

has no effect on Indian country. EPA will continue to implement and administer the RCRA program in Indian country.

K. What Is Codification and Is EPA Codifying Wisconsin's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State Rules in 40 CFR part 272. We reserve the amendment of 40 CFR 272, subpart YY for this authorization of Wisconsin's program changes until a later date.

L. Administrative Requirements

The Office of Management and Budget (OMB) has exempted RCRA authorizations from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore, a decision to authorize Wisconsin for these revisions is not subject to review by OMB. Furthermore, this rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. This authorization will effectively suspend the applicability of certain Federal regulations in favor of Wisconsin's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. Authorization will not impose any new burdens on small entities. Accordingly, I certify that these revisions will not have a significant economic impact on a substantial number of small entities under the Regulator Flexibility Act (5 U.S.C. 601 *et seq.*). Because implementing this proposal would authorize pre-existing requirements under State law and would not impose any additional enforceable duty beyond that required by State law, it will not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). For the same reason, this proposed rule does not have tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000). Authorization will not have substantial direct effects on the states, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. A decision to authorize Wisconsin for these revisions also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action does not include environmental justice related issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994).

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996) in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with any Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the Executive Order. A decision to authorize Wisconsin's revisions will not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S.

Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective April 30, 2002.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This Action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: February 15, 2002.

Bertram C. Frey,

Acting Regional Administrator, Region 5.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 390

[Docket No. FMCSA-00-8209]

RIN 2126-AA57

Motor Carrier Identification Report

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

ACTION: Final rule.

SUMMARY: The FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSRs) to revise the requirements for filing the Motor Carrier Identification Report (Form MCS-150). The FMCSA requires each motor carrier to file an update of the report every 24 months. A motor carrier that submits similar information to a State as part of its annual vehicle registration requirement under the Performance and Registration Information Systems Management (PRISM) complies if it files this information with the appropriate State commercial motor vehicle (CMV) registration office. This action responds to Section 217 of the Motor Carrier Safety Improvement Act of 1999.

DATES: This rule is effective April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Bus and

Truck Standards and Operations, FMCSA, (202) 366-1790, or Mr. Charles E. Medalen, Office of Chief Counsel, (202) 366-1354, FMCSA, 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:

Background

In order to provide proper safety oversight of the regulated motor carrier community, the FMCSA must have an accurate census of the individual motor carriers that comprise it. Section 217 of the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106-159, 113 Stat. 1748, Dec. 9, 1999) (MCSIA) directed the Secretary of Transportation to:

require periodic updating, not more frequently than once every 2 years, of the motor carrier identification report, form MCS-150, filed by each motor carrier conducting operations in interstate or foreign commerce.

On November 24, 2000 (65 FR 70509), the FMCSA published an interim final rule (IFR) that responded to the congressional direction. The preamble to the IFR described the activities that the agency had undertaken on the subject of requiring a motor carrier to report certain identifying and demographic information from 1986 through the current rulemaking. The interim final rule amended § 390.19 to require motor carriers to file a Motor Carrier Identification Report, Form MCS-150, before beginning operations and every 24 months according to a schedule corresponding to the last two digits of the USDOT number. If a motor carrier registers its vehicles in a State that participates in the PRISM program, it is exempt from this requirement, provided it files all the required information with the appropriate State office.

Discussion of Comments

The agency received six comments in response to the interim final rule. The commenters were Advocates for Highway and Auto Safety (Advocates), the American Trucking Associations (ATA), the Petroleum Marketers Association of America (PMAA), the Transportation Lawyers Association (TLA), and two individuals, Patrick E. Haugen and Roger K. Ites.

Update Schedule

All of the commenters except one took issue with some aspect of the update schedule.

Advocates states that, while it "strongly supports" the two-year update cycle, it believes the staggered

implementation dates would compromise the agency's safety goals because it would prevent the agency from obtaining updated information quickly. Advocates recommends that the FMCSA require all motor carriers to update their Form MCS-150 during the first 12 months after the effective date of the rule, to implement the biennial update cycle one year after the effective date, and to require that the update cycle be designed so that no motor carrier would go more than 2 years between updates.

