

**MOTOR VEHICLE DRIVER AND  
SHIPPING INSPECTOR'S HANDBOOK  
FOR  
AMMUNITION, EXPLOSIVES AND  
RELATED HAZARDOUS MATERIALS**



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<b>MOTOR VEHICLE ACCIDENT REPORT</b>	Please read the Privacy Act Statement on Page 3	INSTRUCTIONS: Sections I thru IX are filled out by the vehicle operator. Section X, items 72 thru 82c are filled on by the operator's supervisor. Section XI thru XIII are filled out by an accident investigator for bodily injury, fatality, and/or damage exceeding \$500.			
<b>SECTION I - FEDERAL VEHICLE DATA</b>					
1. DRIVER'S NAME (Last, first, middle) Doe John H.		2. DRIVER'S LICENSE NO./STATE/LIMITATIONS AA0I812/Va.		DATE OF ACCIDENT	
4a. DEPARTMENT/FEDERAL AGENCY PERMANENT OFFICE ADDRESS Department of the Navy, Naval Weapons Station site - Yorktown			4b. WORK TELEPHONE NUMBER ( 804 ) 887-0000		
5. TAG OR IDENTIFICATION NUMBER N9645793	6. EST. REPAIR COST \$ 3,500.00	7. YEAR OF VEHICLE 1995	8. MAKE Ford	9. MODEL Truck 15T	
10. SEAT BELTS USED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO					
11. DESCRIBE VEHICLE DAMAGE Right front fender, front fender, front end					
<b>SECTION II - OTHER VEHICLE DATA (Use Section VIII if additional space is needed)</b>					
12. DRIVER'S NAME (Last, first, middle) Chambers Tom		13. SOCIAL SECURITY NO./ TAX IDENTIFICATION NO. 000-00-0000	14. DRIVER'S LICENSE NO./STATE/LIMITATIONS TC00000/Va.		
15a. DRIVER'S WORK ADDRESS Naval Weapons Station Yorktown, Va.			15b. WORK TELEPHONE NUMBER ( 804 ) 887-0000		
16a. DRIVER'S HOME ADDRESS 700 Latham Drive Newport News, Va.			16b. HOME TELEPHONE NUMBER ( 804 ) 887-0000		
17. DESCRIPTION OF VEHICLE DAMAGE Left front fender, driver door, gas tank, hood, roof, windows			18. ESTIMATED REPAIR COST \$ 2,500.00		
19. YEAR OF VEHICLE 1984	20. MAKE OF VEHICLE Buick	21. MODEL OF VEHICLE Station Wagon		22. TAG NUMBER AND STATE XXXXXX/Va	
23a. DRIVER'S INSURANCE COMPANY NAME AND ADDRESS Last Chance Insurance Company Newport News, Va.			23b. POLICY NUMBER 1234567890123		
24. VEHICLE IS <input type="checkbox"/> CO-OWNED <input type="checkbox"/> RENTAL <input type="checkbox"/> LEASED <input checked="" type="checkbox"/> PRIVATELY OWNED			25a. OWNER'S NAME(S) (Last, first, middle) Chambers Tom		
26. OWNER'S ADDRESS(ES) 700 Latham Drive Newport News, Va.			25b. TELEPHONE NUMBER ( 804 ) 887-0000		
<b>SECTION III - KILLED OR INJURED (Use Section VIII if additional space is needed)</b>					
27. NAME (Last, first, middle) Chambers Tom		28. SEX M	29. DATE OF BIRTH		
30. ADDRESS 700 Latham Drive Newport News, Va.					
A	31. MARK "X" IN TWO APPROPRIATE BOXES <input type="checkbox"/> KILLED <input checked="" type="checkbox"/> DRIVER <input type="checkbox"/> PASSENGER <input checked="" type="checkbox"/> INJURED <input type="checkbox"/> HELPER <input type="checkbox"/> PEDESTRIAN		32. IN WHICH VEHICLE <input type="checkbox"/> FED <input checked="" type="checkbox"/> OTHER (2)	33. LOCATION IN VEHICLE Driver seat	34. FIRST AID GIVEN BY EMS York County
35. TRANSPORTED BY EMS York County		36. TRANSPORTED TO Riverside Hospital			
37. NAME (Last, first, middle)		38. SEX	39. DATE OF BIRTH		
40. ADDRESS					
B	41. MARK "X" IN TWO APPROPRIATE BOXES <input type="checkbox"/> KILLED <input type="checkbox"/> DRIVER <input type="checkbox"/> PASSENGER <input type="checkbox"/> INJURED <input type="checkbox"/> HELPER <input type="checkbox"/> PEDESTRIAN		42. IN WHICH VEHICLE <input type="checkbox"/> FED <input type="checkbox"/> OTHER (2)	43. LOCATION IN VEHICLE	44. FIRST AID GIVEN BY
45. TRANSPORTED BY		46. TRANSPORTED TO			
47. Pedestrian	a. NAME OF STREET OR HIGHWAY		b. DIRECTION OF PEDESTRIAN (SW corner to NE corner, etc.)		
			FROM	TO	
	c. DESCRIBE WHAT PEDESTRIAN WAS DOING AT TIME OF ACCIDENT (Crossing intersection with signal, against signal, diagonally; in roadway playing, walking, hitchhiking, etc.)				

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**FIGURE 3-17. Motor Vehicle Accident Report, SF 91 (Sheet 1 of 4)**

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SECTION IV - ACCIDENT TIME AND LOCATION (Use Section VIII if additional space is needed.)	
48. DATE OF ACCIDENT	49. PLACE OF ACCIDENT (Street address, city, state, ZIP Code; Nearest landmark; Distance nearest intersection; Kind of locality (industrial, business, residential, open country, etc.); Road description).
50. TIME OF ACCIDENT	Intersection of Rt. 238 and Rt. 17, just south of the Coleman Bridge.
09:15	
	AM
	PM

<p>51. INDICATE ON THIS DIAGRAM HOW THE ACCIDENT HAPPENED</p> <p><i>Use one of these outlines to sketch the scene. Write in street or highway names or numbers.</i></p> <p>a. Number Federal vehicle as 1, other vehicle as 2, additional vehicle as 3 and show direction of travel with arrow</p> <p>Example: → <span style="border: 1px solid black; padding: 2px;">1</span> ← <span style="border: 1px solid black; padding: 2px;">2</span> ←</p> <p>b. Use solid line to show path before accident and broken line after the accident</p> <p>c. Show pedestrian by → ○</p> <p>d. Show railroad by ++++++</p> <p>e. Place arrow in this circle to indicate NORTH</p>	52. POINT OF IMPACT (Check one for each vehicle)																										
	<table border="1"> <thead> <tr> <th>FED</th> <th>2</th> <th>AREA</th> </tr> </thead> <tbody> <tr> <td>X</td> <td></td> <td>a. Front</td> </tr> <tr> <td>X</td> <td></td> <td>b. R. Front</td> </tr> <tr> <td>X</td> <td>X</td> <td>c. L. Front</td> </tr> <tr> <td></td> <td></td> <td>d. Rear</td> </tr> <tr> <td></td> <td></td> <td>e. R. Rear</td> </tr> <tr> <td></td> <td></td> <td>f. L. Rear</td> </tr> <tr> <td></td> <td></td> <td>g. R. Side</td> </tr> <tr> <td></td> <td>X</td> <td>h. L. Side</td> </tr> </tbody> </table>	FED	2	AREA	X		a. Front	X		b. R. Front	X	X	c. L. Front			d. Rear			e. R. Rear			f. L. Rear			g. R. Side		X
FED	2	AREA																									
X		a. Front																									
X		b. R. Front																									
X	X	c. L. Front																									
		d. Rear																									
		e. R. Rear																									
		f. L. Rear																									
		g. R. Side																									
	X	h. L. Side																									

53. DESCRIBE WHAT HAPPENED (Refer to vehicles as "Fed", "2", "3", etc. Please include information on posted speed limit, approximate speed of the vehicles, road conditions, weather conditions, driver visibility, condition of accident vehicles, traffic controls (warning light, stop signal, etc.), condition of light (daylight, dusk, night, dawn, artificial light, etc.), and driver actions (making U-turn, passing, stopped in traffic, etc.)

I was proceeding south on Rt. 17 within the posted speed limit. I crossed the Coleman Bridge approaching the intersection of Rt. 238 when another vehicle suddenly appeared in my lane. It was raining and the roads were slippery. I applied the brakes, but due to the road conditions, was unable to stop in time. My truck struck the other vehicle in the left front fender and driver's side door, flipping the car over and my truck came to rest on top of the car, puncturing his gas tank.

SECTION V - WITNESS/PASSENGER (Witness must fill out SF 94, Statement of Witness) (Continue in Section VIII.)			
A	54. NAME (Last, first, middle) Drew David Ralph	55. WORK TELEPHONE NUMBER ( 804 ) 887-0000	56. HOME TELEPHONE NUMBER ( 804 ) 887-0000
	57. WORK ADDRESS 127 S. Jeff St. Portsmouth, Va.	58. HOME ADDRESS 6 North St. Portsmouth, Va.	
B	59. NAME (Last, first, middle)	60. WORK TELEPHONE NUMBER ( )	61. HOME TELEPHONE NUMBER ( )
	62. WORK ADDRESS	63. HOME ADDRESS	

SECTION VI - PROPERTY DAMAGE (Use Section VIII if additional space is needed.)		
64a. NAME OF OWNER (Last, first, middle)	64b. WORK TELEPHONE NUMBER ( )	64c. HOME TELEPHONE NUMBER ( )
64d. WORK ADDRESS	64e. HOME ADDRESS	
65a. NAME OF INSURANCE COMPANY	65b. TELEPHONE NUMBER ( )	65c. POLICY NUMBER
66. ITEM DAMAGED	67. LOCATION OF DAMAGED ITEM	68. ESTIMATED COST

SECTION VII - POLICE INFORMATION		
69a. NAME OF POLICE OFFICER Sgt. Frank William Pool	69b. BADGE NUMBER 1	69c. TELEPHONE NUMBER ( 804 ) 887-0000
70. PRECINCT OR HEADQUARTERS Va. State Police	71a. PERSON CHARGED WITH ACCIDENT Tom Chambers	71b. VIOLATION(S) Failure to yield

**FIGURE 3-17. Motor Vehicle Accident Report, SF 91 (Sheet 2 of 4)**

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**SECTION VII - EXTRA DETAILS**

SPACE FOR DETAILED ANSWERS. INDICATE SECTION AND ITEM NUMBER FOR EACH ANSWER. IF MORE SPACE IS NEEDED, CONTINUE ITEMS ON PLAIN BOND PAPER.

**PRIVACY ACT STATEMENT**

The information on this form is subject to the Privacy Act of 1974 (5 U.S.C. section 552a). Authority to collect the information is Title 40 U.S.C. Section 491 and the title 31 U.S.C. Section 7701. The formation is required by federal Government agencies to administer motor vehicle programs, including maintaining records on accidents involving privately owned and Federal fleet vehicles, and collecting accident claims resulting from accidents. Federal employees, and employees under contract, will use the information only in the performance of their official duties. Routine uses of the collected information may include disclosures to: appropriate Federal, State, or local agencies or contractors when relevant to civil, criminal, or regulatory investigations or prosecutions; the Office of personnel Management and the General Accounting Office for program evaluation purposes; a Member of Congress or staff in response to a request for assistance by the individual of record; another Federal agency, including the Department of Treasury and Justice, or a court under judicial proceedings; agency Inspectors General in conducting audits; private insurance and the collection agencies (including agencies under contract to Treasury to collect debt), and to other agency finance offices for federal management and debt collection. Furnishing the requested information is mandatory, including the Social security Number or Taxpayer's Identification Number(TIN) for use as a unique identifier to ensure accurate identification for individuals or firms in the system.

**SECTION IX - FEDERAL DRIVER CERTIFICATION**

I certify that the information on this form (Sections I thru VII) is correct to the best of my knowledge and belief.

72a. NAME AND TITLE OF DRIVER John H. Doe    Truck Driver    WG-8	72b. DRIVER'S SIGNATURE AND DATE <i>John H. Doe</i> 7/15/2012
--	--

**SECTION X - DETAILS OF TRIP DURING WHICH ACCIDENT OCCURRED**

73. ORIGIN	74. DESTINATION
------------	-----------------

75. EXACT PURPOSE OF TRIP

76. TRIP BEGAN	DATE	TIME (Include AM or PM)	77. ACCIDENT OCCURRED	DATE	TIME (Include AM or PM)
----------------	------	-------------------------	-----------------------	------	-------------------------

78. AUTHORITY FOR THE TRIP WAS GIVEN TO THE OPERATOR <input type="checkbox"/> ORALLY <input type="checkbox"/> IN WRITING (Explain)	79. WAS THERE ANY DEVIATION FROM DIRECT ROUTE? <input type="checkbox"/> NO <input type="checkbox"/> YES (Explain)
---	--

80. WAS THE TRIP MADE WITHIN ESTABLISHED WORKING HOURS? <input type="checkbox"/> YES <input type="checkbox"/> NO (Explain)	81. DID THE OPERATOR, WHILE ENROUTE, ENGAGE IN ANY ACTIVITY OTHER THAN THAT FOR WHICH THE TRIP WAS AUTHORIZED? <input type="checkbox"/> NO <input type="checkbox"/> YES (Explain)
---	--

82. COMPLETED BY DRIVER'S SUPERVISOR	a. DID THIS ACCIDENT OCCUR WITHIN THE EMPLOYEE'S SCOPE OF DUTY <input type="checkbox"/> YES <input type="checkbox"/> NO		b. COMMENTS
--------------------------------------	--	--	-------------

83a. NAME AND TITLE OF SUPERVISOR	83b. SUPERVISOR'S SIGNATURE AND DATE	83c. TELEPHONE NUMBER
-----------------------------------	--------------------------------------	-----------------------

**FIGURE 3-17. Motor Vehicle Accident Report, SF 91 (Sheet 3 of 4)**

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SECTION XI - ACCIDENT INVESTIGATION DATA

---

84. DID THE INVESTIGATION DISCLOSE CONFLICTING INFORMATION.     NO     YES (If checked, explain below.)

---

85. PERSONS INTERVIEWED

---

NAME	DATE	NAME	DATE
a.		c.	
b.		d.	

