Period'' prohibitions, this proceeding is exempt from *ex parte* restraints and disclosure requirements pursuant to 47 CFR 1.1204(b)(1).

60. Accordingly, *it is ordered* that pursuant to the authority contained in sections 4, 11, 303, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 161, 303, and 403, and 202(h) of the Telecommunications Act of 1996, this Notice of Inquiry is adopted.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–8276 Filed 3–30–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 397

[FHWA Docket No. MC–96–10; FHWA–97–2334]

Recommendations on Uniform Forms and Procedures for the Transportation of Hazardous Materials

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Supplemental notice of report availability; request for comments.

SUMMARY: The FHWA is requesting public comment on the final report and recommendations of the Alliance for Uniform HazMat Transportation Procedures (the Alliance) concerning the implementation of a portion of the former Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA). The statute requires the Secretary of Transportation (the Secretary) to establish a working group of State and local government officials to establish uniform forms and procedures for the registration of persons that transport hazardous materials by motor vehicle. The working group is required to make recommendations to the Secretary on whether to limit the filing of State registration and permit forms and the collection of filing fees to the State in which the person resides or has its principal place of business. The Alliance is the working group created to fulfill the requirements of the statute, and accordingly, published its final report with recommendations on March 15, 1996.

On July 9, 1996, the FHWA published a notice indicating that the Alliance's report was available and requesting public comments on the report (61 FR 36016). After reviewing the comments received in response to the notice of availability, the FHWA has determined that it should seek additional public comment before the agency makes a decision on whether to implement the recommendations of the Alliance.

DATES: Written comments must be received on or before June 29, 1998.

ADDRESSES: Submit written, signed comments to Docket No. FHWA–97–2334, the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, (202) 366–4009; Mr. James D. McCauley, Office of Motor Carrier Safety and Technology, (202) 366–9579; 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 Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Federal Register Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Federal Register's home page at: http://www.nara.gov/nara/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/su_docs.

Availability of The Alliance's Report

Electronic Access

The Alliance report has been posted on the Internet. The entire report may be viewed on the Internet, depending on the software being used, and/or downloaded. The report is in WordPerfect 6.1 format while the forms contained in Appendix F of the report are in Graphics Interchange Format (GIF)—a standard format for digitized images. Users will need a graphics viewer to see the GIF file.

There are several ways to access the report on the Internet. The most direct method is as follows: http://www.fhwa.dot.gov/omc/alliance.html.

Alternatively, the report may be accessed through the FHWA's Office of Motor Carriers (OMC) home page located at http://www.fhwa.dot.gov/omc/omchome.html. This site contains general information on the OMC and its programs as well as links to online Federal Motor Carrier Safety Regulations and regulatory guidance, and Federal Hazardous Materials Regulations. When accessing the Alliance report from the OMC home page select the following hyperlinks:

1. Special Program Areas.
2. Final Report: Uniform Program Pilot Project.

Whichever approach is used, users may scroll through the table of contents and access the desired section of the report by clicking on the appropriate heading.

Ordering Copies of the Alliance Report

Copies of the report (''Final Report: Uniform Program Pilot Project,'' March 15, 1996) may be ordered from the National Governors' Association (NGA) Publications Center at (301) 498–3738. The NGA Publications Center will charge a shipping and handling fee for all orders.

Background

Section 5119 of title 49, United States Code, requires the Secretary to establish a working group of State and local government officials to develop recommendations on uniform forms and procedures that the States can use to register and permit persons that transport, or cause the transportation of, hazardous materials by motor vehicle. The working group is also required to make recommendations as to whether the filing of registration and permit forms, and the collection of related fees, should be limited to the State in which a person resides or has its principal place of business. In developing its recommendations, the group is required to consult with persons who are subject to these registration and permit requirements. The recommendations of the working group are to be included in a final report to the Secretary.[1] Finally, section 5119 requires the issuance of regulations implementing those

[1] The report is to be also submitted to the Committee on Commerce, Science, and Transportation of the U.S. Senate, and the Committee on Public Works and Transportation of the U.S. House of Representatives.

recommendations with which the Secretary agrees.

Section 5119 was originally enacted as section 22 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101–615, 104 Stat. 3244; November 16, 1990). The HMTUSA amended the Hazardous Materials Transportation Act of 1974 (HMTA), Pub. L. 93–633, 88 Stat. 2156, which granted regulatory and enforcement authority to the Secretary to provide adequate protection against the risks to life and property inherent in the transportation of hazardous materials in commerce. The HMTA was designed to replace a patchwork of State and Federal laws and regulations concerning hazardous materials transportation with a framework of uniform, national regulations. The HMTA and HMTUSA were repealed by Public Law 103–272 (108 Stat. 745, 1379; July 5, 1994) with the statutory provisions applicable to the transportation of hazardous materials recodified at 49 U.S.C. 5101 *et seq.*

Implementation of Section 5119

Creation of the Alliance for Uniform HazMat Transportation Procedures

In 1991, the NGA and the National Conference of State Legislatures (NCSL) were awarded a contract to coordinate the staffing and operations of the working group. The NGA and NCSL presented recommendations to the Secretary for the establishment of a panel to carry out the tasks of the working group. The panel was approved by the Secretary and held its first meeting in January 1992, at which time it selected the title ''the Alliance for Uniform HazMat Transportation Procedures'' or ''the Alliance.''

The Alliance authorized the formation of four subgroups to address specific areas of State hazardous materials transportation regulation. Industry representatives were invited to participate in the subgroups. The subgroups were:

1. Shipper and Carrier Registration Subgroup;
2. Shipper and Carrier Permitting and Licensing Subgroup;
3. Operational Issues Subgroup; and,
4. Audit and Enforcement Subgroup.

Each subgroup was asked to examine current State practices, identify the extent to which State practices are uniform, identify barriers to uniformity, and make recommendations for criteria on which a uniform State program would be based.

Pilot Study

In May of 1992, the Alliance proceeded with the design and implementation of a two-year pilot project. The project was based upon the following assumptions/recommendations:

1. Base-state system for registration and collection of fees;
2. Reciprocity between states that require permits;
3. Additional information for hazardous waste transporters;
4. Individual state enforcement authority;
5. Participation by localities; and
6. Establishment of a governing board to manage the pilot project.

The FHWA funded a two-year demonstration program for four States. During the first year, each State would develop the internal administrative procedures and organization to conduct a test of the Alliance's recommended program. During the second year, the States would implement the program for motor carriers involved in the transportation of hazardous materials.

In November of 1992, the Alliance contacted State hazardous materials transportation program administrators to solicit participation in the pilot study. The States of Minnesota, Nevada, Ohio, and West Virginia were chosen based upon the following criteria established by the Alliance:

1. The Governor and State legislature were committed to taking the necessary legislative and administrative actions to conduct the State's hazardous materials transportation programs under the principles and operating procedures of the Alliance's recommendations;
2. The regulated community within the State was committed to supporting participation in the program;
3. The State had experience in the registration and permitting of hazardous materials, and/or in the transportation of radioactive materials;
4. The group of States chosen reflected ''geographic diversity;''
5. At least one pilot State had a ''major locality'' with a hazardous materials transportation registration or permitting program.

Between July 1, 1993, and June 30, 1994, the States completed the legislative and administrative work necessary to participate in the pilot study. On July 1, 1994, the pilot States began registering and permitting motor carriers in accordance with the Alliance's recommendations. Each participating State was given the opportunity to select one of the following three options for implementing the Alliance's Uniform Program:

1. The State could apply the requirements of the Uniform Program to all motor carriers (interstate and intrastate); or
2. The State could apply the requirements only to domiciled, interstate motor carriers that operate in two or more of the pilot States; or,
3. The State could select an even smaller sample of interstate motor carriers. Minnesota, Ohio, and West Virginia used option one while Nevada selected option two for the first round of registration and permitting with the intent of expanding the program to all motor carriers during the second program year.

The Alliance's Conclusions

On March 15, 1996, the Alliance submitted its final report and recommendations to the FHWA. The Alliance concluded that the pilot study met the uniformity mandate of 49 U.S.C. 5119. The report states that all of the pilot States support the program and believe that other States should join the program to increase the benefits provided by this uniform program and to spread the administrative load presented by multi-state carriers. The report also states that industry participants support making the program uniform in all States, although the industry believes that a shorter application form and a simplified formula for calculating fees should be used. The Alliance's report is available for review in the docket and may be viewed and downloaded from the Internet.

Discussion of Comments

The FHWA received 20 comments in response to the July 9, 1996, notice. The commenters were: The Advocates for Highway and Auto Safety (the Advocates); the Alliance for Uniform HazMat Transportation Procedures (the Alliance); the Association of Waste Hazardous Materials Transporters (the AWHMT); Blair America, Inc.; the Coalition for the Advancement of Uniform Hazardous Materials Registration and Permit Forms and Procedures (the Coalition); the Commercial Vehicle Safety Alliance (the CVSA); Du Pont-Sentinel Transportation Company (Du Pont-Sentinel); Idaho Department of Law Enforcement, State Police Division (the Idaho State Police); Institute of Makers of Explosives (the IME); Iowa Department of Transportation (the Iowa DOT); Michigan Department of Environmental Quality (the Michigan DEQ); Michigan Department of State Police (the Michigan State Police); National Customs Brokers and Forwarders Association of America, Inc. (the NCBFAA); National Fire Protection

Association (the NFPA); National Tank Truck Carriers, Inc., (the NTTC); New Jersey Department of Law and Public Safety, Office of the Attorney General (the New Jersey Attorney General); Northeast Waste Management Officials' Association (the NEWMOA); Ohio Public Utilities Commission (the Ohio PUC); Roadway Express, Inc. (Roadway); and, the Wisconsin Department of Transportation (the Wisconsin DOT).

