

permit to a motor carrier that, as indicated in the Motor Carrier Management Information System (MCMIS), has a crash rate in the top 30% of the national average; has a driver, vehicle, hazardous material, or total out-of-service rate in the top 30% of the national average; or is listed on FMCSA's SafeStat A, B, C, or D lists.

Comments to the 1993 NPRM supported use of the safety rating to determine a motor carrier's fitness to hold a safety permit, but raised questions about the manner in which a safety rating is assigned and whether the 120 day limitation for a temporary safety permit was sufficient, especially to cover all intrastate carriers that have not previously been required to submit Form MCS-150 and obtain a U.S. DOT number. The California Highway Patrol (CHP) recommended that a safety rating be assigned only after a "compliance review," with greater emphasis on "the mechanical condition of the carrier's vehicles," and not a lesser "safety review" which it considered not to be "sufficient to determine a carrier's actual safety compliance." CHP also recommended that the compliance review be performed at the principal location where hazardous materials operations take place, rather than at its main office or headquarters which may be "far removed from the actual working locations."

The Oregon Public Utilities Commission expressed concern that the safety "rating system is difficult to decipher and appears \* \* \* to be somewhat arbitrary" with variations among different regions. Baker Performance Chemicals, Inc. suggested that there be more discussion on how the safety rating is determined. CWTI recommended that a written notification of an "unsatisfactory" or "conditional" safety rating include written notice that the carrier is prohibited from transporting any of the hazardous materials for which a safety permit is required.

FMCSA believes that most, if not all, of the concerns expressed about the safety rating system itself have been addressed in the 1997 revisions to 49 CFR part 385, including the addition of Appendix B to that part ("Explanation of Safety Rating Process"). See the final rules published May 28, 1997 (62 FR 28807), and November 6, 1997 (62 FR 60035). At present, FMCSA bases a safety rating only on a full compliance review, and it retains the discretion to perform that review at any of the motor carrier's facilities. FMCSA shares the concerns that 120 days may not be sufficient time to perform a compliance review for a motor carrier that does not

have a safety rating, and the agency proposes to allow a temporary safety permit to remain in effect for up to 270 days, providing that the applicant satisfies all the conditions for issuance of a temporary safety permit.

#### *Permit Number and Evidence in the Vehicle*

In the 1993 NPRM, FHWA proposed that its written notification of a "satisfactory" safety rating would "serve as the safety permit and shall include the safety permit number assigned." (59 FR at 33424) It also proposed that the safety permit number must be "clearly displayed on shipping papers or the appropriate transportation document," in order to meet the statutory requirement for the motor carrier to keep "a copy of the permit, or other proof of its existence, in the vehicle." 49 U.S.C. 5109(a). FHWA noted the prohibition in § 5109(f) against a person offering a designated hazardous material for transportation by motor vehicle unless the carrier holds a safety permit, and it indicated that "RSPA will subsequently initiate rulemaking which will address shipper responsibility." (58 CR at 33419)

The National Motor Freight Traffic Association (NMFTA) supported the use of a carrier's U.S. DOT number as the safety permit number and stated that "use of this number would minimize paperwork, inasmuch as the assigned safety permit number would be displayed on the carriers' transportation documents." It also stated that, since FHWA intended to add a "permit" database to its existing information systems, "safety fitness and permit information would be readily available to federal and state officials and enforcement personnel." CHP questioned whether use of the U.S. DOT identification number would be sufficient because "all private interstate motor carriers must obtain and display" this number. The Idaho State Police stated that "there is no way for an enforcement officer [to] know that the carrier has met the requirements for having a safety permit," and it recommended the creation of an approach providing "adequate measures for ensuring that safety permit numbers are legitimate and verifiable."

Some commenters suggested that the same number should be used for both registration and the safety permit, to cover the same period of time, and that DOT should use information from the registration program to issue safety permits to carriers with a U.S. DOT identification number. CWTI suggested that the safety permit number should be included on the registration certificate

or another document carried on the vehicle, rather than the shipping paper prepared by the shipper (or offeror).

Other commenters objected to the proposed requirement that the safety permit number must be on the shipping paper or stated that the specific location and manner of displaying the safety permit number needed to be addressed. Yellow Freight stated that law enforcement officers should be able to determine "through another source" whether a carrier holds a safety permit, and adding additional information to shipping papers "that is not essential to immediate safety concerns will not enhance the transportation of hazardous materials." The Institute of Makers of Explosives (IME) and the International Society of Explosive Engineers (ISEE) stated that requiring the shipper to put the carrier's safety permit number on the shipping paper would result in more errors, as well as increase the time and effort of preparing shipping papers. 3M suggested that the carrier (rather than the shipper) should be responsible for putting the safety permit number on shipping papers.

Associations of motor carriers endorsed the statutory requirement that a shipper (or offeror) must verify that the carrier holds a safety permit before offering a designated hazardous material for transportation. 3M objected and Mobil stated that access to FMCSA's Motor Carrier Management Information System (MCMIS) would be necessary for a shipper to verify that it has a permit, and that there would be no need to have the permit number on shipping papers if a carrier were required to provide "proof of fitness and safety permit issuance" to shippers. In addition, ISEE raised a concern about "the availability of explosives information to the public through the inclusion of carrier permit information in MCMIS."

In this SNPRM, FMCSA is no longer proposing that the carrier's safety permit number must appear on the shipping paper, but the carrier would be required to maintain a copy of the safety permit or another document showing the permit number in the vehicle transporting a designated hazardous material. A State or local law enforcement officer would be able to confirm the validity of this number through real-time or close to real-time information made readily accessible by FMCSA.

Section 5109(f) provides that a person may offer a designated hazardous material to a motor carrier for transportation in commerce "only if the carrier has a safety permit." The authority for implementing this