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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFA Part 397

[FHWA Docket No. MC-92-4]

RIN 2125-AC78

Federal Motor Carrier Safety Regulations; Transportation of Hazardous Materials

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

FHWA-97-2180

**SUMMARY:** The FHWA proposes to amend part 397 of the Federal Motor Carrier Safety Regulations (FMCSRs) by adding a new Subpart B, Motor Carrier Safety Permits. This rulemaking action implements parts of sections 8 and 15 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA). Section 8 requires, among other things, the establishment of a motor carrier safety permit program, at a minimum, for motor carriers transporting class A and/or B explosives (new RSPA hazard classification, Division 1.1, 1.2, and 1.3; see 49 CFR 173.2, as amended), liquefied natural gas (new RSPA hazard classification, Division 2.1; see 49 CFR 173.2, as amended), hazardous materials designated as extremely toxic by inhalation (new RSPA hazard classification, Division 2.3, Hazard Zone A or Division 6.1, Packing Group I, Hazard Zone A; see 49 CFR 173.2, as amended), or highway route controlled quantity radioactive materials (new RSPA hazard classification, Class 7; see 49 CFR 173.2, as amended). Section 15 of the HMTUSA requires, in part, inspection of commercial motor vehicles transporting highway route controlled quantity radioactive materials before each trip. This requirement of section 15 would be incorporated into the proposed safety permit regulations. This proposed rule, if promulgated, would increase regulatory compliance, enhance motor carrier safety, and promote the safe transportation of the designated hazardous materials.

**DATES:** Comments must be received on or before August 16, 1993.

**ADDRESSES:** Submit written, signed comments to FHWA Docket No. MC 92-4, room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a

floppy disk in standard or high density formats containing files compatible with word processing programs such as WordPerfect, WordStar, or Microsoft "Word" for IBM systems, or WordPerfect or Microsoft Word for Macintosh. Commenters should clearly label the submitted disk(s) with the software format used (e.g., WordPerfect 5.0 [IBM] or Microsoft Word 4.0 [Mac]). All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lee Jackson, Hazardous Materials Programs Division (202) 3864415, Mr. Neill L. Thomas, Office of Motor Carrier Standards; (202) 306-2981, or Mr. Raymond W. Cuprill, Office of Chief Counsel, (202) 366-0834, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

**SUPPLEMENTARY INFORMATION:**

Background

On November 16, 1990, the President signed the HMTUSA (Pub. L. 101-615, 104 Stat. 3244), which established additional requirements in the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. app. 1801 et seq.) to reduce the risks to life, property, and the environment posed by unintentional releases of hazardous materials. Congress recognized that approximately 4 billion tons of regulated hazardous materials are transported each year and that approximately 500,000 movements of hazardous materials occur each day. Congress also found that the movement of hazardous materials is necessary to promote economic vitality and meet consumer demands, and should be conducted in a safe and efficient manner.

To this end, section 8 of the HMTUSA amends section 106 of the HMTA (49 U.S.C. app. 1805) to prohibit a motor carrier from transporting, by motor vehicle in commerce (interstate and intrastate), certain hazardous materials designated by the Secretary of Transportation, unless the motor carrier holds a "safety permit" issued by the Secretary and maintains a copy of the permit or proof of its existence in the motor vehicle used to provide such transportation. The section provides that the Secretary may only grant safety permits to carriers that fire fit, willing, and able to (1) provide the

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(June 17, 1993) 58 FR 33418

transportation to be authorized by the permit, (2) comply with existing Federal safety regulations and any applicable minimum financial responsibility laws and regulations, and (3) comply with any safety permit regulations and requirements of this title.

The revised section 106 also requires that the Secretary issue regulations implementing the safety permit requirements and establishing the types and quantities of hazardous materials subject to the regulations. The safety permit regulations are to cover, at a minimum, the transportation by motor carrier of quantities of (1) class A and/or B explosives (new RSPA hazard classification, Division 1.1, 1.2, and 1.3; see 49 CFR 173.2, as amended), (2) liquefied natural gas (new RSPA hazard classification, Division 2.1; see 49 CFR 173.2, as amended), (3) hazardous materials designated by the Secretary as extremely toxic by inhalation (new RSPA hazard classification, Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A; see 49 CFR 173.2, as amended), and (4) highway mute controlled quantity radioactive materials (new RSPA hazard classification, Class 7; see 49 CFR 173.2, as amended). For purposes of this notice we will refer to these hazardous materials as designated high risk hazardous materials. The regulations must also establish procedures applicable to permit application, content, fees, amendment, suspension or revocation, and standards for permit duration, conditions or limitations. This new permit requirement would, under section 13 of the HMTUSA (49 U.S.C. app. 1811), preempt any State permit requirement dealing with transportation of the same hazardous materials if compliance with both the State and Federal permit requirements is not possible, or if the State requirement creates an obstacle to the accomplishment of the HMTA and the regulations.

