

Marine Radio Operator Permit, First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, Third Class Radiotelegraph Operator's Certificate, GMDSS Radio Operator's License, or GMDSS Radio Maintainer's License, who has an application for another commercial radio operator license which has not yet been acted upon pending at the FCC and who holds a PPC(s) indicating that he or she passed the necessary examination(s) within the previous 365 days, is authorized to exercise the rights and privileges of the license for which the application is filed. This authority is valid for a period of 90 days from the date the application is received. The FCC, in its discretion, may cancel this temporary conditional operating authority without a hearing.

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4. In § 13.19, paragraphs (b)(3) and (c) are revised to read as follows:

§ 13.19 Operator's responsibility.

* * * * *

(b) * * *

(3) The class, serial number and expiration date of the license when the FCC has issued the operator a license, or the PPC serial number(s) and date(s) of issue when the operator is awaiting FCC action on an application.

(c) When the operator is on duty and in charge of transmitting systems, or performing service, maintenance or inspection functions, the license or permit document, or a photocopy thereof, or a copy of the application and PPC(s) received by the FCC, must be posted or in the operator's personal possession, and available for inspection upon request by a FCC representative.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 390

[FHWA Docket No. MC-93-17]

RIN 2125-AD14

Federal Motor Carrier Safety Regulations; General; Intermodal Transportation

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; petitions for reconsideration of effective date; request for comments.

SUMMARY: The FHWA published a document on May 16, 1995 at 60 FR

26001 which administratively extended until September 27, 1995, the effective date of its final rule implementing the requirements of the Intermodal Safe Container Transportation Act of 1992. The final rule was published on December 29, 1994, and its original effective date was June 27, 1995. The only purpose of this three-month extension was to provide the FHWA sufficient time to request, receive, and analyze comments, and to publish a final determination, on whether a further extension is warranted. This document requests comments on the major issues raised by petitioners who have requested an extension of the effective date of, and certain exemptions from, the final rule.

DATES: Replies to this request for comments must be received on or before June 26, 1995. As indicated in the May 16, 1995 document, the effective date of the final rule published on December 29, 1994 at 59 FR 67544 has been extended to September 27, 1995.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC-93-17, Room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. 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 Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Peter C. Chandler, Office of Motor Carrier Research and Standards, HCS-10, (202) 366-5763; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC-20, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 1994, the FHWA published a final rule which implemented the requirements of the Intermodal Safe Container Transportation Act of 1992 (the Act) [Pub.L. 102-548, 106 Stat. 3646, partly codified at 49 U.S.C. 5901-5907 (formerly 49 U.S.C. 501 and 508)]. The final rule requires any person who presents a container or trailer with a gross cargo weight of more than 4,536 kilograms or 10,000 pounds to an initial carrier for intermodal transportation to provide a certification to such carrier. Motor carriers are prohibited from

accepting a loaded container or trailer prior to receiving a tangible certification. Motor carriers, rail carriers, water carriers, ocean common carriers, and intermediaries that receive a certification in the course of intermodal transportation must forward the certification to a subsequent carrier transporting the loaded container or trailer. The objective of the final rule was to reduce the number of overweight motor vehicles transporting intermodal containers or trailers by improving communication between shippers and motor carriers.

Issues Raised by Industry Groups

The FHWA has received letters from several companies and industry groups petitioning the FHWA to extend the effective date of the final rule. Among those requesting an extension are APL Land Transport Services, Inc. (APL); the European Shippers' Councils; "K" Line America, Inc. (KLA); the Intermodal Safe Container Coalition (Coalition); the National Industrial Transportation League; the Steamship Association of Southern California; and, Warren & Associates, a law firm representing two freight conferences. The APL, KLA, and the Coalition were the parties who provided the most information in support of an extension. Copies of these letters are available for review in the docket.

For ease of presentation, the FHWA has grouped the issues raised by the petitioners into four major categories: (1) Electronic data interchange (EDI); (2) the widespread need for education and training, especially for foreign shippers; (3) the cargo weight threshold used in determining the applicability of the final rule; and, (4) the results of the data collection needs study mandated by the Act. The FHWA believes that some of the petitioners' assertions warrant public discussion.

Electronic Data Interchange

The KLA wrote that "the complexities of establishing a uniform method for electronic transmission of data between very divergent industries, each with their own unique data requirements, makes compliance by all parties in the intermodal network by the June date difficult to impossible." The KLA explained further that the certification data should ideally be passed as part of an already existing data transmission which would necessitate the various parties sending and receiving the certification information to agree on the data format and the meaning of each field. The development of these specifications, the KLA continued, requires time to allow the users of the

formats to develop the workable file layouts, to agree on the meaning of each field, and to insure that the formats selected would not create incompatibilities within the computers used to send and receive these messages. The KLA also added that individual companies must modify their in-house programs to utilize the data after these formats are established.

