

responsibilities having to do with documented vessels. The effect of the words "Except as provided by the Secretary" is ambiguous at best if each agency has a different requirement for filing of citizenship declarations. An instrument for which no citizenship declaration is filed might be deemed valid under the new Maritime Administration rule, but deemed not to be valid under the Coast Guard's current regulations. If, for example two mortgages were filed on successive days, and only the second was accompanied by a citizenship declaration, it might be argued that under the Coast Guard's regulation, only the second mortgage was actually valid; on the other hand, if the rules of the Maritime Administration are followed, both mortgages are valid, and the second mortgage would normally be subsidiary to the first. Such uncertainty obviously poses potential problems for persons seeking to finance vessels and invites litigation.

Regulatory Evaluation

This rulemaking has been determined not to be a major rule under Executive Order 12291, but it is significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The Coast Guard expects the costs of this rulemaking to be minimal since it is procedural and administrative in nature and eliminates a paperwork burden on the public.

Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard has considered whether this rulemaking will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Although the rulemaking will apply to a substantial number of small entities, the rule is procedural and administrative in nature. By eliminating certain recordkeeping and reporting requirements this rulemaking reduces the requirements imposed on the affected small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rulemaking will not have a substantial economic impact on a number of small entities.

Collection of Information

This rulemaking contains information collection requirements that were approved by the Office of Management

and Budget (OMB) (Approval NO. 2133-0006), in the course of the Maritime Administration's rulemaking to revise 46 CFR part 221. In addition, the information collection requirements contained in this rulemaking were approved by OMB (Approval NO. 2115-0110) on April 14, 1992, in connection with the Coast Guard's proposed revision of 46 CFR part 67 (57 FR 10544).

This rulemaking significantly reduces the paperwork burden on the public. In 1991, more than 60,000 submissions of form MA-899 were required; under this final rule, the Coast Guard estimates that fewer than 1,000 submissions will be required each year. Since the average time to complete an MA-899 is estimated at 15 minutes, this will result in a savings of at least 19,600 burden hours each year.

Federalism

The Coast Guard has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Since this final rule affects only a federal paperwork requirement, it has no preemptive effect.

Environment

The Coast Guard has considered the environmental impact of this rulemaking and has concluded that under § 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. This proposal deals with procedural regulations including reporting and recordkeeping requirements to record title and encumbrance instruments on vessels. This regulation is administrative in nature and clearly has no environmental impact. A Categorical Exclusion Determination is available in the docket for inspection of copying where indicated under "ADDRESSES."

List of Subjects in 46 CFR Part 67

Fees, Incorporation by reference, Vessels.

In consideration of the foregoing, 46 CFR part 67 is amended to read as follows:

PART 67—DOCUMENTATION OF VESSELS

1. The authority citation for part 67 is revised to read as follows:

Authority: 14 U.S.C. 664; 42 U.S.C. 9118; 31 U.S.C. 9701, 46 U.S.C. 2103, 2107, 2710; 46 U.S.C. App. 802, 806, 876, 841a, 883; 49 U.S.C. 322, 49 CFR 1.46.

2. Section 67.29-11 is revised to read as follows:

§ 67.29-11 Requirement for citizenship declaration.

(a) Instruments in the nature of a bill of sale or deed of gift, mortgages, and assignments of mortgages conveying an interest in a documented vessel are ineligible for filing and recording unless accompanied by a declaration of citizenship, except as provided in paragraphs (c) and (d) of this section.

(b) Citizenship declarations must be executed on the form prescribed by the Maritime Administration in 46 CFR part 221. These forms are available from all Coast Guard documentation offices and from the Vessel Transfer and Disposal Officer (MAR-745.1), Maritime Administration, United States Department of Transportation, Washington, DC 20590.

(c) The requirement for presentation of a citizenship declaration does not apply to a transaction conveying an interest in a vessel:

- (1) Described in 46 CFR 221.11(b)(1) (i) through (iv);
- (2) To a person making application for documentation; or
- (3) To a government of the United States or a political subdivision thereof or a corporate entity which is an agency of any such government or political subdivision.

(d) The requirement for presentation of a citizenship declaration is waived when the instrument(s) presented for filing effects a transfer for which:

- (1) The Maritime Administration has given general approval in 46 CFR part 221; or
- (2) Written approval of the Maritime Administrator is required in accordance with 46 CFR part 221.

(e) If the transfer of interest is one which requires written approval of the Maritime Administrator in accordance with rules in 46 CFR part 221, evidence of that approval must be presented for filing with the instrument effecting the transfer of interest.

Note: If the grantee(s) of an ownership interest in a vessel described in paragraph (c)(1) or (d) of this section do(es) not make application for documentation, a declaration of citizenship may be required in order to ensure that the vessel so conveyed retains any coastwise or Great Lakes privileges to which it may be entitled.

Dated: September 18, 1992.

J.W. Kime,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 92-23215 Filed 9-23-92; 8:45 am]

BILLING CODE 4910-14-M

Maritime Administration**46 CFR Part 298**

[Docket No. R-145]

RIN 2133-AA97

Obligation Guarantees**AGENCY:** Maritime Administration, Department of Transportation.**ACTION:** Correction of final rule.