The ATA and one individual raise a question concerning motor carriers that voluntarily update their MCS-150 information. The ATA states that some of its member motor carriers voluntarily update this information at 6, 9, or 12-month intervals, and that they want to continue this practice. The ATA asks if those motor carriers would be required to re-file their MCS-150 information according to the schedule in the interim final rule, even though they file the information more frequently than the rule requires.

Roger K. Ites, a Director of Safety for four motor carriers, expresses a similar concern. He states that he updates four MCS-150 forms annually. His concern is that the combination of a biennial update cycle and a staggered filing schedule could cause him to neglect to comply with the filing requirement.

The TLA, although it supports the rulemaking, believes that the proposed schedule is too complex. It recommends the FMCSA require that all motor carriers provide their Form MCS-150 updates "by a single filing date" to maximize the agency's opportunity to obtain current and meaningful data. It contends that the FMCSA should be able to deal with the filing of the forms and the associated data entry tasks as separate issues.

The TLA also recommends that the FMCSA require motor carriers to update the MCS-150 within 20 days following a change in its name, control, or ownership, and/or its principal place of business. The TLA asserts that section 217 of the MCSIA "speaks only to the collection of information on a regular, "periodic" basis. Filing of an MCS-150 as a result of an address, name, or ownership change is a discrete event initiated by the carrier, not FMCSA. The information, for enforcement purposes, is critical."

The PMAA believes that the FMCSA should have sought public comment on the proposed implementation of the update cycle, noting that the legislation itself "did not set the schedule for the periodic updates." The organization also cites the FMCSA's estimate of a 400

percent increase in its data entry and verification workload and questions whether the update cycle makes the best use of FMCSA's resources. Finally, the PMAA is concerned about its own ability to notify its members of the new requirement in a timely fashion, possibly leading to problems for those carriers required to update their MCS-150 information in early 2001.

Agency's Response

As it stated in the preamble to the IFR, the FMCSA selected a two-year update cycle, the shortest cycle allowed under section 217 of MCSIA, in order to significantly improve the quality of the agency's databases. The FMCSA depends on this data to make the most efficient use possible of its inspection and enforcement resources, and to provide well-founded estimates of the potential benefits and costs of its regulations.

The FMCSA appreciates the diligence of the many motor carriers and safety officials who make a special effort to ensure that their Form MCS-150 information is current. However, not all motor carriers take this approach, and the regulation in effect prior to December 26, 2000 did not require them to update that information. Although the provisions of section 217 of the MCSIA direct the Department of Transportation to "require periodic updating not more frequently than once every two years," neither the statute nor the implementing regulations prohibit motor carriers from updating their information more frequently. For those motor carriers that chose to update the information in the Form MCS-150 more frequently than the regulation requires, they will be in compliance as long as they submit the biennial update required in the regulation, on or before the date set in the regulation.

In response to Advocates' comment that the agency should have accelerated the initial update cycle, the FMCSA did not choose that approach because there are insufficient personnel to handle several hundred thousand forms at once. Although the staggered update cycle could potentially result in some motor carriers' not being required to make their first update until 22 months after the effective date of the IFR (October 2002), all motor carriers would have submitted their updates by that date. Responding to Advocates' concern about a gap in the identification of new motor carriers, 49 CFR 390.19(a), revised on July 6, 2000 (65 FR 35287), requires new motor carriers (and those newly subject to the Federal Motor Carrier Safety Regulations) to file their Form MCS-150 prior to beginning

operations in interstate commerce. The previous rule had required that the Form MCS-150 be filed within 90 days of beginning these operations.

The agency disagrees with the TLA's assertion that filing of the forms can be separated from data entry issues. If the agency required all the updates to be submitted on the same date, there would most likely be gaps between the time that data is submitted and the time that it is entered. These gaps could lead to quality control problems. Furthermore, the administrative burden on the agency, and subsequently, the expenditure of public funds necessary to process several hundred thousand forms at one time, would be greater than those required to process several thousand forms every month.