Section 8 of the HMTUSA also amended the HMTA to require shippers and motor carriers of certain types and quantities of hazardous materials to file a registration statement with the Secretary of Transportation. The registration requirements have been implemented by the Research and Special Programs Administration (RSPA) in a separate rulemaking action (57 FR 30620, July 9, 1992). Motor carriers transporting hazardous materials covered by the registration requirements are advised that they will need to file a registration statement with the RSPA and also obtain a safety permit from the FHWA. The filing of a registration statement with RSPA will

not constitute an application for a safety permit. A separate permit application must be filed with the FHWA.

Additionally, the HMTUSA mandates other specific motor carrier and shipper responsibilities as follows.

#### Shipper Responsibility

Each person who offers any hazardous material for which a permit is required for motor vehicle transportation in interstate or intrastate commerce may offer that material to a motor carrier only if the carrier has a safety permit authorizing such transportation. It is anticipated that the RSPA will subsequently initiate rulemaking which will address shipper responsibility.

#### Inspection Requirements

Section 15 of the HMTUSA amends section 116 of the HMTA (49 U.S.C. app. 1813) to provide that the Secretary shall require by regulation that, before each use of a motor vehicle to transport in commerce (interstate or intrastate) any highway mute controlled quantity radioactive material, such vehicle shall be inspected and certified to be in compliance with the HMTA and applicable Federal motor carrier safety laws and regulations. The amended section 116 further provides that the Secretary may require that inspections be carried out by duly authorized inspectors of the United States or in accordance with appropriate State procedures. The Secretary may also permit the shipper or transporter of any highway mute controlled quantity radioactive material to inspect the vehicle if the individuals conducting the inspections meet the inspector qualification requirements issued by the Secretary.

The definition of "highway route controlled quantity" radioactive materials is found at 49 CFR 173.403. Highway route controlled quantity radioactive materials are generally quantities of materials that emit high levels of radioactivity. The regulatory and packaging requirements which apply to these materials are designed both to adequately identify the presence of these materials and to ensure that the packaging can withstand normal transportation conditions and foreseeable accidents, without a breach of containment integrity.

In considering development of inspection requirements for commercial motor vehicles transporting these materials and trying to determine what type of inspection criteria is needed, the FHWA examined the procedures contained in current inspection methods. This examination included a review of (1) the North American

Uniform Driver/Vehicle Inspection Manual, published by the FHWA in September 1989, (2) a draft of a Commercial Vehicle Safety Alliance document entitled, "Recommended National Procedures for the Safety Inspection of Commercial Highway Vehicles Transporting Spent Fuel/Transuranic and High Level Radioactive Wastes" (March 1991), (3) "A Guide for the Inspection of Spent Nuclear Fuel Shipments by Motor Vehicle" (RSPA, November 1988), and (4) "A Guide for the Inspection of Radioactive Material Shipments by Motor Vehicle or at Freight Facilities" (RSPA, November 1988). Copies of these documents have been placed in the docket and are available for public review.

The FHWA is proposing the use of the general inspection requirements contained in part 396, "Inspection, Repair, and Maintenance," and the more detailed inspection standards found in appendix G to subchapter B, "Minimum Periodic Inspection Standards," to meet the requirement that a vehicle be inspected before each trip. Further, the FHWA believes that a Level 1 North American Uniform Driver/Vehicle Inspection can be used to satisfy the vehicle inspection requirement for the transportation of highway mute controlled quantity radioactive materials, if the inspection is conducted by a qualified inspector. Accordingly, the FHWA proposes to apply the inspector qualification requirements specified in § 396.19, "Inspector qualifications," to ensure that any inspector performing these vehicle inspections is qualified. We specifically invite comments concerning the inspection criteria proposed herein and whether radiological monitoring should be included.

### FHWA Proposed Rulemaking Action

#### Discussion of Proposed Requirements

##### I. Purpose and Scope

The purposes of this proposed rule are to enhance motor carrier safety and promote the safe transportation of designated high risk hazardous materials in both interstate and intrastate commerce. Subpart B of part 397 would require that Federal safety permits be issued to a motor carrier before engaging in the transportation of designated high risk hazardous materials. The conditions for obtaining and retaining the permit should provide motor carriers with additional incentives to safely operate their commercial motor vehicles.