SUMMARY: The Maritime Administration (MARAD) is issuing this notice of correction of a final rule which appeared in the Federal Register on August 6, 1992 (57 FR 34690) concerning the calculation of Internal Rate of Return now required with all applications for obligation guarantees.

EFFECTIVE DATE: August 6, 1992.

SUPPLEMENTARY INFORMATION: The August 6, 1992 final rule removed paragraph (b)(4) of 46 CFR 298.14 without regard to the existence of paragraph (b)(5). This correction redesignates paragraph (b)(5) as new paragraph (b)(4).

§ 298.14—[CORRECTED]

Accordingly, on page 34691 in the Federal Register of August 6, 1992, Column 3, the final rulemaking notice for 46 CFR § 298.14 is corrected by adding at the end paragraph (c), to read as follows:

(c) Paragraph (b)(5) is redesignated as new paragraph (b)(4).

Dated: September 18, 1992.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 92-23111 Filed 9-23-92; 8:45 am]

BILLING CODE 4910-31-M

DEPARTMENT OF VETERANS AFFAIRS**48 CFR Part 817**

RIN 2900-AG06

VA Acquisition Regulation: Special Contracting Methods**AGENCY:** Department of Veterans Affairs.**ACTION:** Final Rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending the VA Acquisition Regulation (VAAR) to eliminate a restriction on multiyear contracting. This amendment will permit multiyear contracting for other than supplies and services for use in VA health care facilities.

EFFECTIVE DATE: September 24, 1992.**FOR FURTHER INFORMATION CONTACT:**

Sherry Patton, Acquisition Policy Division (95A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-5001.

SUPPLEMENTARY INFORMATION:**I. Background**

Multiyear contracting authority was granted to the Department of Veterans Affairs by Public Law 100-322. The authority was limited to the acquisition of supplies and services for use in VA medical facilities.

Public Law 101-237 has further amended Title 38 to eliminate this restriction. These changes are internal VA management policies, therefore, public comment is unnecessary (5 U.S.C. 553(d)(3)). Technical changes are also being made to reflect the correct titles of VA officials.

II. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this rule is exempt from sections 3 and 4 of Executive Order 12291.

III. Regulatory Flexibility Act (RFA)

Since a notice of proposed rulemaking is unnecessary and will not be published, these amendments do not come within the term "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2) and are, therefore, not subject to the requirements of the Act. Nevertheless, these amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612.

IV. Paperwork Reduction Act

The Paperwork Reduction Act does not apply to these final regulations.

List of Subjects in 48 CFR Part 817

Government procurement.

Approved: September 15, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 48 CFR chapter 8, part 817 is amended as set forth below:

PART 817—[AMENDED]

1. The authority citation for part 817 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

PART 817—SPECIAL CONTRACTING METHODS**Subpart 817.1—[Amended]**

2. In subpart 817.1, section 817.102-1(a), remove the notation "Pub. L. 100-322" and add in its place "Pub. L. 101-237," remove the words "for use in Department of Veterans Affairs health care facilities."

Subpart 817.2—[Amended]

3. In subpart 817.2, section 817.202, remove the words "Director, Office of Acquisition and Materiel Management" and add in their place the words, "Deputy Assistant Secretary for Acquisition and Materiel Management."

[FR Doc. 92-23261 Filed 9-23-92; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****49 CFR Part 397**

RIN 2125-AD00

Transportation of Hazardous Materials; Routing of Class 7 (Radioactive) Materials; Preemption Determinations**AGENCY:** Federal Highway Administration (FHWA), DOT.**ACTION:** Interim final rule.

SUMMARY: The FHWA is publishing an interim final rule to incorporate, without substantive change, the preemption determination and waiver of preemption procedures, currently contained in the Research and Special Programs Administration's (RSPA) regulations at 49 CFR 107.201 to 107.227, into the FHWA's regulations at subpart E of 49 CFR part 397. This final rule will also incorporate, without substantive change, the routing requirements for Class 7 (radioactive) materials, currently contained in the RSPA regulations at 49 CFR 177.825, into the FHWA's regulations at subpart D of 49 CFR part 397. This final rule is necessary because the responsibility for highway routing of hazardous materials, including Class 7 (radioactive) materials and the related preemption determination and waiver of preemption procedures, has been delegated by the Secretary of Transportation to the FHWA. Since these regulations, which currently apply to highway routing issues, are being replicated without substantive change under the FHWA chapter of the CFR, there is no need for notice and comment.

EFFECTIVE DATE: September 24, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Eric A. Kuwana or Mr. Raymond W. Cuprill, Office of Chief Counsel (HCC-20), (202) 368-0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are 8:30 a.m. to 5:30 p.m., Monday through Friday, except for legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Standards for the Highway Routing of Hazardous Materials

The Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) (Pub. L. 101-615, 104 Stat. 3244) amended the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. app. 1801 *et seq.*), *inter alia*, to require the Secretary of Transportation to "establish by regulation standards for State and Indian tribes to use in establishing, maintaining, and enforcing: (A) Specific highway routes over which hazardous materials may and may not be transported by motor vehicles, and (B) limitations and requirements with respect to highway routing."