Comments in Support of Implementing the Alliance's Recommendations

The FHWA received 12 comments in support of the Alliance's recommendations. The commenters were: The Alliance, the AWHMT, the Coalition, the CVSA, Du Pont-Sentinel, the Michigan State Police, the NCBFAA, the NFPA, the NTTC, the Ohio PUC, Roadway, and the Wisconsin DOT.

The Alliance discussed its work to develop the Uniform Program and objected to the manner in which the FHWA presented the information contained in the July 9, 1996, notice. The Alliance stated:

Overall, we are extremely disappointed that the notice misrepresents both the purpose of 49 USC 5119 (formerly referred to as Section 22 of the Hazardous Materials Transportation Uniform Safety Act of 1990) and the process by which the Alliance arrived at its recommendations. We are also concerned that the Federal Highway Administration has exceeded its rulemaking authority under 49 USC 5119 under which ''the Secretary shall issue regulations implementing those recommendations contained in the report transmitted to the Secretary (c) with which the Secretary agrees,'' to question the validity of a state hazardous materials program. The Act does not preempt state hazardous materials programs. It relates only to uniformity.

Furthermore, by omitting the words ''to the State in which the person resides or has its principle place of business,'' from the paraphrasing of Section (a)(2), it suggests that the Secretary can somehow limit State fees. The Act specifically states that the Secretary CANNOT limit fees as long as such fees are used to enhance the safe transportation of hazardous materials by motor carriers. The language used by the FHWA in the opening summary suggests that the agency believes it has the authority to determine the value of a state hazardous materials registration program. We strongly object to this representation of 49 USC 5119.

When the Alliance working group was created in January, 1991, thirty-nine states conducted some form of registration and/or permitting program for motor carrier transportation of hazardous materials. At its initial meeting, the Alliance stated that its task was not to reinvent the state programs, but to reconcile the differences among these existing programs. Furthermore, the act required the working group to examine the feasibility of a base state system.

The recommendations contained in the final report submitted by the Alliance accomplish both of these objectives. The findings and recommendations represent two years of hearings and deliberations as well as two years of field testing. Over this four year period the Alliance working group and the Governing Board conducted 24 open meetings in which they heard and considered both state and industry concerns. We recognize that no state or industry association got everything that it wanted out of the Alliance deliberations. That was to be expected. To their credit, many states and many industry representatives supported compromises on very controversial issues that moved the process forward. The Alliance has heard and deliberated on every suggestion brought to its attention. Although the working group and Governing Board rejected some suggestions, it does not mean that they did not listen to them.

The Coalition (a group consisting of the American Trucking Associations, the Association of Waste Hazardous Materials Transporters, National Tank Truck Carriers, National Private Truck Council, Hazardous Materials Advisory Council, Ohio Trucking Association, Minnesota Trucking Association, Nevada Motor Transport Association, and West Virginia Motor Truck Association) indicated transportation of hazardous materials is ''highly'' regulated due to the dangers associated with these commodities. The Coalition also indicated that the overall safety record for transportation of hazardous materials is ''excellent'' and incidents are kept to a minimum by strict regulatory requirements enforced by Federal and State personnel. The Coalition stated:

[M]any states and localities believe that hazardous materials transportation must be even more tightly controlled and have implemented registration and permitting programs within their jurisdictions. In recent years, approximately 49 separate programs with 49 different application requirements have arisen.

The Coalition is concerned that these state and local programs will continue to multiply at an escalating pace. With approximately 33,000 jurisdictions in the United States, it is possible that there could be literally thousands of separate permitting and registration programs in the future with attendant fees. This is especially true when one considers the current misperception that transporters of hazardous materials are prone to accidental releases.

The Coalition also indicated it believes Congress, through 49 U.S.C. 5119, has charged the Secretary with the responsibility to halt the proliferation of non-uniform requirements. The Coalition stated:

Congress recognized that the states have a legitimate role in registering and permitting motor carriers who transport hazardous materials. One way to strike a balance between eliminating the proliferation of non-uniform requirements and allowing states and localities an appropriate registration and permitting role is through the development of a federally specified and state-run registration and permitting program. To that end, Congress has charged the Secretary of Transportation with investigating that possibility (49 U.S.C. 5119). It was intended that such a uniform and reciprocal program would apply only to those states that wish to register or permit motor carriers. In any such program, states would be required to make use of the latest technologies and systems in order to determine motor carrier fitness for operating as a hazardous materials transporter. That is the essence of the recommendations of the Alliance as set forth in its ''Final Report.'' The Final Report, which describes the Uniform Program pilot project, was submitted to the Secretary by the Alliance Interim Governing Board on March 15, 1996.

The Coalition is very familiar with the contents of the Final Report and supports its general conclusions and approach, even though we do not concur with every technical detail. The Coalition recommends that FHWA move forward with rulemaking on the Alliance recommendations immediately. The Final Report is an accurate account of the pilot project that tested the recommendations of the Alliance in the states of Minnesota, Nevada, Ohio, and West Virginia. The pilot proved that the system can work, if properly structured and administered. Indeed, a number of states are interested in becoming members of the Alliance, especially since the Uniform Program provides them a ''safe harbor'' from preemption of their registration and permitting laws.

The Coalition argued that the slow pace of the FHWA's decisionmaking process and lack of funding has created confusion and frustration for the States. The Coalition stated:

[S]tates are unwilling to abandon current programs in return for the existing Uniform Program because of uncertainty about FHWA's commitment to follow through on the congressional directive to implement a state-based uniform hazmat permitting and registration program. The uncertainty is heightened by the slow pace FHWA has set for this rulemaking and the lack of continuing FHWA financial support for those states that are continuing to carry on the Uniform Program. In fact, one of the states presently in the four state alliance is on the verge of implementing a new non-uniform program because of the absence of federal guidelines. Consequently, many states have been left in limbo because of the lack of Federal direction, leading them to either maintain the status quo or proceed on their own with non-uniform programs.

Therefore, the Coalition strongly recommends that FHWA make the rulemaking process for uniform procedures for hazardous materials transportation a top priority. Failure to do so will only result in continued confusion and frustration. Industry and government representatives

worked diligently to devise the Uniform Program and to test its recommendations. While there are still many compromises in the final recommendations, the Coalition endorses the concepts of the Uniform Program.

The AWHMT stated:

Members and staff of the Association have been involved in the development of the Uniform Program since the issue of state authority for qualifying carriers of hazardous materials was debated in Congress prior to the enactment of the 1990 amendments to the Hazardous Materials Transportation Act (HMTA) which authorize this rulemaking. At that time, we recognized that any credible program of credentialing carriers would have to rely on the participation of states because the federal government lacks the manpower to perform this task. However, the duplication and redundancy of unfettered state administration of such programs created intolerable burdens for interstate carriers.

The determination of states to remain major players in the registration and permitting of motor carriers transporting hazardous materials has not abated since the enactment of the 1990 amendments. In fact, the number of permitting and registration programs has grown. Currently, all but 11 states administer some type of hazardous materials registration and/or permitting program.

The AWHMT expressed concern about what it termed ''the lack of federal financial support to carry the Uniform Program forward to national implementation.'' The AWHMT indicated that the FHWA has not continued financial support to the pilot States or other States that would like to participate in the Uniform Program. The AWHMT stated:

Four states are carrying the burden of this program for the nation. It is unclear how long the pilot states are able and willing to support the Uniform Program before other states agree to share the load. Other states are, as outlined in the Coalition comment, waiting for DOT's final rule. Every day implementation of this rule is delayed past the November 17th trigger, we believe FHWA should financially assist its pilot program ''state partners.'' If no support is forthcoming, FHWA owes it to these state partners to finalize, as expeditiously as possible, the Uniform Program.

The CVSA stated:

Congress recognized the role the states play to assure the safe transportation of hazardous materials. States concerned about the quality of such carriers have been unable to effectively ensure compliance of non-domiciled carriers operating in their jurisdictions. The Uniform Program provides a mechanism to reciprocally recognize the reviews performed by other states on non-domiciled carriers. The ability to prequalify hazmat carriers in a reciprocal fashion is necessary to facilitate the ''seamless'' flow of commerce across state lines that FHWA envisions through other initiatives it is pursuing such as CVISN (Commercial Vehicle Information System Network). States will also realize more efficient use of resources as the burden of regulating the nation's interstate carriers is distributed among the states.

CVSA believes it is critical to move forward with the Uniform Program in an expeditious fashion. States are willing to participate in the Uniform Program. However, Congress empowered the Secretary to issue regulations implementing only those recommendations of the Alliance with which the Secretary agrees. Thus, the possibility that FHWA will not finalize the Uniform Program as recommended in full by the Alliance has a chilling effect on additional state participation.

Three State agencies submitted comments in support of the Alliance's recommendations. One of the State agencies, the Ohio PUC, participated in the negotiations of the original Alliance working group and as a pilot State during the two-year pilot program. The Ohio PUC stated:

The Commission has registered and permitted over three thousand hazardous materials carriers, including over three hundred hazardous waste transporters under the Uniform Program. Based upon its experience during the working group negotiations and as a pilot state, the Commission believes that the Uniform Program represents a consensus between the States and the regulated industry.

The Ohio PUC recommended that the FHWA carefully examine the issue of continued financial support for the Alliance until implementation of the Uniform Program is completed. The Ohio PUC stated:

(T)he Commission's support for reciprocity is conditioned upon adequate financial support from the FHWA for the national repository and the Alliance Interim Governing Board until the Uniform Program is fully implemented. In the Final Report, the Alliance provides a detailed summary of the costs of maintaining the infrastructure necessary for reciprocity. *Final Report: Uniform Program Pilot Project,* March 15, 1996, at 53–54. The experience during the pilot process demonstrates that there is an infrastructure necessary for reciprocity among the States. It is unrealistic to expect that the four states now in the Uniform Program can bear the costs of maintaining the infrastructure necessary for reciprocity without assistance from the FHWA until the Uniform Program is fully implemented.