The issues associated with the manual processing of forms will become less relevant once the FMCSA has instituted electronic filing and updates for the MCS-150 information.

In response to the PMAA's assertion that the FMCSA should have not waived the opportunity for notice and comment, the agency believed that, because the statutory mandate was specific and the rule followed it so closely, and because the information collection burden on motor carriers is extremely small, public comment would not have been likely to provide information that would affect the outcome of the rulemaking proceeding. While the parties who did comment to this docket have raised several important points, none of the comments affect the statutory requirements, or the agency's obligation to adopt implementing regulations.

Responding to the PMAA's other comment, concerning notification for motor carriers affected by this rule, the FMCSA considered how the regulation would affect those motor carriers that would have to update their MCS-150 information in January and February 2001: The agency allowed them additional time—until the end of March, 2001—to file their updates (see § 390.19(g)). The FMCSA also posted informational items concerning this new regulation on its main Internet website within days after the IFR was published, referred many callers to that information, and e-mailed and faxed copies of those items to many parties (including the PMAA) for use in their publications.

In response to the TLA's comment concerning a required update of the MCS-150, the FMCSA notes that the procedures for changing the name or business form of a for-hire motor carrier, household goods carrier, or property broker are found at 49 CFR 365.413.

Thus, the agency already has in place rules to enable it to quickly update its database for certain motor carriers and for property brokers. Because the agency had very little time to meet the deadline set in section 217, the agency elected to focus solely upon the requirements contained in that legislation. The FMCSA believes the TLA's comment has merit, with regard to private and exempt motor carriers, and it will consider the issue of updating MCS-150 identifying information (name, address, and business ownership) in a separate rulemaking.

Revision of MCS-150

The ATA and the TLA also address information collected with the Form MCS-150. The ATA recommends the agency update the form to indicate whether the motor carrier is providing an "initial" or "update" filing, and to revise the "NOTICE" portion of the form to reflect the new biennial filing requirement and the special provision for motor carriers in states with fully-implemented PRISM programs. The ATA also suggests that the FMCSA consider requesting motor carriers to provide information on their annual gross revenue, so the agency could determine whether a motor carrier is considered to be a "small business" under the guidelines of the Small Business Administration.

The TLA believes the agency should consider requiring motor carriers to submit summary revenue, mileage, and accident data on the MCS-150. The TLA reasoned that this additional data would aid the agency in setting its enforcement priorities, provide more information specific to segments of the motor carrier industry, and aid the agency in constructing a predictive motor carrier safety model. It believes the FMCSA would especially benefit from this information as it applies to motor carriers operating 9-15 passenger vehicles that have recently been made subject to the FMCSRs.

Motor carrier affiliation is another data item that the TLA asks the FMCSA to consider adding to the MCS-150. The TLA is concerned that some motor carriers may be using the application process to mask a poor safety record, and refers to Docket FHWA-97-2708, Registration for For-Hire Motor Carriers, Brokers, and Freight Forwarders, where the FHWA Office of Motor Carriers [now the FMCSA] also raised the safety integrity issue.

Agency's Response

In response to the ATA's comments concerning a notation of an "initial" or "update" filing and the addition of a

block for gross-revenue, the agency will consider both items in the forthcoming Motor Carrier Replacement Information System rulemaking (Docket No. FMCSA-97-2349, RIN 2126-AA22). Concerning the "NOTICE" statement, the FMCSA is including a copy of the two-page "Highlights: Biennial Update of Motor Carrier Identification Report (MCS-150)" informational item in the update requests that it mails to motor carriers. The agency will review and update the instructions on the MCS-150 when it next revises the form.

In response to the TLA's comment concerning accident data, the agency is using this information, along with information on the outcomes of roadside safety inspections, to determine priorities for motor carrier compliance reviews. The agency discontinued the requirement for motor carriers to report their own accident data in 1993 because it had begun to require this same information to be reported electronically by states, as a condition of receiving Motor Carrier Safety Assistance Program grants. The agency crosschecks this information with the information on the accident register that motor carriers are still required to maintain. In response to the TLA's comment on mileage, motor carriers must report their mileage to the nearest 10,000 miles for the last calendar year in Block 22 of the MCS-150.

