

Attendance is open to the interested public but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statement should notify the person listed above not later than October 24, 2008. The next quarterly meeting of the FAA ATPAC is planned to be held from January 13–14, 2009, in Miami, FL.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on August 26, 2008.

Richard Jehlen,

Executive Director, Air Traffic Procedures, Advisory Committee.

[FR Doc. E8–20310 Filed 8–29–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0204]

Application by the Massachusetts Department of Highways for a Preemption Determination on the City of Boston's Hazardous Materials Routing Designation

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), (DOT).

ACTION: Notice of application for preemption determination, consolidation with the American Trucking Associations, Inc. (ATA) application for preemption determination, and extension of time to submit comments.

SUMMARY: FMCSA provides notice and invites interested parties to submit comments on an application by the Massachusetts Department of Highways (MassHighway) for an administrative determination on whether Federal law preempts highway routing designations issued by the City of Boston (Boston) regarding the transportation of hazardous materials. MassHighway seeks a preemption determination to resolve whether Boston's regulatory scheme on hazardous materials transportation in Boston remains consistent with Federal law in light of the history of the Boston regulation, changes that have occurred since the regulation's inception in 1980, and policy changes in issuing permits under the regulation. The MassHighway application, filed on July 25, 2008, encompasses the issues raised by ATA

in its application for preemption determination filed on May 30, 2008. Accordingly, the MassHighway application will be consolidated with the ATA application in Docket No. FMCSA–1008–0204 and the time period for submitting comments is extended by this notice.

DATES: Comments received by October 17, 2008 and rebuttal comments received by December 1, 2008 will be considered before an administrative ruling is issued. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2008–0204 by any of the following methods:

Web Site: <http://www.regulations.gov>. Follow the instructions for submitting comments on the Federal electronic docket site.

Fax: 1–202–493–2251.

Mail to: Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Courier or Hand Delivery: Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. *e.t.*, Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information, see the Public Participation and Supplementary Information headings below. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to the ground floor, Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. *e.t.*, Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR

19476) or you may visit <http://www.regulations.gov>.

Public participation: The <http://www.regulations.gov> Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the “help” section of the <http://www.regulations.gov> Web site and also at the DOT's <http://docketsinfo.dot.gov> Web site. If you want confirmation of receipt of your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT:

James O. Simmons, Chief, Hazardous Materials Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, or at james.simmons@dot.gov (e-mail).

SUPPLEMENTARY INFORMATION: A copy of each comment must be sent to Monica E. Conyngham, Chief Counsel, MassHighway, 10 Park Plaza, Boston, MA 02116–3969 and Richard Moskowitz, Vice President and Regulatory Affairs Counsel, American Trucking Associations, 950 North Glebe Road, Arlington, VA 22203. You are required to include with your comments a certification that you provided a copy of your comments to MassHighway and ATA. (The following format is suggested: “I certify copies of this comment were sent to Ms. Conyngham, MassHighway, and Mr. Moskowitz, ATA, at the address specified in the **Federal Register**.”)

Background

Title 49 U.S.C. 5125 includes several preemption provisions. Section 5125(c)(1) allows a State or Indian tribe to establish, maintain, or enforce a highway routing designation over which hazardous material may or may not be transported by motor vehicles, or a limitation or requirement related to highway routing, only if the designation, limitation, or requirement complies with 49 U.S.C. 5112(b).

Section 5112(b) requires the Secretary of Transportation (the Secretary), in consultation with the States, to prescribe by regulation standards for the States and Indian tribes to follow when designating specific highway routes for transportation of hazardous materials. The Secretary has delegated to the Administrator of the FMCSA authority and responsibility for highway routing of hazardous materials. See 49 CFR 1.73(d)(2). The standards required by 49 U.S.C. 5112(b) for establishing highway

routing requirements for non-radioactive hazardous materials are set forth in 49 CFR part 397, subpart C, and apply to any designations established or modified on or after November 14, 1994. See 49 CFR 397.69(a). A State or Indian tribe must follow FMCSA standards when establishing highway routing requirements for hazardous materials. See 49 CFR 397.71 (Federal standards for routing of nonradioactive hazardous materials (NRHM)). Except as provided in §§ 397.75 (dispute resolution) and 397.219 (waiver), a NHRM route designation made in violation of § 397.69(a) is preempted pursuant to section 105(b)(4) of the Hazardous Materials Transportation Act, as amended, 49 U.S.C. 5125(c), 49 CFR 397.69(b).