The HMTUSA provides that the Secretary shall designate the types and quantities of hazardous materials

subject to permit requirements. The statute, however, requires that the safety permit regulations apply, at a minimum, to "all transportation by a motor carrier" of the four classes of high risk hazardous materials, discussed earlier in this document. The FHWA is aware that this requirement might be interpreted as requiring a safety permit for the transportation of any quantity of these four classes of high risk hazardous materials. However, administrative expedience dictates that the coverage of the safety permit program be phased-in based on the quantity of hazardous material being transported. Accordingly, we are proposing to limit the safety permit regulations to the transportation of the specific classes of hazardous materials set forth in the HMTUSA of 1990, subject to the quantities and phase-in periods discussed herein and defined in § 397.39 of this proposal. After the program is fully implemented and some experience is gained, the FHWA will decide whether to propose expanding the safety permit regulations to include other hazardous materials.

The HMTUSA requires that the safety permit regulation apply, at a minimum, to motor carriers transporting four specific types of hazardous materials. One of the types of designated high risk hazardous materials is class A and/or B explosives (new RSPA hazard classification, Division 1.1, 1.2, and 1.3; see 49 CFR 173.2, as amended). Different quantities of class A and/or B explosives are transported daily by a vast number of motor carriers, primarily private motor carriers of property. These carriers include operators from a diversity of industry groups, such as explosives magazine operators, quarry operators, farmers, and persons involved in fireworks displays. Immediate application of the safety permit requirements to these motor carriers might present an undue economic burden for these industries, especially when many are solely intrastate operations which have never been subject to the FHWA's regulations. Many of these motor carriers would be required to obtain financial responsibility coverage in the amount of \$5 million. In addition, the large number of motor carriers applying for safety permits could result in administrative burdens which may adversely affect the successful implementation of the proposed program. The proposed regulations, therefore, would phase-in, over a 3-year period, the applicability of the safety permit requirement to motor carriers transporting class A and/or B explosives based on the quantities of these

explosives being transported. The phase-in would be implemented as follows:

Effective date	Covered quantities of class A and/or B explosives
Nov. 16, 1993	454 kilograms (1,000 pounds) or more.
Nov. 16, 1994	227 kilograms (500 pounds) or more.
Nov. 16, 1995	25 kilograms (55 pounds) or more.

Motor carriers transporting 1,000 pounds or more of class A and/or B explosives on a single commercial motor vehicle would be required to obtain a safety permit by November 16, 1993. A year later (November 16, 1994) motor carriers transporting 500 pounds or more of class A and/or B explosives would be required to obtain a safety permit. On November 16, 1995, the transported quantity of class A and/or B explosives for which a safety permit is required would decrease to 55 pounds or more.

There will be no phase-in period, however, for the other three specific types of hazardous materials (liquefied natural gas, hazardous materials designated as extremely toxic by inhalation, and highway route controlled radioactive materials). Unlike Class A and/or B explosives, the FHWA does not believe that immediate application of the safety permit requirements to carriers of these materials would present an undue economic burden on the motor carrier industry. There are far fewer carriers of these types of hazardous materials, as well as far fewer movements of these materials in interstate and intrastate commerce. Further, carriers of these three types of hazardous materials typically have greater financial responsibility coverage than would be required under this NPRM.

Carriers of these types of hazardous materials are currently subject to some form of Federal regulation (e.g., intrastate carriers of these materials must comply with the packaging requirements of the Federal Hazardous Materials Regulations, 49 CFR 171-180). Therefore, due to their greater familiarity with the Federal regulatory system, it would be easier for them to obtain information on the proposed requirements and to comply with a new regulatory program.

The quantity provisions established and set forth in the definition of the term designated high risk hazardous materials are being coordinated with the efforts currently ongoing to implement the registration and routing

requirements of the HMTUSA. This coordination will ensure that motor carriers requesting a safety permit are registered, have been issued a DOT identification number, are in the FHWA Motor Carrier Census File, and are aware of the Agency's routing requirements.

As stated above, a hazardous material designated as extremely toxic by inhalation is another type of designated high risk hazardous material covered by the safety permit provisions of the HMTUSA. The FHWA is proposing that safety permits be required for the transportation of hazardous materials extremely toxic by inhalation that meet the criteria of Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A (see 49 CFR 173.115 and 173.132), if transported in quantities of more than 1 liter (1.06 quarts). The FHWA is not considering the inclusion of Hazard Zone B hazardous materials that are extremely toxic by inhalation in the proposed permit program. Such action is consistent with the proposed registration requirements imposed by the RSPA (57 FR 30620, July 9, 1992). Hazard Zone B hazardous materials include such widely distributed chemicals as chlorine, hydrogen sulfide, ethylene oxide, and nitric oxide, to name a few. This transportation mostly involves quantities that are less than "in bulk" (a containment system that has a capacity in excess of 3,500 water gallons or 468 cubic feet). The FHWA is interested in obtaining information from the public and affected industries concerning the transportation of Hazard Zone B hazardous materials that are extremely toxic by inhalation. Specifically, should the safety permit program be expanded to include the transportation of Hazard Zone B hazardous materials?