The FHWA was delegated the authority and responsibility for highway routing of hazardous materials at 49 CFR 1.48 on July 10, 1991 (56 FR 31343). In accordance with the HMTUSA, the FHWA is directed to promulgate Federal standards which States or Indian tribes must follow if they establish, maintain, or enforce any highway routing designations, limitations, or requirements. The FHWA will accomplish the requirement in two stages: (1) This interim final rule will replicate and reorganize (a) the current RSPA standards for the routing of radioactive hazardous materials (RAM), now designated as Class 7 (radioactive) materials, contained in 49 CFR 177.825 (originally published on January 19, 1981, at 46 FR 5316) and (b) the RSPA preemption procedures contained in 49 CFR 107.201 to 107.227; and (2) a notice of proposed rulemaking (NPRM) sets forth new standards applicable to the routing of nonradioactive hazardous materials (NRHM) to be incorporated in subpart C of this section. The FHWA is using this two-step method because section 105(b)(8) of the HMTA, as amended by the HMTUSA, does not require the Secretary to "amend, modify, or reissue" the current standards for the highway routing of radioactive hazardous materials. The NPRM referenced in (2) was published in the Federal Register on August 31, 1992 (57 FR 39522).

Preemption Determinations and Waivers of Preemption

Section 13 of the HMTUSA, amending section 112 of the HMTA, established preemption determinations and waivers of preemption because Congress recognized the need for a strong mechanism to deal with the many preemption issues which would arise from the HMTUSA framework. The new preemption determinations were a much needed substitute for the old inconsistency rulings, which did not provide an adequate mechanism to resolve preemption issues.

The standards for preemption are now found in section 112(a) of the HMTA, 49 App. U.S.C. 1811(a). Generally, any requirement of a State, political subdivision thereof, or Indian tribe is preempted if: (1) Compliance with it and the HMTA or any regulation issued under the HMTA is not possible; (2) as applied or enforced, it creates an obstacle to the accomplishment and execution of the HMTA or the regulations issued under the HMTA; or (3) it is preempted under section 105(a)(4) or section 105(b). Section 112 of the HMTA requires the Secretary of Transportation to issue regulations which set forth procedures for carrying out preemption determinations and waivers of preemption. This statutory requirement was met by RSPA when it replaced its former inconsistency rulings with preemption determination and waiver of preemption procedures in the Federal Register on February 28, 1991 (56 FR 8616), with correction on April 17, 1991 (56 FR 15510). However, subsequent to those regulatory changes by RSPA, the FHWA was delegated the authority and responsibility to administer preemption determinations and waivers of preemption for all highway routing of hazardous materials, including Class 7 (radioactive) materials. Although some changes may be necessary after comments are received on the NPRM for the routing of nonradioactive hazardous materials, the preemption determination and waiver of preemption procedures in this interim final rule is intended to be applied to the routing of both Class 7 (radioactive) and nonradioactive hazardous materials.

Rulemaking Analyses and Notices

Administrative Procedure Act

Since this interim final rule merely replicates current hazardous material regulations contained in RSPA's chapter of the CFR, notice and comment procedures are "impracticable, unnecessary, or contrary to the public interest" within the meaning of section 4(b)(3)(B) of the Administrative

Procedure Act, 5 U.S.C. 553(b)(3)(B). Public comment is unnecessary because in replicating these sections to meet a statutory mandate, the FHWA is not exercising discretion in a way that could be affected by public comment. As a consequence, the FHWA is proceeding directly to an interim final rule. The FHWA is acting through an interim final rule because the preemption determination and waiver of preemption procedures might be changed slightly in the future as a result of the NPRM on nonradioactive hazardous materials. For the reasons listed above, and to immediately implement congressional mandates, there is good cause for publishing this rule less than 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d).

Executive Order 12291 and DOT Regulatory Policies and Procedures

The FHWA has determined that this interim final rule is not major under Executive Order 12291 and is not significant under DOT's regulatory policies and procedures. (44 FR 11034; Feb. 26, 1979.) This rule will have little, if any, direct or indirect economic impact because it does not alter any existing substantive regulations in such a way as to impose additional burdens. The minimal cost of complying with existing substantive regulations is not being increased. Therefore, preparation of a regulatory evaluation is not warranted. Under DOT's regulatory policies and procedures, notice is not necessary because the FHWA does not believe it would receive any meaningful comment.

Executive Order 12612

This interim final rule implements specific statutory mandates that affect the relationship between the Federal government and the States, and the FHWA has no discretion in implementing these changes. Therefore, preparation of a Federalism assessment pursuant to Executive Order 12612 is not warranted.

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.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 605(b)), the FHWA has evaluated the

effects of this rule on Small entities. Based upon this evaluation, the FHWA certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

There are no new information collection requirements contained in this interim final rule.

