

judicial review, unless the objection arises after the comment period allowed for in the proposal.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone.

**Note:** Incorporation by reference of the State Implementation Plan for the State of Rhode Island was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 13, 1998.

**John P. DeVillars,**

*Regional Administrator, Region I.*

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

**Subpart 00—Rhode Island**

2. Section 52.2070 is amended by revising paragraph (c)(50) to read as follows:

**§ 52.2070 Identification of plan**

\* \* \* \* \*

(c) \* \* \*

(50) Revisions to the State Implementation Plan submitted by the Rhode Island Department of Environmental Management on September 21, 1998. The revisions consist of the State's 15 Percent plan and Contingency plan. The EPA is approving the calculation of the required emission reductions, and the emission reduction credit claimed from surface coating operations, printing operations, plant closures, cutback asphalt, synthetic pharmaceutical manufacturing, automobile refinishing, consumer and commercial products, architectural and industrial maintenance coatings, stage II vapor recovery, reformulated gasoline in on-road and off-road engines, tier I motor vehicle controls, and low emitting vehicles. EPA is taking no action at this time on the emission reduction credit claim made for the Rhode Island automobile inspection and maintenance program.

(i) Incorporation by reference.

(A) Letter from the Rhode Island Department of Environmental Management dated September 21, 1998 submitting a revision to the Rhode Island State Implementation Plan.

3. Section 52.2084 is amended by removing and revising paragraph (a)(2).

4. Section 52.2086 is amended by adding paragraph (d) to read as follows:

**§ 52.2086 Emission inventories**

\* \* \* \* \*

(d) Minor revisions to the Rhode Island 1990 base year emission inventory were submitted to EPA on September 21, 1998. The revised emission estimates were prepared in accordance with EPA guidance, and are approved into the State's SIP.

[FR Doc. 98-32415 Filed 12-7-98; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF DEFENSE**

**Department of the Air Force**

**48 CFR Part 5316**

**Types of Contracts**

**AGENCY:** Department of the Air Force, Department of Defense

**ACTION:** Final rule.

**SUMMARY:** The Department of the Air Force is amending Title 48, Chapter 53 of the CFR by removing Part 5316, Types of Contracts. This rule is removed because it does not meet the requirement for codification. It was revised as part of the Federal Acquisition Regulation Part 15 rewrite, and was changed in the AFFARS on an interim basis by Contracting Policy memo 93-C-02 on January 8, 1998. It contains internal operating procedures that will be finalized in AFAC 96-2.

**EFFECTIVE DATE:** December 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Powell, Contracting Policy Branch, SAF/AQCP, 1060 Air Force Pentagon, Washington, DC 20330-1060, telephone (703) 588-7062.

**SUPPLEMENTARY INFORMATION:** Under the authority of 5 U.S.C. 301 and FAR 1.301 48 CFR, Chapter 53, is amended by removing Part 5316.

**Carolyn A. Lunsford,**

**Air Force Federal Register Liaison Officer.**

[FR Doc. 98-32530 Filed 12-7-98; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**49 CFR Parts 381 and 383**

[FHWA Docket No. FHWA-98-4145]

RIN 2125-AE48

**Federal Motor Carrier Safety Regulations; Waivers, Exemptions, and Pilot Programs; Rules and Procedures**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The FHWA is adopting regulations to implement section 4007 of the Transportation Equity Act for the 21st Century (TEA-21), concerning waivers and exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs), and the administration of pilot programs to evaluate innovative alternatives to the regulations. The regulations establish the procedures persons must follow to request waivers and to apply for exemptions from the FMCSRs, and the procedures the FHWA will use to process the requests for waivers and applications for exemptions. The regulations also codify statutory requirements concerning the agency's administration of pilot programs. This rulemaking is intended to provide procedures to ensure the timely processing of requests for waivers and applications for exemptions, and public disclosure of the procedures the agency would use in initiating and managing pilot programs.

**DATES:** This rule is effective December 8, 1998. Comments must be received on or before February 8, 1998.

**ADDRESSES:** Submit written, signed comments to FHWA Docket No. FHWA-98-4145, the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., et., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HCS-10, (202) 366-4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC-20, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590-0001.

Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

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

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the GPO's web page at: <http://www.access.gpo.gov/nara>.

##### Background

On June 9, 1998, the President signed the Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178, 112 Stat. 107). Section 4007 of TEA-21 amended 49 U.S.C. 31315 and 31136(e) concerning the Secretary of Transportation's (the Secretary's) authority to grant waivers from the FMCSRs for a person(s) seeking regulatory relief from those requirements. The statute provides the Secretary with the authority to grant waivers and exemptions. The duration of a waiver is limited to three months and the Secretary may grant the waiver without requesting public comment.

By contrast, an exemption may be up to two years in duration, and may be renewed. The Secretary must provide the public with an opportunity to comment on each exemption request prior to granting or denying the request.

Section 4007 also provides the Secretary with authority to conduct pilot programs, research studies in which an exemption(s) would be granted to allow innovative alternatives to certain FMCSRs to be tested. The Secretary must provide the public with an opportunity to comment before starting such a program.

Prior to the enactment of TEA-21, 49 U.S.C. 31136(e) and 31315 provided the FHWA explicit authority to waive any regulation issued under the Motor Carrier Safety Act of 1984 (Pub. L. 98-554, 98 Stat. 2832), the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99-570, 100 Stat. 3207-170), and the Omnibus Transportation Employee Testing Act of 1991 (Pub. L. 102-143, 105 Stat. 952). The FHWA could waive any part of a regulation, as it applied to a person or class of persons, if the waiver was first determined to be

consistent with the public interest and the safe operation of commercial motor vehicles (CMVs). Before granting a waiver under these provisions of the United States Code, the FHWA had to publish a notice in the **Federal Register** requesting public comment on the terms and conditions of the waiver. Generally, the agency used its waiver authority sparingly because it was difficult to determine beforehand, with a reasonable degree of certainty, whether an activity that is prohibited under the current regulations could be safely conducted under the terms and conditions of a waiver. The difficulties of that waiver process are exemplified by the decision of the U.S. Court of Appeals for the D.C. Circuit in *Advocates for Highway and Auto Safety v. Federal Highway Administration*, 28 F. 3d 1288 (1994), concerning the FHWA's Vision Waiver Program for CMV drivers.<sup>1</sup>

With the enactment of TEA-21, the FHWA may grant a waiver or exemption that relieves a person from compliance in whole or in part with a regulation if the FHWA determines that the waiver or exemption is in the public interest and would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation to which the waiver or exemption would apply. The TEA-21 also permits the FHWA to conduct pilot programs to evaluate alternatives to regulations relating to motor carrier, CMV, and driver safety. Pilot programs would include the use of exemptions under strict controls to enable the collection and analysis of data, and the preparation of a report to Congress. The TEA-21 makes a clear distinction between "waivers" and "exemptions" and specifies requirements for pilot programs.

##### Waivers

The TEA-21 gives the FHWA the authority to grant short-term waivers without requesting public comment, and without providing public notice. In addition to the safety criterion that applies to both waivers and exemptions, waivers will require a "public interest" finding. Waivers may only be granted to a person for a specific unique, non-emergency event for periods up to three months.

<sup>1</sup> On August 2, 1994, the D.C. Circuit found that the agency's determination that the waiver program will not adversely affect the safe operation of commercial motor vehicles lacked empirical support in the record. Accordingly, the Court found that the FHWA failed to meet the exacting requirements of 49 U.S.C. 31136(e). The Court concluded that the FHWA's adoption of the waiver program was contrary to law, and vacated and remanded the rule to the agency.

##### Exemptions

The exemption provision is intended to broaden the agency's discretion to provide regulatory relief by overcoming the strict interpretation of 49 U.S.C. 31136(e) in *Advocates for Highway and Auto Safety v. Federal Highway Administration*, supra, concerning the FHWA's Vision Waiver Program for CMV drivers. As expressed in the legislative history of section 4007 of TEA-21:

The Court found that the statutory language [49 U.S.C. 31136(e)] required the Secretary to determine, before issuing any waiver, that no diminution in safety would result, i.e., that it be determined beforehand there would be absolutely no increase in crashes as a result of the waivers. To deal with the decision, this section substitutes the term "equivalent" to describe a reasonable expectation that safety will not be compromised. In the absence of greater discretion to deal with waivers and exemptions and a new standard by which to judge them, the Congress would continue to be the only source to provide regulatory exemptions.

