

Section 5105(e) provides that DOT "shall require by regulation that before each use of a motor vehicle to transport a highway-route-controlled quantity of radioactive material in commerce, the vehicle shall be inspected and certified as complying with this chapter and applicable United States motor carrier safety laws and regulations." This section also provides that DOT "may require that the inspection be carried out by an authorized United States Government inspector or according to appropriate State procedures." The definition of a "highway route controlled quantity" of a Class 7 (radioactive) material is set forth at 49 CFR 173.403, in terms of the activity level of the radioactive material in a single package. In general, this is a quantity that emits high levels of radioactivity and, accordingly, the packaging, hazard communication, and operating requirements that apply to a shipment of a highway route controlled quantity of a Class 7 material are intended to both adequately identify the presence of this material and ensure that the packaging will withstand normal transportation conditions and foreseeable accidents, without a breach of containment integrity.

Section 5109 requires DOT to issue regulations for safety permits for transporting certain hazardous materials. A motor carrier must hold a safety permit issued by DOT, and keep a copy of the permit or other proof of its existence in the vehicle, in order to transport certain hazardous materials in commerce or cause such materials to be transported in commerce by motor vehicle. 49 U.S.C. 5109(a). A person may not offer such hazardous materials for motor vehicle transportation in commerce unless the motor carrier has a safety permit. 49 U.S.C. 5109(f).

Under section 5109(b), a safety permit is required for the following four hazardous materials, above threshold amounts established by DOT, but DOT may also prescribe additional hazardous materials, and the amount of each, to be subject to the safety permit requirement:

1. A Class A or B explosive (now Division 1.1, 1.2, or 1.3 explosive);
2. Liquefied natural gas;
3. Hazardous material designated as extremely toxic by inhalation; and
4. A highway route controlled quantity of radioactive material.

Other provisions in section 5109 require DOT to issue regulations for issuing safety permits, including application procedures; the duration, term, and limitations of a safety permit; other conditions needed to protect public safety; and procedures to amend, suspend, or revoke a safety permit. In

order to issue a safety permit, DOT must find that the motor carrier is fit, willing, and able to (1) Provide the transportation to be authorized by the safety permit; (2) comply with Federal hazardous material transportation law and DOT's regulations under that law; and (3) comply with applicable Federal motor carrier safety laws and applicable minimum financial responsibility laws and regulations. 49 U.S.C. 5109(a).

Section 5119 directed DOT to establish a working group of State and local government officials to make recommendations to DOT with respect to uniform forms and procedures for a State "to register persons that transport or cause to be transported hazardous material by motor vehicle in the State" and "to allow the transportation of hazardous material in the State," including "whether to limit the filing of any State registration and permit forms and collection of filing fees to the State in which the person resides or has its principal place of business." After receiving a final report from the working group, DOT "shall prescribe regulations to carry out the recommendations contained in the [final] report \* \* \* with which the Secretary agrees."

#### Prior Proceedings

On June 17, 1993, the Federal Highway Administration (FHWA) published in the **Federal Register** a notice of proposed rulemaking to establish a safety permit program covering the four hazardous materials specified in 49 U.S.C. 5109(b), including the requirement for a pre-trip inspection of a motor vehicle to be used to transport a highway route controlled quantity of Class 7 (radioactive) material. 58 FR 33418. In response to that notice, FHWA received more than 50 written comments, and these comments have been considered in the preparation of this SNPRM, as discussed below.

On November 17, 1993, the Alliance for Uniform HazMat Transportation Procedures (Alliance), established under 49 U.S.C. 5119, transmitted its recommendations to DOT, and it submitted its final report to DOT on March 15, 1996. According to the Alliance, "[a]ll but nine states have some type of permitting and/or registration program for hazardous materials transportation." November 17, 1993 Report, p. 2-7. The Alliance recommended that DOT:

1. Explore options for consolidating State registration programs with the Federal registration program (applicable to shippers and carriers by all modes and administered by DOT's Research

and Special Programs Administration (RSPA), under 49 U.S.C. 5108);

2. Consider waiving the Federal requirement for a safety permit for a motor carrier that obtains a permit under a uniform State permit program; and

3. Promote a one-stop repository for up-to-date information on hazardous materials routing designations.

In its final report, the Alliance described a two-year pilot project carried out in four States (Minnesota, Nevada, Ohio, and West Virginia) of a "base-state" system for registration and collection of fees and reciprocity between States that require permits.

FHWA decided not to proceed with further rulemaking action to implement the requirements in 49 U.S.C. 5109 and 5105(e) until it had considered the final report and recommendations of the Alliance. In its July 9, 1996 notice published in the **Federal Register** (61 FR 36016), FHWA (1) summarized the Federal permit and registration requirements in the Federal hazardous material transportation law, (2) discussed the activities and recommendations of the Alliance, and (3) invited comments on the Alliance's final report and recommendations. In a supplemental notice published in the **Federal Register** on March 31, 1998 (63 FR 15362), FHWA discussed the comments received in response to its July 9, 1996 notice and directed a series of additional questions to State agencies and motor carriers. Only 11 States responded to the notice, and they did not reach a clear consensus on the direction FHWA should take. State designations and restrictions of highway routes for transporting hazardous materials have been published in the **Federal Register** on June 9, 1998 (63 FR 31549), and Dec. 4, 2000 (65 FR 75771), and are maintained on FMCSA's Internet Web site at <http://hazmat.fmcsa.dot.gov>.

DOT has asked Congress to amend or repeal 49 U.S.C. 5109 three times since 1997, because "many States have different permit requirements" for carriers of hazardous materials and because the agency believed it had appropriate safety monitoring systems in place to address unsafe carriers transporting these materials. In addition, the pilot project under 49 U.S.C. 5119 revealed that a uniform permit system will not likely resolve different States' concerns that their needs will be met, and raises additional concerns related to unnecessary preemption and expenses of a parallel Federal permitting system. In place of a Federal safety permit, DOT proposed that it should be authorized to continue