86. ADDITIONAL COMMENTS (Indicate section and item number of reach comment).

---

SECTION XII - ATTACHMENTS

---

87. LIST ALL ATTACHMENTS TO THIS REPORT

---

SECTION XIII - COMMENTS/APPROVALS

---

88. REVIEWING OFFICIAL'S COMMENTS

89. ACCIDENT INVESTIGATOR			90. ACCIDENT REVIEWING OFFICIAL		
a. SIGNATURE	b. DATE		a. SIGNATURE	b. DATE	
c. NAME (First, middle, last)			c. NAME (First, middle, last)		
d. TITLE			d. TITLE		
e. OFFICE			e. OFFICE		
f. OFFICE TELEPHONE NUMBER			OFFICE TELEPHONE NUMBER		
AREA CODE	NUMBER	EXTENSION	AREA CODE	NUMBER.	EXTENSION

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**FIGURE 3-17. Motor Vehicle Accident Report, SF 91 (Sheet 4 of 4)**

## CHAPTER 5

### IN-TRANSIT REGULATIONS FOR MILITARY MOTOR VEHICLES

#### 5-1. INTRODUCTION.

This chapter identifies the in-transit regulations applicable to Navy and Marine Corps explosives drivers transporting arms, ammunition, explosives and related hazardous materials (AA&E). The following information is included:

- a. Driving regulations, hazards and safety measures.
- b. Protecting the security of the load.
- c. Inspection in-transit.
- d. Procedures for accidents, breakdowns, burning-area operations, delays, repacking, refueling and parking.
- e. Procedures for water transportation.
- f. Heavily populated areas.
- g. Safe haven.

#### 5-2. DRIVING REGULATIONS.

Driving regulations and safe driving guidelines particularly applicable to the explosives driver are presented in the following paragraphs.

**5-2.1. SPEED REGULATIONS.** Drivers of motor vehicles transporting AA&E must adhere to the posted speed limits peculiar to each state, county, or municipal roadway system. The posted speed limit for a given roadway system within each state may vary with respect to cars and trucks. In addition, some states have established separate maximum speed limits for trucks transporting Hazard Class 1 ammunition, explosives and related hazardous materials (A&E). Drivers shall be attentive to applicable speed limit requirements within each state and locality when transporting A&E off-station.

**5-2.2. MINIMUM SPEEDS.** No motor vehicle shall be driven at a speed so slow that it will unnecessarily impede or block the normal and reasonable movement of traffic or violate minimum state or local speed requirements.

**5-2.3. DRIVING HOURS.** Explosives drivers shall not be required to drive for periods exceeding the customary eight-hour day, except in extreme emergency or when relief is not available. According to [49 CFR 395.3](#), no driver shall drive more than 11 hours following ten consecutive hours off duty; nor shall a

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driver drive for any period after having been on duty 14 hours following ten consecutive hours off duty. If approved by the originating activity, a driver may be given travel directions by another activity during the eight-hour period.

5-2.3.1. Driving Distances (Government Owned Vehicles). The Permissible Operating Distance (POD) established for government-owned vehicles within the continental United States (CONUS) is 100 miles or less one-way. Refer to [NAVSEA SW020-AG-SAF-010](#) for further detail on the regulations and limitations regarding the use of government-owned vehicles to transport DOD freight.

5-2.4. **DRUNKEN AND RECKLESS DRIVING.** Explosives drivers shall never operate any vehicle while under the influence of alcohol, illegal drugs or a derivative of a narcotic drug, or the misuse of a prescription drug. Motor vehicles shall not be driven recklessly or in such a manner as to endanger life, limb or property. No motor vehicle may be driven at a speed greater than is reasonable and prudent for the type of vehicle, visibility, traffic and road conditions. The following is quoted from the [Uniform Code of Military Justice \(UCMJ\)](#), Article 111, and is applicable to military personnel: “Any person subject to this code who operates any vehicle while drunk, or in a reckless or wanton manner, shall be punished as a court-martial may direct.” Civilian drivers are subject to all local laws when suspected of drunken or reckless driving. Drivers are subject to disciplinary actions and penalties as outlined in [paragraph 2-6](#).

5-2.5. **ARREST.** If arrested, the driver (military or civilian) shall notify his/her home station immediately. If possible, the driver's immediate supervisor shall be contacted as well.

5-2.6. **GENERAL RULES FOR SAFE DRIVING.** The following general rules shall be observed by the explosives driver:

- a. Observe and obey all road signs.
- b. Maintain safe clearance for bridges and tunnels as posted.
- c. Exercise caution when overtaking, meeting or being passed by other vehicles.
- d. Use hand signals or directional lights when passing or turning.
- e. Exercise caution when passing a stationary streetcar or bus, if local regulations permit such passing.
- f. Exercise caution when approaching emergency vehicles.
- g. Exercise caution when backing or maneuvering.
- h. Exercise caution when stopping or parking.
- i. Observe right-of-way regulations.
- j. Be certain vehicle and cargo are secure.

- k. Maintain a safe following distance for traffic and road conditions.
- l. Exercise caution when near or passing an open fire.
- m. Wearing portable headphones, earphones, or other listening devices while operating a motor vehicle is prohibited.
- n. Drivers shall understand and obey all local civil regulations, as well as any on-station regulations, concerning the use (or restricting the use) of cell phones in a moving vehicle. Drivers shall always exercise caution when operating cell phones, "hands free devices," or global positioning systems, and whenever possible, use these devices only when the vehicle is safely stopped.

5-2.7. **ROAD SIGNS.** Road signs used in the United States conform with international agreements.

5-2.8. **YIELDING RIGHT OF WAY.** Ambulances, firefighting equipment, police, and similar emergency vehicles using warning lights and/or sirens, shall have the right of way over all other traffic, including vehicles carrying AA&E. Military formations, whether at a halt or in motion, have the right of way at all times. Drivers shall exercise caution when passing or approaching such formations.

5-2.9. **INSTRUCTIONS FOR SPECIFIC SITUATIONS.** Procedures to be followed by the driver with respect to tunnels, railroad crossings, convoys, bridges, heavily populated areas and stops are presented in the following paragraphs:

5-2.9.1. **Tunnels.** Vehicles transporting A&E shall not be routed through tunnels if it can be avoided. If it becomes absolutely necessary to use tunnels, the driver shall:

- a. Contact the local police to obtain permission.
- b. Request advice from the local law enforcement authorities on existing laws.
- c. Comply with written instructions that shall include authorization to use the tunnel as arranged by the cognizant naval activity.
- d. Advise the proper local authorities and the originating activity if unable to meet the scheduled time for use of a tunnel.

5-2.9.2. **Railroad Crossings.** Drivers of vehicles carrying AA&E shall exercise extreme caution when approaching railroad crossings. All drivers shall, when approaching any railroad crossing, use the four-way flashers 300 feet from the tracks and slowly come to a full stop not more than 50 feet from, nor closer than 15 feet to, the nearest rail of the crossing. The driver will look in both directions and shall not proceed until he/she is certain that all tracks are clear. Full stops need not be made at:

- a. Street car crossings in a town's business or residential district.
- b. Railroad grade crossings where a police officer or a crossing watchperson directs the traffic to proceed.

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c. Abandoned or exempted grade crossings marked by, or with the consent of, the proper state authority. The marking shall be clearly visible from the driver's position in the cab of the vehicle.

5-2.9.3. **Convoys.** In motor vehicle convoys, drivers shall not become widely separated, but shall maintain a safe distance between vehicles. Generally, the safe distance shall not be greater than 300 feet; however, vehicles should not be less than 50 feet apart.

5-2.9.4. **Bridges.** A motor vehicle transporting AA&E shall approach a drawbridge slowly so that a stop may be made safely before the lip of the drawbridge is reached. The driver shall proceed only when the drawbridge is completely closed; and, if traffic signals are present, when the signal is green. When a prescribed route includes toll bridges, the driver shall be advised of this fact in advance of travel. The driver shall:

a. Contact local toll bridge authorities from the starting point; or, at the most convenient scheduled stopping point along the route; or, obtain permission to use the facilities and information regarding special regulations.

b. Cooperate with local authorities by providing them with any information required regarding the vehicle's load and schedule. Follow their instructions concerning the movement of the vehicle over the bridge.

c. Take note of any special directions contained in the written instructions that shall include authorization to use the bridge as arranged by the cognizant activity.

5-2.9.5. **Heavily Populated Areas.** According to [49 CFR 397.67\(a\) and \(b\)](#), a motor vehicle carrying placarded cargo shall be operated over routes that do not go through or near heavily populated areas, places where crowds are assembled, tunnels, narrow streets, or alleys. Drivers shall comply with all state and municipal laws and ordinances. Exceptions to this general rule are as follows:

a. There is no practicable alternative.

b. A reasonable deviation is necessary to reach terminals, points of loading or unloading, facilities for food, fuel, rest, or safe haven.

c. A reasonable deviation is required in response to emergencies as determined by local emergency response officials.

Operating convenience is not a basis for failing to avoid heavily populated areas.

In response to a confirmed case of military necessity or with respect to emergency operations conducted by Explosive Ordnance Disposal (EOD) personnel, Navy/Marine Corps owned motor vehicles carrying A&E may be required to travel through or near populated areas. In this case, the driver shall contact local law enforcement authorities to advise them of the proposed trip before approaching the perimeter of the municipality. The driver will follow the routing instructions provided by the law enforcement authorities, which may include police escort.

5-2.9.6. **Stops.** When transporting AA&E, drivers shall make no unscheduled stops except in an emergency. The vehicle shall not be left unattended at anytime.

### 5-3. DRIVING HAZARDS.

The transportation of A&E by any method is extremely dangerous. All rules for road safety shall be carefully studied and practiced by explosives drivers. Some of the more common hazards may be avoided or minimized by applying the information presented in [paragraphs 5-3.1 through 5-3.3](#).

5-3.1. **CARBON MONOXIDE.** Carbon monoxide is a deadly gas that kills quickly and without warning if inhaled in sufficient quantities. In small amounts it causes drowsiness that results in dangerous inattention by the driver on the highways. The following safety measures shall be taken to prevent carbon monoxide gas from escaping into the vehicle:

- a. The engine shall be kept in good condition. Engines and undercarriages shall be kept free of excessive oil and grease.
- b. The manifold shall be inspected for leaks in the parts, the exhaust pipe and muffler.
- c. The driver shall not leave the engine running while parked.

5-3.2. **DAMAGE TO CARGO.** One of the principal reasons for the careful inspection of containers loaded with A&E is to avoid the hazards of fire and explosion. A leaking or broken container of corrosives or acids can injure the driver by causing burns, fume poisoning or suffocation. Fires and explosions may also result from careless handling of the containers or from the shifting of an improperly dunnaged load.

#### **CAUTION**

Drivers shall avoid sharp braking during downhill travel. This operation is one of the principal causes of load shifting and usually results in damage to the cargo.

5-3.3. **WEATHER CONDITIONS.** Drivers shall be extremely cautious when weather such as snow, ice, sleet, fog, rain or electrical storms affect visibility or traction. If conditions become extremely hazardous, operation of the vehicle shall be temporarily discontinued. When compliance with these instructions increases hazards to road traffic, the vehicle shall be driven to the nearest military activity for safe haven.

### 5-4. SAFETY MEASURES.

While transporting AA&E, all safety regulations shall be strictly followed.

#### **WARNING**

Matches, lighters or other fire, flame, or spark-producing devices shall not be permitted within 25 feet of a motor vehicle loaded with A&E.

5-4.1. **FLAME-PRODUCING DEVICES.** No person shall carry a lighted cigarette, cigar or pipe, or any fire, flame or spark-producing device within 25 feet of a vehicle transporting A&E.

**CAUTION**

Explosives drivers shall adhere to [DOT regulations](#) and state and local laws governing the use of snow chains during inclement weather. Snow chains have the potential for creating sparks.

5-4.2. **SMOKING REGULATIONS.** Smoking is prohibited within 25 feet of the following:

a. A motor vehicle which contains Class 1 materials, Class 5 materials, or flammable materials classified as Division 2.1, Class 3, Divisions 4.1 and 4.2, or;

b. An empty tank motor vehicle which has been used to transport Class 3, flammable materials, or Division 2.1 flammable gases, which when used, was required to be marked or placarded in accordance with [49 CFR Part 172.500, Subpart F](#).

5-4.3. **TRANSPORTING FLAMMABLES.** Vehicles used for the transportation of flammables shall be kept clean and free of oily rags or similar combustible materials. Valves, nozzles and other connections on the vehicle shall be kept free of leaks and in good operating condition at all times.

5-4.4. **EXPOSURE TO WEATHER.** A&E shall not be exposed unnecessarily to the direct rays of the sun or to inclement weather, i.e. rain or electrical storms.

5-4.5. **LOAD INTERFERENCE.** No motor vehicle shall be operated if the cargo or any other object obscures the driver's view in any direction; interferes with the free movement of arms or legs; prevents free and ready access to equipment for emergencies; or, prevents the free and ready exit of the driver from the cab of the vehicle.

**WARNING**

Flares and signals that produce flame shall not be used as warning devices for disabled vehicles carrying A&E.

5-4.6. **WARNING DEVICES.** In the case of an accident, incident, breakdown or stop made for any reason on the public highways, a motor vehicle carrying A&E shall have three bidirectional emergency reflective triangles as warning devices to approaching traffic. These devices eliminate the need for flags and reflectors and are effective during the day or night.