The Michigan State Police believe implementation of the Uniform Program would improve compliance with hazardous materials regulations and improve safety. The Michigan State Police believe the Alliance's program can be implemented without adversely impacting the State's need to place administrative controls on hazardous materials carriers.

Two motor carriers provided comments in support of the Uniform Program. DuPont-Sentinel stated:

Our organization supports the Alliance recommended Uniform Permitting system. We feel it is a reasonable balance between the effort required of carriers to generate data and the information needed by the states to perform an adequate background check and determine carrier safety history. Critics will argue that the information requirements of the proposed program are somewhat more complex than many existing state permits. While this is true to a certain extent, the additional requirements also mean those states will have more detailed information than they presently use to continue making sound decisions about carrier safety performance and permit qualifications.

We have found the informational burdens imposed by the recommended uniform system are not overly intrusive to us or to our interstate hazardous material/waste carrier industry. When the more complex, but uniform, requirements are weighed against the current disjointed myriad of various state requirements for different information, our company alone will be able to save approximately $8,000 per year in administrative cost under the uniform program. We feel that other carriers handling hazardous materials and wastes in multiple states will see the same effect. Thus any additional complexity of data supplied by the carrier is more than outweighed by the benefit of only having to have the same set of uniform data for each state.

DuPont-Sentinel also indicated that it believes reciprocity between State permitting and registration programs will greatly enhance each State's ability to assess motor carriers' compliance with the hazardous materials regulations. DuPont-Sentinel stated:

Our opinion is that reciprocity would mean all the involved states would each be responsible for determining the safety fitness of a fraction of the present number of carriers, with the same level of state revenues to fund these assessments. Thus the states would have the time and funding to perform a much more intensive investigation of the fewer carriers which are based in their state for permitting purposes. By almost any logic, this should result in a much higher level of highway safety because the carriers which are qualified by the state to handle hazardous materials will be more thoroughly investigated than they are today. Thus only those carriers which can clearly demonstrate to the base state a proven history of safe performance and compliance with existing standards will be allowed to transport hazardous materials.

Roadway stated:

We agree that transporters of hazardous materials should be held to high standards and do not dispute the right of regulators to monitor safe transportation. However, a regulatory scheme that allows more than 30,000 jurisdictions to develop individual programs in a hit-or-miss scheme is detrimental overall to safety.

FHWA Response to Commenters Supporting the Implementation of the Alliance's Recommendations

The FHWA understands the commenters concerns about the need to establish uniformity and reciprocity between the States' permitting and registration programs. However, the agency does not believe that the information provided to date from the States and hazardous materials, substances, and wastes transporters is sufficient to support issuing a notice of proposed rulemaking (NPRM) to adopt the Alliance's recommendations. Prior to issuing an NPRM the agency must assess the costs and benefits (safety and economic) of implementing the Alliance's recommendations. A major factor in assessing the costs is the extent to which the States would be required to modify their existing programs and the development of the information-system infrastructure needed for the States to share information on motor carriers' safety performance. Because of the lack of comments from the State agencies administering permitting and registration programs, the FHWA cannot determine the costs of implementing the Alliance's program.

With regard to benefits, neither the Alliance's final report nor the comments received in response to the July 9, 1996, notice provided information to enable the FHWA to estimate the benefits of implementing the Alliance's Uniform Program. Although several commenters believe the overall costs to motor carriers will be reduced, the agency does not believe it is possible to make such an assertion without determining all of the costs associated with implementing the Uniform Program and identifying the sources of revenues or funding to meet those costs. In the absence of Federal funding, the most likely source would be the registration and permit fees paid by motor carriers. The State agencies did not indicate whether their fees would be adjusted to cover the costs of implementing the Uniform Program. Therefore, it is inappropriate to assume that the costs for the industry would decrease.

Although the Alliance indicated in its comments that 24 ''open meetings'' were held and the concerns of the States and industry were considered, the comments received to date suggest the Alliance's proposed uniform program does not effectively reconcile the differences among existing State programs. The FHWA notes that only three State agencies submitted comments in support of implementing all of the Alliance's recommendations. Two States and the NEWMOA supported the adoption of the Alliance's uniform program for hazardous materials and substances transporters, but opposed applying the program to the permitting of hazardous waste transporters. Two other States opposed implementing any of the elements of the Alliance's Uniform Program. The comments from the States opposed to some, or all of, the Alliance's recommendations are an indication that certain aspects of the Uniform Program are not, as currently presented, acceptable to those States for incorporation into their permitting and registration programs. A detailed discussion of the comments from States opposed to some, or all of, the Alliance's recommendations is provided in the next section of this notice. This is particularly important because of the preemptive effect that the Alliance's recommendations, if implemented by the FHWA, would have on the jurisdictions that have not adopted the Uniform Program.

Section 5119(c) of title 49 of the United States Code requires that a regulation prescribed under this subsection must take effect one year after it is prescribed. The Secretary may extend the one-year period for an additional year for good cause. After a regulation is effective, a State may establish, maintain, or enforce a requirement related to the same subject matter only if the requirement is the same as the regulation. Therefore, if the FHWA implemented the Alliance's recommendations, each State with a permitting and/or registration program that differs from the Alliance's Uniform Program would be required to either modify its program to conform completely to the Alliance's program, or cease its permitting and/or registration program. The FHWA believes there are significant costs associated with having each of the States modify its respective program and it would be inappropriate to initiate a rulemaking action at this time without determining the total economic burden on the States. Section 5119 does not provide Federal funding for the States to make the transition from their current registration and permitting programs to the Uniform Program, and it is not evident to the FHWA that the States are prepared to absorb all the costs associated with implementing the Uniform Program.

The FHWA believes that prior to initiating a rulemaking to implement the Alliance's recommendations, the agency must be assured that the States are prepared to fund all costs associated with entering into the Uniform Program, and have the means to sustain the Uniform Program without support from the FHWA. Federal funding was provided to the four pilot States to participate in the study, but currently no funding has been designated to support the continuation of the Uniform Program in the pilot States or the enrollment of the remaining 46 States and the District of Columbia.

In addition to the costs for each of the States to adopt the Uniform Program, there are costs associated with establishing an information-system infrastructure for nationwide implementation of the Uniform Program and funding the operations of the Governing Board. The Alliance estimates the annual administrative costs (e.g., the Governing Board, maintaining the repository, etc.) of a fully-implemented Uniform Program covering all of the States and the District of Columbia would be approximately $400,000. This amount does not include the annual costs for each of the States to participate in the Uniform Program. Since Congress did not authorize Federal funds for the implementation of the Uniform Program, the administrative costs for the Uniform Program would have to be financed through fees paid by the motor carriers subject to the permitting and registration requirements. Therefore, the registration and permitting fees charged by the States may need to be increased in order to cover both the costs for the States to operate under the new base-State procedures, and the costs for administering a nationwide network.

The FHWA notes several commenters indicated there is a need for continued Federal funding for the pilot States and the Interim Governing Board. The expectation that the FHWA would continue funding for the pilot States proves that the Uniform Program, as tested by the Alliance, is not self-sufficient. Although commenters argue the pilot States are being forced to absorb the costs for maintaining the Uniform Program until it is fully implemented, the FHWA does not believe participation in the Pilot Project should have resulted in an undue financial burden on the participating States. With the exception of West Virginia, each of the participating States had a registration and/or permitting program in effect prior to volunteering to join the Pilot Program. The FHWA did not provide funding for these non-reciprocal programs. Federal funding was provided to assist in making the transition from the old registration and permitting system to the Uniform Program, and in the case of West Virginia, to establish a registration and permitting system under the Pilot Program. Therefore, the pilot States

were responsible for charging the necessary registration and permitting fees to cover the costs associated with their programs, and their respective shares of the administrative costs associated with the four-State information-system infrastructure and the Interim Governing Board.

The FHWA believes the administrative costs for the infrastructure and the Interim Governing Board should be proportional to the number of States and motor carriers covered by the Uniform Program. The Uniform Program only has four States participating at the present time and the costs for administering the current program should not pose a problem for the participating States. The FHWA disagrees with the commenters' inference that there is fixed cost for the nationwide information-system infrastructure and Governing Board for which the pilot States must bear the full burden until other States adopt the Uniform Program. If more States join the Uniform Program, it is reasonable to expect that each State will bear the financial burden for its involvement and its share of the infrastructure. The commenters have not provided details on why the costs for the pilot States' current activities exceed the financial resources available from the fees charged to the hazardous materials, wastes, and substances transporters.

The FHWA must emphasize the fees charged by the pilot States were not limited by the FHWA. Section 5119 does not give the agency authority to limit the registration and permitting fees collected by States from motor carriers. However, 49 U.S.C. 5125(g) requires that if a State, political subdivision of a State, or Indian tribe imposes a fee related to hazardous material transportation, the fee must be ''fair'' and used for a purpose related to hazardous material transportation, including enforcement and planning, developing, and maintaining a capability for emergency response. Each State has the responsibility of determining the fees it believes are necessary to support its hazardous materials safety programs. The States also have the responsibility for taking into consideration the percentage of those fees that must be distributed to other States in the Uniform Program. Presumably, the State that has the burden of processing a motor carrier's application and performing the investigation of the carrier would take the greatest share of the fees paid by the carrier. The percentage of the fees distributed to other States would be based upon an appropriate assessment of those States' roles in ensuring the safe operation of the carrier. For whatever reason, the fee collection and distribution system used in the Pilot Project did not achieve self-sufficiency.