Only Class I (annual carrier operating revenues of \$10 million or more) and Class II (operating revenue of at least \$3 million but less than \$10 million) contract and common motor carriers of property are currently required to report revenue data to the U.S. Department of Transportation under the provisions of 49 CFR 1420. Responding to the recommendation made by the ATA and the TLA, the FMCSA may consider the potential for adding a block for other motor carriers to report revenue data as part of the forthcoming Unified Carrier Register rulemaking.

Responding to the TLA's recommendation to add information on a motor carrier applicant's affiliation, the FMCSA reviews the information provided in motor carrier registration documents to prevent motor carriers from using this process in an attempt to mask prior FMCSA determinations of unfitness or revocations of registration. The FMCSA will also consider addressing the "affiliation" question in the forthcoming Motor Carrier Replacement Information System rulemaking.

Electronic Filing

The ATA believes that providing motor carriers an electronic filing option

can reduce the paperwork burdens on both the industry and the FMCSA. It strongly urges the agency to have the electronic filing capability in place no later than March 31, 2001, the first mandatory filing date for motor carriers whose USDOT numbers place them in the January through March, 2001, update period.

The FMCSA agrees with the ATA on the benefits of electronic filing. Several months ago, the FMCSA put into place a data entry process that allows new motor carriers to file their initial MCS-150s electronically. The agency has also recently implemented procedures to allow the biennial updates to be filed electronically. These procedures are being added to § 390.19(c). Detailed instructions are available on the FMCSA's www site, www.fmcsa.dot.gov.

Penalties for Non-filers and Late Filers

Advocates expressed a concern that the IFR did not address penalties for those motor carriers that fail to file an updated Form MCS-150 during the initial two-year update cycle or in future years. The organization recommends that the agency consider assessing financial penalties for motor carriers whose filings are between three months and one year late, and that the FMCSA impose additional penalties, including revoking a motor carrier's operating authority, for motor carriers that are more than one year overdue.

Agency's Response

The final rule that covered marking of commercial motor vehicles, published on June 2, 2000 (65 FR 35287) added, among other things, a new paragraph (§ 390.19(e)) that advised motor carriers that if they failed to file a Form MCS-150, or filed misleading information, they would be subject to the civil penalties and sanctions prescribed in 49 U.S.C. 521(b)(2)(B). The civil penalty could be a fine as high as \$5,000 if this information was used to misrepresent a fact that constitutes a violation other than a reporting or recordkeeping violation. As the FMCSA develops the regulation for the Unified Carrier Registration Program, it will consider methods to ensure motor carriers' compliance.

PRISM Issues

The ATA recommends that the FMCSA provide and maintain a listing of States that have fully implemented and functional PRISM programs. It also asks several questions concerning the exemption for motor carriers that register their commercial motor vehicles in states that participate in the PRISM

program. One question deals with registration of vehicles of motor carriers headquartered in non-PRISM States, but which had vehicles based in both PRISM and non-PRISM States. The others sought clarification of the relationship and information requirements of the International Registration Plan (IRP) and PRISM.

Agency's Response

The FMCSA believes there may be some misunderstanding concerning the relationship between the PRISM program and the IRP. All States in the continental United States are members of the IRP, and the IRP forms the administrative framework upon which the PRISM program is based. See www.aamva.org/IRP/ for additional information.

The phrase "all the required information" in Section 390.19(g) refers to information that each PRISM State requires motor carriers to provide, within their respective CMV registration programs. Motor carriers provide this information through a State-administered process using a form equivalent to the Form MCS-150. As of December 2001, the following States are collecting this information and issuing USDOT numbers: Arizona, Colorado, Georgia, Indiana, Iowa, Kentucky, Maine, Oregon, South Dakota, and Tennessee. The FMCSA will maintain an updated list of States that have fully implemented and functional PRISM programs on the agency's website.