National Environmental Policy Act

The FHWA has concluded that this final rule will not have any significant impact on the quality of the environment, and therefore, an environmental impact statement under the National Environmental Policy Act is not required.

Regulatory Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR part 397

Hazardous materials transportation, Highways and roads.

In consideration of the foregoing, the Federal Highway Administration amends part 397 of title 49, Code of Federal Regulations, as set forth below.

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS [AMENDED]

1. The authority citation for part 397 is revised to read as follows:

Authority: 49 App. U.S.C. 1801 *et seq.*; 49 CFR 1.48.

2. Part 397 is amended by adding new subparts D and E to read as follows:

Subpart D—Routing of Class 7 (Radioactive) Materials

Sec.

- 397.101 Requirements for motor carriers and drivers.
- 397.103 Requirements for State routing designations.

Subpart E—Preemption Procedures

Sec.

- 397.201 Purpose and scope of the procedures.
- 397.203 Standards for determining preemption.
- 397.205 Preemption application.
- 397.207 Preemption notice.
- 397.209 Preemption processing.
- 397.211 Preemption determination.
- 397.213 Waiver of preemption application.

Sec.

- 397.215 Waiver notice.
- 397.217 Waiver processing.
- 397.219 Waiver determination and order.
- 397.221 Timeliness.
- 397.223 Petition for reconsideration.
- 397.225 Judicial review.

Subpart D—Routing of Class 7 (Radioactive) Materials

§ 397.101 Requirements for motor carriers and drivers.

(a) Except as provided in paragraph (b) of this section or in circumstances when there is only one practicable highway route available, considering operating necessity and safety, a carrier or any person operating a motor vehicle that contains a Class 7 (radioactive) material, as defined in 49 CFR 172.403, for which placarding is required under 49 CFR part 172 shall:

- (1) Ensure that the motor vehicle is operated on routes that minimize radiological risk;
- (2) Consider available information on accident rates, transit time, population density and activities, and the time of day and the day of week during which transportation will occur to determine the level of radiological risk; and
- (3) Tell the driver which route to take and that the motor vehicle contains Class 7 (radioactive) materials.

(b) Except as otherwise permitted in this paragraph and in paragraph (f) of this section, a carrier or any person operating a motor vehicle containing a highway route controlled quantity of Class 7 (radioactive) materials, as defined in 49 CFR 173.403(l), shall operate the motor vehicle only over preferred routes.

(1) For purposes of this subpart, a preferred route is an Interstate System highway for which an alternative route is not designated by a State routing agency; a State-designated route selected by a State routing agency pursuant to § 397.103; or both of the above.

(2) The motor carrier or the person operating a motor vehicle containing a highway route controlled quantity of Class 7 (radioactive) materials, as defined in 49 CFR 173.403(l) and (y), shall select routes to reduce time in transit over the preferred route segment of the trip. An Interstate System bypass or Interstate System beltway around a city, when available, shall be used in place of a preferred route through a city, unless a State routing agency has designated an alternative route.

(c) A motor vehicle may be operated over a route, other than a preferred route, only under the following conditions:

(1) The deviation from the preferred route is necessary to pick up or deliver a highway route controlled quantity of Class 7 (radioactive) materials, to make necessary rest, fuel or motor vehicle repair stops, or because emergency conditions make continued use of the preferred route unsafe or impossible;

(2) For pickup and delivery not over preferred routes, the route selected must be the shortest-distance route from the pickup location to the nearest preferred route entry location, and the shortest-distance route to the delivery location from the nearest preferred route exit location. Deviation from the shortest-distance pickup or delivery route is authorized if such deviation:

(i) Is based upon the criteria in paragraph (a) of this section to minimize the radiological risk; and

(ii) Does not exceed the shortest-distance pickup or delivery route by more than 25 miles and does not exceed 5 times the length of the shortest-distance pickup or delivery route.

(iii) Deviations from preferred routes, or pickup or delivery routes other than preferred routes, which are necessary for rest, fuel, or motor vehicle repair stops or because of emergency conditions, shall be made in accordance with the criteria in paragraph (a) of this section to minimize radiological risk, unless due to emergency conditions, time does not permit use of those criteria.

(d) A carrier (or a designated agent) who operates a motor vehicle which contains a package of highway route controlled quantity of Class 7 (radioactive) materials, as defined in 49 CFR 173.403(l), shall prepare a written route plan and supply a copy before departure to the motor vehicle driver and a copy to the shipper (before departure for exclusive use shipments, as defined in 49 CFR 173.403(i), or within fifteen working days following departure for all other shipments). Any variation between the route plan and routes actually used, and the reason for it, shall be reported in an amendment to the route plan delivered to the shipper as soon as practicable but within 30 days following the deviation. The route plan shall contain:

(1) A statement of the origin and destination points, a route selected in compliance with this section, all planned stops, and estimated departure and arrival times; and

(2) Telephone numbers which will access emergency assistance in each State to be entered.