H.R. Conf. Rep. No. 105-550, at 489-490 (1998)

The TEA-21 requires the FHWA to publish a notice in the **Federal Register** for each exemption requested, explaining that the request has been filed, and providing the public an opportunity to inspect the safety analysis and any other relevant information known to the agency, and comment on the request. Prior to granting a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person or class of persons who will receive the exemption, the provisions from which the person will be exempt, the effective period, and all terms and conditions of the exemption. The terms and conditions established by the FHWA must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

In addition, the agency is required to monitor the implementation of each exemption to ensure compliance with its terms and conditions.

If the FHWA denies a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person who was denied the exemption and the reasons for the denial. Section 4007 gives the agency the option of publishing a notice for each denial of an exemption, or periodically publishing notices for all denials during a given period of time.

Generally, the duration of exemptions issued under the authority of section

4007 is limited to two years from the date of approval, but may be renewed.

The FHWA is required to immediately revoke an exemption if—

(1) The person fails to comply with the terms and conditions of the exemption;

(2) The exemption has resulted in a lower level of safety than was maintained before the exemption was granted; or

(3) Continuation of the exemption would not be consistent with the goals and objectives of the regulations issued under the authority of 49 U.S.C. chapter 313, or 49 U.S.C. 31136.

### **Pilot Programs**

The TEA-21 permits the FHWA to conduct pilot programs to evaluate alternatives to regulations relating to motor carrier, CMV, and driver safety. These programs may include exemptions from one or more regulations. The FHWA must publish, in the **Federal Register**, a detailed description of each pilot program, including the exemptions being considered, and provide notice and an opportunity for public comment before the effective date of the program. The agency is required to ensure that the safety measures in the pilot programs are designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved through compliance with the safety regulations. The duration of pilot programs is limited to three years from the starting date.

The FHWA is required to immediately revoke participation of a motor carrier, CMV, or driver for failure to comply with the terms and conditions of the pilot program, or if continued participation is inconsistent with the goals and objectives of the safety regulations issued under the authority of 49 U.S.C. chapter 313, or 49 U.S.C. 31136. The agency is required to immediately terminate a pilot program if its continuation is inconsistent with the goals and objectives of the safety regulations issued under the authority of 49 U.S.C. chapter 313, or 49 U.S.C. 31136.

At the conclusion of each pilot program, the FHWA must report to Congress the findings, conclusions, and recommendations of the program, including suggested amendments to laws and regulations that would enhance motor carrier, CMV, and driver safety and improve compliance with the FMCSRs.

### **Public Meeting to Discuss the FHWA's Implementation of Section 4007**

On August 20, 1998, the FHWA held a public meeting at the Department of Transportation headquarters to solicit information from interested parties on issues the agency should consider in implementing section 4007 of TEA-21. A notice announcing the meeting was published on July 29, 1998 (63 FR 40387). The notice also provided interested parties with an opportunity to submit written comments to the docket.

#### *Discussion of Comments Made During the Public Meeting*

The following companies and organizations were represented at the public meeting: Advocates for Highway and Auto Safety (Advocates); American Association of Motor Vehicle Administrators (AAMVA); the American Automobile Association (AAA); American Road and Transportation Builders Association (ARTBA); the American Trucking Associations, Inc. (ATA); Associated General Contractors (AGC); Institute for Public Representation; Maryland State Highway Administration; Nalley and Associates; National Automobile Dealers Association (NADA); National Private Truck Council (NPTC); Petroleum Marketers Association (PMA); Kenneth Pierson, a safety consultant; Truckload Carriers Association; U.S. Department of Energy; and Western Atlas International. A transcript of the meeting has been placed in the docket.