The FHWA agrees with the Coalition's statement that there is a need to halt what it terms ''the proliferation of non-uniform requirements.'' However, the agency does not believe the States' uncertainty about the outcome of the FHWA's review of the Alliance's recommendations is an obstacle to achieving uniformity or reciprocity. The States have independently developed permitting and registration programs with no apparent movement toward the use of uniform forms and procedures. The States have also been reluctant to implement reciprocity provisions in their permitting and registration programs. The Congress recognized the States' reluctance to establish uniformity and reciprocity and charged the Secretary with the responsibility to establish a working group to study the issue and, upon completion of the working group's final report, implement the recommendations with which the Secretary agrees.

The FHWA reviewed the final report and recommendations of the Alliance and, after considering the complexity of the issues covered in the report and the potential economic impact on the States, issued a notice requesting public comments on the report. The agency concluded that it would have been inappropriate to assume the Uniform Program was acceptable to most of the States, and that the States were prepared to absorb all the costs of implementing the Uniform Program.

In response to comments about one of the four pilot States discontinuing its participation in the Uniform Program, the agency strongly encourages each of the pilot States to maintain the current reciprocal arrangements. The FHWA also encourages other States to examine the potential for achieving reciprocity in permitting and registration programs. If the common goal is to ensure the safe transportation of hazardous materials, there should be a common approach to accomplishing the goal. The States are not prohibited from having reciprocal agreements and there is no readily apparent reason for the States' refusal to cooperate with neighboring jurisdictions to establish reciprocity. Irrespective of whether there is a Federal mandate, the States should establish reciprocal agreements whenever possible.

Comments in Opposition to Implementing All of the Alliance's Recommendations

Eight commenters opposed implementation of some, or all of, the Alliance's Uniform Program. The Advocates, Blair America, Inc., the IME, the Idaho State Police, and the Iowa DOT opposed implementing the Alliance's recommended program. The Michigan DEQ, New Jersey Attorney General, and the NEWMOA support implementing the Alliance's recommendations for hazardous materials transportation, but oppose mandating reciprocity of permitting requirements for hazardous waste transporters.

The NEWMOA [2] stated:

> Generally, our state hazardous waste programs approve of the uniform permit forms that the Alliance and its support staff have developed. However, we continue to have serious reservations about the effects that base-state permitting/permit reciprocity and related issues will have on our state's ability to effectively regulate hazardous wastes. These reservations persist despite a number of major improvements to the model program that were made by the Alliance and its staff to address our, and other states'', concerns. We believe that, to a considerable degree, these concerns are rooted in differences between relevant statutory goals that may be difficult to reconcile without additional public airing of the environmental regulatory issues that we raise. Finally, we would like to briefly address DOT's policy concerning preemption of state hazardous waste regulatory requirements. While this policy is not addressed by the Alliance's report it has, in our view, a bearing on your agency's decisions regarding the Alliance's recommendations and their implementation.

The NEWMOA indicated that each of its member States has a rigorous permitting program for hazardous waste transporters and facilities where wastes are stored and transferred. Each of the States requires extensive disclosure of ownership, criminal history, and history of compliance with environmental and safety laws and regulations as a condition for receiving and maintaining a permit. The NEWMOA stated:

> These state programs were created to fill a major gap in the ''cradle to grave'' regulatory concept for hazardous wastes that was envisioned by congress and is encouraged in RCRA (Resource Conservation and Recovery Act). Our accumulated experience has taught our states that any activities involving wastes require a higher degree of regulatory scrutiny than activities involving commercial commodities which have value. An unfortunate part of this experience is the

[2] The NEWMOA is a non-partisan, nonprofit interstate association that was established by the Governors of the New England States as an official interstate, regional organization, in accordance with section 1005 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.* The membership consists of State environmental agency directors of the hazardous waste, solid waste, waste site cleanup, and pollution prevention programs in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

legacy of soil and groundwater contamination present in each of our states. This contamination, in part, is the result of hazardous wastes discharged prior to current environmental standards being implemented at either the state or federal level. Section 22 of HMTUSA does not mention or address this critical element of our state hazardous waste programs. Thus, it is not surprising that the Alliance and its staff have had difficulty addressing our concerns. While we believe that the Alliance's Model Program should improve the overall regulation of hazardous materials transportation, we fear that it would, as presently proposed, erode adequate cradle to grave control of hazardous waste over time.

The concept of reciprocity appears reasonable enough when applied to the relatively straightforward permit issues involved in transportation safety. However, permit reciprocity becomes more complicated when applied to less quantifiable issues, such as business integrity, that are important considerations when regulating hazardous wastes. The degree of investigation required in such permit reviews is often a matter of judgement, based on experience and knowledge of a transporter's operations, making the overview of such activities by a peer review group difficult to administer and enforce, and unrealistically demanding of resources. Consequently, NEWMOA's directors do not feel confident that the peer review mechanism would ensure consistently adequate permit reviews.

The Michigan DEQ stated:

The program needs to develop flexibility to handle non-Hazardous Materials (HazMat) regulated wastes. Many states have developed programs which take into account historical problems which go beyond the scope of HazMat regulated materials such as hazardous waste managed under the Resource Conservation and Recovery Act. Hazardous waste is a specific subset of the HazMat regulated under the program and has a completely different set of problems associated with it, primarily because it has no inherent value (i.e. it is not a product, but a waste that is normally being transported for disposal). States, therefore, set up specific licensing/permitting programs for dealing with this material that go beyond safety aspects of the carriers and other HazMat concerns to assure that the waste is effectively transported and disposed. The proposed Alliance recommendations for a Uniform program do not take into account the concerns that states have to deal with concerning transportation of hazardous or other wastes. Each state should be allowed to develop licensing/permitting programs that reflect the state's particular needs and historical problems.

State agencies in Idaho and Iowa opposed all aspects of the Alliance's Uniform Program. The Idaho State Police stated:

The Uniform HazMat Transportation Procedures as recommended in the Alliance's final report would negatively impact Idaho's efforts and thus negatively impact transportation safety in our state. The new system would preempt the state fee with no guarantee of replacement funding. The Idaho State Legislature is unlikely to adopt the procedures.

The Alliance's Uniform HazMat Transportation Procedures are more complex and stringent than mandated by Section 22 of HMTUSA. The model creates another regulatory agency at a time when government agencies and regulations are being minimized. The new agency would also have some authority without being a governmental agency or answerable to elected officials.

Due to the complexity of the procedures, administrative costs would increase when the purpose of the mandate is to reduce costs to government and carriers. The state fee collecting agency, now under constraint to consolidate and simplify procedures, will not be supportive of the additional administrative burden. Considerable training and carrier assistance would be required to implement the new system. Carrier fees would also be used to support the Board and national staff functions, a new cost. In the final report, concern was expressed regarding lower revenues to the states. The response was a suggestion to increase the registration fees which nullifies the economic advantage being described in the report.

The Advocates expressed concern that the Alliance's final report did not include an assessment of potential health and safety benefits for implementing the Uniform Program. The Advocates stated:

Our primary concern with the report centers on the findings and recommendations of Section V: Enhancement of Health and Safety. In this section, the report's authors cite a continuing urgency on the part of FHWA officials for a demonstration that the mechanisms of the four state pilot programs actually increase public benefits by improving the consequent health and safety of hazmat transport. The agency wanted assurances that the fundamental concepts of the pilot programs such as base state registration and reciprocity generate verifiable reductions in hazmat incidents. The report, p. 38.

The report responds to this urgent plea for demonstrable health and safety benefits by indicating that safety benefits consist of an overall increased awareness of the need for carriers to augment the quality of their internal oversight processes which can produce better operations through improved compliance with the various requirements of hazmat transport. *Id.*

Advocates agrees that a pilot program cannot by itself produce an uncontested increase in safe hazmat operations, given the small number of states and the lengths of pilot program participation. We seriously doubt that sufficient statistical power could be produced from the small sample sizes in four pilot states' hazmat operations over just a few years.

Nevertheless, we ultimately agree with the FHWA's insistence on ''bottom line'' health and safety benefits that must be generated from the program if it is to serve as (a) model for federal regulatory action nationwide. There must be a clear and convincing demonstration that the proposed system of registration and reciprocity not only produces improved internal oversight and review by hazmat carriers, and arguably improved compliance with hazmat regulations, but also significant and sustained decreases in hazmat incidents and their severity.

The Advocates also commented about findings in the report that show ''widespread, chronic violation of threshold requirements and responsibilities of hazmat carriers, such as insufficient limits on hazmat transportation insurance, partial or non-existent registration and/or permit securement, and unresolved civil forfeiture payments for violations.'' The Advocates stated:

It is clear that some of the hazmat carriers detected through the pilot program present a danger to public health and safety, and to environmental protection, and, in some cases, an imminent threat to public health and safety. Even casual extrapolation of these findings beyond the four pilot states is a cause of grave concern to national safety organizations such as Advocates and should be a strong motivating factor in the FHWA's resolve to require stringent reforms through the hazmat transportation regulations to verifiably advance public health and safety.

Blair America, Inc., one of the motor carriers that participated in the Alliance's pilot study, opposed implementing the Alliance's Uniform Program. Blair America stated:

Of the four states in the Alliance, we transport HazMat through only two of them (OH and WV), yet we were forced to pay larger fees to the two other states through which we never transport HazMat loads. Of the $275.00 we pay to the Ohio P.U.C. for HazMat registration, $155.00—more than 56% of the total—is distributed to MN and NV, states through which we do not transport hazardous materials. To us, this is just throwing money away because it does us no good, but is a windfall to the states which do nothing to earn it.

FHWA Response to Commenters Opposed to Implementing the Alliance's Recommendations

The FHWA believes the States' concern that the Uniform Program does not provide adequate procedures for ensuring oversight of hazardous wastes transporters can be resolved through further negotiations between the Alliance and the State agencies responsible for regulating the transportation of hazardous wastes. The commenters indicated it is necessary to require extensive disclosure of company ownership, criminal history of company management, and history of compliance with environmental and safety laws and regulations as a condition for receiving and maintaining a permit. The FHWA

understands the States' desire to know as much as possible about hazardous waste transporters, but cannot pinpoint specific reasons why the States cannot achieve reciprocity.

