

Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663-1123, (e-mail histoff@panet.us-state.gov).

Dated: June 2, 1997.

**William Z. Slany,**  
Executive Secretary.

[FR Doc. 97-15028 Filed 6-9-97; 8:45 am]

BILLING CODE 4210-11-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Final Environmental Impact Statement; JFK International Airport Light Rail System Errata Sheet

**SUMMARY:** A public notice was published in the **Federal Register** and area newspapers on May 23, 1997 (62 FR 28529), advertising the completion and availability of the Final Environmental Impact Statement, The Port Authority of New York and New Jersey JFK International Airport Light Rail System.

Please be advised that the following modifications and/or clarifications are to be included in the Final Environmental Impact Statement, The Port Authority of New York and New Jersey JFK International Airport Light Rail System (LRS):

On page 5-147, Sections 5.12.2 Impacts and Mitigation, prior to the last sentence; on page 7-7, Section 7.16 Coastal Zone, at the end of the section; and, on Page 8-5, Section 8.2.2, New York State Actions—Coastal Management Program Consistency—in each location add the sentence—“The FAA will not unconditionally approve the Airport Layout Plan (ALP) in a Record of Decision (ROD), nor will it render a determination of a PFC use application until the New York Coastal Zone Management Program concurs in the Port Authority consistency determination.”

In Volume 2 of 3 and Volume 3 of 3, FAA responses to comments on both the DEIS and the Written Reevaluation/Technical Report, are finalized comments. Change the “header” in these pages to read “Responses to Comments on the DEIS” or “Responses to Comments on the Written Reevaluation/Technical” as appropriate.

For additional information or to submit comments (which are due by June 23, 1997) on the Final Environmental Impact Statement contact either:

Mr. Laurence Schaefer, Federal Aviation Administration, AEA-620, Fitzgerald

Federal Building, John F. Kennedy International Airport, Jamaica, NY 11430, Telephone: (718) 553-3340, FAX: (718) 995-9219  
Mr. Victor Teglassi, NYS Dept Transportation, Region 11, Hunters Point Plaza, 47-40 21st Street, Long Island City NY 11101, Telephone: (718) 482-4610, FAX: (718) 482-4660.

Issued in Jamaica, New York on May 29, 1997.

**William DeGraaff,**

Acting Manager, Airports Division Federal Aviation Administration Eastern Region.

[FR Doc. 97-15018 Filed 6-9-97; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

[FHWA Docket No. Motor Carrier-96-40]

#### Motor Carrier Regulatory Relief and Safety Demonstration Project

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of final determination.

**SUMMARY:** The FHWA announces its final determination establishing the Motor Carrier Regulatory Relief and Safety Demonstration Project (“Project”). The Project will allow qualified motor carriers operating light to medium weight commercial motor vehicles (CMVs) in interstate commerce to qualify for exemption from certain Federal Motor Carrier Safety Regulations (FMCSRs) for a three year period.

**EFFECTIVE DATE:** June 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert F. Schultz, Jr., Office of Motor Carrier Research and Standards, (202) 366-4009, or Ms. Grace Reidy, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, DOT, 400 Seventh Street, SW., Washington, WASHINGTON, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** On November 28, 1995, the President signed the National Highway System Designation Act of 1995 [Pub. L. 104-59, 109 Stat. 568 (NHS Act)]. Section 344 of the NHS Act, now codified at 49 U.S.C. 31136, mandates that the FHWA implement a pilot program for motor carriers operating CMVs with a gross vehicle weight rating (GVWR) between 10,001 and 26,000 pounds, inclusive, in interstate commerce, to qualify for exemption from certain of the FMCSRs (49 CFR Part 350 *et seq.*). Notice of the

Project (notice) was published in the **Federal Register** on August 28, 1996 (61 FR 44385). The comment period closed on September 27, 1996. In response to docket comments which raised the issue of the relation between this Project and the existing motor carrier regulations of the States, a supplemental notice was published on October 29, 1996 (61 FR 55835), seeking comment on the appropriate use of Federal preemption to resolve any conflicts between the Federal and State provisions. The comment period for that notice expired November 29, 1996.

### Comments

The FHWA received 27 comments in response to the Notice. The commenters included 9 motor carriers, 12 trade associations, 3 safety consultants or safety interest groups, 2 States and a trade union. The vast majority of the comments endorsed the “New Era” which the FHWA outlined in the Notice. In particular, the use of performance-based standards received strong support.