Generally, the participants in the public meeting supported the implementation of section 4007 of the TEA-21. There were differing views on how complex or detailed the procedural rules should be; what criteria to use for granting waivers and exemptions and allowing participation in pilot programs; and how the FHWA should monitor persons who are granted waivers or exemptions, and participants in pilot programs.

The ATA discussed the need for making a distinction between the procedural rules for waivers and exemptions. The ATA stated:

With respect to waivers, since they are for a short duration and are intended to be limited in scope to address unique circumstances, there should be fewer entry hurdles for applicants, as well as less monitoring by the government.

Applicants should be required to describe the circumstances that make their operations so unique as to support a limited waiver, and why there is a reasonable public interest—because that is one of the legislative tests.

Applicants must also be required to describe the safety controls that will be put

in place in order to mitigate any potential safety concerns. And since waivers will be limited in duration, [the FHWA], as I indicated, should limit the amount of monitoring or reporting involved.

And we believe in some cases maybe there is no reporting and maybe there is no monitoring, depending on the circumstances.

The ATA recommended that the FHWA consider providing examples of such countermeasures, and be willing to assist the applicants by providing information on the types of safety impact analyses that might be included in an application.

The AAA believes that “open, timely, and two-way” communication among the FHWA and the States, and the public is critical. The AAA also indicated that certain terms should be defined in the regulations and that certain conditions should be met by applicants for exemptions and waivers. The AAA stated:

Although the statute does not require public notice or comment, it also does not prohibit this critical component. AAA believes that FHWA should take full advantage of all opportunities to communicate its goals in motor carrier safety and therefore recommends that FHWA provide formal public notice of waivers.

A notice in the **Federal Register** would not be burdensome and would at least communicate the public interest to be served by the waiver. Such notice would also signal to the public that the agency values communication, which is so important for the public to feel like they're a part of the process.

We further recommend that FHWA approach states and communities affected by the waiver again as partners and provide notice sufficiently in advance so that their objections, recommendations, or concerns regarding the proposed waiver may be fairly and adequately considered and make them a part of the process.

AAA also urges FHWA to clearly define the term “public interest” in its rule implementing the waiver authority. Clear definitions are critical to public understanding and acceptance.

Moving on to the area of exemptions, AAA recommends that the regulations governing requests for exemption go beyond those required “at a minimum” in the statute and should include some of the following areas:

1. The public interest to be served by the exemption;
2. A clear statement of the necessity for and purpose of the exemption;
3. An analysis of the enforcement impacts of the exemption and, if substantial, how cost recovery to states might be achieved;
4. And then identification of the economic benefits to participants.

The AGC and PMA expressed interest in having the FHWA exercise its authority under section 4007 of the TEA-21 to provide an exemption and pilot program, respectively, concerning

the hours-of-service regulations (49 CFR 395). The AGC stated:

AGC calls on FHWA to use these new authorities to grant broad exemption from the hours of service restrictions for the construction industry. No other set of regulations are considered more onerous to the industry than these restrictions and the attendant requirements that go along with them.

And from our point of view, they have the least positive impact on safety in construction. And as I said, I gave a detailed—detailed comments that we've submitted to the record before on hours of service, detailing why we think the industry is unique and why it should be exempted.

The PMA made reference to the FHWA's Winter Home Heating Oil Delivery State Flexibility Program developed in response to section 346 of the National Highway System Designation Act of 1995 (Pub. L. 104-59, 109 Stat. 568). The PMA requested that a program similar to the one described in the FHWA's January 29, 1997 (62 FR 4372) notice of final determination "fit comfortably within the constructs of the rule we discuss here today."

The PMA also provided comments about monitoring participants in pilot programs. The PMA stated:

In regard to monitoring of participants, monitoring of these programs—especially Pilot Project Programs—should be done by requiring participants to submit periodic reports as part of the FHWA Plan.

Additionally, PMA suggests the Federal Highway Administration consider the creation of small, program-specific agency appointed review boards consisting of agency personnel, affected state regulators and industry representatives, who would be responsible for overall monitoring of an individual program.

The review board should be given periodic updates regarding their specific program, as provided by the FHWA. In this way, Pilot Programs will be treated with the utmost level of seriousness, with meaningful consideration being given to all aspects of the process.