(e) No person may transport a package of highway route controlled

quantity of Class 7 (radioactive) materials on a public highway unless:

(1) The driver has received within the two preceding years, written training on:

(i) Requirements in 49 CFR parts 172, 173, and 177 pertaining to the Class 7 (radioactive) materials transported;

(ii) The properties and hazards of the Class 7 (radioactive) materials being transported; and

(iii) Procedures to be followed in case of an accident or other emergency.

(2) The driver has in his or her immediate possession a certificate of training as evidence of training required by this section, and a copy is placed in his or her qualification file (see § 391.51 of this subchapter), showing:

(i) The driver's name and operator's license number;

(ii) The dates training was provided;

(iii) The name and address of the person providing the training;

(iv) That the driver has been trained in the hazards and characteristics of highway route controlled quantity of Class 7 (radioactive) materials; and

(v) A statement by the person providing the training that information on the certificate is accurate.

(3) The driver has in his or her immediate possession the route plan required by paragraph (d) of this section and operates the motor vehicle in accordance with the route plan.

(f) A person may transport irradiated reactor fuel only in compliance with a plan if required under 49 CFR 173.22(c) that will ensure the physical security of the material. Variation for security purposes from the requirements of this section is permitted so far as necessary to meet the requirements imposed under such a plan, or otherwise imposed by the U.S. Nuclear Regulatory Commission in 10 CFR part 73.

(g) Except for packages shipped in compliance with the physical security requirements of the U.S. Nuclear Regulatory Commission in 10 CFR part 73, each carrier who accepts for transportation a highway route controlled quantity of Class 7 (radioactive) material [see 49 CFR 173.401(l)], shall, within 90 days following the acceptance of the package, file the following information concerning the transportation of each such package with the Associate Administrator for Safety and System Applications, Federal Highway Administration, Attn: Traffic Control Division, HHS-32, room 3419, 400 Seventh Street, SW., Washington, DC 20590-0001:

(1) The route plan required under paragraph (d) of this section, including all required amendments reflecting the routes actually used;

(2) A statement identifying the names and addresses of the shipper, carrier and consignee; and

(3) A copy of the shipping paper or the description of the Class 7 (radioactive) material in the shipment required by 49 CFR 172.202 and 172.203.

§ 397.103 Requirements for State routing designations.

(a) The State routing agency, as defined in § 397.201(c), shall select routes to minimize radiological risk using "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials," or an equivalent routing analysis which adequately considers overall risk to the public. Designations must be preceded by substantive consultation with affected local jurisdictions and with any other affected States to ensure consideration of all impacts and continuity of designated routes.

(b) State routing agencies may designate preferred routes as an alternative to, or in addition to, one or more Interstate System highways, including interstate system bypasses, or Interstate System beltways.

(c) A State-designated route is effective when—

(1) The State gives written notice by certified mail, return receipt requested, to the Associate Administrator for Safety and System Applications, Federal Highway Administration, Attn: Traffic Control Division, HHS-32, Room 3419, Registry of State-designated routes, at the address above; and

(2) Receipt thereof is acknowledged in writing by the Associate Administrator.

(d) Upon request, the Office of Highway Safety, Traffic Control Division, HHS-32, room 3419, at the address above, will provide a list of State-designated preferred routes and a copy of the "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials."

Subpart E—Preemption Procedures

§ 397.201 Purpose and scope of the procedures.

(a) This subpart prescribes procedures by which:

(1) Any person, including a State, political subdivision thereof, or Indian Tribe, directly affected by any highway routing designation for hazardous materials may apply to the Federal Highway Administration (FHWA) for a determination as to whether that highway routing designation is preempted under section 105(b) or section 112(a)(1) or (a)(2) of the Act (49

App. U.S.C. 1804 and 1811) or regulations issued thereunder; and

(2) A State, political subdivision thereof, or Indian tribe may apply for a waiver of preemption with respect to any highway routing designation that the State, political subdivision thereof, or Indian Tribe acknowledges to be preempted by section 105(b) or section 112(a)(1) or (a)(2) of the Act or regulations issued thereunder, or that has been determined by a court of competent jurisdiction to be so preempted.

(b) Unless otherwise ordered by the Administrator, an application for a preemption determination which includes an application for a waiver of preemption will be treated and processed solely as an application for a preemption determination.

(c) For purposes of this part:

Act means the Hazardous Materials Transportation Act, 49 U.S.C. App. 1801 *et seq.*, as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990, Pub. L. 101-615.

Administrator means the Administrator of the Federal Highway Administration, a modal agency of the United States Department of Transportation.

Person means an individual, firm, copartnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, or government, Indian tribe, or agency or instrumentality of any government or Indian tribe when it offers hazardous materials for transportation in commerce or transports hazardous materials in furtherance of a commercial enterprise, but such term does not include the United States Postal Service.

Political subdivision includes a municipality; a public agency or other instrumentality of one or more States, or a public corporation, board, or commission established under the laws of one or more States.

Routing agency means the State highway agency or other State agency designated by an Indian tribe, to supervise, coordinate, and approve the highway routing designations for that State or Indian tribe. Any highway routing designation made by a political subdivision of a State shall be considered a designation made by that State.