However, many commenters believed that the design of the proposed Project would discourage participation in the Project by motor carriers. The explanation most frequently offered for this conclusion was that the “paperwork” requirements of the Project, both at the time of application and during the Project, were too burdensome, and outweighed the regulatory relief which the Project motor carrier would enjoy. The Project as proposed required each applicant motor carrier to provide the FHWA, at the time of application, with a signed certification of certain facts, a Safety Control Plan, a roster of eligible drivers, and a calculation of its accident rate over the preceding three years. The motor carrier would also have to verify that the driving record of each driver whom it proposed for the Project did not contain any convictions of certain prohibited offenses. In addition, the motor carrier would have to have vehicle maintenance records on hand for the three years preceding the Project. During the Project, the FHWA proposal required a Project participant to agree to provide the FHWA with certain information concerning any accidents in which the motor carrier was involved, and, in that event, a re-calculation of the motor carrier’s accident rate for the preceding three years. The FHWA also proposed that Project motor carriers provide the names of new drivers which the motor carrier wished included in the Project, as well as names of drivers who drop out of the Project or who cease to exclusively operate motor vehicles with

a GVWR between 10,001 and 26,000 pounds, inclusive. Vehicle maintenance records were also to be maintained and submitted during the Project. In some cases, such as supplying accident information, the reporting was to be within 10 days; in other cases, a quarterly basis was proposed.

The commenters most strenuously objected to the totality of these "paperwork" requirements. The driver information requirements were singled out by a significant segment of the commenters. They believed that the high turnover rate of drivers which many motor carriers experience would make the driver roster requirement overly burdensome. It was suggested that detailed driver information should be provided only with regard to those drivers who are convicted of certain moving violations, or who are involved in an accident.

Continuing exemption of motor carriers after the three year period of this Project also drew comment. Commenters believed that the Project would be more attractive if a commitment was made to extend the Project beyond three years. They also believed that participants should be able to expect that the safety management systems which they put in place for the Project would not become obsolete when the Project terminates.

Some of the Project exemptions were given little value by the commenters. For instance, it was suggested that most motor carriers would continue to require a pre-employment road test for new hires even if they were exempt from the rule requiring one. It was also stated that insurance carriers would continue to require motor carriers to obtain an application for employment for each new employee, even if the Federal requirement is waived. Some commenters also felt that the creation of an exemption from the regulation requiring newly-hired drivers to furnish a list of motor vehicle violations was offset by the Project requirement that Project motor carriers examine the driving history of their Project drivers to verify that each driver is free of any disqualifying violations.

The Project as proposed created various exemptions from the record of duty status provisions, but did not remove the actual hours-of-service limitations. The failure to take this final step drew criticism, particularly from those who believe that the spirit, if not the letter, of the NHS Act mandated such relief. On the other hand, criticism also came from those who believed that neither the records of duty status, nor the hours-of-service limitations, should be lifted, because the FHWA would be

unable to detect, or prosecute, violations of the hours-of-service rules.

Many commenters believed that relief from another provision of the FMCSRs should have been proposed: The requirement that drivers undergo a periodic examination by a licensed medical practitioner. The commenters appeared to be saying that because of the differences between the typical day-to-day activity of drivers of Project vehicles, and drivers of vehicles with a GVWR in excess of 26,000 pounds, medical examination was less critical for the former. These commenters focused upon the fact that drivers operating CMVs of the class eligible for this Project normally engage in short-haul operations. Such operations, the commenters contend, are distinguished from long-haul operations by the fact that (1) The short-haul driver is on duty during more normal work hours, and thus is less inclined to experience the fatigue of evening or graveyard shifts, and, (2) the short-haul driver experiences more frequent breaks, spends less time actually behind the wheel, and drives fewer miles on an annual basis. These commenters felt that it was the intent of Congress that this Project provide an opportunity for relief from the medical examination requirement.

The Project as proposed also outlined certain eligibility criteria. Some commenters believed that the requirement that the police-reported accident rate of Project motor carriers not exceed 1.6 per million vehicle miles traveled (for the most recent 36 month period) would unfairly disqualify some motor carriers. The inequity would occur, they averred, because the proposal does not take accident culpability into account, and thus an accident in which a motor carrier's driver is totally free of negligence could nonetheless result in the removal of that motor carrier from the Project. Other commenters were concerned that a motor carrier that had not accumulated 1 million vehicle miles traveled would not be eligible, or would become ineligible when a single accident occurred.

The requirement that Project drivers not operate CMVs other than those which have a GVWR between 10,001 and 26,000 pounds, drew criticism, primarily from the utility industry, which is characterized by a high percentage of drivers who "cross over" to operate CMVs in excess of 26,000 pounds GVWR. The FHWA also proposed that Project drivers would not be eligible if they had been convicted in the past three years of certain violations of law. Some commenters expressed the

belief that all moving violations should be taken into account in determining the eligibility of drivers.

The FHWA also proposed that Project motor carriers be required to maintain and submit CMV maintenance records. Commenters expressed concern that this requirement was particularly burdensome and eliminated the benefit afforded by the Project exemptions addressing vehicle maintenance records.