5-4.6.1. **Posting Warning Devices.** Immediately upon stopping, the driver shall set the turn signals to flash simultaneously; and, place three red emergency reflective triangles on the traffic side of the vehicle per the following directions:

a. One warning device shall be placed 100 feet in front of the motor vehicle and one 100 feet in back of the vehicle in the center of the traffic lane it occupies. One warning device shall be placed on the traffic side of the vehicle not more than 10 feet from the front or rear of the vehicle. (See [figure 5-1A](#).)

b. If the stop is made within 500 feet of the crest of a hill, a curve, or any object obstructing the vehicle from the view of approaching traffic, the warning devices shall be placed not less than 100 feet or more than 500 feet from the vehicle in the direction of the hill, curve or other obstruction. One warning device shall be placed on the traffic side of the vehicle not more than 10 feet from the front or rear of the vehicle. (See [figure 5-1B](#).)

c. If the stop is made on any lane of a divided highway, one warning device shall be placed 200 feet in back of the stopped vehicle in the center of the traffic lane it occupies; one warning device shall be placed 100 feet in back of the vehicle in the center of the traffic lane it occupies; and, one warning device shall be placed on the traffic side of the vehicle within 10 feet from the rear of the vehicle. (See [figure 5-1C](#).)

d. When any motor vehicle used in the transportation of AA&E is disabled or stopped entirely off the roadway on an adjacent shoulder, the warning devices shall be placed as near as practical on the shoulder at the edge of the roadway.

5-4.6.2. Picking Up Warning Devices. The driver shall ensure signals are flashing simultaneously before picking up the emergency warning devices from the highway.

## 5-5. PROTECTING THE SECURITY OF THE LOAD.

The driver shall be aware of security policies, procedures and responsibilities (see [paragraphs 2-8 through 2-8.3](#)). Most importantly, drivers shall be aware of, and adhere to, physical security requirements for their load prescribed by the established Force Protection Condition (FPCON), shown in [NAVSEA SW020-AG-SAF-010](#).

5-5.1. VEHICLE SECURITY. The doors of all motor vehicles containing AA&E shall be securely sealed and under constant surveillance when outside a restricted, fenced area. The only exception is when it is necessary to open the vehicle for inspection or to handle the contents. In this event, a responsible person shall be in charge of the vehicle. All doors on vehicles containing AA&E shall be closed securely before the vehicle is in motion. When open trucks are used, the load shall be protected from the sun and weather by waterproof, fire-resistant tarpaulins (see [paragraph 4-2](#) and [4-2.4](#)).

5-5.2. SEALS. Refer to [paragraphs 4-8](#) and [4-8.1](#) regarding the requirements for transportation conveyance seals, NAVSUP Form 407, Seal Notice ([figure 3-14](#)), and seal tags for AA&E shipments.

5-5.2.1. Breaking of Seals En Route. In the event that seals are broken or replaced en route, the driver shall notify the shipping activity or receiving activity immediately and request instructions concerning the security of the cargo prior to continuing to destination. Drivers shall remain with the vehicle at all times to protect the cargo until a new seal is applied. In the case of sensitive or classified shipments, the Commanding Officer (CO) of the nearest military installation shall be notified immediately so that qualified personnel can be dispatched, if required. At the destination, the proper authority shall inspect the cargo to ensure that no breach of security has been committed. If compromise of the load is suspected, the CO at the receiving activity will immediately notify the nearest field office of the [Naval Criminal Investigative Service \(NCIS\)](#) and [NOSSA](#).

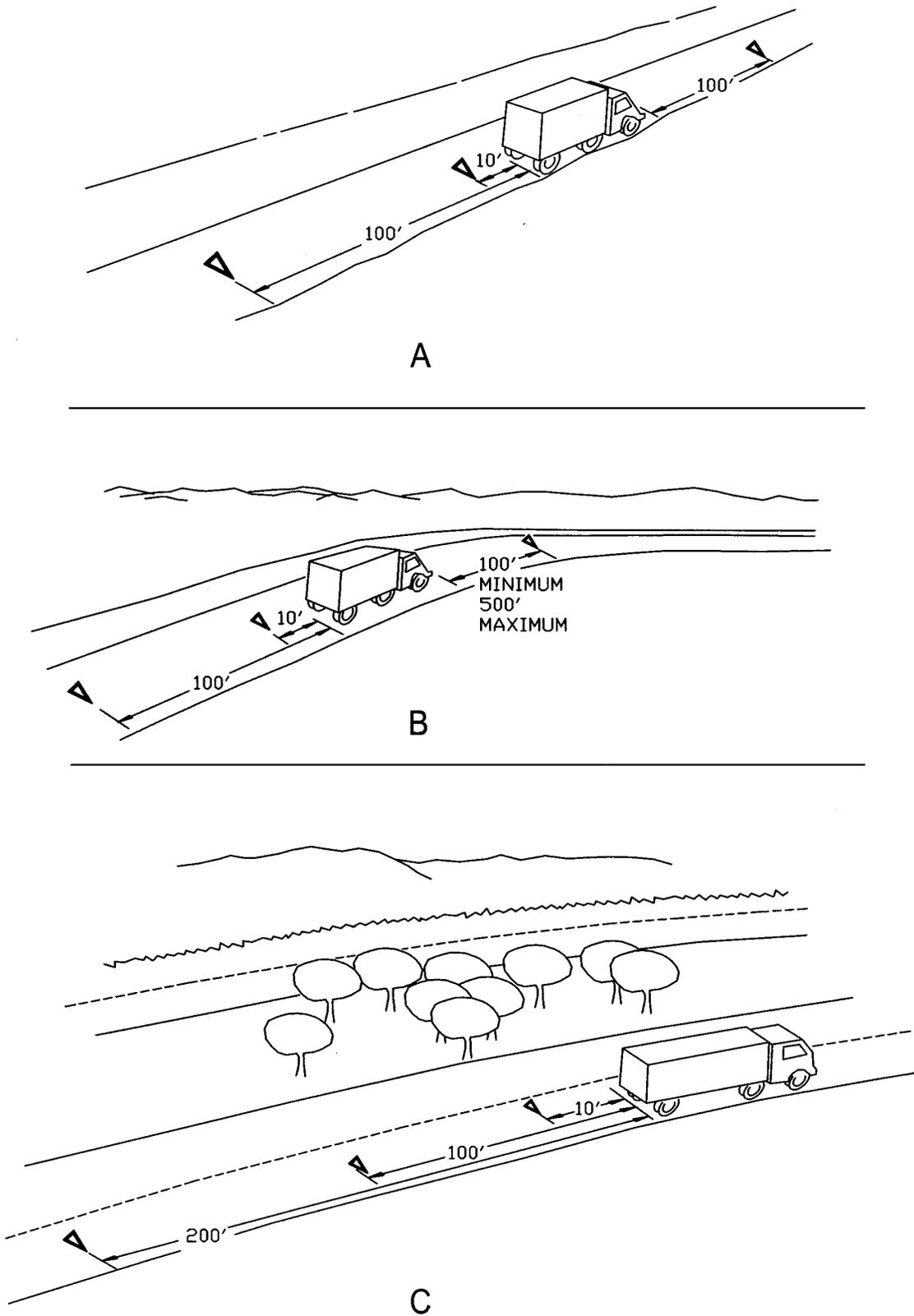


FIGURE 5-1. (A-C) Posting Warning Signals for Highway Stops

**5-5.3. GUARDING VEHICLES.** When outside a military station, the cargo doors of all motor vehicles containing AA&E shall be secured and motor vehicles shall be under constant surveillance. For off-station AA&E movements, in the context of the Navy's two-driver requirement, constant surveillance means (1) that a Signature and Tally Record, DD Form 1907 will be maintained; (2) that at least one driver will remain in the cab of the vehicle, or remain within 25 feet of the vehicle during brief stops, provided the vehicle is within full, unobstructed view. When vehicles are parked on-station in a barricaded area or in other assigned locations, their cargo doors shall be sealed and the ignition keys left in the vehicle, unless security considerations dictate that they be removed. When ignition keys are removed because of these considerations, they shall be made readily available to personnel assigned to move the vehicles. When trailers loaded with AA&E are parked without attached tractors, tractors will be made available for moving them. The ignition keys for these tractors shall be handled in the same manner as specified for AA&E loaded motor vehicles. The security of the cargo and the vehicle shall be the direct responsibility of the explosives driver while under the driver's custody. Drivers must be mindful of both the hazardous nature of the cargo and the Security Risk Category (SRC) assigned to the cargo. In cases where a courier is used, the courier shall be responsible for the cargo. The level of on- and off-station security surveillance over AA&E movements will vary according to the SRC of the AA&E and the existing local FPCON.

**5-5.4. SAFE HAVEN.** The origin transportation officer must schedule shipments to arrive at the destination within normal receiving hours, making every effort to avoid layover of shipment during weekends, holidays, and non-receiving hours. [DOD 5100.76-M](#) and [OPNAVINST 5530.13 \(series\)](#) require that installations and activities offer safe haven to motor carriers who have encountered an emergency situation during the transport of DOD AA&E. These regulations also require that activities accept AA&E shipments arriving during non-delivery hours. In either case, the activity shall ensure the vehicle is parked in a secure area and provided appropriate protection commensurate with the SRC of the delivered items. SRC I and SRC II AA&E will be provided the level of physical security protection detailed in [NAVSEA SW020-AG-SAF-010](#). Safe haven is strictly temporary in nature, and is intended to minimize the length of time that ordnance is in the public domain. AA&E laden vehicles must be removed from the secure area as soon as practicable upon determination by the CO/OIC and/or appropriate civil authorities that any threat to the shipment's integrity has diminished.

## **5-6. INSPECTION IN TRANSIT.**

Drivers must examine their vehicle tires at the beginning of each trip and each time the vehicle is parked. Vehicles shall be stopped and inspected at all specified check points en route. The requirement for operators of vehicles transporting AA&E to stop at specified intervals and check their tires was eliminated by the Federal Register of 4 Oct. 2002. The motor vehicle and cargo shall be inspected by the driver for the following:

- a. General condition of the motor vehicle and clean placards.
- b. Condition of the tires: A soft, flat or unusually hot tire must be repaired, replaced or properly inflated before the trip is resumed. An overheated tire shall be removed and placed a safe distance from the vehicle. The driver shall not operate the vehicle until the cause of overheating is corrected.

c. Cargo securement: According to [49 CFR 392.9](#), drivers are instructed to inspect load securement devices within the first 50 miles after beginning a trip, and make necessary adjustments as required. Thereafter, the cargo securement devices will be reexamined when the driver makes a change in duty status, drives for more than 3 hours, or drives for more than 150 miles, whichever comes first. Note that the requirement to examine securement devices is not applicable to the driver of a closed and sealed van-type motor vehicle. If load-shift involving a closed and sealed van-type motor vehicle is suspected, drivers are instructed to notify the shipper, report circumstances and request permission to break the seal and inspect the condition of cargo securement system. For classified shipments, if the stability of the load is in doubt the instructions in [paragraph 5-5.2.1](#) shall be followed. After inspection, the motor vehicle will be re-sealed (drivers shall have been furnished with extra seals for this purpose). Seal application instructions are provided in [paragraphs 4-8](#) and [5-5](#) of this manual. Drivers are permitted to make adjustments to securement systems as required. However, in the event of substantial misalignment of the AA&E cargo and/or damaged cargo, drivers must notify their carrier dispatchers and the shipper for instructions. Delays must be reported in accordance with [paragraph 5-10](#) of this manual.

## 5-7. PROCEDURES FOLLOWING AN ACCIDENT.

The potentially disastrous consequences of an accident involving vehicles loaded with A&E dictate that emergency safety procedures be followed in every case. The explosives driver has primary responsibility for taking appropriate steps immediately. [NAVSEAINST 8020.18 \(series\)](#) provides DON policy and procedures concerning emergency response to accidents involving DOD munitions and explosives.

5-7.1. REQUIRED ACTION. When a motor vehicle loaded with A&E becomes involved in an accident, the driver shall:

- a. Stop the vehicle immediately.
- b. Turn off the ignition.
- c. Set the brake and chock the vehicle to prevent movement.
- d. Post warning devices on the highway. Ensure that all turn signals are flashing simultaneously while warning devices are being posted.
- e. If fire results, the driver shall follow the firefighting instructions found on the shipping papers (refer to [paragraphs 8-5](#) through [8-6.2](#)).
- f. Notify local law enforcement authorities.
- g. Render first aid. Do not move badly injured persons unless it is absolutely necessary.
- h. Notify both shipping and receiving activities by the fastest available means.
- i. Notify the Army Operations Center (AOC) at 703-697-0218/0219 collect, or DSN 227-0218/0219 should DOD/EOD assistance be required for clean-up operations.

**NOTE**

EOD personnel or other competent DOD official(s) must be dispatched to the scene of an accident involving damaged A&E materials. See subparagraph (k) below for further instructions.

j. Provide emergency response information (BL and/or DD Form 2890) to law enforcement authorities and firefighting personnel. This data will provide the type of cargo, dangerous characteristics, firefighting techniques, operating distances for firefighters and equipment, and personnel evacuation distances.

k. Do not attempt to handle damaged A&E cargo or unload a disabled vehicle. Assist emergency first responders as necessary. Handling of damaged A&E cargo will begin after the damaged cargo has been declared safe to move and transport by EOD personnel or other competent on-scene DOD officials.

l. Do not sign any insurance or release documents.

m. Express no opinions as to who is to blame for the accident.

n. If an unattended vehicle is struck, make a reasonable effort to locate the missing driver, while maintaining constant surveillance over the vehicle and its A&E cargo. If this is not possible, leave the following information for the owner of the unattended vehicle:

(1) Name.

(2) Address or home station.

(3) State or Federal Government license numbers.

(4) Destination.