The APL asserted that the changes needed to assure that the necessary EDI takes place will require an extensive effort. The APL wrote that full implementation through EDI would not be possible by June 27, 1995, for its own operations, and it surmises the same would be true for most of the industry. The Coalition asserted that the forwarding of paper certifications, which would be necessary if the final rule became effective on June 27, 1995, would be tremendously cumbersome and burdensome because the intermodal transportation industry increasingly communicates through EDI. The Coalition explained further that there is no existing system for the forwarding of paper certifications to a subsequent carrier and that such a system would most certainly break down. The Coalition wrote that the development of necessary EDI standards will take at least until November 1995, and that even more time will be needed for programming, testing, training, and coordination. Although the Coalition requested an extension of the effective date until May 1, 1996, it asserted that compliance through the use of EDI by such date is a most ambitious goal. Warren & Associates stated that the June 27, 1995, effective date does not take into consideration the advance time required to integrate and standardize compliance through the use of EDI among the different industry participants.

FHWA Response: The intermodal transportation industry relies heavily on EDI. The FHWA recognizes that the development of EDI standards could not have begun in any substantial way prior to publication of the final rule on December 29, 1994, when all parties were made aware of the specific regulatory requirements. The development of standards, computer programming, and training are necessary for the intermodal transportation industry to accomplish the forwarding of certifications between carriers through the use of EDI. The FHWA also recognizes that making the final rule effective before the intermodal transportation industry has sufficient time to complete the necessary tasks for compliance to be achieved through the use of EDI would require the forwarding

of paper certifications. This may cause large disruptions in domestic and international trade and commerce. The FHWA requests comments on the length of time that would be needed for the intermodal transportation industry to complete the tasks necessary for compliance with the final rule through the use of EDI.

Education and Training

The KLA wrote that an extension of the effective date of the final rule is also justified because of the need to educate numerous parties on its requirements. The KLA asserted that education of affected parties in the United States by June 27, 1995, would be a daunting task and that advising overseas shippers would be "impossible." The European Shippers' Councils wrote that European exporters have not yet received information on what the Act requires of them or instructions on how a certification should be issued. The European Shippers' Councils asserted that it would be impossible for all European shippers to comply with the final rule by June 27, 1995. The Coalition wrote that making shippers aware of their obligations will require a massive educational effort, one that is far from completed.

FHWA Response: The FHWA recognizes that it has a responsibility to inform participants in the intermodal transportation industry of their responsibilities under the final rule. The FHWA has developed an educational pamphlet which, unfortunately, is not yet available for distribution. In addition to English, the pamphlet will be available in German, French, Spanish, Japanese, and Mandarin Chinese. Pamphlets will be provided to various associations for domestic and international distribution upon its availability. In addition, the Department of State will assist the FHWA with the international distribution of the pamphlets. The FHWA will also request assistance from various embassies with international distribution of the pamphlets. The FHWA requests comments on what additional educational materials would be helpful and how the pamphlets and other materials should be distributed.

Cargo Weight Threshold

The Coalition recommended that the jurisdictional weight threshold of the Act and the final rule (more than 4,536 kilograms [10,000 pounds] gross cargo weight) should be raised. The Coalition stated that "even though there is no possibility under the law of physics that either international or domestic shipments weighing between 10,000

and 40,000 pounds could cause gross vehicle weight violations as defined in the Act, the Act and Regulations nonetheless require each shipment to be weighed and subject to the advance notification and certification requirements." In a letter, however, the Steamship Operators Intermodal Committee (SOIC) asserted that the Coalition's statement is erroneous. The SOIC wrote that its tests show that a 20 foot container which is loaded with 40,000 pounds of cargo exceeds the maximum gross weight allowed by the bridge gross weight formula when it is mounted on a 23 foot chassis.

FHWA Response: The Act specifically establishes a gross cargo weight applicability threshold of more than 4,536 kilograms (10,000 pounds) for loaded containers and trailers. Accordingly, the regulations issued by the FHWA are applicable to containers or trailers in intermodal transportation with an actual gross cargo weight (inclusive of packing material and pallets) of more than 4,536 kilograms (10,000 pounds). Although the gross cargo weight threshold of more than 4,536 kilograms (10,000 pounds) mandated by Congress extends the scope of the Act beyond the range of cargo weight typically associated with overweight conditions, the FHWA cannot modify the gross cargo weight threshold of the final rule without a congressional amendment to the Act.

Data Collection Needs Study

The National Industrial Transportation League requested that the study mandated by the Act be accelerated and that the effective date of the final rule be extended pending the findings of the study.