#### FHWA Response

After careful review, the FHWA has decided to make two changes in the Project to alleviate the recordkeeping requirements proposed in the original notice. The first is the elimination of the requirement that motor carriers maintain and submit vehicle maintenance records. The benefit to be derived from this information is not sufficiently crucial to the monitoring, or the evaluation, of the Project to require its inclusion. The second change is to alter the frequency of the periodic calculation of the accident rate, and its submission to the FHWA. The calculation of accidents per million vehicle miles traveled will now be required on a semi-annual basis, rather than quarterly as proposed. The calculation will also, as proposed, be required in the event of an accident involving the motor carrier.

The FHWA is aware that this Project imposes special recordkeeping and reporting requirements upon participating motor carriers. The FHWA believes that the remaining paperwork requirements of the Project are absolutely necessary to conduct this Project and ensure the safety of the public on the highways. For instance, in the absence of a roster of the drivers participating in the Project, the Agency would be unable to assist enforcement personnel at roadside inspection locations. Confronted with a driver who has no Record of Duty Status, as required by 49 CFR 395.8(k), but who professes to be a Project driver and thus exempt from that section, safety inspectors or other enforcement officials would be unable to verify the exempt status of that driver. The Agency also believes that most of the remaining records which are required by this Project are routinely maintained by most motor carriers in the course of their day-to-day operations.

The FHWA is also relaxing the proposed exclusion from the Project of CMV drivers who "crossover" and operate CMVs with a GVWR greater than 26,000 pounds. The FHWA believes that such activity can be permitted, so long as its occurrence for any particular driver is frequent, and

measurable; that is, the FHWA will permit a Project motor carrier to direct Project drivers to operate vehicles outside of the Project weight class if: (a) the driver operates Project vehicles at least 25% of the time, and (b) the motor carrier can provide the FHWA with the total number of vehicle miles driven outside the Project, and the total number of miles driven within the Project, for each such driver. The FHWA can take such information into account in conducting its evaluation of the Project, and thus preserve the integrity of that process. Motor carriers and their drivers are advised to be alert to the fact that when activity is conducted outside the Project, it is subject to all provisions of the FMCSRs. For instance, a driver who operates a CMV over 26,000 pounds GVWR must, in accordance with 49 CFR 395.8, be able to account for his or her hours of service for an earlier period of up to 8 days. A "crossover" Project driver will immediately be required to account for his/her hours of service over the preceding 8 days, even though the driver during this earlier period was exempt from the requirements of 395.8 by virtue of being engaged in Project activity.

The FHWA is cognizant of the economic realities which underlie the suggestion that it should assure motor carriers that the exemptions of this Project will continue beyond the three-year life of this pilot. It is possible that the exemptions will continue in some form; however, the case for permanent regulatory change must be made by appropriate supporting data. The Agency realizes that strong participation in this pilot may generate data which show the way to meaningful, performance-based improvements of the current regulatory scheme. The agency cannot now predict what the Project data will show, or what the overall regulatory landscape will look like down the road. After the first two years of the Project, the FHWA intends to analyze the Project data. Permanent rules resembling the guidelines of this Project may be indicated at that time.

The provisions of the FMCSRs governing maximum driving time provide the best available standard for assuring that fatigued drivers are kept off the public highways. In order for the FHWA to exempt Project motor carriers and their drivers from these provisions, the agency must ensure that safety management controls are available which will achieve a level of operational safety equal to or greater than that resulting from compliance with these provisions. Despite the invitation to comment in the original

Notice, no commenter has proposed that alternate safety controls exist. On September 7, 1995, the FHWA sought public input (60 FR 46682) with regard to advanced driver and vehicle technologies, but none addressing maximum driving time were produced.

However, the FHWA also believes that the elimination of the requirement for records of duty status (log books), time cards or interactive on-board recording devices for qualified Project motor carriers, does not place the motoring public in danger. Safety investigators will rely more heavily upon other evidence, such as, fuel and toll receipts, bills of lading, and trip reports, to determine if on-duty or driving time violations are present. Such evidence is currently employed to corroborate hours-of-service violations, particularly when logbooks appear to be falsified.

The FHWA does not believe that the requirement for a periodic medical examination should be susceptible to relief under the Project. It may be true that the typical operator of a CMV of the weight class eligible for this Project engages in short-haul operations, i.e. works normal daytime hours, experiences frequent breaks from driving, spends less time behind the wheel, and drives fewer total miles than many long-haul operators. But accidents involving this class of drivers occur more frequently than accidents involving long-haul drivers. The biennial medical examination provides a minimal check of the physical condition of the individuals operating these vehicles, which, though often referred to as "light- to medium-sized trucks," are nonetheless capable of causing serious personal injury and property damage. For this reason, and because the FHWA is reviewing medical standards for all CMV operators outside of this Project, the agency believes that relief from this provision is not appropriate under this Project.