Routing designation includes any regulation, limitation, or restriction which would have the effect of restricting or prohibiting the transportation of hazardous materials over a highway route, a specific portion

of a route, or during a specific time period.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, or any other territory or possession of the United States designated by the Secretary.

§ 397.203 Standards for determining preemption.

(a) Any highway routing designation established, maintained, or enforced by a State, political subdivision thereof, or Indian tribe is preempted if—

(1) Compliance with both the highway routing designation and any requirement under the Act or of a regulation issued under the Act is not possible;

(2) The highway routing designation as applied or enforced creates an obstacle to the accomplishment and execution of the Act or the regulations issued under the Act; or

(3) It is preempted under the Act.

(b) [Reserved]

§ 397.205 Preemption application.

(a) Any person, including a State, political subdivision thereof, or Indian tribe directly affected by any highway routing designation of another State, political subdivision, or Indian tribe, may apply to the Administrator for a determination of whether that highway routing designation is preempted by the Act or § 397.203 of this subpart. The Administrator shall publish notice of the application in the *Federal Register*.

(b) Each application filed under this section for a determination must:

(1) Be submitted to the Administrator, Federal Highway Administration, U.S. Department of Transportation, Washington, DC 20590-0001. Attention: HCC-10 Docket Room, Hazardous Materials Preemption;

(2) Set forth a detailed description of the highway routing designation of the State, political subdivision thereof, or Indian tribe for which the determination is sought;

(3) If applicable, specify the provisions of the Act or the regulations issued under the Act under which the applicant seeks preemption of the highway routing designation of the State, political subdivision thereof, or Indian tribe;

(4) Explain why the applicant believes the highway routing designation of the State, political subdivision thereof, or Indian tribe should or should not be preempted under the standards of § 397.203; and

(5) State how the applicant is affected by the highway routing designation of

the State, political subdivision thereof, or Indian tribe.

(c) The filing of an application for a determination under this section does not constitute grounds for noncompliance with any requirement of the Act or any regulation issued under the Act.

(d) Once the Administrator has published notice in the *Federal Register* of an application received under paragraph (a) of this section, no applicant for such determination may seek relief with respect to the same or substantially the same issue in any court until final action has been taken on the application or until 180 days after filing of the application, whichever occurs first. Nothing in this section shall be construed as prohibiting any person, including a State, political subdivision thereof, or Indian tribe, directly affected by any highway routing designation from seeking a determination of preemption in any court of competent jurisdiction in lieu of applying to the Administrator under paragraph (a) of this section.

§ 397.207 Preemption notice.

(a) If the applicant is other than a State, political subdivision thereof, or Indian tribe, the applicant shall mail a copy of the application to the State, political subdivision thereof, or Indian tribe concerned, accompanied by a statement that comments may be submitted regarding the application to the Administrator within 45 days. The application filed with the Administrator must include a certification that the applicant has complied with this paragraph and must include the names and addresses of each official to whom a copy of the application was sent.

(b) The Administrator may afford interested persons an opportunity to file written comments on the application by serving notice on any persons readily identifiable by the Administrator as persons who will be affected by the ruling sought or by publication in the *Federal Register*.

(c) Each person submitting written comments to the Administrator with respect to an application filed under this section shall send a copy of the comments to the applicant and certify to the Administrator that he or she has complied with this requirement. The Administrator may notify other persons participating in the proceeding of the comments and provide an opportunity for those other persons to respond.

§ 397.209 Preemption processing.

(a) The Administrator may initiate an investigation of any statement in an application and utilize in his or her

evaluation any relevant facts obtained by that investigation. The Administrator may solicit and accept submissions from third persons relevant to an application and will provide the applicant an opportunity to respond to all third person submissions. In evaluating an application, the Administrator may consider any other source of information. The Administrator may convene a hearing or conference, if a hearing or conference will advance the evaluation of the application.

(b) The Administrator may dismiss the application without prejudice if:

(1) He or she determines that there is insufficient information upon which to base a determination; or

(2) He or she requests additional information from the applicant and it is not submitted.

§ 397.211 Preemption determination.

(a) Upon consideration of the application and other relevant information received, the Administrator issues a determination.

(b) Notwithstanding that an application for a determination has not been filed under § 397.205, the Administrator, on his or her own initiative, may issue a determination as to whether a particular highway routing designation of a State, political subdivision thereof, or Indian tribe is preempted under the Act or the regulations issued under the Act.

(c) The determination includes a written statement setting forth the relevant facts and the legal basis for the determination, and provides that any person aggrieved thereby may file a petition for reconsideration within 20 days in accordance with § 397.223.

(d) Unless the determination is issued pursuant to paragraph (b) of this section, the Administrator serves a copy of the determination upon the applicant. In all preemption determinations, the Administrator serves a copy of the determination upon any other person who participated in the proceeding or who is readily identifiable by the Administrator as affected by the determination. A copy of each determination is placed on file in the public docket. The Administrator may publish the determination or notice of the determination in the *Federal Register*.

