includes foreign commerce. Therefore, Canadian and Mexico-domiciled motor carriers transporting HM permitted materials in the United States would be subject to the requirements proposed in this SNPRM.

Application Procedures

Each motor carrier that conducts operations in interstate commerce must submit to FMCSA a Motor Carrier Identification Report, Form MCS-150, before it begins operations and on a two-year cycle thereafter (the month and year of submission are based on the last two digits of the carrier's U.S. DOT number). 49 CFR 390.19(a). Effective January 1, 2003, a "new entrant" motor carrier must also submit Form MCS-150A, Safety Certification for Application for a U.S. DOT Number, and other forms to obtain operating authority. 49 CFR 385.305.

In the 1993 NPRM, FHWA proposed to use a revised Form MCS-150 as the application for a safety permit. Two commenters supported the use of the MCS-150 form (with revisions) for applying for a safety permit. Other commenters suggested combining the safety permit and registration programs, in terms of a single application form, registration and permit number, and expiration dates.

FMCSA believes that the safety permit program can best be coordinated with the biennial report filed on Form MCS-150 (and Form MCS-150A for a new entrant). Rather than revising the Form

MCS-150, however, FMCSA proposes to create a new Form MCS-150B for a motor carrier to provide the limited additional information required for issuance of a safety permit. FMCSA believes that keeping the safety permit program part of the motor carrier identification and safety fitness program with the same schedule for renewal will be more efficient than attempting to combine the safety permit application with the registration program (which applies to offerors and carriers by all modes of transportation, allows registration for one, two, or three years at the registrant's option, and operates on a mid-year basis [July 1 to June 30] rather than a staggered cycle throughout a two-year period).

Implementation of the safety permit requirement would be phased in beginning January 1, 2005. The actual date of compliance would depend on whether the motor carrier is already involved in the transportation of a permitted material. A motor carrier that is not involved in the transportation of a permitted material on January 1, 2005, would need to apply for and receive a safety permit before it may transport any of the hazardous materials for which a safety permit would be required. However, a "new entrant" motor carrier that applies for a U.S. DOT number after January 1, 2005, would be required to apply for a safety permit (by submitting Form MCS-150B) during 2005 or 2006. Thus, until the motor carrier that is already operating is required to renew its U.S. DOT number during 2005 or 2006, it need not apply for a safety permit. In all cases, a safety permit will be valid until the next date for filing Form MCS-150 (in accordance with the schedule set forth in 49 CFR 390.19(a)(2) and (3)).

A draft of Form MCS-150B is available in the docket (at the DMS Web site <http://dms.dot.gov>), and interested persons are invited to submit comments on that draft. As indicated on that draft, FMCSA proposes to require that an official of the motor carrier must certify "under penalties of perjury," but not to require notarization. As in the 1993 NPRM, FMCSA is not proposing to charge a fee for applying for a safety permit, but it may consider the need to assess an application fee in the future, especially if the safety permit program is expanded to apply to motor carriers of additional types and quantities of hazardous materials.

Conditions for Issuing a Safety Permit

In the 1993 NPRM, FHWA proposed that its determination on an application for a safety permit would be based "upon a safety fitness finding made

pursuant to 49 CFR part 385." 58 FR at 33421. FHWA also proposed authority to issue a temporary safety permit to an unrated motor carrier, pending a safety fitness determination, when the carrier has certified in its application that it is operating in full compliance with the FMCSRs and HMRs, or comparable State regulations (including financial responsibility requirements in part 387 or State regulations, whichever is applicable). Under the 1993 proposal, a temporary safety permit would remain in effect for no more than 120 days "or until a safety rating is assigned, whichever occurs first" (58 FR at 33424).

As in the 1993 NPRM, FMCSA proposes to require that a motor carrier have a "satisfactory" safety rating in order to obtain a safety permit. Appendix B to 49 CFR part 385 contains an explanation of the safety rating process including a list of the regulations that FMCSA considers "acute" (where noncompliance is so severe as to require immediate compliance) and "critical" (where noncompliance relates to management and/or operational controls). This SNPRM also proposes additions to the list of "acute" and "critical" regulations in Section VII of Appendix B to part 385.

FMCSA is also proposing to add two further conditions for issuing a safety permit: (1) the motor carrier must show that it has a satisfactory security program, and (2) the motor carrier must be registered with RSPA (and remain registered). A satisfactory security program would apply to motor carriers transporting hazardous materials in commerce listed in this Supplemental Notice of Proposed Rulemaking (SNPRM). A satisfactory security program must include: (1) A security plan as prescribed in subpart I of Part 172 of this title, (2) means of communication that will enable the vehicle operator to immediately contact the motor carrier during the course of transportation as required in this SNPRM, and (3) means of providing its hazardous materials employees with security training for hazardous materials employees. FMCSA is also proposing to issue a temporary safety permit, valid for up to 270 days, to a motor carrier that does not have a safety rating but certifies that it has a satisfactory security program and is operating in full compliance with the HMRs, the FMCSRs or comparable State regulations, and minimum financial responsibility requirements in 49 CFR part 387 or State regulations (whichever are applicable). However, FMCSA would not issue a temporary safety