The FHWA believes that participation in this Project should be limited to those motor carriers which have exemplary safety histories. The Agency further believes that the best measure of a exemplary history would be an accident rate equal to or better than that of the top 25% of all motor carriers. The FHWA estimates this accident rate to be 1.6, or fewer, crashes per 1 million vehicle miles of travel, based on analysis of the nationwide police-reported crash experience of the types of vehicles that are expected to participate in this Project, and the FHWA's estimates of the miles traveled annually by such vehicles.

This crash rate is derived from the most recent three years of information for straight trucks included in the General Estimates System (GES) of the National Highway Traffic Safety Administration, and from mileage statistics found in the FHWA's "1994 Highway Statistics," Publication No. FHWA-PL-95-042. The FHWA employed data on straight trucks from the GES to ensure that all types of police-reported crashes are taken into consideration. The FHWA believes that in order to definitively pinpoint those motor carriers with exemplary safety histories, all types of crashes, not just those which may be defined as preventable or recordable, must be taken into account. While some commenters were opposed to the rate and considered it an obstacle to participation in the Project, no commenter submitted data that would support a different rate.

The FHWA believes that many of the motor carriers which will volunteer for the Project will have operations in urban areas and may not accumulate vehicle miles of travel in excess of 1 million. The eligibility criterion for participation in the Project concerning the police-reported accident rate has been amended to clarify that motor carriers with less than a million miles over the past 36 months are eligible if they have less than 2 police-reported accidents in that period. The same standard applies to those motor carriers with which have been in business less than 36 months. When combined with the exclusion of those motor carriers with an "Unsatisfactory" Safety Rating, participation in the Project is effectively limited to motor carriers with exemplary safety histories.

### Preemption

As mentioned earlier, in response to docket comments raising the issue of the relation between the requirements of this Project and the existing motor carrier regulations of the States, a supplemental notice was published on October 29, 1996 (61 FR 55835) seeking comment on the appropriate use of Federal preemption in this Project. Eight Comments to the supplemental notice were received. Five comments were from trade groups, one from a motor carrier, one from a union, and one from a safety advocacy group. Four were in favor of the exercise of Federal preemption, two were opposed to it, and two offered no opinion. No comments were received from States.

After review of the comments, the FHWA remains convinced that it has the authority to preempt the provisions of State laws which conflict with this Project. However, the FHWA also

remains convinced that it will be unnecessary to invoke this authority. For some time, through various Federal initiatives, foremost of which is the program of grants to States known as the Motor Carrier Safety Assistance Program (MCSAP), the States and the Federal government have been working together to achieve a high degree of uniformity between State and Federal enforcement of motor carrier regulatory compliance. At the same time, the high degree of communication between these parties has resulted in greater familiarity with the operations of one another. Thus a new Federal program, though it may necessitate corresponding changes in State activity, is more readily understood by State officials. The FHWA also believes that the Federal-State partnership is capable of absorbing the changes which this Project imposes upon the enforcement community.

#### **Changes From Notice of August 28, 1996 (61 FR 44385)**

The following are the significant changes to the proposal for the Project outlined in the notice and request for comments dated August 28, 1996:

1. Motor carriers participating in the Project will not be required to collect, or submit, vehicle maintenance records, as a condition of participation in the project.

2. Calculation and submission of the accident rate by each participating motor carrier will be required on a semi-annual basis, as opposed to quarterly. The requirement to submit a re-calculation of the revised rate following each accident has been retained.

3. The eligibility criterion for participation in the Project concerning the police-reported accident rate has been amended to clarify that motor carriers with less than a million miles over the past 36 months are eligible if they have less than 2 police-reported accidents in that period. The same standard applies to those motor carriers which have been in business less than 36 months.

4. An occasional use of a Project driver "crossing over" to operate CMVs with a GVWR in excess of 26,000 pounds is permissible; however, only his or her activities while operating CMVs having a GVWR between 10,001 and 26,000 pounds, inclusive, will be considered as part of the project data.

For the reasons set forth in the preamble, the FHWA hereby presents the following as the final determination of the design of the Motor Carrier Regulatory Relief and Safety Demonstration Project. The FHWA will grant to eligible motor carriers, for the term of the Project only, exemption from

those requirements of the FMCSRs outlined under the caption "Project Exemptions." The exemptions will only apply to the eligible drivers identified by the motor carrier. In order to participate in the Project, a motor carrier will have to meet the requirements outlined under the caption "Criteria for Admission To The Project," and also must submit the appropriate documentation outlined under the caption "Applying For The Project." Once admitted to the Project, each participating motor carrier agrees to honor the reporting and submission requirements outlined under the caption "The Agreement."

The FHWA will evaluate the Project data throughout the Project, with particular focus upon FHWA's regulatory reinvention and zero-base initiatives. In addition, at the conclusion of the Project, the FHWA, in accordance with the NHS Act, will use this data to conduct a zero-base review of the need for, and the costs and benefits of, all of the FMCSRs.