The States that are participating in the PRISM program have the knowledge and information to respond to questions such as those the ATA raised. The FMCSA is also considering posting answers to specific program questions, such as those raised by the ATA, on the website.

Other Comments

Mr. Patrick E. Haugen raised a question concerning whether hazardous material cargo tank container equipment would be included in the vehicle counts in Block 26 of the MCS-150. He believes that they would not, although they represent a sizeable fleet of equipment used in hazardous materials transportation.

The FMCSA responds that these containers, which are generally tanks mounted on skids, or intermediate bulk containers with a capacity of 1,000 water gallons or less, are considered cargo rather than vehicles. The shippers of these containers are required to register with the Office of Hazardous Materials Transportation of the Research and Special Programs Administration. The containers would need to comply

with the applicable packaging specifications in 49 CFR part 178 of the Hazardous Materials Regulations.

Discussion of the Final Rule

The regulatory language published in the IFR is being adopted today, with one exception. Because the extended filing date (to March 2001) for those motor carriers that had been required to file the MCS-150 by the end of January or February 2001 has now passed, paragraph 390.19(a)(4) was removed in a technical amendment to the FMCSRs published October 1, 2001 (66 FR 49867, at 49873).

The agency also makes technical amendments to the § 390.19(b) and (c). The internet address for the FMCSA, included in paragraph (b), has changed. In addition, the FMCSA is now able to accommodate electronically submitted MCS-150 information from motor carriers requesting a USDOT number for the first time, as well as motor carriers filing their biennial update. Paragraph (c) is revised to include that additional way of filing this information.

Update Schedule

Today's final rule requires all motor carriers to file a new MCS-150 every 24 months. However, to make the procedure simple for motor carriers and manageable for the agency, the rule sets staggered filing dates. Each motor carrier determines the month and the year in which it must file based on its USDOT number.

The Month. If a motor carrier's USDOT number ends in 1, it must file the MCS-150 update by the end of January, and every second January afterwards; if the USDOT number ends in 2, 3, 4, 5, 6, 7, 8 or 9, the carrier must file by the end of February, March, April, May, June, July, August or September, respectively, and biennially after that; and if the USDOT number ends in 0, the update must be filed by the end of October, and every two years after that.

The Year. If the next to the last digit in the motor carrier's USDOT number is odd, the carrier must file its MCS-150 update in an odd-numbered year; if even, in an even-numbered year. For purposes of this rule, zero is considered an even number.

Section 217 restricts the frequency of Form MCS-150 updates to no more than every two years, which limits the burden imposed by the requirement. As the system starts up, some relatively new carriers, however, must submit their first update less than two years after initially filing the MCS-150. However, after the first round of updates is complete, all motor carriers will be on

a firm 24-month update schedule. Due to the minimal time and effort to update the MCS-150 and the difficulty in determining how many motor carriers will be affected by this schedule, FMCSA finds that this rule is consistent with the intent of Section 217.

Special situations. There are two situations where, because of the special circumstances surrounding the need for information, a motor carrier will update the information in the MCS-150 more frequently than the two-year refiling interval specified in Section 217. They are: (1) Verifications of information made during the course of compliance reviews, and (2) a motor carrier registering its CMVs in States participating in the PRISM program.

Compliance reviews. In order for FMCSA safety investigators to have current motor carrier information to properly perform record selection and exposure-based safety analyses when they conduct compliance reviews (CRs), the agency has had a longstanding practice of requiring safety investigators to begin the CR by asking the motor carrier to verify the information contained in its MCMIS record. Since the information obtained during a CR may lead to enforcement action, it is clearly in the interest both of the motor carrier and the agency that it be accurate. Because a CR is an audit with respect to a specific party, it is not considered an information-gathering activity subject to the Paperwork Reduction Act. The agency does not believe that requesting a motor carrier to review MCS-150 information during the course of a CR is inconsistent with the requirements of Section 217.