## II. Applicability

This proposal would establish safety permit requirements applicable to motor carriers which transport designated high risk hazardous materials in interstate or intrastate commerce. These requirements would apply to a motor carrier's officers, drivers, agents, representatives, and employees.

Section 8 of the HMTUSA applies to both interstate and intrastate hazardous materials motor carrier operations. Accordingly, the FHWA proposes to amend part 397 by adding a compliance section to ensure that interstate and intrastate motor carriers subject to part 397 are also subject to all applicable parts of the FMCSRs (49 CFR parts 350-399). This action is necessary since the FHWA intends to use the provisions of part 385, "Safety Fitness Procedures."

in making determinations whether to issue, or deny, a request for a safety permit for either interstate or intrastate motor carriers. This determination will ensure that motor carriers engaged in the transportation of designated high risk hazardous materials in interstate or intrastate commerce meet the "fit, willing, and able" requirement of the HMTUSA.

Once these proposed rules have been promulgated and fully implemented, data will be collected and analyzed to assess the effectiveness of the safety permit program. Based upon its analysis of data collected, the FHWA will determine whether to propose to extend the applicability of the safety permit program to other classes and quantities of hazardous materials. Any subsequent action would be taken after notice and opportunity to comment have been provided.

### III. Transportation Without a Safety Permit Prohibited

The HMTUSA provides that no motor carrier shall transport or cause to be transported any hazardous material for which a permit is required in interstate or intrastate commerce unless the motor carrier has obtained a safety permit which authorizes such transportation. Violation of that prohibition could result in civil penalties up to \$25,000 per violation, per day, as provided for in the HMTA.

### IV. Definitions

The FHWA believes it is important to define new terms which would be used in this proposed rule. Accordingly, definitions of the terms designated high risk hazardous materials, extremely toxic by inhalation materials, and in bulk are provided. The FHWA, in issuing a final rule, will ensure that the definitions used are consistent with the definitions used in the Hazardous Materials Regulations.

### V. Application Procedures

A motor carrier would have to apply to the FHWA for a permit to transport the designated high risk hazardous materials. A motor carrier would be required, at a minimum, to submit a Motor Carrier Identification Report, Form MCS-150, to obtain a motor carrier safety permit from the FHWA.

A revised Form MCS-150 would be used by motor carriers as an application for a safety permit. The application would have to be signed by an official of the motor carrier and notarized, to comply with the provisions of the HMTUSA that require the permit application to be submitted under oath [49 U.S.C. app. 1805(d)(7)].

The application for a permit would be submitted to the Regional Director, Office of Motor Carriers; for the region in which the motor carrier has its principal place of business. See 49 CFR 390.27, Locations of regional motor carrier safety offices, for domestic and foreign motor carriers. This will help expedite the safety permit procedure since the in-depth compliance reviews used to gather safety fitness and other information are completed by the FHWA's field offices. Renewals would be handled similarly.

The safety rating notification letter currently being sent to a motor carrier would be modified to serve as the safety permit and would authorize the motor carrier to transport designated high risk hazardous materials. The letter would bear a safety permit number, which would be the motor carrier's DOT identification number required by § 390.21 of the FMCSRs. Motor carriers which have already been assigned DOT identification numbers would have to apply for a safety permit by submitting another Form MCS-150. Motor carriers which have never applied for a DOT identification number would be allowed to apply for an identification number and a safety permit simultaneously using a single Form MCS-150.

The HMTUSA requires that permit application procedures also provide for the assessment of fees necessary to recover the full costs of administering the motor carrier safety permit requirements. As discussed above, we are proposing to make extensive use of existing FHWA programs, forms, and procedures, and the program applicability would be initially limited to four specific groups of hazardous materials, therefore, reducing the number of motor carriers covered. Enforcement of the proposed safety permit requirements would be accomplished within the framework of existing programs (i.e., compliance reviews and roadside inspections). As a result, the FHWA has determined that no measurable cost would be attributable to the administration of the proposed motor carrier safety permit program. In addition, the collection of fees for the issuance of a permit would, in itself, add to the government's cost of administration. Accordingly, the FHWA proposes not to assess fees at this time, but will review the necessity to do so in the future as the program is fully implemented and expanded to include other motor carriers of hazardous materials. This will allow the FHWA to gain more information and experience, which would assist us in establishing an appropriate and correct fee structure. The FHWA welcomes public comment

pertaining to the assessment of permit fees.