#### **Project Exemptions**

Qualified motor carriers will be exempt from certain requirements of the FMCSRs while participating in the Project. All motor carriers participating in the Project will be exempt from the same regulations; motor carriers may not pick and choose the regulations from which they wish to be exempt.

The FHWA, while granting these exemptions to qualified, exemplary motor carriers, has established certain mechanisms to assist the agency in monitoring the level of safety of these motor carriers. These mechanisms are more fully explained later in this notice. Briefly, they are:

- (1) Each project motor carrier must establish, and submit to the agency, a Safety Control Plan which details the steps it intends to take during the Project to ensure that it maintains or improves the level of operating safety which it experienced prior to the Project.

- (2) Project motor carriers must advise the FHWA within ten business days of the occurrence of any police-reported accidents involving Project drivers. At the same time the Project motor carrier must submit a re-calculation of its ratio of accidents to vehicle miles, and if it is greater than the Project standard (1.6), the motor carrier will be subject to removal from the Project, and

- (3) the FHWA will monitor the safety performance of Project motor carriers, including random checks of various state and Federal databases.

Project motor carriers, and their eligible drivers, will, with regard to the

operation in interstate commerce of CMVs with a gross vehicle weight rating (GVWR) between 10,001 and 26,000 pounds, inclusive, be exempt from the following requirements of the FMCSRs:

#### *Driver Qualifications*

Newly-hired drivers are not required to prepare, or furnish to the employing motor carrier, a list of violations of motor vehicle laws, or a certificate in lieu thereof, in accordance with 49 CFR 391.11(b)(8). (However, motor carriers are still required to obtain an official state driving record as required by 49 CFR 391.23). Drivers are also not required to successfully complete a Driver's Road Test, or furnish an Application For Employment, in accordance with 49 CFR 391.11(b)(10) and 391.11(b)(11). In addition, motor carriers do not have to maintain complete Driver Qualification Files on each driver in accordance with 49 CFR 391.51.

#### *Driver Hours-Of-Service*

Project drivers are not required to comply with record of duty status regulations, whether this entails maintenance of a logbook in accordance with 49 CFR 395.8, use of a timecard in accordance with 49 CFR 395.1(e), or the use of an interactive automatic on-board recording device in accordance with 49 CFR 395.15. However, Project motor carriers and drivers must observe the provisions governing maximum driving time, and the use of ill or fatigued operators in accordance with 49 CFR 395.3 and 392.3. Additionally, project motor carriers and their drivers do not forfeit any other exemptions available under FHWA regulations.

#### *CMV Inspections*

While participating in the Project, motor carriers are exempt from those requirements pertaining to CMV inspection records, and their retention in accordance with 49 CFR 396.3 (b) and (c). Exemption is also granted from the regulations pertaining to driver vehicle inspection reports and the driver vehicle inspection, 49 CFR 396.11 and 396.13 (b) and (c). In addition, driveaway-towaway inspections are not required of Project motor carriers or their drivers, nor are periodic inspections and periodic inspection reports, 49 CFR 396.15, 396.17 and 396.21. However, motor carriers are not relieved of their responsibility to inspect, repair and maintain their motor vehicles in accordance with 49 CFR 396.3(a). Furthermore, the Project driver and CMVs are subject to safety inspection at roadside locations.

### Accident Information

Project motor carriers are exempt from the requirement that they maintain an accident register in accordance with 49 CFR 390.15 (b)(1) and (b)(2).

### Criteria for Admission to the Project

Each motor carrier applying for admission to the Project must satisfy the following criteria:

*Criterion 1:* The motor carrier operates in interstate commerce.

*Criterion 2:* The motor carrier operates CMVs having a GVWR between 10,001 and 26,000 pounds, inclusive. However, CMVs designed to transport more than 15 passengers (including the driver), or used in transporting hazardous materials in placardable quantities, as defined in regulations issued by the Secretary of Transportation under the Hazardous Materials Transportation Act (49 U.S.C. 5101, *et seq.*), are not eligible to participate in this Project.

*Criterion 3:* The motor carrier does not currently have a Safety Fitness Rating of "Unsatisfactory" issued by the FHWA. Motor carriers who have not received a safety rating issued by the FHWA are eligible for this Project.

*Criterion 4:* For CMVs eligible for this Project, the motor carrier has an accident rate equal to or less than 1.6 police-reported accidents per million vehicle miles traveled, averaged over the most recent 36 months. For example, a motor carrier which has experienced 4 police-reported accidents, and 3 million vehicle miles traveled, by eligible CMVs, over the most recent 36 months, would be eligible for the Project, based upon the following calculation:

4 divided by 3 equals 1.33, which is less than 1.6. This calculation is to be based solely on the accidents and mileage of those CMVs which have a GVWR between 10,001 and 26,000 pounds, inclusive. In addition, the term "accident" referenced in 390.5 is not applicable to this calculation; a "police-reported accident" is any accident which results in the filing of an official report by a Federal, State, local or tribal law enforcement agency. Motor carriers with less than one million vehicle miles traveled in the most recent 36 months, are eligible for the Project if they have not more than 1 police-reported accidents in that period of time. Two or more police-reported accidents involving this type of motor carrier will result in ineligibility for this Project.