Motor carriers in PRISM States. The PRISM program links State commercial motor vehicle registration to the safety fitness of motor carriers. It began as a Congressional mandate by Congress under Section 4003 of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 and was authorized for national implementation under Section 4004 of TEA-21. It is a key element in the FMCSA's motor carrier enforcement and safety compliance program. The States participating in PRISM receive special grants to implement the program.

The commercial vehicle registration process of the States provides the framework for the PRISM program. It serves two vital functions. First, it establishes a system of accountability by ensuring that no one receives a license plate for a vehicle without identifying the carrier responsible for the safety of the vehicle during the registration year. Second, the use of registration sanctions (denial, suspension and revocation)

serves as a powerful incentive for unsafe carriers to improve their safety performance. The vehicle registration process ensures that all carriers engaged in interstate commerce are uniquely identified through a USDOT number when they register their vehicles. The safety fitness of each carrier can then be checked prior to issuing vehicle registrations. The State can refuse to register vehicles of an unfit carrier (as defined by the FMCSRs).

The FMCSA has provided PRISM States with access to the MCMIS database to issue USDOT census numbers to motor carriers. Under the PRISM Program, the States issue census numbers to interstate motor carriers as part of their commercial vehicle registration process. This process ensures that no vehicle is plated without identifying the carrier responsible for the safety of the vehicle during the registration year. PRISM States also require motor carriers to annually update their MCS-150 data to reflect current operations. Some States enter this information directly into the MCMIS, while others forward it to the FMCSA for data entry. As of December 2001, twenty States are participating in the PRISM Program and five additional States have provided the FMCSA with a Letter of Intent to implement the Program. Ten States are currently collecting MCS-150 Forms and issuing USDOT census numbers to interstate motor carriers.

The FMCSA has determined that if a motor carrier in a PRISM State files annually with the State commercial vehicle registration office, information similar to what is required in the FMCSA's MCS-150 meets the periodic filing requirement of this rule, and no additional filing with the FMCSA is necessary.

The final rule does not change the requirement of 49 CFR 390.19(e) that a motor carrier must file this information, and must not furnish misleading information or make false statements.

Implementation Schedule

In order to ease the burden on both motor carriers and the FMCSA, the new biennial update system will be distributed over the first 10 months of the calendar year.

Update year. The first cycle began in January 2001. Those motor carriers with an odd-number in the next-to-last digit of their USDOT number are required to file an update in calendar year 2001, and in every odd-numbered year in the future. Those motor carriers with an even number in the next-to-last digit of their USDOT number are required to file

an update in calendar year 2002, and in every even-numbered year in the future.

Update month. Within each yearly cycle, motor carriers with a USDOT number ending with the numeral 1 must file by January 31. Motor carriers with a number ending in 2 are to file by February 28 or 29, and so forth, through 0, the number for filing in October. During the final two months of each year, FMCSA staff will complete the necessary verification of the information filed.

Special note. In the Washington, D.C. metropolitan area, there have been significant delays in U.S. mail delivery to U.S. Government buildings between mid-October and late November 2001 related to the discovery of biological contaminants, and measures taken to test for the presence of these materials and to decontaminate letters and mail-handling facilities. The FMCSA asks motor carriers that mailed an updated form MCS-150 between early October and December to mail another copy of the form to the agency. In addition, the agency reminds all motor carriers that they must return the form MCS-150 to the FMCSA, even if no information has changed, so the agency can ensure that its information on each motor carrier is up to date.

Rulemaking Analyses and Notices

The FMCSA believes the interim final rule should be adopted as a final rule. The effective date of the interim final rule has passed with no indication that the requirement has had an adverse impact on motor carriers operating in interstate commerce. Despite the concern that the proposed update cycle would proceed at an undesirably slow pace, the work is progressing well. Between December 2000 and November 2001, the agency updated over 115,000 motor carrier records.

Section 217 directs the FMCSA in detail to amend 49 CFR 385.21 (now recodified as § 390.19), to require periodic updating of the Form MCS-150, and to complete the initial update of MCS-150 data within one year of the date of enactment of the MCSIA. Section 217 provides that periodic updates shall be required not more than biennially. The IFR simply promulgated the requirements of Section 217. It differed from the statute only in setting an orderly schedule for the updates.