Part III of the model application developed by the Alliance includes questions for transporters of hazardous waste. The form requests the full name, date of birth, driver's license number and all aliases used for individuals who hold, or have held in the last three years, certain management positions. The application form also requests information on parent companies, affiliates and subsidiaries, major contractors and clients. In addition, the form has a legal proceedings section for information on past criminal activities. The commenters did not provide explanations of why the information requested in the Alliance's model application would not, if accurately documented, be satisfactory in identifying high-risk motor carrier operations that should be denied a permit.

The FHWA notes that achieving uniformity and reciprocity requires compromise on the part of all of the States. The agency is concerned that the States have not displayed a willingness to compromise on the specific information requested from motor carriers or the procedures used to verify information provided on registration and permitting forms. The agency strongly recommends that each State make a clear distinction between concerns about the fee collection and distribution process and concerns about the information requested on the registration/permitting form(s) when deciding whether to support or oppose the Alliance's Uniform Program. This will enable the Alliance to more effectively respond to the States' concerns.

With regard to commenters reference to the RCRA, the agency has carefully reviewed the statutory requirements codified at 42 U.S.C. 6901 *et seq.* and does not believe the States' responsibilities under the RCRA preclude implementation of the Uniform Program. The RCRA requires that the Environmental Protection Agency, after consultation with State authorities, promulgate guidelines to assist States in the development of State hazardous waste programs. The State programs could cover the generation, transportation, treatment, storage, or disposal of hazardous waste. Therefore, the States' current permitting and registration activities under the RCRA go far beyond the scope of the Alliance's Uniform Program. However, the FHWA notes the RCRA does not prohibit uniformity or reciprocity among State hazardous waste programs. The assertion that programs developed under the RCRA would be adversely affected by the adoption of the Alliance's recommendations are not supported by the information the commenters provided.

The FHWA agrees with the Advocates that the Alliance's final report does not indicate there will be significant and sustained decreases in hazardous materials incidents. Although Section 5119 does not stipulate that the uniform forms and procedures developed by the working group achieve a certain level of effectiveness at preventing hazardous materials incidents, the FHWA believes the implementation of the Uniform Program should, at a minimum, provide quantitative safety benefits. The Uniform Program, if implemented, would require some States to be more thorough in assessing motor carriers' safety fitness prior to registering and permitting those carriers. At the same time, other States may be forced to rely on less information to assess a carrier's safety fitness. The final report does not provide information on the effectiveness of the current State programs at improving safety, nor does it provide an estimate of how the effectiveness of the individual States' programs may change as a result of adopting the Uniform Program. The report implies that all registration and permitting programs are cost effective tools to improve safety and that the implementation of the Uniform Program will offer improvements over the status quo.

The FHWA acknowledges that a rigorous permitting and registration system can be used to identify motor carriers that may not have sufficient safety management controls to properly handle the transportation of hazardous materials. It is in the best interest of the motoring public that unsafe motor carriers be restricted from transporting hazardous materials, wastes, and substances. However, the final report does not indicate whether each of the current State registration and permitting programs are accomplishing the goal of keeping unsafe carriers from transporting these commodities, or that the implementation of the Uniform Program will accomplish this objective.

Irrespective of the FHWA's views on the merits of the commenters arguments against implementing the Alliance's recommendations, the agency must reiterate that it is inappropriate to initiate rulemaking until it has sufficient information to quantify the costs and the benefits of implementing the Uniform Program. Section 5119 does not exempt the agency from statutes and Executive Orders governing the rulemaking process in general, and the specific statutes concerning preemption of State laws and regulations.

For example, Executive Order 12866 requires Federal agencies to promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as, failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies must assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies are directed to select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) requires agencies to do a qualitative and quantitative assessment of the costs and benefits of the proposed rulemakings that would require expenditures by State, local, and tribal governments. The assessment must include an analysis of the extent to which such costs to State, local, and tribal governments may be paid with Federal financial assistance and the extent to which there are available Federal resources to carry out the mandate. Agencies are also required to provide reasonable estimates of future compliance costs and any disproportionate budgetary effects upon a particular region of the country or particular State, local, or tribal government, or particular segment of the private sector.

The FHWA must emphasize that the analyses required by the Executive Orders and statutes must be performed before a proposed rulemaking can be issued. The information provided by the commenters and other information currently available to the agency is not sufficient for conducting the types of analyses required by the Executive Orders and statutes.

Other Issues Discussed by Commenters

Several of the commenters discussed the relationship between the Alliance's Uniform Program and the Federal and

State initiatives listed in the July 9, 1996, notice and repeated in the appendix to this notice.

Specific Issues

The Michigan State Police believes the Research and Special Programs Administration's (RSPA) registration program should be eliminated if the Uniform Program is implemented. The Michigan State Police argues there is no need to have a dual registration system by both the State and Federal governments. The Michigan State Police indicated the Alliance's Uniform Program will accomplish the same objectives as the RSPA's program.

On the subject of the FHWA's safety permit rulemaking (discussed in the appendix to this notice), the Michigan State Police stated:

The (Michigan State Police) views the FHWA's proposed Safety Permit Program in the same light as the RSPA [Registration] Program. Permits and registration do little, if anything, to improve safety. Just because a vehicle or a company is operated safety today does not mean it will operate safely tomorrow.

Permit programs do, however, identify the industry to the enforcement agency and give a ''snapshot'' of how they operate. If used appropriately, they do represent a legitimate revenue collection for training and enforcement funding.

Due to the nature of the national and international trucking industry, including sheer size and ever-changing players, the Federal Government is not in a position to adequately implement and maintain an effective permit program. Any permit system would be infinitely better handled at the state level, as the personnel are much closer to the individuals in the industry. The Alliance Program will allow USDOT access of the information in the system.

The (Michigan State Police) does not support the development of another national-level database, considering the problems with MCMIS (the FHWA's Motor Carrier Management Information System).

The Michigan State Police also offered comments on the potential relationship between the Alliance's Uniform Program and the FHWA's Commercial Vehicle Information System (CVIS) Feasibility Study and motor carrier identification numbers (USDOT numbers). The Michigan State Police agree with the initial SafeStat assessment of fitness and believes that coordinating the SafeStat scores with the Alliance permit is simply an issue of software compatibility. By contrast, the Michigan State Police believe there are problems with the current motor carrier identification numbering system. The Michigan State Police stated:

The numbering system used by USDOT to identify motor carriers is in definite need of repair. There are far too many mismatches in the system, which creates numerous difficulties in the MCMIS (Motor Carrier Management Information System) and Safetynet systems. As computerized data is becoming increasingly more important, the (Michigan State Police believe) the USDOT numbering system should be reworked to address concerns related by the States and industry. As FHWA is also developing shipper information for hazardous materials violations, a unique identifier must also be developed for them. Logic would dictate that these programs be adaptable to each other to provide consistent, accurate information.

The Iowa DOT believes the Alliance's Uniform Program competes with the RSPA's registration program. The State argues that one registration program is enough. The Iowa DOT stated:

The USDOT's Hazardous Materials Registration Program should be changed. It should encompass all hazardous materials offered for transportation or transported, which would require the transport vehicle to be marked or placarded. Second, this program should be administered by each state with the USDOT providing guidance. It seems unusual that shippers and carriers send their registration money to Washington, D.C., have RSPA take a processing fee and then return money to the states.

The Iowa DOT also discussed the FHWA's CVIS program. The Iowa DOT stated:

The Commercial Vehicle Information System (CVIS) feasibility study currently underway should be encouraged to include hazardous material carriers in the SafeStat Identification Algorithm (either by incorporating it into an existing safety evaluation area or creating a separate safety evaluation area relating to HM). This would allow CVIS to identify ''at risk'' hazardous material carriers.

The Ohio PUC also discussed the CVIS program. The Ohio PUC stated: Although the Commission is supportive of the concept behind the CVIS program as a base-state, reciprocal program, the CVIS program has no specific hazardous materials component and is only in the pilot stage. The purpose of the Uniform Program is to ensure that carriers are qualified to transport hazardous materials. This includes compliance with provisions such as hazmat training and insurance where the carrier must certify compliance prior to transportation; the CVIS program is retrospective in nature, reviewing safety performance only. Moreover, the practicality and effectiveness of revoking vehicle registrations privileges is uncertain at best. In the future, after completion of the CVIS pilot program, there may be a decision by the States to coordinate more closely activities under CVIS and the Uniform Program, such as compliance reviews; however, since the Uniform Program has successfully completed its pilot process, there is no need to further delay implementation of the Uniform Program in order to wait for the completion and review of the CVIS pilot.

The Ohio PUC provided general comments on all of the Federal and State initiatives the FHWA listed in the July 9, 1996, notice. The Ohio PUC stated:

With respect to the relationship of the Uniform Program with all four programs described in the Request for Comments, the FHWA is not taking advantage of the key lesson learned in studying intelligent vehicle transportation systems. In the CVISN (Commercial Vehicle Information System Network) project, the FHWA recognized that, rather than condensing all databases currently gathered by States into a single, massive database, efficiencies will be achieved through a system of computer pointers and triggers which would create a network of smaller databases. The programs described in the Request for Comments are examples of other databases which should be able to share information with the Uniform Program repository; individual states could then coordinate activities, such as compliance reviews or audits, across these programs in order to create efficiencies, when the states deems appropriate in allocating resources for transportation regulatory activities. It is neither necessary nor desirable to consolidate all of these programs into a single program, administered on the Federal level, with a single massive database.