*Criterion 5:* The motor carrier is active on a year-round basis. "Seasonal" motor carriers are not eligible for this Project.

*Criterion 6:* The drivers submitted by the motor carrier for participation in the

Project have not been convicted, in the past three years, of:

1. An offense that "directly arose out of" a fatal traffic accident;
2. Driving a CMV while under the influence of alcohol, including:
  - (a) Driving a CMV while the person's alcohol concentration is 0.04 percent or more,
  - (b) Driving under the influence of alcohol, as prescribed by State law, and
  - (c) Refusal to undergo testing for alcohol or controlled substances as required by any State or jurisdiction,
3. Driving a CMV while under the influence of a controlled substance;
4. Leaving the scene of an accident involving a CMV; or
5. A felony involving the use of a CMV, including the use of a CMV in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance.

*Criterion 7:* The motor carrier has a written Safety Control Plan for this Project. This plan must, in some form, clearly detail the measures which the motor carrier will undertake to ensure that the current level of safety is not compromised by the operation of the Project exemptions. This document may entail no more than submitting pertinent portions of a company's current Operating Plan or similar document. An outline for the creation of this document is also available from the FHWA upon request. In its application, the motor carrier will agree to abide by its Safety Control Plan.

### Applying for the Project

In order to be considered for the Project, motor carriers must, within 180 days of the publication of this Notice of Final Determination, submit, in writing, to the FHWA, the following:

(1) A completed Motor Carrier Identification Report (MCS-150), which will provide updated information about the overall operation of the motor carrier.

(2) The following certification, duly executed by the Chief Operating Officer of the motor carrier:

I certify that (Name of motor carrier) operates CMVs having a GVWR between 10,001 and 26,000 pounds, inclusive, in interstate commerce, on a year-round basis, and is not rated "Unsatisfactory" by the FHWA. I certify that the company has approved the attached Safety Control Plan and will employ these controls throughout the Project. I certify that the motor carrier EITHER:

has an accident rate equal to or less than 1.6 police-reported accidents per million vehicle miles traveled (VMT), averaged over the most recent 36 months, based upon \_\_\_\_\_

police-report accidents and \_\_\_\_\_ vehicle miles traveled, by CMVs having a GVWR between 10,001 and 26,000 pounds, inclusive, OR has \_\_\_\_\_ actual VMT (less than one million) over the most recent 36 months and has experienced \_\_\_\_\_ (less than 2) police-reported accidents involving subject vehicles over that period of time.

I hereby submit a roster of \_\_\_\_\_ company drivers for participation in the Project. The roster includes driver names, license numbers and State of licensure, and dates of employment. I certify that each of these drivers is eligible to participate in the Project, that each operates CMVs having a GVWR between 10,001 and 26,000 pounds, inclusive, and that I have independently verified that the driving record of each does not include any convictions within the past 3 years of any of the disqualifying offenses enumerated in the Project criteria. I have read and agree to be bound by the requirements for notification and submission of information to the FHWA outlined in the section entitled "The Agreement" in the notice of final determination of this project.

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Name of Motor Carrier \_\_\_\_\_

(3) A Safety Control Plan.

(4) A Driver Roster consisting of driver names, driver license numbers and state of licensure, and dates of employment. This will enable the FHWA to advise enforcement officers of the identity of Project drivers and to monitor their driving performance.

**Note:** The motor carrier applicant must submit the names of ALL eligible drivers for participation in the Project.

However, the FHWA is mindful of the fact that some motor carriers with larger operations may desire to volunteer a particular terminal, or a particular geographic region, or State, for this Project. The FHWA anticipates no difficulty in affording motor carriers flexibility with this form of selection for participation; however, the FHWA will carefully scrutinize any suggested "subunits" to be certain that they advance the congressional mandate, particularly the requirement that this Project examine a broad cross-section of the motor carrier industry. All of the items above should be assembled and submitted to: Department of Transportation, Federal Highway

Administration, 10-26 Safety Demonstration Project, 400 Seventh Street S.W., Washington, Washington, D.C. 20590-0001.

### The Agreement

If the FHWA finds that a motor carrier applicant is qualified for admission to the Project, it will by letter admit the motor carrier to the Project. A copy of this letter should be made available by the motor carrier to each Project driver to serve as the credential of his/her participation in the Project.

By agreement, Project motor carriers promise to do the following at the times indicated:

(1) Within 10 business days following the occurrence of a police-reported accident involving a Project driver, the motor carrier must submit details of that accident sufficient to enable the FHWA to locate the corresponding police accident report. Normally it will be sufficient to provide the date and physical location of the accident, the vehicle number, and the driver name and license number. If the FHWA needs nonconfidential insurance-related information, it will so advise the motor carrier.

