

December 12, 2013

Via Regulations.gov

Paul Bomgardner
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue., SE
Washington, DC 20590

Dear Mr. Bomgardner:

Re: Docket FMCSA-2013-0305: Agency Information Collection Activities; Extension of an Approved Information Collection Request: Transportation of Hazardous Materials, Highway Routing

The Federal Motor Carrier Safety Administration (FMCSA) has proposed extending its present State hazardous materials (hazmat) route reporting requirements without change.¹ But, the proposed extension without change does not comport to the requirements of Public Law 112-141, Moving Ahead for Progress in the 21st Century (MAP-21)² Specifically, American Trucking Associations³ (ATA) believes three changes will bring the information collection into compliance with FMCSA's delegated functions and enhance the quality, usefulness, and clarity of the collected information:

- FMCSA should clarify that States must, rather than may, submit hazmat routing information to it;
- FMCSA should change the State reporting requirements to every two years or within 60 days of making a routing change, whichever is sooner; and
- FMCSA should regularly publish a national routing list in the *Federal Register*.

States Must Submit Highway Routing Information

FMCSA proposes to "request that each State and Indian tribe...provide information identifying hazardous materials routing designations within its jurisdiction."⁴ FMCSA proposes to do so in accordance with 49 C.F.R. § 397.73, which states that "Information on [Non-Radioactive Hazardous Materials] routing designations *must* be made available by the States and

¹ See 78 Federal Register 205, *Agency Information Collection Activities: Extension of an Approved Information Collection Request: Transportation of Hazardous Materials, Highway Routing*, 63280 (October 23, 2013).

² § 33013, 126 Stat. 405 (July 6, 2012) (modifying 49 U.S.C. §§ 5112, 5125).

³ ATA is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. Directly and through its affiliated organizations, ATA encompasses over 30,000 motor carriers and suppliers of every type and class of operation in the United States, Canada, and Mexico.

⁴ 78 Federal Register 205, 63280.

Indian tribes to the public in the form of maps, lists, road signs, or some combination thereof.”⁵ 49 C.F.R. § 397.73(a) mirrors the statutory language, which similarly mandates that States *must* provide this information.⁶

Both the Code of Federal Regulations⁷ and the U.S. Code⁸ mandate that States provide this information. FMCSA proposes only to request it. To more effectively compel States to publish their routing information, ATA suggests that FMCSA replace “request” with “require” in the notice to more adequately reflect States’ responsibility to report.

FMCSA Should Modify the Proposed Reporting Frequency to Comport to MAP-21 Requirements

The proposal would require States to report their highway route designations annually.⁹ MAP-21 mandates that this reporting period be changed to at least once every two years *and* not later than sixty days after a hazmat route designation is established, amended, or discontinued.¹⁰ ATA suggests that FMCSA modify the reporting frequency requirements accordingly. Such a requirement ensures that States are reporting their most up to date hazmat routes and that carriers operating in interstate commerce can appropriately follow those routes.

FMCSA Should Publish Highway Routing Designations in the *Federal Register*

Although not part of the information collection requirement here discussed, FMCSA has a responsibility to publish national hazmat route designations.¹¹ This requirement becomes doubly important because State hazmat routing designations are no longer enforceable until published in FMCSA’s hazmat route registry.¹² Instead, new or changed routes are enforceable only 60 days after FMCSA adds them to it.¹³

FMCSA has not published a comprehensive Hazardous Materials Route Registry in the *Federal Register* for over a decade.¹⁴ FMCSA maintains another list on its website, but it has not been updated in over five years.¹⁵ ATA recognizes that States are not required to change their hazmat routes. Still, ATA questions whether *no* State has updated their route designations in the last five years. Therefore, FMCSA should also publish updates to the registry in the *Federal Register* at least annually.

⁵ 49 C.F.R. § 397.73(a) (2012) (emphasis added).

⁶ 49 U.S.C. § 5112(c)(2) (2006) (as modified by P.L. 112-141, 126 Stat. 405, § 33013(a)(2) (July 6, 2012)).

⁷ 49 C.F.R. § 397.73(a)

⁸ 49 U.S.C. § 5112(c)(2) (2006) (as modified by P.L. 112-141, 126 Stat. 405, § 33013(a)(2) (July 6, 2012)).

⁹ 78 Federal Register 205, 63280 (2013).

¹⁰ 49 U.S.C. § 5112(c)(2)(B) (2006) as modified by P.L. 112-141, 126 Stat. 405, § 33013(a)(2)(B) (July 6, 2012)) (emphasis added).

¹¹ 49 U.S.C. § 5112(c)(1) (2006).

¹² 49 U.S.C. § 5125(c) (2006) as modified by P.L. 112-141, 126 Stat. 405, § 33013(b) (July 6, 2012)).

¹³ *Id.*

¹⁴ 65 Federal Register 233, Transportation of Hazardous Materials; Designated, Preferred and Restricted Routes, 75771 (December 4, 2000).

¹⁵ Federal Motor Carrier Safety Administration, *National HM Route Registry*, <http://www.fmcsa.dot.gov/safety-security/hazmat/national-hazmat-route.aspx> (last accessed December 4, 2013) (showing the current routing list as accurate as of 2008).

Conclusion

FMCSA's proposed information collection does not comply with the route reporting requirement changes in MAP-21. FMCSA should modify the information collection to ensure that the information to be collected comports to the authorizations granted to it by Congress. First, FMCSA should require States to submit their route designations and amendments. Second, FMCSA should update its reporting frequency requirements to two years and within 60 days of any State route modification. Finally, although not technically part of the information to be collected, FMCSA should regularly publish updates to its national hazmat route registry so that motor carriers are aware of current routes and so that States can enforce their own routing laws.

These three changes ensure that the national hazmat route registry program is performed as a proper FMCSA function and that the information collected is high quality, useful, and clear. Should you wish to discuss this matter in greater detail, please contact the undersigned at bstephenson@trucking.org or at (703) 838-7982.

Best,



Boyd Stephenson
Director, Hazardous Materials Policy
American Trucking Associations