(5) Any other information pertinent to the accident.

o. Stand-by to assist emergency first responders and/or DOD personnel in clean-up operations as required.

**NOTE**

Motor vehicle disentanglement operations shall not begin until the A&E has been offloaded from the cargo carrying vehicle and moved a safe distance away from the immediate vicinity of the accident.

5-7.2. **REQUIRED REPORT.** Every accident involving a Navy vehicle shall be reported by the driver of the vehicle on the Motor Vehicle Accident Report, SF 91. Refer to [paragraph 3-5.1](#) and [figure 3-17](#). Detailed instructions for completion of this form are provided in [appendix B](#).

**5-8. PROCEDURES FOLLOWING A BREAKDOWN.**

When a vehicle loaded with AA&E is disabled due to mechanical failure or reasons other than an accident, the driver is required to take action to ensure the safety of the public and to protect the cargo. If fire results, the driver shall follow the firefighting instructions found on the shipping papers (see [paragraph 8-5](#) through [8-6.2](#)).

**WARNING**

Do not attempt to jump start a motor vehicle that has A&E cargo onboard.

**5-8.1. REQUIRED ACTION.** The procedure listed below shall be followed in cases of breakdown:

a. If safe and practicable to do so, drive the vehicle to a safe parking place as far off the highway as possible and away from congested areas.

b. Immediately turn on the vehicle's two front and two rear hazard warning signals; post the emergency warning devices.

c. Notify state/local (as applicable) law enforcement authorities; request on-scene traffic control and security assistance as required -- dispatch of two law enforcement personnel for safety and protection of cargo is preferred.

d. Contact responsible personnel at your home station (point of origin) to report the breakdown and request guidance/assistance as necessary; contact destination activity to report delay in-transit due to breakdown.

e. With concurrence of home station responsible personnel, contact a local vehicle repair shop and arrange for on-site repair work.

**WARNING**

No hot work shall be performed on a vehicle with A&E cargo present in the vehicle.

f. If on-site repair work is not feasible, with concurrence of responsible home station personnel, arrange to have the A&E loaded vehicle towed to a capable repair facility; choose a repair facility that is located away from congested residential and/or industrial areas. Towing operations will begin once it has been determined by competent personnel that the A&E loaded vehicle is safe to tow.

**WARNING**

Do not repair the vehicle in an enclosed garage or work area.

g. If on-site or work shop repair work (with or without tow) is not feasible, then, with concurrence and assistance received from responsible home station personnel, arrange to have an

alternate motor vehicle, along with qualified DOD A&E handling personnel and equipment dispatched to the scene of the breakdown. Commence on-site A&E load transfer operations as necessary. See paragraph 5-11 for instructions pertaining to repackaging and transferring A&E cargo in-transit.

**5-8.2. REQUIRED REPORT.** A complete report shall be made to the safety officer or duty officer at the driver's home activity. The report shall include all pertinent details, including a description of the cause of the breakdown, location, terrain, interval of delay, steps taken to effect repairs, and either a certified statement of costs (if the driver was able to have repairs made), or a receipt if the driver paid for repairs. The report shall be presented to the driver's supervisor, who shall forward it to the safety officer. See [paragraph 3-5.2](#).

## **5-9. PROCEDURES IN BURNING-AREA OPERATIONS.**

Explosives drivers engaged in burning-area operations, shall follow the orders and instructions given by the supervisor or ordnance worker in charge of the area.

**5-9.1. ENTERING THE AREA.** When a vehicle delivers authorized materials for the burning area, the ordnance supervisor shall direct the driver to the location for unloading operations or to a holding area behind a barricade.

**5-9.2. UNLOADING THE VEHICLE.** The driver shall remain in the cab during unloading operations and shall not be required to assist in the unloading. After unloading, the ordnance supervisor or ordnance worker shall direct the driver to drive behind the burning-lane barricade, or another designated area, park the vehicle and turn off the engine.

**5-9.3. ACTION DURING ELECTRICAL STORMS.** The driver shall park the vehicle so that it will not endanger personnel shelters or centers. The driver shall evacuate the vehicle only on orders from the ordnance supervisor or ordnance worker.

**5-9.4. LEAVING THE AREA.** All vehicle floors shall be swept thoroughly at the burning area. The vehicle shall be inspected by the ordnance worker before it is permitted to leave.

## **5-10. PROCEDURES IN CASE OF DELAY FOR MORE THAN 5 HOURS.**

If for any reason a motor vehicle carrying AA&E is delayed for more than 5 hours, the driver shall report the delay to the transportation manager or duty officer of the home activity immediately. Delays resulting from delivery being restricted to normal working hours shall not be reported.

**5-10.1. REQUIRED ACTION.** The explosives driver shall take immediate appropriate action and report the reason for the delay. If the vehicle has been involved in an accident, incident or breakdown, the driver shall observe the procedures outlined in [paragraphs 5-7](#) and [5-8](#), respectively; and, shall report the situation to the home activity. If the delay is caused by road or weather conditions, the driver shall observe appropriate safety precautions and determine the most practical course of action. Public safety shall always be the first consideration.

**5-10.2. REQUIRED REPORT.** The report of delay shall provide the following information:

- a. Exact location of the vehicle.
- b. Cause of the delay.
- c. A statement that local law enforcement authorities have been notified.

d. A statement attesting to the level of security that was adhered to throughout the period of delay. For example, in addition to the driver(s) ability/inability to carry out mandatory constant surveillance duties and responsibilities, indicate the extent to which state and/or local law enforcement officials contributed to the surveillance mission.

#### 5-11. REPACKAGING OR TRANSFER OF LOAD IN TRANSIT.

When practical, and subject to the imposition of reasonable risk control measures, a package of A&E that has been damaged in transit may be replaced or repaired and its contents transferred to the new or required package. The repackaging work must be performed by qualified DOD personnel in accordance with standard A&E packaging procedures. On-scene EOD or other competent DOD personnel must certify that the affected A&E materials are safe to move/handle prior to beginning the repackaging work.

a. Repackaging in Transit.

(1) In-transit repackaging of A&E cargo that has been certified safe to move/handle shall be performed in accordance with approved methods using serviceable packaging supply materials. Questions regarding A&E packaging can be directed to the [Naval PHST Center](#) at (973) 724-3388.

(2) The repackaging work must be performed at a safe location in proximity to the cargo transfer site consistent with relevant emergency response operations that may be in process. Care shall be taken to mitigate operational hazards including minimizing public/personnel exposure to risk (keep unauthorized personnel away). To the extent practicable, perform repackaging work at a safe distance from other known concurrent hazardous operations/environmental conditions that may exist in the immediate area. Emergency responders shall also be cognizant of the need to control risk associated with the exposure of susceptible A&E materials to electromagnetic radiation hazards.

**WARNING**

Drivers shall not dispose of damaged packages/containers -- standing rule applies to both empty packages/containers and those that contain residual A&E items.

(3) When repair of a damaged package is not feasible, the damaged package and its contents shall be diverted only the minimum distance necessary to the nearest compatible civil or DOD safe haven facility pending final disposition instructions. A safe to handle/move/transport certification by EOD or other competent DOD personnel must be obtained prior to execution of this contingency action.

b. Transferring in Transit. Class/Division 1.1, 1.2 and 1.3 A&E and/or Poisons 6.1, shall not be transferred from one container to another or from one vehicle to another on any public highway, street or

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road, except in cases of emergency and as directed by a qualified DOD official. In the event of an emergency, the driver shall take action to warn emergency responders and other highway users of ensuing dangers. The driver's responsibility in this regard becomes even more critical when the prospect of transferring A&E cargo from one conveyance to another is apparent. The following actions shall be taken:

(1) Drive the vehicle to a safe parking place as far off the highway as possible and away from congested areas.

### **WARNING**

If the vehicle is diesel-powered, set the transmission in neutral.

(2) Turn off the engine and set the handbrakes.

(3) Immediately turn on the vehicle's two front and rear hazard warning signals, and post the emergency warning devices.

(4) Provide constant surveillance over the vehicle and its cargo while awaiting the arrival of a qualified DOD emergency response A&E cargo handling supervisor and crew members.

c. Reports. For all occasions involving the repackaging and/or transfer of AA&E material in-transit, the driver shall complete a report of corrective action taken. As a minimum, the repackaging and/or transfer report shall include the following information:

(1) Condition of the material before and after repackaging.

(2) Number of containers/packages damaged.

(3) Statement of corrective action taken.

The report will be forwarded to the activity AA&E Safety Officer; a copy of the report will be forwarded to [NOSSA \(N5\)](#).

## **5-12. PROCEDURES FOR REFUELING A LOADED MOTOR VEHICLE.**

A motor vehicle designated for transporting A&E on and off station shall be fueled prior to the commencement of A&E loading operations. An adequate amount of fuel shall be added to the fuel tank to enable the driver to complete delivery of the A&E cargo without having to refuel in-transit. If, while en route to destination, contingency factors beyond the driver's control should arise that require refueling, the following safety precautions shall be followed:

**WARNING**

Compressed Natural Gas (CNG) powered vehicles shall not be refueled within 100 feet of A&E.

- a. The engine shall be turned off.
- b. The lights shall be turned off.

**WARNING**

In the event of a fire, if a carbon dioxide (CO<sub>2</sub>) fire extinguisher is present for use in extinguishing the fire, do not direct its content at or into an open fuel tank. Even with a grounded fuel hose, static electricity can be generated and may ignite the fuel vapor, causing an explosion. This is due to high velocity streams of CO<sub>2</sub> being injected into the concentrated vapors of hydrocarbon fuels such as jet propulsion (JP), gasoline, diesel, etc.

- c. One driver shall stand by with a fire extinguisher.
- d. The nozzle of the fuel hose shall be in continuous and firm contact with the intake pipe of the fuel tank or be otherwise grounded (grounding cable is included in safety equipment required on vehicles).
- e. Under no circumstances shall the vehicle be fueled simultaneously with other vehicles.
- f. In the event of a fuel spill during refueling, motors on the equipment or refueling unit shall not be started until the tank is capped, and the spill is thoroughly washed down with water; or, the equipment is first moved manually at least 50 feet from the spill.
- g. No person may smoke or carry a lighted cigarette, pipe or cigar, or any fire, flame or spark-producing device within 25 feet of the fueling operations.
- h. A person must be in constant control of the fueling process at the point where the fuel tank is filled.

**5-13. PARKING A LOADED MOTOR VEHICLE**

In the interest of protecting the public well-being to the maximum extent, special federal and DOD safety regulations have been established for driving and parking motor vehicles loaded with Class/ Division 1.1, 1.2, and 1.3 A&E. Therefore, military and civilian drivers tasked by the Navy Department to operate motor vehicles engaged in transporting these hazardous materials must comply with the following requirements:

5-13.1. **GENERAL RESTRICTIONS.** Only essential personnel vehicles shall be operated within 100 feet of fuel storage areas and transfer operations (except service stations), where low-lying accumulations of flammable vapors or hazardous ignition-combustible material sources are present. Drivers of vehicles transporting Class/Division 1.1 through 1.3 A&E shall not park near fuel pumps or similar areas, except when refueling. In addition, vehicles shall not be parked over any grassy area or unpaved surfaces which may be oil-soaked.

**WARNING**

Under no circumstances shall the driver of a vehicle carrying Class 1.1, 1.2 or 1.3 A&E park in a public garage, on a public parking lot, or leave the vehicle unattended.

5-13.2. **PARKING IN THE PUBLIC DOMAIN.** The following regulations shall be adhered to for parking Class/Division 1.1, 1.2 and 1.3 A&E loaded motor vehicles in the public domain:

a. Congested Areas. The motor vehicle shall not be parked within 300 feet of a bridge, tunnel, dwelling, or place where people work, congregate, or assemble, except for brief periods when the necessities of operation require the vehicle to be parked and make it impracticable to park the vehicle in any other place.

b. Public Streets or Highways. The motor vehicle shall not be parked within 5 feet of the traveled portion of a public street or highway.

c. Private Property. The motor vehicle shall not be parked on private property (including premises of fueling or eating facilities) without the knowledge and consent of the person who is in charge of the property and who is aware of the nature of the hazardous materials the vehicle contains.

**NOTE**

See [paragraphs 5-7](#) and [5-8](#) of this manual for instructions related to accidents and breakdowns respectively that may impact the ability to conform to customary parking rules for vehicles loaded with Class/Division 1.1, 1.2 and 1.3 A&E.

5-13.3. **PARKING ON-STATION.** Vehicles loaded with Class/Division 1.1, 1.2 and 1.3 A&E shall be parked on-station only in locations identified in approved site plans and associated fire maps. The following additional regulations apply:

a. AA&E loaded vehicles shall not be parked overnight, except when late or weekend arrival does not permit immediate unloading. In this case, AA&E loaded vehicles shall be parked in approved secure holding areas per the provisions of [NAVSEA SW020-AG-SAF-010](#), Chapter 2 and [NAVSEA OP 5 Volume 1](#), Chapter 12.

b. A&E loaded vehicles shall not be parked and left unattended in front of the doors to magazines and/or operating buildings.

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c. Approved secure holdings areas, as noted in subparagraph a. above, shall be used to park AA&E loaded motor vehicles. On an exception basis only, when warranted by current operating conditions, AA&E loaded vehicles may be parked temporarily in open areas between magazines in accordance with existing explosives safety quantity-distance (Q-D) criteria and subject to Explosives Safety Office concurrence.

d. A vehicle that is undergoing AA&E load or offload operations may be parked temporarily alongside a magazine, operating building, or other Potential Explosion Site (PES) pending completion of the load/offload work provided that:

(1) The appropriate Q-D criteria are observed.

(2) The combined Net Explosive Weight (NEW) of the explosives contained in the vehicle, the magazine, operating building, etc., shall not exceed the explosive limit specified for the PES.