**Note:** This information must be accompanied by a revised calculation of police-reported accidents per million vehicle miles traveled, indicating the figures employed to make the calculation.

The motor carrier will be subject to removal from the Project (see below) should this rate exceed 1.6 police-reported accidents per million VMT for the most recent 36 month period (or, in the case of Project motor carriers with less than a million vehicle miles traveled in the most recent 36 months, if this is the second or greater accident in the most recent 36 months).

(2) Immediately following the addition of a new driver eligible for the Project, the motor carrier must submit to the FHWA an update to the roster of Project drivers, including the name, driver's license number, and date of employment of all drivers.

(3) Immediately, when a Project driver ceases to be employed by the motor carrier, the motor carrier must submit the driver's name and license number to the FHWA.

(4) Within 10 business days, the motor carrier must notify the FHWA when the motor carrier is sold, goes out of business, changes its name, ceases to operate, ceases to operate in interstate commerce, ceases to operate CMVs with GVWRs between 10,001 and 26,000 pounds, or ceases to conduct operations on a year-round basis.

(5) Within 10 business days, the motor carrier must notify the FHWA

when the motor carrier chooses to amend its Safety Control Plan, or is unable, for any reason, to carry out the terms of the Safety Control Plan which it developed for this Project.

(6) Semi-annually, Project motor carriers must provide the FHWA with a current calculation of police-reported accidents per million vehicle miles traveled for the preceding 36 months, and indicate the figures employed to arrive at the calculation of this rate. The first calculation must be submitted upon the sixth-month anniversary of the date of admission to the Project. Subsequent calculations will be due in intervals of six months thereafter.

### Removal From the Project

The FHWA does not anticipate that any motor carrier which has satisfied the stringent admission criteria of this Project will experience any deterioration of its safety record. However, should this occur, the FHWA will, consistent with its duty under the NHS Act, take all steps necessary to protect the public interest, as well as the integrity of the Project. Participation in this Project is voluntary, and the FHWA retains the right to revoke a motor carrier's participation in the Project if its safety performance poses a threat to highway safety. Participating motor carriers are not exempt from roadside inspections, compliance reviews or enforcement actions pertaining to the remaining regulations from which they are not exempt, or on those portions of their operations (such as those involving CMVs with a GVWR in excess of 26,000 pounds) which are not a part of the Project. Also, Project drivers who pose a threat to highway safety will, at a minimum, be subject to immediate revocation of their privilege to participate in the Project.

If the FHWA finds that the highway operations of a Project motor carrier have placed the safety of the public in jeopardy, the agency will remove the motor carrier from the Project. In addition, at such time as the three-year police-reported accident rate of a Project motor carrier exceeds 1.6 per million VMT for the most recent 36 month period, the motor carrier will be subject to disqualification. Additionally, in the case of Project motor carriers with less than a million vehicle miles traveled in the most recent 36 months, the agency will disqualify the Project motor carrier if this is the second, or greater, accident in the most recent 36 (or less) months.

The FHWA will also immediately remove from the Project any driver convicted of any of the offenses enumerated under Criterion 6, *Admission To the Project*. Such

convictions will not necessarily result in the removal from the Project of the motor carrier which employs the driver, but may result in more intensive scrutiny of the operations of that Project motor carrier.

### The Final Evaluation

At the conclusion of the Project, the FHWA will conduct an evaluation of the Project. The principal objective of the evaluation is to provide input to the Agency's ongoing zero-base review of the need for, and the cost and benefits of, the FMCSRs as they apply to interstate motor carriers operating CMVs in the 10,001 to 26,000 pound GVWR class.

The evaluation will focus upon operational safety by comparing the collective experience of Project motor carriers and drivers during the Project with that prior to the Project. The evaluation will also compare the collective experience of Project motor carriers with the experience of motor carriers not participating in the Project. These comparisons will be accomplished through the use of motor carrier performance data obtained from Federal and State information systems as well as project data reported to the FHWA by participating motor carriers.

### Paperwork Reduction Act of 1995

The voluntary participants in this program must comply with information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). Persons are not required to respond to a collection of information unless it displays a valid OMB control number. The information collections requirements related to this program have been approved through emergency processing by the OMB until August 31, 1997, and assigned OMB No. 2125-0575.

The August 28, 1996, notice provided a 60-day comment period for the information collections requirements related to this program. Discussion of these comments including the FHWA's response is included in the preamble under the heading "Changes from Notice of August 28, 1996." Prior to the expiration date of the information collection, the FHWA intends to follow the normal clearance procedures to request the OMB to extend its approval for three years. The comments will be considered by the FHWA in its request to the OMB for an extension.

(49 U.S.C. 31136 and 31141; 49 CFR 1.48)

Issued on: June 2, 1997.