FHWA Response: The Act requires the Secretary of Transportation to conduct a study to assess existing data and data collection needs with respect to the movement in intermodal transportation of loaded containers and trailers in the violation of the Act and highway weight laws. The Act requires that the final report from the study provide legislative and other recommendations for improving the collection of such data. The Congress did not intend the study to be a prerequisite to the promulgation and enforcement of regulations which implement the requirements of the Act, but rather a separate activity designed to provide insight into the data needs that would assist Congress in making future related legislative decisions. Completion of the study is not by itself sufficient grounds to warrant an extension, and the schedule for the study cannot be significantly accelerated.

Opposition to a Lengthy Extension of the Effective Date of the Final Rule

In addition to letters requesting an extension of the effective date of the final rule, the FHWA received two letters in opposition. The American Trucking Associations, Inc. (ATA), opposed a lengthy extension of the effective date, but indicated that it could support an extension until January 1, 1996, to permit the FHWA to proceed with a rulemaking on the various petitions that have been filed, including its own. The ATA recognized that the EDI concerns of those requesting an extension may have some validity. In addition, Mr. M. P. McLean wrote that these regulations are necessary and long overdue and recommended they be implemented without delay.

Petition for Exemptions by the American Trucking Associations, Inc.

On April 7, 1995, the ATA filed a petition to exempt three types of motor carrier operations from the final rule:

1. A motor carrier which loads a container or trailer and provides all highway portions of the intermodal transportation.
2. A motor carrier which loads a container or trailer, provides the initial highway portion of the intermodal transportation, and assumes responsibility for the violations of highway weight laws of other motor carriers that transport the loaded container or trailer.
3. A motor carrier which is presented a loaded trailer for domestic

transportation with a bill of lading that includes the weight and a reasonable description of the cargo, as well as the shipper's signature, and which subsequently decides on its own initiative to ship the loaded trailer by rail for a portion of the domestic transportation.

For the first type of operation, the ATA asserts that the certification serves no purpose because the motor carrier controls the loading of the container or trailer and, therefore, always knows the weight and identity of the cargo. In the second type, the ATA argues that the certification serves no purpose because the initial motor carrier knows the weight and identity of the cargo and has assumed responsibility for any overweight citations issued to other motor carriers. In the third type, the ATA contends that a certification should not be required because the use of intermodal transportation would be discouraged if a shipper had to prepare a certification for every trailer on the possibility that its motor carrier might have the trailer transported by rail and because the motor carrier in this situation has been provided all of the pertinent information that would otherwise be included in a certification. The ATA asserts that all of these requested exemptions will eliminate unnecessary paperwork burden and have no adverse impact on highway safety. The ATA's petition is available for review in the docket.

Request for Comments

The FHWA is not requesting comments on the content of the final rule, but only on the ATA's petition for three exemptions and whether an extension of the effective date of the final rule beyond September 27, 1995, is necessary to allow affected parties to become familiar with their responsibilities and take necessary actions for compliance. The FHWA requests comments regarding the appropriateness of the following effective dates requested by the petitioners:

1. January 1, 1996, as mentioned by the ATA in its statements regarding the various filed petitions.
2. May 1, 1996, as requested by the Coalition and Warren & Associates based on their arguments related to: EDI; education; and paperwork burdens and costs associated with compliance to the final rule.
3. June 1, 1996, as requested by the KLA based on their arguments related to EDI and education.
4. Any other date.

The FHWA requests commenters to provide information and data which support their position. Commenters who support a specific effective date are requested to provide a timetable of activities necessary for compliance.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be

considered and will be available for examination in the docket room at the above address. The FHWA will not consider any request for an extension of the comment period of this publication. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has previously determined that the final rule implementing the Intermodal Safe Container Transportation Act of 1992 is a significant regulatory action within the meaning of Executive Order 12866 and significant under Department of Transportation regulatory policies and procedures because it affects intermodal transportation and attracts substantial public interest. As such, the final rule was reviewed by the Office of Management and Budget and the Office of the Secretary of Transportation before being published. This present action is intended only to allow comments on an appropriate effective date for the December 29, 1994, final rule. Based on the information received in response to this action, the FHWA will make a final determination on an appropriate effective date. It is anticipated that the economic impact of this action will be

minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA has evaluated the effects of this action on small entities. Based upon this evaluation, as well as for the reasons set forth in the previous paragraph, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (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 this action does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. Nothing in this action directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The information collection requirements contained in the December 29, 1994, final rule have been approved by the Office of Management and

Budget in accordance with the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and assigned the control number of 2125-0557 which expires on June 30, 1997. This action does not affect the recordkeeping requirements previously established.

National Environmental Policy Act

The agency has analyzed this rulemaking 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 any effect on the quality of the environment.

Regulation Identification Number

A regulation 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 390

Highway safety, Highways and roads, Intermodal transportation, Motor carriers, Recordkeeping requirements.

Authority: 49 U.S.C. 5901-5907, 31132, 31136, 31502 and 31504; 49 CFR 1.48.

Issued on: May 19, 1995.

Rodney E. Slater,

Federal Highway Administrator.

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