(e) If no petition for reconsideration is filed within 20 days in accordance with § 397.223, a determination issued under this section constitutes the final agency decision as to whether a particular highway routing designation of a State, political subdivision thereof, or Indian tribe is preempted under the Act or

regulations issued thereunder. The fact that a determination has not been issued under this section with respect to a particular highway routing designation of a State, political subdivision thereof, or Indian tribe carries no implication as to whether the requirement is preempted under the Act or regulations issued thereunder.

§ 397.213 Waiver of preemption application.

(a) Any State, political subdivision thereof, or Indian tribe may apply to the Administrator for a waiver of preemption with respect to any highway routing designation that the State, political subdivision thereof, or Indian tribe acknowledges to be preempted by the Act, § 397.203 of this subpart, or a court of competent jurisdiction. The Administrator may waive preemption with respect to such requirement upon a determination that such requirement—

- (1) Affords an equal or greater level of protection to the public than is afforded by the requirements of the Act or regulations issued under the Act, and
- (2) Does not unreasonably burden commerce.

(b) Each application filed under this section for a waiver of preemption determination must:

(1) Be submitted to the Administrator, Federal Highway Administration, U.S. Department of Transportation, Washington, DC 20590-0001. Attention: HCC-10 Docket Room, Hazardous Materials Preemption Docket;

(2) Set forth a detailed description of the highway routing designation of the State, political subdivision thereof, or Indian tribe for which the determination is being sought;

(3) Include a copy of any relevant court order or determination issued pursuant to § 397.211;

(4) Contain an express acknowledgment by the applicant that the highway routing designation of the State, political subdivision thereof, or Indian tribe is preempted under the Act or the regulations issued under the Act, unless it has been so determined by a court of competent jurisdiction or in a determination issued under this subpart;

(5) Specify each provision of the Act or the regulations issued under the Act that preempts the highway routing designation of the State, political subdivision thereof, or Indian tribe;

(6) State why the applicant believes that the highway routing designation of the State, political subdivision thereof, or Indian tribe affords an equal or greater level of protection to the public than is afforded by the requirements of the Act or the regulations issued under the Act;

(7) State why the applicant believes that the highway routing designation of the State, political subdivision thereof, or Indian tribe does not unreasonably burden commerce; and

(8) Specify what steps the State, political subdivision thereof, or Indian tribe is taking to administer and enforce effectively the preempted requirement.

§ 397.215 Waiver notice.

(a) The applicant State, political subdivision thereof, or Indian tribe shall mail a copy of the application and any subsequent amendments or other documents relating to the application to each person whom the applicant reasonably ascertains will be affected by the determination sought. The copy of the application must be accompanied by a statement that the person may submit comments regarding the application to the Administrator within 45 days. The application filed with the Administrator must include a certification with the application has complied with this paragraph and must include the names and addresses of each person to whom the application was sent.

(b) Notwithstanding the provisions of paragraph (a) of this section, if the State, political subdivision thereof, or Indian tribe determines that compliance with paragraph (a) of this section would be impracticable, the applicant shall:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and practicable to notify; and

(2) Include with the application filed with the Administrator a description of the persons or class or classes of persons to whom notice was not sent.

(c) The Administrator may require the applicant to provide notice in addition to that required by paragraphs (a) and (b) of this section, or may determine that the notice required by paragraph (a) of this section is not impracticable, or that notice should be published in the **Federal Register**.

(d) The Administrator may serve notice on any other persons readily identifiable by the Administrator as persons who will be affected by the determination sought and may afford those persons an opportunity to file written comments on the application.

(e) Any person submitting written comments to the Administrator with respect to an application filed under this section shall send a copy of the comments to the applicant. The person shall certify to the Administrator that he or she has complied with the requirements of this paragraph. The Administrator may notify other persons participating in the proceeding of the

comments and provide an opportunity for those other persons to respond.

§ 397.217 Waiver processing.

(a) The Administrator may initiate an investigation of any statement in an application and utilize any relevant facts obtained by that investigation. The Administrator may solicit and accept submissions from third persons relevant to an application and will provide the applicant an opportunity to respond to all third person submissions. In evaluating an application, the Administrator may convene a hearing or conference, if a hearing or conference will advance the evaluation of the application.

(b) The Administrator may dismiss the application without prejudice if:

(1) he or she determines that there is insufficient information upon which to base a determination;

(2) upon his or her request, additional information is not submitted by the applicant; or

(3) the applicant fails to provide the notice required by this subpart.

(c) Except as provided in this subpart, the Administrator will only consider an application for a waiver of preemption determination if:

(1) the applicant expressly acknowledges in its application that the highway routing designation of the State, political subdivision thereof, or Indian tribe for which the determination is sought is preempted by the Act or the regulations thereunder; or

(2) the highway routing designation of the State, political subdivision thereof, or Indian tribe has been determined by a court of competent jurisdiction or in a determination issued pursuant to § 397.211 to be preempted by the Act or the regulations issued thereunder.

(d) When the Administrator has received all substantive information necessary to process an application for a waiver of preemption determination, notice of that fact will be served upon the applicant. Additional notice to all other persons who received notice of the proceeding may be served by publishing a notice in the **Federal Register**.