**Jane F. Garvey,**

*Acting Administrator.*

[FR Doc. 97-15073 Filed 6-9-97; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket No. RSAC-96-1, Notice No. 5]

#### Railroad Safety Advisory Committee; Notice of Meeting

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of Railroad Safety Advisory Committee ("RSAC") meeting.

**SUMMARY:** As required by Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), and 41 C.F.R. 101-6.1015(b), the Federal Railroad Administration (FRA) gives notice of a meeting of the Railroad Safety Advisory Committee ("RSAC"). The meeting is designed to accomplish several things: (1) the RSAC's receipt of status reports, containing progress information, from the Power Brake working group (to revise the power brake regulations contained in 49 CFR part 232), the Locomotive Engineer Certification working group (to revise the locomotive engineer certification regulations contained in 49 CFR part 240), and the Tourist and Historic Railroads working group's Steam Standards task force (to revise the steam locomotive inspection and testing standards contained in 49 CFR part 230); (2) the agency's tasking of the RSAC with the development of Locomotive Crew Safety standards (crashworthiness and working conditions); (3) the tasking of the RSAC with the development of Locomotive Event Recorder accident survivability standards; (4) the agency's engagement in exploratory discussions with the RSAC regarding positive train control; (5) the address of various issues relating to recent FRA regulatory actions (Accident/Incident Reporting and Passenger Safety); (6) a general briefing and discussion relating to other regulatory and related matters before the agency; and (7) miscellaneous administrative matters.

**DATES:** The meeting of the RSAC is scheduled to commence at 9:30 a.m. and conclude at 4:00 p.m. on Tuesday, June 24.

**ADDRESSES:** The meeting of the RSAC will be held at the BWI Airport Marriott, 1743 West Nursery Road, Baltimore,

Maryland. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Sign language interpreters will be available for individuals with hearing impediments.

#### FOR FURTHER INFORMATION CONTACT:

Vicky McCully, FRA, 400 7th Street, S.W. Washington, D.C. 20590, (202) 632-3330, Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 400 7th Street, S.W., Washington, D.C. 20590, (202) 632-3309, or Lisa Levine, Office of Chief Counsel, FRA, 400 7th Street, S.W., Washington, D.C. 20590, (202) 632-3189.

#### SUPPLEMENTAL INFORMATION:

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), FRA is giving notice of a meeting of the Railroad Safety Advisory Committee ("RSAC"). The meeting is scheduled to begin at 9:30 a.m. and conclude at 4:00 p.m. on Tuesday, June 24, 1997. The meeting will be held at the BWI Airport Marriott, 1743 West Nursery Road, Baltimore, Maryland. All times noted are Eastern Standard Time.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The Committee consists of 48 individual representatives, drawn from among 27 organizations representing various rail industry perspectives, and 2 associate non-voting representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico.

During this meeting, the RSAC will be receiving status reports, containing progress information, from the Power Brake working group (to revise the power brake regulations contained in 49 CFR part 232), the Locomotive Engineer Certification working group (to revise the locomotive engineer certification regulations contained in 49 CFR part 240), and the Tourist and Historic Railroads working group's Steam Standards task force (to revise the steam locomotive inspection and testing standards contained in 49 CFR par 230). The RSAC will also be receiving two new tasks: (1) the development of Locomotive Crew Safety standards (crashworthiness and working conditions); and (2) the development of Event Recorder Data Survivability standards.

Finally, the agency will engage in exploratory discussions with the RSAC regarding positive train control, address issues relating to recent FRA regulatory actions (Accident/Incident Reporting, Passenger Safety), discuss other regulatory and related actions before the

agency, and address several administrative matters before the RSAC.

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 F.R. 9740) for more information about the RSAC.

Issued in Washington, D.C. on June 5, 1997.

**Bruce Fine,**

*Associate Administrator for Safety.*

[FR Doc. 97-15161 Filed 6-9-97; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

[Docket No. RSPA-97-2581 (PDA-16(R))]

#### Application by New York Propane Gas Association for a Preemption Determination as to Nassau County, New York, Ordinance on Transportation of Liquefied Petroleum Gases

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Public notice and invitation to comment.

**SUMMARY:** The New York Propane Gas Association (NYPGA) has applied for an administrative determination whether Federal hazardous materials transportation law preempts certain sections of a Nassau County, New York, ordinance that require a permit for any motor vehicle used to deliver liquefied petroleum gas (LPG) within Nassau County and a "certificate of fitness" for any person who delivers LPG.

**DATES:** Comments received on or before July 25, 1997, and rebuttal comments received on or before September 8, 1997, will be considered before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

**ADDRESSES:** The application and all comments received may be reviewed in the Dockets Office, U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. Comments may be submitted to the Dockets Office at the above address. Three copies of each written comment should be submitted. Comments may also be submitted by E-mail to "rspa.counsel@rspa.dot.gov." In every case, the comment should refer to the Docket Number set forth above.