(3) An AA&E loaded vehicle parked in a restricted area shall have its engine turned off, brakes set, rear chocked, and ignition key left in the vehicle. If security considerations dictate that the ignition keys be removed, they shall be made readily available to personnel assigned to move the vehicle.

### NOTE

Restricted areas differ at each individual activity depending upon Q-D considerations, location of magazines, proximity to inhabited buildings, and the hazard class of magazine contents. Refer to [OPNAVINST 5530.14 \(series\)](#) for further clarification on the various levels of restricted areas.

## 5-14. PROCEDURES FOR WATER TRANSPORTATION.

When a motor vehicle loaded with AA&E requires water transportation en route, the driver and vessel authorities shall share responsibility for the safety of the public and cargo. Drivers of vehicles shall observe the following procedures:

a. Deliver a letter of identification to the master of the vessel or to a designated representative requesting transportation. The letter shall be signed by the CO of the activity at which the shipment originated. Whenever possible, these letters should be mailed prior to the trip.

b. Deliver to the vessel representative the shipping documents containing the full description of the cargo for review. These papers will be returned to the driver.

c. Drive the vehicle to the location indicated by the vessel representative.

d. Shut off the engine and do not restart it until directed by the vessel representative.

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e. Turn off all vehicle lights and do not turn them on again until directed by the vessel representative.

### **WARNING**

One person shall remain in the cab of a diesel powered vehicle. The transmission shall be left in neutral and the parking brake applied. There is a possibility that a warm engine could self-start if the vehicle should roll.

f. Set the brakes securely and chock the wheels to prevent movement. Place non-diesel powered vehicles in the lowest forward gear or in reverse.

g. Remain with the vehicle.

h. Make no repairs or adjustments to the vehicle while aboard the vessel.

i. Do not smoke, and warn others to refrain from smoking within 25 feet of the vehicle.

j. Obey all instructions given by authorized vessel personnel during the voyage and during the drive-on and drive-off operation.

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## CHAPTER 8

### FIRE REGULATIONS

#### 8-1. INTRODUCTION.

The danger of fire is inherent in every motor vehicle loaded with ammunition, explosives and related hazardous materials (A&E). This chapter provides instructions for explosives drivers regarding preparation for potential fire, preventive measures, passing fires along the highway, firefighting equipment, and firefighting procedures. Explosives drivers are required to read and understand the following information.

#### 8-2. PREPARATION.

Explosives drivers shall be provided with emergency response/firefighting information (i.e. safe operating distances for firefighters, safe evacuation distances, etc.) appropriate to the specific loads they are transporting. This information is annotated on bill of lading, or on the DD Form 2890 (figure 3-13) for military or government drivers transporting A&E within CONUS. The North American Emergency Response Guidebook (ERG) guidesheet applicable to the A&E being transported must be attached to the DD Form 2890. Explosives drivers shall read, sign and carry these instructions with them at all times from point of origin to destination. Additionally, drivers shall know the content of the load, be aware of the hazards, and have knowledge of the following:

- a. Type of cargo, number of packages, total weight.
- b. Hazard Class and Division, Compatibility Group, UN Number, Proper Shipping Name, and Net Explosive Weight (NEW).
- c. Required placards.
- d. Safe driving regulations, i.e. safe following distances, restriction against use of flame-producing devices and smoking, proper refueling practices, parking regulations, etc.
- e. Warning instructions.
- f. Emergency response telephone numbers.

#### 8-3. FIRE PREVENTION.

Explosives drivers shall exert every effort to prevent fires in vehicles transporting A&E. Therefore, drivers shall adhere to all rules and regulations concerning the following:

- a. Use of plastic bedliners. (See “WARNING” after [paragraph 4-2.](#))
- b. Convoy distances. (See [paragraph 5-2.9.3.](#))
- c. Flame-producing devices. (See [paragraph 5-4.1.](#))
- d. Refueling. (See [paragraph 5-12.](#))
- e. Safe driving. (See [paragraphs 5-2.6](#) and [8-4.](#))
- f. Smoking. (See [paragraph 5-4.2.](#))
- g. Vehicle inspection. (See [paragraph 4-4.](#))
- h. Parking. (See [paragraphs 5-13](#) and [8-4.](#))

#### **8-4. PASSING FIRES ALONG THE HIGHWAY.**

Motor vehicles transporting arms, ammunition, explosives and related hazardous materials (AA&E) shall not be driven past fires of any kind burning on or near the highway until the driver has determined that the passing can be made safely and without stopping (300 feet or more). A motor vehicle containing AA&E must not be parked within 300 feet of an open fire.

#### **8-5. FIRE EXTINGUISHERS.**

##### **8-5.1. SPECIFICATIONS.**

a. Each motor vehicle loaded with ammunition, explosives and related hazardous material shall be equipped with one fully charged [Underwriters’ Laboratory \(UL\)](#) fire extinguisher with a rating of 10-B:C or greater capacity, securely mounted and readily accessible. The extinguisher shall use a non-freezing extinguishing agent 10-pound dry chemical or other non-toxic vapor type with equivalent extinguishing capacity.

b. When all stock of extinguishers filled with carbon dioxide (CO<sub>2</sub>) are exhausted, use of a Purple-K (PKP), dry chemical extinguisher is required. The PKP dry chemical extinguisher is stocked under NSN 9C 4210-00-808-4544. Halon 1211 portable fire extinguisher shall not be used.

**8-5.2. USE.** Drivers shall be instructed as to the care, inspection and use of installed portable dry chemical fire extinguishers. National Fire Protection Association (NFPA) 10 provides instructions on the care and use of portable fire extinguishers; NFPA 17 provides instructions on dry chemical extinguishing systems. Maintenance and inspection of portable fire extinguishers shall be coordinated through individual activity fire departments.

**NOTE**

The guidelines outlined above follow those presented in [49 CFR 393.95](#), which require one fire extinguisher per vehicle transporting AA&E. It is the policy of the [Department of the Navy \(DON\)](#) to follow these guidelines for all DON shipments of AA&E.

**8-6. FIREFIGHTING PROCEDURES.**

Should a fire occur on a vehicle carrying AA&E, the driver shall park the vehicle as far from the highway and as far removed from a congested area as possible. [Figures 8-1](#) and [8-2](#) provide a summary of DD Form 2890 emergency response information for Class/Division 1.1 through 1.6 A&E. The following firefighting procedures shall be strictly followed.

**8-6.1. VEHICLE FIRES.** If any part of the vehicle (other than the actual cargo) catches fire, the driver shall use the hand extinguisher immediately and attempt to extinguish the fire. The driver shall make every effort to prevent the fire from reaching the cargo.

**WARNING**

Do not attempt to fight any fire that has reached the cargo area.

**8-6.2. CARGO FIRES.** If the cargo does catch fire (or if fire in any part of the vehicle cannot be controlled with the equipment on hand); the driver shall not attempt to fight the fire. The driver shall withdraw from the area, and take the following action in accordance with the emergency response procedures outlined on the shipping papers.

a. Call the emergency response telephone number on the shipping papers first. Notify police and fire departments. Upon their arrival, furnish the specific emergency response instructions provided on the shipping papers, or on the DD Form 2890.

b. Warn the public and evacuate any persons from the area in accordance with the approach distances specified on the shipping papers.

**POTENTIAL HAZARDS**

**FIRE OR EXPLOSION:**

--MAY EXPLODE AND THROW FRAGMENTS 1 MILE OR MORE IF FIRE REACHES CARGO.

**HEALTH HAZARDS:**

--Fire may produce irritating, corrosive and/or toxic gases.

**PUBLIC SAFETY**

--CALL EMERGENCY RESPONSE TELEPHONE NUMBER ON SHIPPING PAPER FIRST. IF SHIPPING PAPER IS NOT AVAILABLE OR THERE IS NO ANSWER; CALL U.S. ARMY OPERATIONS CENTER AT (703) 697-0218 (for explosives ammunition incidents) OR DEFENSE LOGISTICS AGENCY AT (800)851-8061 (for all other dangerous good incidents).

--Isolate spill or leak area immediately for at least 1/3 mile in all directions.

--Move people out of line of sight of the scene and away from windows.

--Keep unauthorized personnel away.

--Stay upwind.

--Ventilate closed spaces before entering.

**PROTECTIVE CLOTHING:**

--Wear positive pressure self-contained breathing apparatus (SCBA).

--Structural firefighters' protective clothing will only provide limited protection.

**EVACUATION:**

--Large Spill - Consider initial evacuation for 1/2 mile in all directions.

--Fire - If rail car or trailer is involved in a fire, isolate for 1 mile in all directions. Also, initiate evacuation emergency responders for 1 mile in all directions.

**FIRES:**

--**CARGO FIRES: DO NOT FIGHT FIRE WHEN IT REACHES CARGO! CARGO MAY EXPLODE!** Stop all traffic and clear the area for at least 1 mile in all directions and let fire burn. Do not move cargo or vehicle if cargo has been exposed to heat.

--**TIRE OR VEHICLE FIRES: USE PLENTY OF WATER -- FLOOD IT! IF WATER IS NOT AVAILABLE, USE CO<sub>2</sub> DRY CHEMICAL, OR DIRT.** If possible, and WITHOUT RISK, use unmanned hose holders or monitor nozzles from maximum distance to prevent fire from spreading to cargo area. Pay special attention to tire fires, as re-ignition may occur. Stand by with extinguisher ready.

**SPILL OR LEAK:**

--Eliminate all ignition sources (no smoking, flares, sparks or flames in immediate area).

--All equipment used when handling the product must be grounded.

--Do not touch or walk through spilled material.

--**DO NOT OPERATE RADIO TRANSMITTERS WITHIN 330 FEET OF ELECTRIC DETONATORS.**

--**DO NOT CLEAN UP OR DISPOSE OF, EXCEPT UNDER SUPERVISION OF A SPECIALIST.**

**FIRST AID:**

--Move victim to fresh air.

--Call 911 or emergency medical service.

--Give artificial respiration if victim is not breathing.

--Administer oxygen if breathing is difficult.

--Remove and isolate contaminated clothing and shoes.

--In case of contact with substance, immediately flush skin or eyes with running water for at least 20 minutes.

--Ensure that medical personnel are aware of the material(s) involved, and take precautions to protect themselves.

**FIGURE 8-1. Summary of Emergency Response Information, Class/Division 1.1, 1.2, 1.3, 1.5 or 1.6 Explosives**

**POTENTIAL HAZARDS**

**FIRE OR EXPLOSION:**

--MAY EXPLODE AND THROW FRAGMENTS 1/3 MILE OR MORE IF FIRE REACHES CARGO.

**HEALTH HAZARDS:**

--Fire may produce irritating, corrosive and/or toxic gases.

**PUBLIC SAFETY**

--CALL EMERGENCY RESPONSE TELEPHONE NUMBER ON SHIPPING PAPER FIRST. IF SHIPPING PAPER IS NOT AVAILABLE OR THERE IS NO ANSWER; CALL U.S. ARMY OPERATIONS CENTER AT (703) 697-0218 (for explosives ammunition incidents) OR DEFENSE LOGISTICS AGENCY AT (800) 851-8061 (for all other dangerous goods incidents).

--Isolate spill or leak area immediately for at least 330 feet in all directions.

--Move people out of line of sight of the scene and away from windows.

--Keep unauthorized personnel away.

--Stay upwind.

--Ventilate closed spaces before entering.

**PROTECTIVE CLOTHING:**

--Wear positive pressure self-contained breathing apparatus (SCBA).

--Structural firefighters' protective clothing will only provide limited protection.

**EVACUATION:**

--Large Spill -- Consider initial evacuation for 800 feet in all directions.

--Fire -- If rail car or trailer is involved in a fire, isolate for 1/3 mile in all directions. Also, initiate evacuation including emergency responders for 1/3 mile in all directions.

**FIRES:**

--**CARGO FIRES: DO NOT FIGHT FIRE WHEN IT REACHES CARGO! CARGO MAY EXPLODE!** Stop all traffic and clear the area for at least 1/3 mile in all directions and let fire burn. Do not move cargo or vehicle if cargo has been exposed to heat.

--**TIRE OR VEHICLE FIRES: USE PLENTY OF WATER -- FLOOD IT! IF WATER IS NOT AVAILABLE, USE CO<sub>2</sub> DRY CHEMICAL, OR DIRT.** If possible, and WITHOUT RISK, use unmanned hose holders or monitor nozzles from maximum distance to prevent fire from spreading to cargo area. Pay special attention to tire fires, as re-ignition may occur. Stand by with extinguisher ready.

**SPILL OR LEAK:**

--Eliminate all ignition sources (no smoking, flares, sparks or flames in immediate area).

--All equipment used when handling the product must be grounded.

--Do not touch or walk through spilled material.

--DO NOT OPERATE RADIO TRANSMITTERS WITHIN 330 FEET OF ELECTRIC DETONATORS.

--DO NOT CLEAN UP OR DISPOSE OF, EXCEPT UNDER SUPERVISION OF A SPECIALIST.

**FIRST AID:**

--Move victim to fresh air.

--Call 911 or emergency medical service.

--Give artificial respiration if victim is not breathing.

--Administer oxygen if breathing is difficult.

--Remove and isolate contaminated clothing and shoes.

--In case of contact with substance, immediately flush skin or eyes with running water for at least 20 minutes.

--Ensure that medical personnel are aware of the material(s) involved, and take precautions to protect themselves.

**SUPPLEMENTAL INFORMATION:**

--Packages bearing the 1.4S label or packages containing material classified as 1.4S are designed or packaged in such a manner that when involved in a fire, may burn vigorously with localized detonations and projections of fragments.

--Effects are usually confined to immediate vicinity of packages.

--If fire threatens cargo area containing packages bearing the 1.4S label or packages containing material classified as 1.4S, consider isolating at least 50 feet in all directions.

--Fight fire with normal precautions from a reasonable distance.