The Wisconsin DOT stated:

Although there is some merit in the Alliance's recommendations that uniform program permits supplant federal registration and permits, and that Congress consider eliminating the federal registration program, we believe that these recommendations are premature. Significant differences exist between the two programs. For instance, the federal program covers offerors and carriers using water, air, rail or highway modes to transport certain special categories of hazardous materials. The uniform program covers motor carriers who transport all placarded hazardous materials, as well as bulk-packaged hazardous substances and marine pollutants, and hazardous wastes requiring a uniform manifest. The federal program exempts government agencies, while under the uniform program, they may be subject to registration. These and other discrepancies need to be addressed before considering coordination of the two programs or the elimination of the federal program.

The Coalition presented its recommendation on how the FHWA could satisfy the statutory requirements of 49 U.S.C. 5109 concerning Federal motor carrier safety permits for certain hazardous materials transporters, and 49 U.S.C. 5119 concerning uniform forms and procedures for registration and permitting of hazardous materials transporters. The Coalition stated:

Congress charged the Secretary of Transportation with developing a permitting program for transporters of certain hazardous materials (49 U.S.C. 5109). However, under the Alliance program those same transporters will already be subject to permitting requirements. Therefore, any Federal permit or registration should focus on and apply

only to motor carriers that operate in those states that do not wish to become a member of the Uniform Program. The Coalition suggests the following:

(1) If the motor carrier operates only in Federal Program states, the motor carrier would be bound by the Federal permit requirements and would not be permitted to operate in Uniform Program States without first obtaining the proper credentials.

(2) If a motor carrier operates only in Uniform Program states or, both Uniform Program and Federal Program states, the Uniform Program registration and permit would be all the motor carrier needs to operate in all jurisdictions.

The Coalition indicated that it believes this type of system would provide for a higher level of regulatory compliance by motor carriers and at the same time would lessen the total regulatory burden on hazardous materials transporters.

FHWA Response to Commenters

The FHWA believes the commenters have identified significant reasons why the Federal and State initiatives and programs described in the July 9, 1996, notice are not, as currently operated, acceptable to the States as tools to help monitor hazardous materials, waste, and substances shippers and transporters. Each of the initiatives was started for a variety of reasons which do not appear to coincide with the reasons the States have developed their registration and permitting programs. As such, the programs do not, in the opinion of the State agencies, provide enough detailed information on all hazardous materials transporters.

For example, the current Federal Hazardous Materials Transportation Registration and Fee Assessment Program covers entities who offer or transport (in commerce) any of the following materials:

1. Any highway route-controlled quantity of a Class 7 (radioactive) material;

2. More than 25 kilograms (55 pounds) of a Division 1.1, 1.2, 1.3 (explosive) material in a motor vehicle, rail car, or freight container;

3. More than one liter (1.06 quarts) per package of a material extremely toxic by inhalation (a material poisonous by inhalation that meets the criteria for ''hazard zone A'');

4. A hazardous material in a bulk packaging having a capacity equal to or greater than 13,248 liters (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids; or

5. A shipment, in other than a bulk packaging, of 2,268 kilograms (5,000 pounds) gross weight or more of a class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required for that class.

The Federal program was established in response to 49 U.S.C. 5108(a)(1) and covers a subset of all hazardous materials shipments. Section 5108(a)(2) gives the Secretary the authority to expand the registration program to cover persons transporting or causing to be transported hazardous materials not included in the list above.

With regards to the comments on the FHWA's SafeStat program, the FHWA notes that SafeStat is a performance-based approach to rank motor carriers for on-site compliance reviews (CRs). The program is intended to more effectively focus the FHWA and State resources on motor carriers who have demonstrated poor safety performance through roadside inspections, prior enforcement actions and, most importantly, accidents. SafeStat uses four broad Safety Evaluation Areas (SEAs): The Accident SEA, the Driver SEA, the Vehicle SEA, and the Safety Management SEA. For each SEA, values are determined for all carriers that have sufficient safety data related to that SEA. If sufficient safety data is not available, a value is not calculated. No assumptions are made based upon a lack of data. Each carrier's SEA value approximates the motor carrier's percentile rank, relative to all other motor carriers having sufficient data to be assessed within that same SEA. By using the percentile rank for each SEA, SafeStat avoids using arbitrary predetermined levels of scoring and provides an easily understood value for each SEA. The SEA values range between 0 and 100. The higher a carrier's SEA value, the worse its safety status. Therefore, an Accident SEA score of 80 indicates that approximately 80 percent of the motor carrier population had a better level of safety performance than the subject carrier with respect to accidents and 20 percent had worse. Similarly, a Vehicle SEA score of 75 indicates that approximately 75 percent of the motor carrier population had a better level of safety performance than the subject motor carrier with respect to their maintenance practices and the operating condition of their vehicles.

SafeStat allows the relative weight for each SEA to be adjusted for purposes of calculating an overall score. Since accident history is the most important measure of safety, SafeStat places double emphasis upon the Accident SEA in calculating an overall SafeStat score. Motor carriers that are identified as being within the worst 25 percent of the ranked population within an individual SEA are deemed an unacceptable performer for that SEA.

The FHWA acknowledges SafeStat does not include an SEA for hazardous materials. The agency understands the concerns that States and the general public have about hazardous materials. The SafeStat program, as currently structured, provides a performance-based approach for prioritizing motor carriers for on-site compliance reviews. The prioritization algorithm does not make a distinction for commodities transported. The mere fact that a motor carrier transports hazardous materials does not mean the carrier should be a higher priority than a carrier that transports nonhazardous materials but performs poorly in the SEAs. The FHWA believes the SafeStat program can be used as part of a hazardous materials permitting framework. Hazardous materials carriers that perform poorly in the current SEAs would be considered ineligible for a permit and carriers for which there is insufficient data would be granted the permit based upon information obtained from company officials and, if necessary, an on-site compliance review.

The FHWA notes that none of the commenters provided information on current State activities to monitor the safety performance of the carriers who are required to register or obtain permits. The States commenting to this docket have emphasized the importance of identifying the hazardous materials shippers and transporters, but have not indicated whether the information is being used to prioritize enforcement actions or compliance reviews.

The FHWA disagrees with the Michigan State Police's statement that registration and permitting programs do not improve safety. The FHWA believes that a carefully structured registration and/or permitting program that focuses on the risks associated with the specific commodities transported, and linked to enforcement activities initiated in response to poor safety performance could have safety benefits. To date, the States have not submitted comments to the FHWA indicating that their programs are based upon any form of risk assessment or linked to specific enforcement activities aimed at hazardous materials carriers with poor overall safety records.

With regard to the Michigan State Police's comments about MCMIS, the FHWA intends to issue a notice of proposed rulemaking to require motor carriers to periodically update the information submitted to the agency on the Motor Carrier Identification Report (Form MCS–150). Section 385.21 of the

Federal Motor Carrier Safety Regulations requires motor carriers conducting operations in interstate commerce to file a Form MCS–150 to the agency within 90 days after beginning operations. Currently, carriers are not required to update the information submitted. The FHWA is aware of problems with the current system and believes the forthcoming rulemaking will provide the States and the motor carrier industry with an opportunity to work with the agency to improve the accuracy of the information in the MCMIS.

The FHWA believes the comments about the capabilities of the States versus those of the Federal government are a strong indication of the need for uniformity and reciprocity. The FHWA agrees with the Ohio PUC that efficiencies can be achieved through a network of databases using a system of computer pointers and triggers. However, the States have apparently refused to embrace this concept. The FHWA must reiterate that there is no prohibition on uniformity and reciprocity. The States need only agree to work together to make uniformity and reciprocity a reality. The Alliance has provided its recommendations on uniform forms and procedures and the States have not shown a willingness to adopt the Alliance's recommendations. Therefore, it is not a question of the FHWA taking advantage of lessons learned from previous Federal-State initiatives, but a question of why the States have not elected to work together for the common goal of ensuring an efficient and effective program to improve the safety of hazardous materials transportation.

The FHWA must emphasize that the Congress directed the Secretary to establish the Federal registration program implemented by the RSPA, and the Federal permitting program proposed by the FHWA on June 17, 1993 (58 FR 33418). These programs are congressional mandates and should not be considered as a form of competition between the Federal and State governments. The States have an important role in highway safety and a right to go beyond the scope of Federal programs if, based upon data, it is clear there are safety issues that need to be resolved. To date, none of the commenters have identified specific safety issues, nor have they provided a clear explanation as to why the States cannot achieve a consensus on the forms and procedures used for the registration and permitting of hazardous materials transporters.

In response to the Coalition's recommendation for implementation of the Federal permitting requirement, the FHWA believes the approach may have merit if most of the States adopt the Alliance's Uniform Program. The FHWA believes this approach could help to minimize the paperwork burden on the motor carrier industry and the FHWA, while providing an effective means to monitor the safety performance of the hazardous materials carriers that would be covered by the proposed Federal permitting requirements. The agency will consider the Coalition's comments along with those of persons commenting in response to the June 17, 1993, NPRM.

Request for Additional Comments

Questions for State Agencies

Generally, the establishment of a permitting requirement means motor carriers that fail to meet the minimum requirements for obtaining the permit would not be allowed to transport certain classes of hazardous materials, substances or wastes. Establishing a permitting requirement also means that motor carriers which are granted a permit, would lose their privileges to transport certain classes of hazardous materials if the terms and conditions of the permit are violated. If there are quantifiable safety benefits to a permitting program, they would come in the form of preventing hazardous materials incidents caused by unqualified motor carriers transporting the materials for which a permit would be required. Given these assumptions, the FHWA requests that State agencies responsible for the permitting of hazardous materials transporters answer the following questions:

1. What types of hazardous materials, wastes, or substances may only be transported in or through your State by motor carriers that have a permit?

2. Why did your State initiate its permitting program and in what year did the program take effect? For example, was there a specific hazardous materials incident(s) that prompted the development of the program?