### VI. Safety Permit Application Determinations

Determinations on safety permit applications would be based upon a safety fitness finding made pursuant to 49 CFR part 385. A "satisfactory" safety rating would be a prerequisite to the granting of a safety permit. A less than "satisfactory" safety rating would result in a denial of the permit application. The FHWA would have the discretion to issue a temporary safety permit to an unrated motor carrier pending a safety fitness determination. A temporary safety permit would remain in effect for up to 120 days from the date of issuance or until a "satisfactory" safety rating is assigned, whichever occurs first. Once the motor carrier is assigned a "satisfactory" safety rating, the temporary safety permit would be converted to a 3-year permit. If the motor carrier fails to achieve a "satisfactory" safety rating within 120 days, the temporary permit would expire. No safety permit would then be issued until a "satisfactory" safety rating is achieved.

Intrastate motor carriers (for-hire and private) and those motor carriers of foreign domicile conducting operations in the United States, which currently are not required to obtain a U.S. DOT identification number, would be required to submit a Form MCS-150 to apply for a safety permit. As this regulation would affect motor carriers in Canada and Mexico, we have completed a preliminary analysis of the United States-Canada Free-Trade Agreement (FTA) (19 U.S.C. 2112) and the U.S. obligations under the General Agreement on Tariffs and Trade (GATT). The FHWA believes that this proposed rulemaking would not violate either the FTA or the GATT. It is this agency's interpretation that the FTA does not constitute an impediment nor prohibit the implementation of this proposed regulation. The most relevant provision of the GATT is article III which addresses the National Treatment on Internal Taxation and Regulation. To violate article III of the GATT, there must be some degree of differentiation between the treatment of the products of a contracting party and either the products of another contracting party or the domestic party. This proposed rulemaking would not distinguish between U.S. and Canadian products, and the proposed permit requirement would treat all U.S. and foreign motor carriers and shippers transporting hazardous materials in the same manner.

A motor carrier which has not been assigned a safety rating or has not been subject to these Federal rules would be required to certify, in writing, that the motor carrier is operating in full compliance with the FMCSRs or comparable State regulations, including financial responsibility required by 49 CFR part 387 or by State regulation, whichever is applicable. It should be understood that during the 120-day temporary permit period, the motor carrier would have to bring its operation into full compliance with the Federal hazardous materials regulations, the Federal motor carrier safety regulations, and any applicable minimum financial responsibility laws and regulations. An official with authority to bind the motor carrier would be required to execute the certification. Motor carriers which have not been assigned a safety rating may, upon filing a properly executed Form KS-150 and certification, obtain a temporary safety permit which would allow the motor carrier's operation to continue for the interim period of up to 120 days.

The FHWA's Motor Carrier Management Information System (MCMIS) would be modified to identify motor carriers that have been issued safety permits. Safety fitness and permit information would be available to Federal, State and local agencies and the public upon written, oral, or electronic request.

#### VII. Review of Safety Permit Denials

A safety permit application would be denied on the basis of a safety fitness determination and rating issued in accordance with 49 CFR part 385, Safety Fitness Procedures. Accordingly, any party whose safety permit application is denied would be able to obtain a review of FHWA's determination by requesting a change in the safety rating, pursuant to § 385.15 or § 385.17, whichever is applicable.

#### VIII. Failure to Report

Failure to file a Form MCS-150, Motor Carrier Identification Report (which would serve as the safety permit application), or furnishing false or misleading information in a Form MCS-150 or any document filed during a safety permit proceeding, would result in the denial or revocation of the safety permit and may subject the motor carrier to civil or criminal penalties.

#### IX. Conditions for Safety Permit

The FHWA has included in this proposal conditions which would apply to each safety permit issued. Motor carriers would have to clearly display the assigned safety permit numbers on

the shipping paper or on the appropriate transportation document which contains the description of the hazardous materials being transported and for which a safety permit is required. A motor carrier holding a safety permit would also be required to display, on each commercial motor vehicle used to transport such hazardous materials, its name, city and State location, and its DOT identification number as required by 49 CFR 390.21. This would fulfill the requirement in the HMTUSA that a safety permit or proof of the existence of such a permit (permit number), issued by the FHWA, is maintained in the motor vehicle [49 U.S.C. epp. 1805(d)(1)]. Also, 49 CFR 177.817, "Shipping papers," requires that the shipping paper be available on the motor vehicle for information purposes in the event of an accident or vehicle inspection. Since the shipping document is already required to be carried on the motor vehicle during transportation, the proposed requirement would minimize any additional paperwork burden placed upon the industry. The FHWA intends to establish an information system to provide immediate permit verification by enforcement officials at roadside, or by a shipper or the public. This will be done by adding a "permit" data base to the agency's existing information systems. Such action would require simple adjustments to existing programs with minimal costs involved.

Additional conditions specific to the transportation of highway route controlled quantity radioactive materials or class A and/or B explosives are also proposed. For example, safety permits issued for the transportation of highway route controlled quantity radioactive materials would require that each commercial motor vehicle be inspected before each trip. In addition, motor carriers would be required to maintain a written certification of each inspection, as performed by a qualified inspector meeting the requirements specified in § 396.19. Inspector qualifications, of the FMCSRs. This proposed requirement would satisfy the inspection and certification requirement of section 15(d)(1) of the HMTUSA.