**FIGURE 8-2. Summary of Emergency Response Information, Class/Division 1.4 Explosives**

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## APPENDIX B

### GENERAL INSTRUCTIONS FOR COMPLETION OF MOTOR VEHICLE ACCIDENT REPORT, STANDARD FORM (SF) 91

#### B-1. INTRODUCTION.

This appendix provides detailed instructions on the correct preparation of the Motor Vehicle Accident Report, SF 91. This form is divided into 13 sections, and is illustrated in [figure 3-17](#).

#### SECTION I - FEDERAL VEHICLE DATA

1. Driver's Name. The driver shall print full name.
2. Driver's License No./State/Limitations. Enter the state permit number, not the government permit number. This applies to both military and civilian drivers.
3. Date of Accident. Enter the day, month and year.
- 4a. Department/Federal Agency Permanent Office Address. The driver will enter the name and location of the organization to which assigned.
- 4b. Work Telephone Number. The driver will enter the telephone number of place of employment.
5. Tag or Identification Number. Enter the vehicle license number or vehicle ID #.
6. Estimated Repair Cost. The driver shall provide an estimate of what it would cost to have the vehicle repaired.
7. Year of Vehicle. This information is located on the registration card or trip ticket, or inside of the driver's door on the data plate.
8. Make of Vehicle. Enter the make of the vehicle, i.e. Ford, Dodge, Chevy, etc.
9. Model of Vehicle. Enter the model of the vehicle, i.e. F150, Taurus, etc.
10. Seat Belts Used. Were the driver and passenger wearing seat belts? Answer Yes or No.
11. Describe Vehicle Damage. List the parts of the vehicle that were damaged. Begin with the major damage and include all other damage, no matter how small. Example: LEFT FRONT FENDER DENTED SLIGHTLY.

**SECTION II - OTHER VEHICLE DATA**

- 12. Driver's Name. Enter the full name of the driver of the other vehicle.
- 13. Social Security No./Tax Identification No. Enter social security number or tax identification number for the driver of the other vehicle.
- 14. Driver's License Number/State/Limitations. Enter the license number, state of issue, and any restrictions or limitations noted on the license of the other driver.
- 15a. Driver's Work Address. Enter the work address of the driver of the other vehicle (city, state and zip).
- 15b. Work Telephone Number. Enter the other driver's work telephone number including area code.
- 16a. Driver's Home Address. Enter the home address of the driver of the other vehicle (city, state and zip).
- 16b. Driver's Home Telephone Number. Enter the other driver's home telephone number including area code.
- 17. Describe Vehicle Damage. List the parts of the vehicle other driver's that were damaged. Begin with the major damage and include all other damage, no matter how small. Example: LEFT REAR FENDER AND BUMPER DENTED SLIGHTLY.
- 18. Estimated Repair Cost. The driver shall provide an estimate of cost to have the other vehicle repaired.
- 19. Year of Vehicle. This information is found on the registration card or inside the driver's door on the data plate of the other vehicle.
- 20. Make of Vehicle. Enter the make of the other vehicle, i.e. Ford, Dodge, Chevy, etc.
- 21. Model of Vehicle. Enter the model of the other vehicle, i.e. F150, Taurus, etc.
- 22. Tag Number and State. This information should be obtained from the vehicle registration card and verified to be the same as the license tag on the other vehicle.
- 23a. Driver's Insurance Company Name and Address. Provide the name and address of the other vehicle's insurance provider. If federal, state or local government, list political subdivision and agency.
- 23b. Policy Number. Enter the number of the insurance policy covering the other vehicle.
- 23c. Telephone Number. Enter the telephone number of the insurance provider for the other vehicle.
- 24. Vehicle Is: Check appropriate box.

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25a. Owner's Name(s). If same as driver, state SAME AS DRIVER.

25b. Telephone Number. Owner's telephone number.

26. Owner's Address(es). If same as driver, state SAME AS DRIVER. Otherwise list full address as it appears on registration.

**SECTION III - KILLED OR INJURED**

27. Name. State the full name of the injured or deceased person(s).

28. Sex. State the sex of the injured or deceased person(s).

29. Date of Birth. Provide the date of birth of the injured or deceased person(s).

30. Address. Provide the full address of the injured or deceased person(s).

31. Mark "X" in Appropriate Boxes. Mark those which apply.

32. In Which Vehicle. Vehicle in which the injured or deceased person was riding.

33. Location in Vehicle. Location in which the injured or deceased person was riding prior to the accident.

34. First Aid Given By. Name of individual(s) or organization providing first aid to the injured person(s).

35. Transported By. Organization transporting injured person(s).

36. Transported To. Location to which injured person(s) was transported for medical treatment.

37. Same as 27.

38. Same as 28.

39. Same as 29.

40. Same as 30.

41. Same as 31.

42. Same as 32.

43. Same as 33.

44. Same as 34.

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45. Same as 35.
46. Same as 36.
- 47a. Name of Street or Highway. Give the name and route number of the street or highway on which the accident occurred and of the nearest cross street or landmark.
- 47b. Direction of Pedestrian. Direction in which pedestrian was walking, give landmarks, if possible (from and to blocks).
- 47c. Describe What Pedestrian Was Doing at the Time of Accident. Give all pertinent information.

### SECTION IV - ACCIDENT TIME AND LOCATION

48. Date of Accident. Date the accident occurred.
49. Place of Accident. Location of accident (street address, city, state, zip code, distance to nearest intersection, nearest landmark, kind of locality (industrial, business, residential, open country, etc.), road description (highway, state road, etc.).
50. Time of Accident. Time the accident occurred (a.m., p.m.).
51. Indicate on This Diagram. HOW THE ACCIDENT HAPPENED. Use symbols and arrows to describe and sketch the scene of the accident. Include landmarks.
52. Point of Impact. (Check one box for each vehicle). Check box describing where impact occurred on each vehicle.
53. Describe What Happened. Give all pertinent information.

### SECTION V - WITNESS/PASSENGER

54. Name. Enter name of witness.
55. Work Telephone Number. Enter work telephone number of witness.
56. Home Telephone Number. Enter home telephone number of witness.
57. Work Address. Enter business/work address of witness.
58. Home Address. Enter home address of witness.
59. Name. Enter name of second witness.
60. Work Telephone Number. Enter work telephone number of second witness.
61. Home Telephone Number. Enter home telephone number of second witness.

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62. Work Address. Enter business/work address of second witness.

63. Home Address. Enter home address of second witness.

### SECTION VI - PROPERTY DAMAGE

64a. Name of Owner. Enter name of owner of property (other than vehicles) which was damaged.

64b. Work Telephone Number. Enter office/work telephone number of owner of damaged property.

64c. Home Telephone Number. Enter home telephone number of owner of damaged property.

64d. Work Address. Enter business/work address of owner of damaged property.

64e. Home Address. Enter home address of owner of damaged property.

65a. Name of Insurance Company. Name and address of the insurance provider covering the property which was damaged. If federal, state or local government, list political subdivision and agency.

65b. Telephone Number. Telephone number of insurance provider.

65c. Policy Number. Insurance policy number of insurance covering damaged property.

66. Item Damaged. Describe item which was damaged.

67. Location of Damaged Item. Current physical location of damaged item.

68. Estimated Cost. Estimate of repair cost or replacement of damaged item.

### SECTION VII - POLICE INFORMATION

69a. Name of Police Officer. Enter name of police officer working the accident.

69b. Badge Number. Enter badge number of police officer working accident.

69c. Telephone Number. Enter work telephone number of police office working accident.

70. Precinct or Headquarters. Enter name of the police station to which the officer working the accident reports. Include name of department and address.

71a. Person Charged with Accident. Enter the name of the person who was charged with any violation in connection with the accident.

71b. Violation(s). Enter violation(s) for which the individual was charged.

**SECTION VIII - EXTRA DETAILS**

Use this area for continuation of any blocks or additional information. If a block is continued, be sure to annotate the block number.

**NOTE**

Please review Privacy Act Statement

**SECTION IX - FEDERAL DRIVER CERTIFICATION**

72a. Name and Title of Driver. PRINT your full name and your title.

72b. Driver's Signature and Date. After reviewing the completed form and the certification statement, place your legal signature and the date signed in this block.

**SECTION X - DETAILS OF TRIP DURING WHICH ACCIDENT OCCURRED**

73 thru 83c. Shall be completed by the driver's supervisor. These blocks are self-explanatory.

**SECTION XI - ACCIDENT INVESTIGATION DATA**

**SECTION XII - ATTACHMENTS**

**SECTION XIII - COMMENTS/APPROVALS**

84 thru 89f. Shall be completed by the Accident Investigator.

90a thru 90f. Prior to completion of these blocks, the accident reviewing official shall review the entire SF 91. Following review, the reviewing official shall complete blocks 90a thru 90f.

[Please click here for the latest Revision of Title 49 CFR Part 397](#)

## APPENDIX C

### TITLE 49 CFR PART 397 TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES Revised 1 October 2011

#### SUBPART A - GENERAL

**Sec.**

- 397.1 Application of the rules in this part.
- 397.2 Compliance with Federal motor carrier safety regulations.
- 397.3 State and local laws, ordinances, and regulations.
- 397.5 Attendance and surveillance of motor vehicles.
- 397.7 Parking.
- 397.9 [Reserved].
- 397.11 Fires.
- 397.13 Smoking.
- 397.15 Fueling.
- 397.17 Tires.
- 397.19 Instructions and documents.

#### SUBPART B [RESERVED]

#### SUBPART C - ROUTING OF NON-RADIOACTIVE HAZARDOUS MATERIALS

**Sec.**

- 397.61 Purpose and scope.
- 397.63 Applicability.
- 397.65 Definitions.
- 397.67 Motor carrier responsibility for routing.
- 397.69 Highway routing designations; preemption.
- 397.71 Federal standards.
- 397.73 Public information and reporting requirements.
- 397.75 Dispute resolution.
- 397.77 Judicial review of dispute decision.

#### 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.
- 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.

Authority: 49 U.S.C. 322; 49 CFR 1.73 Subpart A also issued under 49 U. S. C. 5103, 31136, 31502, and [49 CFR 153](#) Subparts C, D, and E also issued under 49 U.S.C. 5112, 5125.

Source: 36 FR 4876, Mar. 13, 1971, unless otherwise noted.

\* Editorial Note: Nomenclature changes to Part 397 appear at 66 FR 49874, 1 Oct 2001

**SUBPART A - GENERAL**

**397.1 Application of the rules in this part.**

(a) The rules in this part apply to each motor carrier engaged in the transportation of hazardous materials by a motor vehicle which must be marked or placarded in accordance with Part 177.823 of this title and to-

(1) Each officer or employee of the motor carrier who performs supervisory duties related to the transportation of hazardous materials; and

(2) Each person who operates or who is in charge of a motor vehicle containing hazardous materials.

(b) Each person designated in paragraph (a) of this section must know and obey the rules in this part.

[36 FR 4876, Mar. 13, 1971, as amended at 36 FR 16067, Aug. 19, 1971; 53 FR 18058, May 19, 1988; 60 FR 38749, July 28, 1995]

**397.2 Compliance with Federal motor carrier safety regulations.**

A motor carrier or other person to whom this part is applicable must comply with the rules in Parts 390 through 397, inclusive, of this subchapter when he/she is transporting hazardous materials by a motor vehicle which must be marked or placarded in accordance with Part 177.823 of this title.

[37 FR 18080, Sept. 7, 1972]

**397.3 State and local laws, ordinances, and regulations.**

Every motor vehicle containing hazardous materials must be driven and parked in compliance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated, unless they are at variance with specific regulations of the Department of Transportation which are applicable to the operation of that vehicle and which impose a more stringent obligation or restraint.

**397.5 Attendance and surveillance of motor vehicles.**

(a) Except as provided in paragraph (b) of this section, a motor vehicle which contains a Division 1.1, 1.2, or 1.3 (explosive) material must be attended at all times by its driver or a qualified representative of the motor carrier that operates it.

(b) The rules in paragraph (a) of this section do not apply to a motor vehicle which contains Division 1.1, 1.2, or 1.3 material if all the following conditions exist-

(1) The vehicle is located on the property of a motor carrier, on the property of a shipper or consignee of the explosives, in a safe haven, or, in the case of a vehicle containing 50 pounds or less of a Division 1.1, 1.2, or 1.3 material, on a construction or survey site; and

(2) The lawful bailee of the explosives is aware of the nature of the explosives the vehicle contains and has been instructed in the procedures which must be followed in emergencies; and

(3) The vehicle is within the bailee's unobstructed field of view or is located in a safe haven.

(c) A motor vehicle which contains hazardous materials other than Division 1.1, 1.2, or 1.3 materials, and which is located on a public street or highway, or the shoulder of a public highway, must be attended by its driver. However, the vehicle need not be attended while its driver is performing duties which are incident and necessary to the driver's duties as the operator of the vehicle.

(d) For purposes of this section-

(1) A motor vehicle is attended when the person in charge of the vehicle is on the vehicle, awake, and not in a sleeper berth, or is within 100 feet of the vehicle and has it within his/her unobstructed field of view.

(2) A qualified representative of a motor carrier is a person who-

(i) Has been designated by the carrier to attend the vehicle;

(ii) Is aware of the nature of the hazardous materials contained in the vehicle he/she attends;

(iii) Has been instructed in the procedures he/she must follow in emergencies;

and

(iv) Is authorized to move the vehicle and has the means and ability to do so.

(3) A safe haven is an area specifically approved in writing by local, State, or Federal governmental authorities for the parking of unattended vehicles containing Division 1.1, 1.2, or 1.3 materials.

(e) The rules in this section do not relieve the driver from any obligation imposed by law relating to the placing of warning devices when a motor vehicle is stopped on a public street or highway.