3. How many motor carriers applied for permits in each of the last 5 calendar/fiscal years (please indicate the period covered in your State's fiscal year)? Of the motor carriers that applied for permits during each of the last 5 calendar/fiscal years, how many were denied a permit and what were the typical reasons for denial of the permit?

4. During each of the last 5 calendar/fiscal years, how many carriers had their permits revoked or suspended and what were the typical reasons for the revocation or suspension? How many of the motor carriers had their privileges to transport hazardous materials, substances, and wastes reinstated?

5. Are motor carriers required to renew the permit? If yes, what is the procedure for renewing the permit and how often is the carrier required to renew the permit?

6. Looking specifically at the number of highway transportation-related hazardous materials incidents (involving a hazardous material, substance, or waste for which the transporter is required to obtain a permit), how many incidents, fatalities, and injuries occurred in each of the last 5 calendar/fiscal years? Also, what was the dollar amount of property damage and environmental restoration associated with the incidents in each of the last 5 calendar/fiscal years.

The following questions are intended to gather information concerning the costs associated with establishing and operating the various State permitting programs and the States' estimates of the economic and information collection burden on motor carriers subject to the States' permitting requirements:

7. How much money was needed to establish your State's permitting program? Please include all costs associated with hiring and training staff, setting up a computer system, etc.

8. How much money did your State spend in each of the last 5 calendar/fiscal years to maintain its permitting program?

9. How much money was collected during each of the last 5 calendar/fiscal years in the form of application and processing fees that motor carriers were required to pay in order to receive a permit?

10. What was the application fee and, if applicable, the processing fee that was charged for each of the last 5 calendar/fiscal years?

11. How much time does your State estimate that the average motor carrier spends completing an application for the State's permit?

12. How much time does your State estimate that the average motor carrier spends renewing the State permit?

13. What types of records or other documents related to the permit or registration requirements are motor carriers required to maintain?

The next series of questions concern reciprocity between State programs. The FHWA is requesting information from States about potential institutional barriers to establishing Federal requirements for uniform forms and procedures for hazardous materials, substances, and wastes transportation.

14. Does your State's permitting or registration program include a

reciprocity agreement with any other State's permitting or registration program? Please identify the State(s).

15. If your State does not have a reciprocity agreement with another State(s), what specific requirements does your State impose on motor carriers that the other States do not cover?

16. If the FHWA implemented a Uniform Program, using a base-State approach that required your State to accept permits issued by other States and to modify your State's forms and procedures, how much money in fees would your State lose? How much money would your State have to spend to modify its current permitting and/or registration system?

Motor Carrier Questions

The next series of questions are intended to gather information from motor carriers about the economic and administrative burden associated with complying with State permitting and registration requirements.

17. How many different State permitting and/or registration programs was your company subject to during each of the last 5 calendar years?

18. What was the total for all State permit application and/or registration fees and, if applicable, processing fees that your company paid for each of the last 5 calendar years?

19. What was the total for all State permit renewal fees that your company paid during each of the last 5 calendar years?

20. On average, how much time does your company spend completing an application for a State permit or completing a State registration form?

21. On average, how much time does your company estimate that it spends renewing each State permit?

22. Are there any instances in which your company was granted a permit to transport specific commodities in a State(s), but denied a permit to operate in another State? Please identify the commodities and the States involved.

Comments Concerning Other Relevant Issues

In addition to the questions listed, commenters are encouraged to discuss other issues that they believe are relevant to the discussion of uniform forms and procedures for hazardous materials, substances, and wastes. The FHWA requests that commenters examine current Federal and State initiatives concerning permitting and registration of motor carriers.

Current Federal And State Initiatives Concerning Registration and Permitting of Motor Carriers and Shippers

There are several major activities underway which could be used as part of the hazardous materials transportation registration and permitting processes. These activities include: (1) The FHWA's motor carrier safety permits and inspection rulemaking; (2) the Research and Special Program Administration's (RSPA) Hazardous Materials Registration and Fee Assessment Program; (3) the Performance Registration Information System Management (PRISM) program (formerly referred to as the Commercial Vehicle Information System or CVIS); and (4) the elimination of the Interstate Commerce Commission (ICC) and the transfer of the ICC's registration (operating authority) and insurance programs to the FHWA. These initiatives, as well as the FHWA's motor carrier registration requirement—the motor carrier identification report (Form MCS-150) required by 49 CFR 385.21 and used by the FHWA to assign USDOT numbers—and the registration and insurance filings of for-hire motor carriers required by many States (Single State Registration System) provide a means for identifying transporters of hazardous materials and, for some of the programs, making certain that the carriers have appropriate levels of financial responsibility. However, each of these programs are commonly administered independently by separate agencies within a State.

These initiatives may have a significant bearing on the public comments offered in response to this notice and on the ultimate direction of any resulting rulemaking actions affecting Federal and State registration and permitting of transporters and shippers of hazardous materials. Each of the initiatives is discussed in the appendix to this notice. The FHWA requests that commenters consider the Alliance's report and recommendations, and the specific types of information that carriers and shippers would be required to provide if the Alliance's recommendations were adopted by the FHWA. Commenters are encouraged to provide suggestions on whether the Alliance's recommended program should be implemented and whether the programs described in the appendix to this notice could be used to support the implementation of any portion of the Alliance's program.

Administrative Notice

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 at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practical. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the closing date. Interested persons should continue to examine the docket for new material.

Authority: 49 U.S.C. 5119; 49 CFR 1.48.

Issued on: March 20, 1998.

Gloria J. Jeff,

Deputy Administrator, Federal Highway Administration.

Appendix—Current Federal and State Initiatives Concerning Registration and Permitting of Motor Carriers and Shippers

I. FHWA Rulemaking on Motor Carrier Safety Permits and the Inspection of Vehicles Transporting Highway-Route-Controlled Quantities of Radioactive Materials [49 U.S.C. 5109(a) and 5105(e)]

Section 5109(a), *Motor Carrier Safety Permits,* (originally enacted as one of the provisions of section 8 of the HMTUSA) provides that a motor carrier shall only transport, or cause the transportation of, hazardous materials in commerce if the carrier holds a safety permit issued by the Secretary and keeps a copy of the permit, or other proof of its existence, in the vehicle. The Secretary is required to prescribe by regulation the hazardous materials and amounts to which the permit requirement applies. However, the list of hazardous materials must include, at a minimum, and in amounts established by the Secretary, the following:

(1) Division 1.1, 1.2, and 1.3 (class A or B explosives);

(2) liquefied natural gas;

(3) hazardous material the Secretary designates as extremely toxic by inhalation; and

(4) a highway-route-controlled quantity of radioactive material, as defined by the Secretary.

Section 5105(e), *Inspections of Motor Vehicles Transporting Certain Material,* (originally enacted as section 15 of the HMTUSA) directs the Secretary to issue regulations requiring that each motor vehicle transporting a highway-route-controlled quantity of Class 7 (radioactive) material in commerce be inspected and certified as complying with the Federal hazardous materials and motor carrier safety laws and regulations. The Secretary may require the inspections to be conducted by Federal inspectors or in accordance with appropriate State procedures. The Secretary may allow self-certification by motor carriers using employees that meet minimum qualifications set by the Secretary.

On June 17, 1993, the FHWA published a notice of proposed rulemaking (NPRM) to implement the requirements of 49 U.S.C. 5109 and 5105 (58 FR 33418). The FHWA proposed to amend part 397 of the Federal Motor Carrier Safety Regulations (FMCSRs) by adding a new subpart B, Motor Carrier Safety Permits. The notice proposed to initially limit the safety permit program to the transportation of the four classes of hazardous materials set forth in the statute, with phase-in periods for Division 1.1, 1.2, and 1.3 materials (Class A and B explosives)[3] and limiting the materials considered extremely toxic by inhalation to those 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) and are transported in quantities of more than 1 liter (1.06 quarts). The proposed permit procedures made extensive use of existing FHWA programs, forms and procedures, and as a result, the agency proposed not to assess permit fees. To obtain a permit, a motor carrier would be required to submit a revised MCS–150 (Motor Carrier Identification Report) to the Regional Director, Office of Motor Carriers, for the region in which the motor carrier has its principal place of business. 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 (120 days) to an unrated motor carrier pending a safety fitness determination. Safety permits would be valid for three years and would be renewable. Reviews of the FHWA's determinations on permit issuance would be handled pursuant to the existing procedures applicable to safety rating reviews (49 CFR 385.15 and 385.17). The current safety rating notification letter would be modified to serve as the safety permit. The letter would bear a safety permit number, which would be the motor carrier's identification or census number assigned by the FHWA when the motor carrier submits the MCS–150 required by § 385.21. Motor carriers would be required to display this permit number on the shipping papers and on the commercial motor vehicles used.

With regard to the inspection requirements of 49 U.S.C. 5105, the FHWA proposed that motor carriers transporting highway-route-controlled quantities of Class 7 (radioactive) materials be required to inspect each commercial motor vehicle used before each trip and that a written certification by a qualified inspector be maintained. It was proposed that these vehicles be inspected through the use of the general inspection requirements contained in 49 CFR part 396, ''Inspection, Repair, and Maintenance,'' and the more detailed inspection standards found in appendix G to 49 CFR subchapter B, ''Minimum Periodic Inspection Standards.'' The inspector qualification requirements for the periodic inspection (specified in 49 CFR 396.19) would be used to ensure that inspectors are qualified to perform the vehicle inspections.

The FHWA carefully reviewed the various registration and permitting requirements of the Federal law and decided not to proceed with further rulemaking action to implement the requirements of 49 U.S.C. 5109 and 5105 until it had considered the final report and recommendations of the Alliance for implementing section 5119. This was considered the most effective way to satisfy all of these related statutory requirements, as the Alliance's recommendations would have a significant bearing on the implementation of the Federal safety permit and inspection requirements.