§ 397.219 Waiver determination and order.

(a) Upon consideration of the application and other relevant information received or obtained during the proceeding, the Administrator issues an order setting forth his or her determination.

(b) The Administrator may issue a waiver of preemption order only if he or she finds that the requirement of the State, political subdivision thereof, or Indian tribe affords the public a level of

safety at least equal to that afforded by the requirements of the Act and the regulations issued under the Act and does not unreasonably burden commerce. In determining whether the requirement of the State, political subdivision thereof, or Indian tribe unreasonably burdens commerce, the Administrator may consider the following factors:

(1) The extent to which increased costs and impairment of efficiency result from the highway routing designation of the State, political subdivision thereof, or Indian tribe;

(2) Whether the highway routing designation of the State, political subdivision thereof, or Indian tribe has a rational basis;

(3) Whether the highway routing designation of the State, political subdivision thereof, or Indian tribe achieves its stated purpose; and

(4) Whether there is need for uniformity with regard to the subject concerned and if so, whether the highway routing designation of the State, political subdivision thereof, or Indian tribe competes or conflicts with those of other States, political subdivisions thereof, or Indian tribes.

(c) The order includes a written statement setting forth the relevant facts and the legal basis for the determination, and provides that any person aggrieved by the order may file a petition for reconsideration in accordance with § 397.223.

(d) The Administrator serves a copy of the order upon the applicant, any other person who participated in the proceeding and upon any other person readily identifiable by the Administrator as one who may be affected by the order. A copy of each order is placed on file in the public docket. The Administrator may publish the order or notice of the order in the Federal Register.

(e) If no petition for reconsideration is filed within 20 days in accordance with § 397.223, an order issued under this section constitutes the final agency decision regarding whether a particular requirement of a State, political subdivision thereof, or Indian tribe is preempted under the Act or any regulations issued thereunder, or whether preemption is waived.

§ 397.221 Timeliness.

If the Administrator fails to take action on the application within 90 days of serving the notice required by § 397.217(d), the applicant may treat the application as having been denied in all respects.

§ 397.223 Petition for reconsideration.

(a) Any person aggrieved by an order issued under § 397.211 or § 397.219 may file a petition for reconsideration with the Administrator. The petition must be filed within 20 days of service of the determination or order issued under the above sections.

(b) The petition must contain a concise statement of the basis for seeking reconsideration, including any specific factual or legal errors, or material information not previously available.

(c) The petitioner shall mail a copy of the petition to each person who participated, either as an applicant or routing, in the waiver of preemption proceeding, accompanied by a statement that the person may submit comments concerning the petition to the Administrator within 20 days. The petition filed with the Administrator must contain a certification that the petitioner has complied with this paragraph and include the names and addresses of all persons to whom a copy of the petition was sent.

(d) The Administrator's decision under this section constitutes the final agency decision. If no petition for reconsideration is filed under this section, then the determination issued under § 397.211 or § 397.219 becomes the final agency decision at the end of the 20 day period.

§ 397.225 Judicial review.

A party to a proceeding under § 397.205(a), § 397.213(a), or § 397.223(a) may seek review by the appropriate district court of the United States of the decision of the Administrator under such proceeding only by filing a petition with such court within 60 days after the final agency decision.

Issued on: September 11, 1992.

T.D. Larson,
Administrator.

[FR Doc. 92-22868 Filed 9-23-92; 8:45am]

BILLING CODE 4910-22-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1012

Meetings of the Commission; Technical Amendment

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; technical amendment.

SUMMARY: In order to correctly state the Interstate Commerce Commission's regulations, as set forth in title 49,

chapter X, of the Code of Federal Regulations, a technical amendment is necessary to correct an error in a citation in the Commission's regulations on public participation in oral arguments. This technical amendment is set forth below.

EFFECTIVE DATE: September 24, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Gass (202) 927-5654.

List of Subjects in 49 CFR Part 1012

Sunshine Act.

For the reasons set forth in the preamble, title 49, chapter X, part 1012 is amended as set forth below.

PART 1012—MEETINGS OF THE COMMISSION

1. The authority citation for part 1012 continues to read as follows:

Authority: 5 U.S.C. 552b(g), as amended by Pub. L. 94-409, 90 Stat. 1241; 49 U.S.C. 17(3), 24 Stat. 385, as amended.

§ 1012.4 [Amended]

2. In § 1012.4, paragraph (b) is amended by removing the words "the 49 CFR part 1115" and adding in their place the words "49 CFR part 1116".

By the Commission.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-23245 Filed 9-23-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 920412-2112]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Inseason adjustment and closure.

SUMMARY: NMFS announces the closure of the recreational salmon fishery in the exclusive economic zone (EEZ) from Leadbetter Point, Washington, to Cape Falcon, Oregon, at midnight, September 17, 1992, under a modified subarea quota of 5,700 coho salmon. The Director, Northwest Region, NMFS (Regional Director), determined that the subarea coho salmon quota for this fishery, as adjusted to account for the 2,700 fish not harvested by the earlier recreational fishery in this subarea, has been