[59 FR 63925, Dec. 12, 1994]

**397.7 Parking.**

(a) A motor vehicle which contains Division 1.1, 1.2, or 1.3 materials must not be parked under any of the following circumstances-

- (1) On or within 5 feet of the traveled portion of a public street or highway;
- (2) On private property (including premises of fueling or eating facilities) without the knowledge and consent of the person who is in charge of the property and who is aware of the nature of the hazardous materials the vehicle contains; or
- (3) Within 300 feet of a bridge, tunnel, dwelling, or place where people work, congregate, or assemble, except for brief periods when the necessities of operation require the vehicle to be parked and make it impracticable to park the vehicle in any other place.

(b) A motor vehicle which contains hazardous materials other than Division 1.1, 1.2, or 1.3 materials must not be parked on or within five feet of the traveled portion of a public street or highway except for brief periods when the necessities of operation require the vehicle to be parked and make it impracticable to park the vehicle in any other place.

[59 FR 63925, Dec. 12, 1994]

**397.9 [Reserved]**

**397.11 Fires.**

(a) A motor vehicle containing hazardous materials must not be operated near an open fire unless its driver has first taken precautions to ascertain that the vehicle can safely pass the fire without stopping.

(b) A motor vehicle containing hazardous materials must not be parked within 300 feet of an open fire.

**397.13 Smoking.**

No person may smoke or carry a lighted cigarette, cigar, or pipe on or within 25 feet of-

(a) A motor vehicle which contains Class 1 materials, Class 5 materials, or flammable materials classified as Division 2.1, Class 3, Divisions 4.1 or 4.2; or

(b) An empty tank motor vehicle which has been used to transport Class 3, flammable materials, or Division 2.1 flammable gases, which when so used, was required to be marked or placarded in accordance with the rules in Part 177.823 of this title.

[59 FR 63925, Dec. 12, 1994]

**397.15 Fueling.**

When a motor vehicle which contains hazardous materials is being fueled-

- (a) Its engine must not be operating; and
- (b) A person must be in control of the fueling process at the point where the fuel tank is filled.

**397.17 Tires.**

(a) A driver must examine each tire on a motor vehicle at the beginning of each trip and each time the vehicle is parked.

(b) If, as the result of an examination pursuant to paragraph (a) of this section, or otherwise, a tire is found to be flat, leaking, or improperly inflated, the driver must cause the tire to be repaired, replaced, or properly inflated before the vehicle is driven. However, the vehicle may be driven to the nearest safe place to perform the required repair, replacement, or inflation.

(c) If, as the result of an examination pursuant to paragraph (a) of this section, or otherwise, a tire is found to be overheated, the driver shall immediately cause the overheated tire to be removed and placed at a safe distance from the vehicle. The driver shall not operate the vehicle until the cause of the overheating is corrected.

(d) Compliance with the rules in this section does not relieve a driver from the duty to comply with the rules in Parts 397.5 and 397.7.

**397.19 Instructions and documents.**

(a) A motor carrier that transports Division 1.1, 1.2, or 1.3 (explosive) materials must furnish the driver of each motor vehicle in which the explosives are transported with the following documents:

(1) A copy of the rules in this part;  
(2) [Reserved]  
(3) A document containing instructions on procedures to be followed in the event of an accident or delay. The documents must include the names and telephone numbers of persons (including representatives of carriers or shippers) to be contracted, the nature of the explosives being transported, and the precautions to be taken in emergencies such as fires, accidents, or leakages.

(b) A driver who receives documents in accordance with paragraph (a) of this section must sign a receipt for them. The motor carrier shall maintain the receipt for a period of one year from the date of signature.

(c) A driver of a motor vehicle which contains Division 1.1, 1.2, or 1.3 materials must be in possession of, be familiar with, and be in compliance with-

- (1) The documents specified in paragraph (a) of this section;
- (2) The documents specified in Part 177.817 of this title; and;
- (3) The written route plan specified in Part 397.67.

[59 FR 53925, Dec. 12, 1994, as amended at 63 FR 33280, June 18, 1998]

**SUBPART B [RESERVED]**

## SUBPART C - ROUTING OF NON-RADIOACTIVE HAZARDOUS MATERIALS

Source: 59 FR 51830, Oct. 12, 1994, unless otherwise noted.

### 397.61 Purpose and scope.

This subpart contains routing requirements and procedures that States and Indian tribes are required to follow if they establish, maintain, or enforce routing designations over which a non-radioactive hazardous material (NRHM) in a quantity which requires placarding may or may not be transported by a motor vehicle. It also provides regulations for motor carriers transporting placarded or marked NRHM and procedures for dispute resolutions regarding NRHM routing designations.

### 397.63 Applicability.

The provisions of this subpart apply to any State or Indian tribe that establishes, maintains, or enforces any routing designations over which NRHM may or may not be transported by motor vehicle. They also apply to any motor carrier that transports or causes to be transported placarded or marked NRHM in commerce.

### 397.65 Definitions.

For purposes of this subpart, the following definitions apply:

Administrator. The Federal Motor Carrier Safety Administrator, who is the chief executive of the Federal Motor Carrier Safety Administration, an agency within the United States Department of Transportation, or his/her designate.

Commerce. Any trade, traffic, or transportation in the United States which:

(1) Is between a place under the jurisdiction of a State or Indian tribe and any place outside of such jurisdiction; or

(2) Is solely within a place under the jurisdiction of a State or Indian tribe but which affects trade, traffic, or transportation described in subparagraph (a).

FMCSA. The Federal Motor Carrier Safety Administration, an agency within the Department of Transportation.

Hazardous Material. A substance or material, including a hazardous substance, which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, or property when transported in commerce, and which has been so designated.

Indian tribe. Has the same meaning as contained in Section 4 of the Indian Self-Determination and Education Act, 25 U.S.C. 450b.

Motor carrier. A for-hire motor carrier or a private motor carrier of property. The term includes a motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers.

Motor vehicle. Any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof.

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NRHM. A non-radioactive hazardous material transported by motor vehicle in types and quantities which require placarding, pursuant to Table 1 or 2 of 49 CFR 172.504.

Political subdivision. A municipality, 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.

Radioactive material. Any material having a specific activity greater than 0.002 microcuries per gram (uCi/g), as defined in 49 CFR 173.403.

Routing agency. The State highway agency or other State agency designated by the Governor of that State, or an agency designated by an Indian tribe, to supervise, coordinate, and approve the NRHM routing designations for that State or Indian tribe.

Routing designations. Any regulation, limitation, restriction, curfew, time of travel restriction, lane restriction, routing ban, port-of-entry designation, or route weight restriction, applicable to the highway transportation of NRHM over a specific highway route or portion of a route.

Secretary. The Secretary of Transportation.

State. 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 or Guam.

### **397.67 Motor carrier responsibility for routing.**

(a) A motor carrier transporting NRHM shall comply with NRHM routing designations of a State or Indian tribe pursuant to this subpart.

(b) A motor carrier carrying hazardous materials required to be placarded or marked in accordance with 49 CFR 177.823 and not subject to a NRHM routing designation pursuant to this subpart, shall operate the vehicle over routes which do not go through or near heavily populated areas, places where crowds are assembled, tunnels, narrow streets or alleys, except where the motor carrier determines that:

- (1) There is no practicable alternative;
- (2) A reasonable deviation is necessary to reach terminals, points of loading and unloading, facilities for food, fuel, repairs, rest, or a safe haven; or
- (3) A reasonable deviation is required by emergency conditions, such as a detour that has been established by a highway authority, or a situation exists where a law enforcement official requires the driver to take an alternative route.

(c) Operating convenience is not a basis for determining whether it is practicable to operate a motor vehicle in accordance with paragraph (b) of this section.

(d) Before a motor carrier requires or permits a motor vehicle containing explosives in Class 1, Divisions 1.1, 1.2, 1.3, as defined in 49 CFR 173.50 and 173.53 respectively, to be operated, the carrier or its agent shall prepare a written route plan that complies with this section and shall furnish a copy to the driver. However, the driver may prepare the written plan as agent for the motor carrier when the trip begins at a location other than the carrier's terminal.

### **397.69 Highway routing designations; preemption.**

(a) Any State or Indian tribe that establishes or modifies a highway routing designation over which NRHM may or may not be transported on or after November 14, 1994, and maintains or enforces such designation, shall comply with the highway routing standards set forth in Part 397.71 of this subpart. For purposes of this subpart, any highway routing designation affecting the highway transportation of

NRHM, made by a political subdivision of a State is considered as one made by that State, and all requirements of this subpart apply.

(b) Except as provided in Parts 397.75 and 397.219, a NRHM route designation made in violation of paragraph (a) of this section is preempted pursuant to section 105(b)(4) of the Hazardous Materials Transportation Act (49 U.S.C. app. 1804(b)(4)). This provision shall become effective after November 14, 1996.

(c) A highway routing designation established by a State, political subdivision, or Indian tribe before November 14, 1994 is subject to preemption in accordance with the preemption standards in paragraphs (a)(1) and (a)(2) of Part 397.203 of this subpart.

(d) A State, political subdivision, or Indian tribe may petition for a waiver of preemption in accordance with Part 397.213.

### **397.71 Federal standards.**

(a) A State or Indian tribe shall comply with the Federal standards under paragraph (b) of this section when establishing, maintaining, or enforcing specific NRHM routing designations over which NRHM may or may not be transported.

(b) The Federal standards are as follows:

(1) *Enhancement of public safety.* The State or Indian tribe shall make a finding, supported by the record to be developed in accordance with paragraphs (b)(2)(ii) and (b)(3)(iv) of this section, that any NRHM routing designation enhances public safety in the areas subject to its jurisdiction and in other areas which are directly affected by such highway routing designation. In making such a finding, the State or Indian tribe shall consider:

(i) The factors listed in paragraph (b)(9) of this section; and

(ii) The DOT "Guidelines for Applying Criteria to Designate Routes for Transporting Hazardous Materials," DOT/RSPA/OHMT-89-02, July 1989<sup>1</sup> or its most current version; or an equivalent routing analysis which adequately considers overall risk to the public.

(2) *Public participation.* Prior to the establishment of any NRHM routing designation, the State or Indian tribe shall undertake the following actions to ensure participation by the public in the routing process:

(i) The State or Indian tribe shall provide the public with notice of any proposed NRHM routing designation and a 30-day period in which to comment. At any time during this period or following review of the comments received, the State or Indian tribe shall decide whether to hold a public hearing on the proposed NRHM route designation. The public shall be given 30 days prior notice of the public hearing which shall be conducted as described in paragraph (b)(2)(ii) of this section. Notice for both the comment period and the public hearing, if one is held, shall be given by publication in at least two newspapers of general circulation in the affected area or areas and shall contain a complete description of the proposed routing designation, together with the date, time, and location of any public hearings. Notice for both the comment period and any public hearing may also be published in the official register of the State.

(ii) If it is determined that a public hearing is necessary, the State or Indian tribe shall hold at least one public hearing on the record during which the public will be afforded the opportunity to present their views and any information or data related to the proposed NRHM routing designation. The State shall make available to the public, upon payment of prescribed costs, copies of the transcript of the hearing, which shall include all exhibits and documents presented during the hearing or submitted for the record.

<sup>1</sup> This document may be obtained from Office of Enforcement and Compliance (MC-EC), Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590-0001.

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(3) *Consultation with others.* Prior to the establishment of any NRHM routing designation, the State or Indian tribe shall provide notice to, and consult with, officials of affected political subdivisions, States and Indian tribes, and any other affected parties. Such actions shall include the following:

(i) At least 60 days prior to establishing a routing designation, the State or Indian tribe shall provide notice, in writing, of the proposed routing designation to officials responsible for highway routing in all other affected States or Indian tribes. A copy of this notice may also be sent to all affected political subdivisions. This notice shall request approval, in writing, by those States or Indian tribes, of the proposed routing designations. If no response is received within 60 days from the day of receipt of the notification of the proposed routing designation, the routing designation shall be considered approved by the affected State or Indian tribe.

(ii) The manner in which consultation under this paragraph is conducted is left to the discretion of the State or Indian tribe.

(iii) The State or Indian tribe shall attempt to resolve any concern or disagreement expressed by any consulted official related to the proposed routing designation.

(iv) The State or Indian tribe shall keep a record of the names and addresses of the officials notified pursuant to this section and of any consultation or meeting conducted with these officials or their representatives. Such record shall describe any concern or disagreement expressed by the officials and any action undertaken to resolve such disagreement or address any concern.

(4) *Through routing.* In establishing any NRHM routing designation, the State or Indian tribe shall ensure through highway routing for the transportation of NRHM between adjacent areas. The term “through highway routing” as used in this paragraph means that the routing designation must ensure continuity of movement so as to not impede or unnecessarily delay the transportation of NRHM. The State or Indian tribe shall utilize the procedures established in paragraphs (b)(2) and (b)(3) of this section in meeting these requirements. In addition, the State or Indian tribe shall make a finding, supported by a risk analysis conducted in accordance with paragraph (b)(1) of this section, that the routing designation enhances public safety. If the risk analysis shows-

(i) That the current routing presents at least 50 percent more risk to the public than the deviation under the proposed routing designation, then the proposed routing designation may go into effect.

(ii) That the current routing presents a greater risk but less than 50 percent more risk to the public than the deviation under the proposed routing restriction, then the proposed routing restriction made by a State or Indian tribe shall only go into effect if it does not force a deviation of more than 25 miles or result in an increase of more than 25 percent of that part of a trip affected by the deviation, whichever is shorter, from the most direct route through a jurisdiction as compared to the intended deviation.

(iii) That the current route has the same or less risk to the public than the deviation resulting from the proposed routing designation, then the routing designation shall not be allowed.

(5) *Agreement of other States; burden on commerce.* Any NRHM routing designation which affects another State or Indian tribe shall be established, maintained, or enforced only if:

(i) It does not unreasonably burden commerce, and

(ii) It is agreed to by the affected State or Indian tribe within 60 days of receipt of the notice sent pursuant to paragraph (b)(3)(i) of this section, or it is approved by the Administrator pursuant to Part 397.75.