II. Federal Hazardous Materials Registration and Fee Assessment Program and the Hazardous Materials Emergency Preparedness Grant Program

Section 5108(a)(1) (originally enacted as one of the provisions of section 8 of the HMTUSA) requires that each person transporting or causing to be transported in commerce the following hazardous materials must file a ''registration statement'' with the Secretary:

(1) Highway-route-controlled quantities of Class 7 (radioactive) materials;

(2) More than 25 kilograms of Division 1.1, 1.2, and 1.3 (explosives) materials;

(3) More than 1 liter in each package of a hazardous material which has been designated by the Secretary as extremely toxic by inhalation;

(4) Hazardous material in a bulk package, container, or tank as defined by the Secretary if the package, container, or tank has a capacity of 13,249 or more liters (3,500 or more gallons) or has a volume greater than 13.25 cubic meters (468 cubic feet);

(5) A shipment of at least 2,268 kg (5,000 pounds) (except in a bulk packaging) of a class of hazardous material requiring a placard.

In addition, section 5108(a)(2) provides the Secretary with discretionary authority to require any of the following persons to file a registration statement:

(1) A person transporting or causing to be transported hazardous materials in commerce and not covered by section 5108(a)(1);

(2) A person manufacturing, fabricating, marking, maintaining, reconditioning, repairing, or testing a package or container the person represents, marks or certifies, or sells for use in transporting in commerce hazardous material the Secretary designates.

Paragraph (g) of section 5108 authorizes the Secretary to establish, impose, and collect a fee for the processing of the registration statement, as well as an annual fee.

Implementation of these requirements was delegated by the Secretary to the RSPA. Federal registration of hazardous materials offerors and transporters began in 1992 (57 FR 30620, July 9, 1992). Federal registration is required of persons engaged in certain activities that involve the offering or transporting of hazardous materials in interstate, intrastate, or foreign commerce by highway, rail, air, or water. Less than half of the current registrants have identified themselves as highway carriers. The Federal registration program has no preemptive effect upon State and local hazardous materials registration programs.

The annual fee (currently $300) is used to fund grants to State and Indian tribal governments for hazardous materials planning and training purposes. The funds are allocated through the RSPA's Federal Hazardous Materials Emergency Preparedness (HMEP) Grant Program with the first grants awarded to qualifying State and Indian tribal governments in 1993. By law, 75 percent of the Federal grant monies awarded to the States is further distributed to local emergency response and planning agencies. The FY 1995 funds helped to provide: (1) Training for 121,000 emergency response personnel; (2) approximately 500 commodity flow studies and hazard analyses; (3) 4,500 emergency response plans updated or written for the first time; (4) assistance to 2,150 local emergency planning committees; and (5) 770 emergency exercises.

In cooperation with the Alliance's pilot program, the concept of ''one-stop shopping'' for Federal and State registration of motor carriers was tested by the Public Utilities Commission of Ohio (PUCO) and the RSPA. Motor carriers required to register with the State of Ohio were provided with the option of also submitting the Federal registration statement and fee to the PUCO for transmittal to the RSPA. For the 1994–95 registration year (from July 1, 1994 to June 30, 1995), approximately 200 persons registered in the Federal program through the PUCO. During the 1995–96 registration year, the number of persons choosing this option decreased sharply to 76 persons. Only 16 of the participants in the 1994–95 registration year elected to use this process for the 1995–96 registration year. The test was completed at the end of the 1995–96 registration year and the results are being evaluated.

III. Performance Registration Information System Management (PRISM)

Performance Registration Information System Management is based upon the Commercial Vehicle Information System (CVIS) feasibility study mandated by 49 U.S.C. 31106—section 31106 was originally enacted by section 4003 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914, 2144; December 8, 1991). Specifically, PRISM ties commercial motor vehicle registration privileges to a motor carrier's safety performance. For the first time, chronically unsafe motor carriers risk losing their vehicle registration privileges if they prove unable or unwilling to improve their operational safety levels after a designated period. The project is a cooperative effort involving the FHWA and five pilot States: Iowa (the lead State), Oregon, Colorado, Minnesota, and Indiana.

Motor carriers are identified for inclusion in the PRISM improvement process

[3] The proposed phase-in period was to 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

(MCSIP—Motor Carrier Safety Improvement Process) through the application of a carrier identification and prioritization algorithm referred to as the Safestat Identification Algorithm (Safestat). Safestat identifies ''At Risk'' motor carriers by producing a safety score for every interstate motor carrier. Motor carriers are ranked on a worst-first basis. Motor carriers with the lowest scores are considered to be ''At Risk'' and are scheduled for a compliance review (on-site visit), while motor carriers with less severe safety scores receive ''warning letters.'' Once a motor carrier has been identified for entry into the MCSIP, its safety performance is monitored using a second algorithm called the Safestat Monitoring Algorithm. The MCSIP process has been designed to provide numerous opportunities for motor carriers to improve their safety performance. Failure to improve safety performance, however, will result in progressively more severe penalties leading eventually to suspension or revocation of vehicle registration privileges.

The PRISM could be used to identify hazardous materials (HM) carriers that are ''At Risk'' by modifying the Safestat Identification Algorithm to include additional information about HM motor carriers. In fact, it has been suggested that a separate safety evaluation area relating to HM be included in the SafeStat Identification Algorithm. Under this proposal, HM carriers that have been identified for entry into the MCSIP process and continue to score poorly may have their HM permits denied or suspended.

IV. Interstate Commerce Commission's (ICC) Carrier Registration and Insurance Requirements

On December 29, 1995, the President signed the ICC Termination Act of 1995 (ICCTA) (Pub. L. 104–88, 109 Stat. 803), which eliminates the ICC and transfers certain motor carrier regulatory functions from the ICC to the FHWA. The principal functions transferred were the licensing and registration activities, insurance tracking, Mexican motor carrier oversight, and responsibilities for brokers, freight forwarders, and household goods carriers. All past operating authority licenses and financial responsibility filings remain valid, and all new applications and financial responsibility filings are processed by the FHWA. The ICCTA provides that registration generally remains in effect for up to five years unless it is suspended, amended, or revoked. Reasons for suspension or revocation may include unsafe operations, lack of the required financial responsibility coverage, or failure to comply with regulatory requirements.

The FHWA's motor carrier programs are intended to ensure that motor carriers are properly identified, have adequate levels of financial responsibility, and operate in a safe manner. Under the present programs, for-hire motor carriers are registered and must show proof of financial responsibility and familiarity with the FHWA's safety regulations. The financial responsibility coverage of for-hire motor carriers is continuously monitored. Policy pre-expiration notices obtained from the insurance companies, as well as internal audits, are used to determine compliance. Prior to an insurance policy lapsing, the carrier is contacted. An enforcement action, including litigation, can be used to stop the carrier from operating without financial responsibility. A motor carrier's operating authority can be revoked if financial responsibility is not obtained. A similar procedure applies to motor carriers that have been authorized to self-insure their operations.

The Single State Registration System (SSRS) program was created to succeed the ''bingo card'' program administered by the ICC. The SSRS program is a base-State system whereby a motor carrier registers its interstate operating authority with, and provides proof of financial responsibility coverage to one State (a base-State) instead of multiple States. The base-State then distributes the collected fees to other participating States in which the motor carrier's vehicles operate. State participation in the System was limited to those States participating in the bingo card program prior to January 1991. Fee amounts were limited to those imposed prior to November 1991, not to exceed $10 per vehicle.

Under the ICCTA, the SSRS will continue to operate. However, the Department of Transportation (the Department) is required to consolidate the current USDOT identification number system, the SSRS, the former ICC registration system (including financial responsibility registration) into a single, on-line Federal system. The new system will contain information on, and identification of, all foreign and domestic motor carriers, brokers, and freight forwarders (as well as others required to register with the Department) as well as information on safety fitness and compliance with the required levels of financial responsibility coverage. The Secretary may establish fees to fully operate the system, including any personnel to support the overall registration and financial responsibility filing system.

On August 26, 1996, the FHWA published an advance notice of proposed rulemaking (ANPRM) requesting comments on the development of the motor carrier replacement information and registration system (61 FR 43816). The agency is preparing a notice of proposed rulemaking for issuance in 1998.

[FR Doc. 98–8367 Filed 3–30–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 031898B]

Magnuson-Stevens Act Provisions; Essential Fish Habitat (EFH); Preparation Schedule for EFH Provisions of Fishery Management Plans

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: NMFS announces the availability of the schedules and updates for amending fishery management plans (FMPs) to incorporate EFH provisions, in compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act requires the Secretary of Commerce to set forth a schedule to amend FMPs to identify EFH and to review and update EFH based on new scientific evidence or other relevant information. The Secretary's EFH amendment schedule requires all FMP amendments to be submitted to the Secretary by October 11, 1998. This document announces the availability of the fishery management councils' (Councils) schedules for preparing EFH provisions including the identification, description, conservation, and enhancement of EFH. The FMP amendments will contain the schedule to revise and update the EFH provisions.

ADDRESSES: Requests for copies of these schedules and updates should be made to the Director, Office of Habitat Conservation; Attention: EFH Schedule, NMFS; 1315 East-West Highway, Silver Spring, MD 20910-3282. These schedules and additional information and updates of the schedules will also be available from the Councils or regional NMFS offices (see **SUPPLEMENTARY INFORMATION**) and will be posted on the NMFS Office of Habitat Conservation Internet website at: http://kingfish.ssp.nmfs.gov/rschreib/habitat.html.

FOR FURTHER INFORMATION CONTACT: Lee Crockett, 301/713-2325.

SUPPLEMENTARY INFORMATION: The creation of these schedules is required by section 305(b)(1)(A) of the Magnuson-Stevens Act (16 U.S.C. 1855(b)(1)(A)). Section 303(a) of the