#### x. Renewal of safety Permits

Procedures would be provided for renewing a safety permit. The renewal process would continue to purge the system of motor carriers not currently operating under a permit, aid compliance and enforcement efforts, and serve as a timetable for routine monitoring of motor carrier operations continuing under a safety permit. Motor

carriers would be required to renew their safety permits every 3 years. As part of its review of applications for permit renewals, the FHWA will check its motor carrier management information data base, State records, complaint registers, and other compliance information sources before a final decision concerning permit renewal is made. A decision to renew a permit will be made utilizing the factors considered in determining a safety rating set forth in 49 CFR 385.7. A safety compliance review may not be necessary or practical when reviewing applications for renewal. A compliance review will be conducted, however, wherever there is an indication of a compliance problem.

The Form MCS-150 would be used to initiate the renewal process. Where appropriate, supplementary information regarding current operations may be necessary to further process the safety permit renewal request. Depending upon the number of renewal applications received at any given time, the issuance of renewals may be delayed for a short period of time. Therefore, if a motor carrier files for renewal at least 90 days, but no more than 180 days, prior to the permit's expiration date, the safety permit would remain in force until the renewal process is completed and a determination is made. Accordingly, failure to file for renewal at least 90 days in advance of expiration may result in temporary loss of the permit.

#### XI. Penalties

The regulation proposed herein would be issued pursuant to the authority granted by the HMTA, as amended by the HMTUSA, and consequently any violation of its provisions would be subject to the civil and criminal penalties set forth in 49 U.S.C. 1809 (1991).

#### Rulemaking Analyses and Notices

##### Regulatory Impact

The proposals contained in this document would implement the congressional mandate of the HMTUSA which restricts the transportation of certain designated high risk hazardous materials in interstate and intrastate commerce to motor carriers that hold safety permits, issued by the FHWA, authorizing the transport of those hazardous materials. Further, transportation of highway route controlled quantity radioactive materials would be prohibited unless the commercial motor vehicle was inspected and certified to be in compliance with all applicable

regulations before each trip. The HMTUSA requires that regulations implementing its provisions must be issued by November 16, 1991, and that the permit requirements be effective November 16, 1992.

The permit and inspection requirements proposed herein would be merged into existing FHWA program areas (e.g., Safety Fitness Procedures, Selective Compliance and Enforcement Program) and would produce minimal additional burden on the regulated industry.

#### **Executive Order 22291 (Federal Regulation) and DOT Regulatory Policies and Procedures**

The FHWA has determined that this document does not contain a major rule under Executive Order 12291, but is a significant regulation under the DOT regulatory policies and procedures because of substantial congressional and public interest. This interest is due to the potential for some motor carriers failing to obtain the required permit to transport certain designated high risk hazardous materials. A draft regulatory evaluation has been prepared and placed in the docket. As discussed in the draft regulatory evaluation, the anticipated economic impact of this proposed rulemaking on the interstate motor carrier industry will be minimal. At this time, the FHWA is unable to determine the precise impact of this proposed rulemaking on intrastate motor carrier operations because the agency has had no regulatory authority over intrastate carriage. The FHWA requests information identifying the intrastate motor carrier population to be affected by this proposed rule. This information will assist the agency in determining the economic impact on this portion of the motor carrier industry and any additional impact which may result from also having to come into compliance with the rest of the FMCSRs.

#### **Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354), the agency has evaluated the effects of this proposed rulemaking on small entities. Some small entities would be economically impacted by this rulemaking, if promulgated, and would not be allowed to transport certain designated high risk hazardous materials if they cannot obtain the required permit from the FHWA. However, the FHWA believes that relatively few small motor carriers will fail to obtain the required permit. Moreover, this rule will serve as a powerful incentive to gain compliance

with the FMCSRs by such motor carriers who wish to avoid these adverse consequences. Thus, under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

#### **Executive Order 1 2612 (Federalism Assessment)**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. While the congressional mandates required by the HMTUSA will require changes to be made to the FMCSRs, no changes will be required to the regulations governing the Motor Carrier Safety Assistance Program (MCSAP). Accordingly, the impact on the various States by the changes being proposed will be minimal. This new permit requirement would preempt only a State permit requirement dealing with transportation of the same hazardous materials and only to the extent such a State permit is based upon a demonstration of safety fitness. The various States are requested to submit comments on this proposal and advise the FHWA of the effect, if any, on their participation in the MCSAP.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., the reporting and recordkeeping provisions that are included in this proposed regulation are being submitted to the Office of Management and Budget for approval.