MassHighway submits that the Boston regulation on routing of hazardous materials has been in place since 1980. Subsequent construction on the Central Artery and Third Harbor Tunnel Project (often referred to as the "Big Dig") impacted the routes used by transporters of hazardous materials in Boston. After September 11, 2001, Boston changed its policy on issuing permits necessary for transportation of hazardous materials through Boston. Boston officials take the position that Boston's regulation is grandfathered under 49 U.S.C. 5125(c)(2)(A) and (B) and that minor routing changes have not impacted the fact that the regulation is not subject to preemption under 49 CFR 397.69. Boston also argues that its increased enforcement and policy on issuing permits falls squarely within its permitting authority. MassHighway acknowledges that the regulated community argues that the policy changes are a *de facto* change in routing restrictions and hazmat carriers denied permits must now pass through multiple communities surrounding Boston, increasing and transferring risk to other communities and depriving the public of involvement in the routing process. MassHighway requests that FMCSA review the facts, analysis, and exhibits presented in its application, including the above-described circumstances, prior DOT Inconsistency and Consistency Determinations, and a 1981 Federal District Court decision, to determine whether the Boston regulation and current enforcement scheme remain grandfathered under Federal law. *American Trucking Associations, Inc. et al. v. city of Boston et al.* (D. Mass. filed April 6, 1981) (Copy of unpublished opinion provided in MassHighway application.)

On May 30, 2008, ATA filed an Application for Preemption Determination on the City of Boston's

routing and transportation restrictions applicable to certain hazardous materials. Notice of this application and request for comments was published in the **Federal Register** on August 8, 2008. See 73 FR 46349 (August 8, 2008). The ATA application and **Federal Register** notice may be found at <http://www.regulations.gov> under non-rulemaking docket no. FMCSA-2008-0204. ATA alleges that Boston, in the course of the construction of the Central Artery Tunnel, changed designated hazardous materials routes through Boston and, in doing so, failed to comply with the requirements of § 397.71. ATA requested that the FMCSA Administrator make a determination on whether the highway routing designations established by Boston are preempted pursuant to § 397.69(b).

FMCSA received the MassHighway application on or about July 25, 2008. MassHighway addresses the same central issue as that raised in the ATA application, *e.g.*, whether the Boston hazardous materials routing designations are subject to the preemption provisions of § 397.69. In order to avoid duplication and address the issues raised in these applications in a thorough and complete manner, FMCSA is consolidating the MassHighway application for a preemption determination with that of the ATA. Copies of the MassHighway application for preemption and the ATA application for preemption determination are available for review in the consolidated docket for this notice. You may view or obtain a copy of the applications online by visiting <http://www.regulations.gov> and going to the docket number for this matter (FMCSA-2008-0204).

Public Comments

FMCSA seeks comments on (1) whether Boston's highway routing designations were established or modified prior to November 14, 1994, exempting them from the preemption provisions of 49 CFR 397.69 and/or (2) whether Boston's highway routing designations are subject to the preemption provisions of 397.69. Comments should specifically address the preemption standard established under 49 CFR 397.69 and 49 U.S.C. 5125(c).

Issued on: August 26, 2008.

David Hugel,

Deputy Administrator.

[FR Doc. E8-20222 Filed 8-29-08; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-99-6156, FMCSA-00-7006, FMCSA-00-7165, FMCSA-02-12294]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 34 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective September 21, 2008. Comments must be received on or before October 2, 2008.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-99-6156, FMCSA-00-7006, FMCSA-00-7165, FMCSA-02-12294, using any of the following methods.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* 1-202-493-2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to <http://www.regulations.gov>, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or