Because the December 26, 2000 effective date of the interim final rule requires motor carriers to update the information in the Form MCS-150 every 24 months, and provides that a motor carrier that submits similar information to a State as part of its annual vehicle registration requirement under the

Performance and Registration Information Systems Management (PRISM) program will be in compliance if it files it with the appropriate State commercial motor vehicle (CMV) registration office, the FMCSA amends § 390.19 to remove the exception contained in § 390.19(a)(4).

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

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866, and is not significant within the meaning of the Department of Transportation's regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979). The current requirement for motor carriers to file a single MCS-150 before beginning operations limits the agency's ability to maintain current information on the industry that it regulates, and to accurately gauge the safety outcomes of its programs and activities. This FR responds to the requirement of Section 217 of the MCSIA by requiring motor carriers operating in interstate or foreign commerce to provide an update of the information filed with the FMCSA on their most recent MCS-150 no more often than every two years. As discussed in the next section, the FR imposes so little additional burden that a full regulatory evaluation is unnecessary.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the agency has considered the effects of this FR on small entities. The FMCSA is revising its requirement for filing the MCS-150 to respond to direction contained in Section 217 of the MCSIA. Motor carriers are required to file their MCS-150 updates according to a schedule determined by the next-to-last digit (whether the update would be filed during an odd-numbered or even-numbered year) and the last digit (the filing month) of their assigned USDOT number.

As of April 2000, the FMCSA estimates there are 430,173 motor carriers operating between 1 and 20 powered units (trucks, truck-tractors, buses, and motorcoaches), and another 84,272 that operate an unspecified number of powered units.

The agency has estimated that it takes 20 minutes to complete the MCS-150 the first time it is filed. However, the agency estimates the biennial update would take considerably less time. The information is likely to be the same, and motor carriers will already have had the

experience of completing the form at least once before. For the purpose of this FR, the agency estimates that the biennial update would take 10 minutes. The agency considers the time necessary for motor carriers to comply with this provision to be minimal: the time requirement is estimated to be extremely small, especially in comparison to the filing of other information required from businesses in their normal course of operations. Furthermore, if the motor carrier uses the postage-paid return form provided by the agency, it will not incur costs for mailing or facsimile transmission costs. Therefore, in compliance with the Regulatory Flexibility Act, the FMCSA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. It has been determined that this rulemaking does not have a substantial direct effect on States, nor would it limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), a Federal agency must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. An analysis of this rule has been made by the FMCSA, and it has been determined that it will affect the information collection burden associated with the currently-approved information collection covered by OMB Control No. 2126-0013 (formerly 2125-0544). The OMB approved the most recent update of this information collection on October 4, 1999. The approval period runs through May 31, 2004.

For a motor carrier filing an MCS-150 for the first time, the FMCSA estimates it takes approximately 20 minutes to gather the information and complete the form. The FMCSA estimates that there are approximately 50,000 new motor

carriers annually who must file their initial MCS-150. Until now, a motor carrier has only been required to complete and file this form once, when it begins to operate CMVs in interstate commerce. This FR requires a motor carrier to provide an update of the information every two years, starting January 2001. For most motor carriers, it is likely that much of the information contained on the MCS-150 will remain unchanged.

The FMCSA estimated that the updates required during calendar year 2000, and the biennial update starting January 2001, would require 10 minutes. Because the agency proposed to implement a regulation that will require motor carriers to file this information more frequently, the FMCSA submitted this proposed revision of information collection to OMB for review and approval. Neither the OMB nor any commenters took issue with the agency's estimate of this information collection burden.

Estimated Annual Reporting Burden:
Number of respondents: 549,000 motor carriers

Burden hours: Biennial update: 549,000 x 50% (biennial) x 10 minutes per update = 45,750 hours. Annual initial MCS-150 filings: 51,400 X 20 minutes = 17,133 burden hours. Total estimated annual burden: 62,883 hours.