#### **National Environmental Policy Act**

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and has determined that this action would not have an adverse effect on the quality of the environment.

#### **Regulatory Identification Number**

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

#### **List of Subjects in 49 CFR Part 397**

Hazardous materials transportation, Highways and roads, Motor carrier safety permits.

Issued on: June 9, 1993.

Rodney E. Slater,  
Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code Of Federal Regulations, subtitle B, chapter III, part 397, as follows:

#### **PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS**

1. The authority citation for part 397 is revised to read as follows:

Authority: 49 U.S.C. app. 1801-1813.

2. Part 397 is amended by revising the heading to read "Transportation of hazardous materials." by adding a heading to subpart A (§§ 397.1 through 397.19) to read "Driving and parking rules," and by adding a new Subpart B to read as follows:

#### **Subpart B—Motor Carrier Safety Permits**

##### **Sec.**

397.31 Purpose and scope.

397.33 Applicability.

397.35 Compliance with Federal Motor Carrier Safety Regulations.

397.37 Transportation without a safety permit prohibited.

397.39 Definitions.

397.41 Application procedures.

397.43 Safety permit determinations.

397.45 Review of safety permit determinations.

397.47 Failure to file report.

397.49 Conditions for safety permit.

397.51 Renewal of safety permit application.

397.53 Penalties.

#### **Subpart B—Motor Carrier Safety Permits**

##### **§ 397.31 Purpose and scope.**

(a) The purpose of this subpart is to enhance motor carrier safety and to promote the safe transportation of designated high risk hazardous materials in interstate and intrastate commerce by requiring motor carriers to obtain a safety permit from the FHWA authorizing such transportation.

(b) This subpart prescribes minimum requirements for motor carriers to apply for and obtain safety permits to transport designated high risk hazardous materials, as defined in § 397.39.

##### **§ 397.33 Applicability.**

The provisions of this subpart shall apply to any motor carrier that transports or causes to be transported interstate or intrastate commerce any designated high risk hazardous material.

as defined in § 397.39. Officers, drivers, agents, representatives, and employees of the motor carriers subject to this subpart shall comply with the provisions of this subpart and be knowledgeable of its requirements.

**§ 397.35 Compliance with Federal Motor Carrier safety Regulations.**

Any motor carrier that transports or causes to be transported in interstate or intrastate commerce any designated high risk hazardous materials, as defined in § 397.39, shall comply with all applicable parts 350 through 399 of this subchapter.

**§ 397.36 Transportation without a safety permit prohibited.**

No motor carrier shall transport or cause to be transported any designated high risk hazardous material, as defined in § 397.39 in interstate or intrastate commerce, unless the motor carrier has obtained a safety permit, issued under this subpart, which authorizes such transportation.

**§ 397.39 Definitions.**

For the purposes of this subpart—  
Designated **high risk hazardous materials** means highway route controlled quantity radioactive materials (new RSPA hazard classification, Class 7; see 49 CFR 173.2, as amended), liquefied natural gas in bulk (new RSPA hazard classification, Division 2.1; see 49 CFR 173.2, as amended), more than one liter (1.06 quarts) per package of a hazardous material extremely toxic by inhalation (new RSPA hazard classification, Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A; see 49 CFR 173.2, as amended), and the following quantities of class A and/or B explosives, including packaging (new RSPA hazard classification, Division 1.1, 1.2, and 1.3; see 49 CFR 173.2, as amended):

(a) Effective on November 16, 1993, 454 kilograms (1,000 pounds);

(b) Effective on November 16, 1994, 227 kilograms (500 pounds); and

(c) Effective on November 16, 1995, 25 kilograms (55 pounds).

**Extremely toxic by inhalation materials** means those hazardous materials transported in quantities which exceed one liter (1.06 quarts) per package and meet the criteria of Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A (see 49 CFR 173.115 and 173.132).

**In bulk** means a containment system that has a capacity in excess of 3,500 water gallons or 468 cubic feet.

**§ 397.41 Application procedures.**

(a) A motor carrier shall submit a completed Motor Carrier Identification Report, Form MCS-150, to obtain a motor carrier safety permit authorizing the transportation of designated high risk hazardous materials. The Form MCS-150 (application form) shall be signed by an official of the motor carrier and notarized.

(b) The MCS-150 (application form) shall be submitted to the Regional Director, Office of Motor Carriers, Federal Highway Administration, in the region where the motor carrier's principal place of business is located. (See 49 CFR 390.27, Locations of regional motor carrier safety offices, for domestic and foreign motor carriers.)

(c) Application forms may be obtained by contacting any of the Federal Highway Administration's regional motor carrier safety offices.