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(6) *Timeliness.* The establishment of a NRHM routing designation by any State or Indian tribe shall be completed within 18 months of the notice given in either paragraph (b)(2) or (b)(3) of this section, whichever occurs first.

(7) *Reasonable routes to terminals and other facilities.* In establishing or providing for reasonable access to and from designated routes, the State or Indian tribe shall use the shortest practicable route considering the factors listed in paragraph (b)(9) of this section. In establishing any NRHM routing designation, the State or Indian tribe shall provide reasonable access for motor vehicles transporting NRHM to reach:

- (i) Terminals,
- (ii) Points of loading, unloading, pickup and delivery, and
- (iii) Facilities for food, fuel, repairs, rest, and safe havens.

(8) *Responsibility for local compliance.* The States shall be responsible for ensuring that all of their political subdivisions comply with the provisions of this subpart. The States shall be responsible for resolving all disputes between such political subdivisions within their jurisdiction. If a State or any political subdivision thereof, or an Indian tribe chooses to establish, maintain, or enforce any NRHM routing designation, the Governor, or Indian tribe, shall designate a routing agency for the State or Indian tribe, respectively. The routing agency shall ensure that all NRHM routing designations within its jurisdiction comply with the Federal standards in this section. The State or Indian tribe shall comply with the public information and reporting requirements contained in Part 397.73.

(9) *Factors to consider.* In establishing any NRHM routing designation, the State or Indian tribe shall consider the following factors:

(i) *Population density.* The population potentially exposed to a NRHM release shall be estimated from the density of the residents, employees, motorists, and other persons in the area, using United States census tract maps or other reasonable means for determining the population within a potential impact zone along a designated highway route. The impact zone is the potential range of effects in the event of a release. Special populations such as schools, hospitals, prisons, and senior citizen homes shall, among other things, be considered when determining the potential risk to the population along a highway routing. Consideration shall be given to the amount of time during which an area will experience a heavy population density.

(ii) *Type of highway.* The characteristics of each alternative NRHM highway routing designation shall be compared. Vehicle weight and size limits, underpass and bridge clearances, roadway geometrics, number of lanes, degree of access control, and median and shoulder structures are examples of characteristics which a State or Indian tribe shall consider.

(iii) *Types and quantities of NRHM.* An examination shall be made of the type and quantity of NRHM normally transported along highway routes which are included in a proposed NRHM routing designation, and consideration shall be given to the relative impact zone and risks of each type and quantity.

(iv) *Emergency response capabilities.* In consultation with the proper fire, law enforcement, and highway safety agencies, consideration shall be given to the emergency response capabilities which may be needed as a result of a NRHM routing designation. The analysis of the emergency response capabilities shall be based upon the proximity of the emergency response facilities and their capabilities to contain and suppress NRHM releases within the impact zones.

(v) *Results of consultation with affected persons.* Consideration shall be given to the comments and concerns of all affected persons and entities provided during public hearings and consultations conducted in accordance with this section.

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(vi) *Exposure and other risk factors.* States and Indian tribes shall define the exposure and risk factors associated with any NRHM routing designations. The distance to sensitive areas shall be considered. Sensitive areas include, but are not limited to, homes and commercial buildings, special populations in hospitals, schools, handicapped facilities, prisons and stadiums; water sources such as streams and lakes; and natural areas such as parks, wetlands, and wildlife reserves.

(vii) *Terrain considerations.* Topography along and adjacent to the proposed NRHM routing designation that may affect the potential severity of an accident, the dispersion of the NRHM upon release and the control and clean-up of NRHM if released shall be considered.

(viii) *Continuity of routes.* Adjacent jurisdictions shall be consulted to ensure routing continuity for NRHM across common borders. Deviations from the most direct route shall be minimized.

(ix) *Alternative routes.* Consideration shall be given to the alternative routes to, or resulting from, any NRHM route designation. Alternative routes shall be examined, reviewed, or evaluated to the extent necessary to demonstrate that the most probable alternative routing resulting from a routing designation is safer than the current routing.

(x) *Effects on commerce.* Any NRHM routing designation made in accordance with this subpart shall not create an unreasonable burden upon interstate or intrastate commerce.

(xi) *Delays in transportation.* No NRHM routing designations may create unnecessary delays in the transportation of NRHM.

(xii) *Climatic conditions.* Weather conditions unique to a highway route such as snow, wind, ice, fog, or other climatic conditions that could affect the safety of a route, the dispersion of the NRHM upon release, or increase the difficulty of controlling it and cleaning it up shall be given appropriate consideration.

(xiii) *Congestion and accident history.* Traffic conditions unique to a highway routing such as: traffic congestion; accident experience with motor vehicles, traffic considerations that could affect the potential for an accident, exposure of the public to any release, ability to perform emergency response operations, or the temporary closing of a highway for cleaning up any release shall be given appropriate consideration.

[36 FR 4876, March 13, 1971, as amended at 72 FR 55703, Oct. 1, 2007]

### **397.73 Public information and reporting requirements.**

(a) *Public information.* Information on NRHM routing designations must be made available by the State and Indian tribes to the public in the form of maps, lists, road signs or some combination thereof. If road signs are used, those signs and their placements must comply with the provisions of the Manual on Uniform Traffic Control Devices,<sup>2</sup> published by the FMCSA, particularly the Hazardous Cargo signs identified as R14-2 and R14-3 shown in Section 2B-43 of that Manual.

(b) *Reporting and publishing requirements.* Each State or Indian tribe, through its routing agency, shall provide information identifying all NRHM routing designations which exist within their jurisdictions on November 14, 1994 to the FMCSA, Office of Enforcement and Compliance (MC-EC), 1200 New Jersey Ave., SE., Washington, D.C. 20590-0001 by March 13, 1995. The State or Indian tribe shall include descriptions of these routing designations, along with the dates they were established. This

<sup>2</sup>This publication may be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 and has stock number 050-001-81001-8. It is available for inspection and copying as prescribed in 49 CFR Part 7, appendix D. See 23 CFR Part 655, subpart F.

information may also be published in each State's official register of State regulations. Information on any subsequent changes or new NRHM routing designations shall be furnished within 60 days after establishment to the FMCSA. This information will be available from the FMCSA, consolidated by the FMCSA, and published annually in whole or as updates in the FEDERAL REGISTER. Each State may also publish this information in its official register of State regulations.

(Approved by the Office of Management and Budget under control number 2125-0554).

[36 FR 4876, March 13, 1971, as amended at 72 FR 55703, Oct. 1, 2007]

### **397.75 Dispute resolution.**

(a) *Petition.* One or more States or Indian tribes may petition the Administrator to resolve a dispute relating to an agreement on a proposed NRHM routing designation. In resolving a dispute under these provisions, the Administrator will provide the greatest level of safety possible without unreasonably burdening commerce, and ensure compliance with the Federal standards established at Part 397.71 of this subpart.

(b) *Filing.* Each petition for dispute resolution filed under this section must:

(1) Be submitted to the Administrator, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590-0001. Attention: Office of the Chief Counsel (MC-CC).

(2) Identify the State or Indian tribe filing the petition and any other State, political subdivision, or Indian tribe whose NRHM routing designation is the subject of the dispute.

(3) Contain a certification that the petitioner has complied with the notification requirements of paragraph (c) of this section, and include a list of the names and addresses of each State, political subdivision, or Indian tribe official who was notified of the filing of the petition.

(4) Clearly set forth the dispute for which resolution is sought, including a complete description of any disputed NRHM routing designation and an explanation of how the disputed routing designation affects the petitioner or how it impedes through highway routing. If the routing designation being disputed results in alternative routing, then a comparative risk analysis for the designated route and the resulting alternative routing shall be provided.

(5) Describe any actions taken by the State or Indian tribe to resolve the dispute.

(6) Explain the reasons why the petitioner believes that the Administrator should intervene in resolving the dispute.

(7) Describe any proposed actions that the Administrator should take to resolve the dispute and how these actions would provide the greatest level of highway safety without unreasonably burdening commerce and would ensure compliance with the Federal standards established in this subpart.

(c) *Notice.* (1) Any State or Indian tribe that files a petition for dispute resolution under this subpart shall mail a copy of the petition to any affected State, political subdivision, or Indian tribe, accompanied by a statement that the State, political subdivision, or Indian tribe may submit comments regarding the petition to the Administrator within 45 days. (2) By serving notice on any other State, political subdivision, or Indian tribe determined by the Administrator to be possibly affected by the issues in dispute or the resolution sought, or by publication in the FEDERAL REGISTER, the Administrator may afford those persons an opportunity to file written comments on the petition. (3) Any affected State, political subdivision, or Indian tribe submitting written comments to the Administrator with respect to a petition filed under this section shall send a copy of the comments to the petitioner and certify to the Administrator as to having 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.

(d) *Court actions.* After a petition for dispute resolution is filed in accordance with this section, no court action may be brought with respect to the subject matter of such dispute until a final decision has been issued by the Administrator or until the last day of the one-year period beginning on the day the Administrator receives the petition, whichever occurs first.

(e) *Hearings; alternative dispute resolution.* Upon receipt of a petition filed pursuant to paragraph (a) of this section, the Administrator may schedule a hearing to attempt to resolve the dispute and, if a hearing is scheduled, will notify all parties to the dispute of the date, time, and place of the hearing. During the hearing the parties may offer any information pertinent to the resolution of the dispute. If an agreement is reached, it may be stipulated by the parties, in writing, and, if the Administrator agrees, made part of the decision in paragraph (f) of this section. If no agreement is reached, the Administrator may take the matter under consideration and announce his or her decision in accordance with paragraph (f) of this section. Nothing in this section shall be construed as prohibiting the parties from settling the dispute or seeking other methods of alternative dispute resolution prior to the final decision by the Administrator.

(f) *Decision.* The Administrator will issue a decision based on the petition, the written comments submitted by the parties, the record of the hearing, and any other information in the record. The decision will include a written statement setting forth the relevant facts and the legal basis for the decision.

(g) *Record.* The Administrator will serve a copy of the decision upon the petitioner and any other party who participated in the proceedings. A copy of each decision will be placed on file in the public docket. The Administrator may publish the decision or notice of the decision in the FEDERAL REGISTER.

[36 FR 4876, March 13, 1971, as amended at 72 FR 55703, Oct. 1, 2007]

### **397.77 Judicial review of dispute decision.**

Any State or Indian tribe adversely affected by the Administrator's decision under Part 397.75 of this subpart may seek review by the appropriate district court of the United States under such proceeding only by filing a petition with such court within 90 days after such decision becomes final.

## **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

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(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 Part 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, times 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:

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- (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; and
  - (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 Part 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)), must, within 90 days following the acceptance of the package, file the following information concerning the transportation of each such package with the Office of Enforcement and Compliance (MC-EC), Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., 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 173.203.

[57 FR 44131, Sep 24, 1992, as amended at 66 FR 49874, Oct 1, 2001; 72 FR 55703, Oct 1, 2007]

### **397.103 Requirements for State routing designations.**

(a) The State routing agency, as defined in Part 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.

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(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 Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance (MC-EC), Attn: National Hazardous Materials Route Registry, 1200 New Jersey Ave., SE., Washington, DC 20590-0001.

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

(d) 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," are available upon request to Office of Enforcement and Compliance (MC-EC), 1200 New Jersey Ave., SE., Washington, DC 20590-0001.

[57 FR 44131, Sept. 24, 1992, as amended at 66 FR 49874, Oct 1, 2001; 72 FR 55703, Oct 1, 2007]

### SUBPART E - PREEMPTION PROCEDURES

Source: 57 FR 44132, Sept. 24, 1992, unless otherwise noted.

#### **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 Administrator for a determination as to whether that highway routing designation is preempted under 49 U.S.C. 5125, or Part. 397.69 or Part. 397.203; and

(2) A 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 49 U.S.C. 5125, or Part. 397.69 or Part. 397.203, 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 49 U.S.C. 5101 *et seq.*, formerly known as the Hazardous Materials Transportation Act.

*Administrator* means the Federal Highway Administrator, who is the chief executive of the Federal Motor Carrier Safety Administration, an agency of the United States Department of Transportation, or his/her designate.

*Hazardous material* means a substance or material, including a hazardous substance, which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, or property, when transported in commerce, and which has been so designated.

*Indian tribe* has the same meaning as contained in section 4 of the Indian Self-Determination and Education Act, 25 U.S.C. 450b.

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*Person* means an individual, firm, co-partnership, 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 the Governor of the State, or an 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, restriction, curfew, time of travel restriction, lane restriction, routing ban, port-of-entry designation, or route weight restriction applicable to the highway transportation of hazardous materials over a specific highway route or portion of a route.

*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.

[57 FR 44132, Sept. 24, 1992, as amended at 59 FR 51834, Oct. 12, 1994]

### **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) The highway routing designation is preempted pursuant to Part 397.69(b).

(b) [Reserved].

(57 FR 44132, Sept. 24, 1992, as amended at 59 FR 51834, Oct. 12, 1994]

### **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 Part 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 Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, D.C. 20590-0001. Attention: Office of the Chief Counsel, Enforcement and Litigation Division (MC-CCE), Hazardous Materials Preemption;

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- (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 Part 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.

[57 FR 44132, Sept. 24, 1992, as amended at 72 FR 55703, Oct 1, 2007]

### **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 the 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 Part 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 Part 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 Part 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, Part 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 Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, D.C. 20590-0001. Attention: Office of the Chief Counsel, Enforcement and Litigation Division (MC-CCE), Hazardous Materials Preemption Docket;

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- (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 Part 397.211;
- (4) Contain an express acknowledgement 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.

[57 FR 44132, Sept. 24, 1992, as amended at 72 FR 55703, Oct 1, 2007]

### **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 that 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 requires 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 Part 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

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(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 Part 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 Part 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 Part 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 Part 397.211 or Part 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 Part 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 Part 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.