National Environmental Policy Act

The Federal Motor Carrier Safety Administration (FMCSA) is a new administration within the Department of Transportation (DOT). We are striving to meet all of the statutory and executive branch requirements on rulemaking. The FMCSA is currently developing an agency order that will comply with all statutory and regulatory policies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). We expect the draft FMCSA Order to appear in the **Federal Register** for public comment in the near future. The framework of the FMCSA Order is consistent with and reflects the procedures for considering environmental impacts under DOT Order 5610.1C. The FMCSA analyzed this proposal under the NEPA and DOT Order 5610.1C. Since the proposal is strictly procedural in nature, we believe it would be among the type of regulations that would be categorically excluded from any environmental assessment.

Unfunded Mandates Reform Act of 1995

This rule does not impose a Federal mandate resulting in the expenditure by State, local, or tribal governments, in the

aggregate, or by the private sector, of \$100 million or more in any one year. 2 U.S.C.1531 *et seq.*

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutional Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in Sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (2001)

We have analyzed this action under Executive Order 13211 for any adverse effects on energy supply, distribution, or use, and reasonable alternatives and their effects. The rule is not a significant rule, and there are no adverse energy effects as a result of it.

List of Subjects in 49 CFR Part 390

Highway safety, Motor carriers, Motor vehicle identification and marking, Reporting and recordkeeping requirements

In consideration of the foregoing, the FMCSA amends title 49, Code of Federal Regulations, Chapter III, as follows:

PART 390—[AMENDED]

1. Revise the authority citation for part 390 to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 217, Pub. L. 105–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

2. Amend § 390.19 by revising paragraphs (a), (b), and (c) and revising paragraph (g) to read as follows:

§ 390.19 Motor carrier identification report.

(a) Each motor carrier that conducts operations in interstate commerce must

file a Motor Carrier Identification Report, Form MCS–150 at the following times:

- (1) Before it begins operations; and
- (2) Every 24 months, according to the following schedule:

USDOT Number ending in	Must file by last day of;
1	January
2	February
3	March
4	April
5	May
6	June
7	July
8	August
9	September
0	October

(3) If the next-to-last digit of its USDOT number is odd, the motor carrier shall file its update in every odd-numbered calendar year. If the next-to-last digit of the USDOT number is even, the motor carrier shall file its update in every even-numbered calendar year.

(b) The Motor Carrier Information Report, Form MCS–150, with complete instructions, is available from the FMCSA’s web site at: <http://www.fmcsa.dot.gov> (keyword “MCS–150”), from all FMCSA Service Centers and Division offices nationwide, or by calling 1–800–832–5660.

(c) The completed Motor Carrier Identification Report, Form MCS–150, shall be filed with the FMCSA’s Office of Data Analysis and Information Systems.

(1) The form may be filed electronically according to the instructions at the agency’s web site, or it may be sent to Federal Motor Carrier Safety Administration, Data Analysis and Information Systems, MC-RIS, 400 Seventh Street, SW, Washington, DC 20590.

(2) A for-hire motor carrier should submit the Form MCS–150 along with its application for operating authority (Form OP–1 or OP–2) to the appropriate address referenced on that form, or may submit it electronically or by mail separately to the address mentioned in this section.

* * * * *

(g) A motor carrier that registers its vehicles in a State that participates in the Performance and Registration Information Systems Management (PRISM) program (authorized under section 4004 of the Transportation Equity Act for the 21st Century [(Public Law 105–178, 112 Stat. 107)]) is exempt from the requirements of this section, provided it files all the required information with the appropriate State office.

[Approved by the Office of Management and Budget under control number 2126–0013]

Issued on: February 26, 2002.

Joseph M. Clapp,
Administrator.

[FR Doc. 02–4960 Filed 2–28–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304-1304-01; I.D. 022502D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season amount of the Pacific cod total allowable catch (TAC) apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 26, 2002, until 1200 hrs, A.l.t., September 1, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 A season Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA is 9,098 metric tons (mt) as established by an emergency rule