**§ 397.43 Safety permit determinations.**

(a) Determinations concerning the granting, denial, suspension, or revocation of a safety permit shall be made pursuant to the Safety Fitness Procedures of part 385 of this subchapter and the provisions of this subpart. A "satisfactory" safety rating is a prerequisite to the granting of a safety permit. A less than "satisfactory" safety rating will result in a denial of the permit application, or revocation or suspension of a safety permit previously issued.

(b) A written notification of a "satisfactory" safety rating issued pursuant to § 385.11 of this subchapter shall serve as the safety permit and shall include the safety permit number assigned.

(c) A temporary safety permit may be issued to an unrated motor carrier pending a safety fitness determination, provided the motor carrier has certified in the permit application that it is operating in full compliance with the FMCSRs or comparable State regulations, including financial responsibility required by part 387 of this subchapter or by State regulation, whichever is applicable.

(d) A temporary safety permit shall remain in effect for no more than 120 days from the date of issuance or until a safety rating is assigned, whichever occurs first. If a motor carrier is assigned a "satisfactory" safety rating, a safety permit shall be issued in accordance with paragraph (b) of this section. If the motor carrier fails to obtain a "satisfactory" safety rating within 120 days, no safety permit shall be issued until a "satisfactory" safety rating is assigned.

**§ 397.45 Review of safety permit determinations.**

In obtaining a review of a safety permit determination made pursuant to § 397.43, the motor carrier shall follow the procedures established in § 385.15 or § 385.17 of this subchapter.

**§ 397.47 Failure to file report.**

Failure by a motor carrier to file a Motor Carrier Identification Report, Form MCS-150, pursuant to the provisions of § 385.23 of this subchapter, furnishing misleading information, or making false statements in the Form MCS-150 or any other document that may be required pursuant to this subpart will subject the motor carrier to the penalties prescribed in 49 U.S.C. 1809.

**§ 397.49 Conditions for safety permit.**

(a) Safety permits shall be issued for a period of 3 years.

(b) Safety permit numbers shall be clearly displayed on shipping papers or the appropriate transportation document which contains the description of the designated high risk hazardous materials which require a safety permit.

(c) All motor carriers must comply with the Federal hazardous materials regulations, the Federal motor carrier safety regulations, and any applicable minimum financial responsibility laws, and regulations.

(d) Motor carriers must have and maintain a "satisfactory" safety rating issued by the FHWA, as prescribed in part 385 of this subchapter.

(e) Motor carriers transporting highway route controlled quantity radioactive materials shall be subject to the following additional conditions:

(1) The vehicle shall be inspected in accordance with Appendix G to subchapter B of this chapter before each trip;

(2) Inspections of the vehicle must be performed by a qualified inspector who meets the requirements specified in § 396.19 of this subchapter;

(3) Written certifications that each vehicle has been inspected in accordance with this paragraph must be prepared and retained for a period of one year;

(4) The certification statement shall include:

(i) The vehicle identification number;  
(ii) Date of inspection;  
(iii) Certification statement;  
(iv) The qualified inspector's name;  
(v) Signature of a motor carrier official; and

(5) The routing and training requirements of § 177.825 of this title must be complied with by both the carrier and the driver.

(f) Motor carriers transporting explosives for which a safety permit is required pursuant to this subpart shall be subject to the following conditions:

(1) The motor carrier shall comply with the requirements of § 397.9 of this part concerning written route plans; and

(2) The motor carrier shall comply with the attendance requirements of § 397.5 of this part.

**9397.51 Renewal of safety permit application.**

(a) A motor carrier shall submit a completed motor carrier safety permit application, Form **MCS-150, Motor Carrier Identification Report**, in order to renew a motor carrier safety permit authorizing the transportation of designated high risk hazardous materials.

(b) The Form **MCS-150** (application form) used for renewal shall be submitted to the **Regional Director, Office of Motor Carriers, in the region** where the motor carrier's designated principal place of business is located. (See 49 **CFR 390.27, Locations of regional motor carrier safety offices, for domestic and foreign motor carriers.**)

(c) To permit timely consideration, an application for renewal should be submitted at least **90 days**, but not more than **180 days**, before the expiration date of the safety permit to be renewed.

(d) If a motor carrier files an application for renewal in accordance with paragraph (c) of this section which is complete and conforms with the requirements of this section, the existing safety permit will not be considered to have expired until the application for renewal has been approved, modified, or disapproved.

(e) If a motor carrier fails to file for a renewal of a safety permit at least 90 days prior to expiration, a temporary loss of the permit may result.

**§ 397.53 Penalties.**

Violations of any of the requirements imposed by this subpart are subject to penalties provided in 49 **U.S.C. 1809 (1990)**, i.e., civil penalties of not more than \$25,000 or less than \$250 per violation, and criminal penalty for willful violations of up to \$50,000 per violation or five (5) years, imprisonment or both

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