The review board could also be available to advise the Secretary at his request as to key elements of rule implementation, in addition to monitoring, including revocation of participation; program termination; the report to Congress; and other items as the Secretary may request.

#### *Discussion of Written Comments Received in Response to the FHWA's July 29, 1998, Notice*

The FHWA received written comments from: the AAA; the AAMVA; the ARTBA; the ATA; the Insurance Institute for Highway Safety (IIHS); Parents Against Tired Truckers; and the PMA.

The IIHS stated:

Some federal motor carrier safety rules are so vital to the protection of commercial drivers and the general public that waivers and exemptions should not be permitted. One example is the current limitation on driving hours. The agency has no sound evidence that these hours-of-service limits can be extended without increasing crash rates.

Motor carriers seeking waivers or exemptions from safety rules should expect to furnish sound data to justify these exemptions and undergo continued close scrutiny of their safety records. FHWA should not simply accept motor carriers' assertions that their safety records are excellent. Rather, the agency should review compliance data and perform compliance reviews if none have been performed within the past five years. Similarly, a reasonable percentage, perhaps 20 percent, of vehicles from motor carriers seeking exemptions should be inspected by state or federal personnel. Because of the high percentage of out-of-state citations and crashes that do not show up in the records of the States issuing commercial licenses to individual drivers, the agency also should gather crash and citation data from all states in which the motor carrier operates. In addition, the reported vehicle-miles of travel should be verified. If FHWA decides to grant a waiver or exemption, these data should continue to be actively collected to determine whether public safety has been compromised.

The ARTBA stated:

While we support the goals of section 4007, we urge FHWA to take steps to ensure participants in section 4007 will not be subject to an increased level of enforcement scrutiny relative to non-participants. Specifically, FHWA should include directives that enforcement frequency should be unaffected by an individual or industry's status of participation in section 4007. Without this type of assurance, participation will potentially be discouraged.

#### **FHWA Response to Comments**

The FHWA has considered the remarks of the participants in the August 20, 1998, public meeting, and the comments submitted to the docket and believes the procedural rules provide a straightforward process for the implementation of the waiver, exemption, and pilot program authority provided by section 4007 of the TEA-21. The FHWA does not agree with commenters who suggest that the procedural rules include specific details on how the agency would determine whether to grant or deny a waiver or exemption, and monitor the persons who are granted waivers and exemptions. The FHWA also disagrees with commenters' suggestions to include specific details on how the agency would communicate with State agencies.

The FHWA does not believe it is practical to establish rules on who should be eligible to apply for waiver or

exemption without knowing the specific regulatory relief the person is requesting. Each request for a waiver and application for an exemption should be reviewed on a case-by-case basis to determine if the person can satisfy the statutory criteria for waivers and exemptions. In the case of exemption applications, the FHWA notes that the agency must publish a notice in the **Federal Register** to provide the public with an opportunity to review the application and safety impact analysis provided with the application. The agency believes this process will be adequate to ensure that all interested parties may comment on the applicant's safety performance and the specific regulatory relief being requested.

The FHWA agrees with the ATA's comments about the need for making a distinction between the procedural rules for waivers and exemptions. Since waivers are for temporary (three months or less) regulatory relief for unique, non-emergency events, there should be a simple process for requesting a waiver, and the FHWA should ensure a timely response to the applicant.

The FHWA believes the interim final rule establishes an effective process to ensure a timely response to the persons who request a waiver. Although the FHWA has the authority to publish a **Federal Register** notice to request public comments on waiver applications—a point emphasized by the AAA during the public meeting—the agency has tentatively determined that it would be impractical to request public comment each time someone needs a waiver for a unique, non-emergency event, especially given the three-month statutory limitation on the duration of the waiver. The agency believes that unless the application is submitted far in advance of the date for the unique event, it is very likely that the waiver could not be processed in time. Also, the time required to go through a notice-and-comment process would typically exceed the duration of the unique event.

In response to the ATA's comments that the FHWA assist exemption applicants by providing information on the types of safety impact analyses that might be included in an application, the FHWA will consider providing assistance to the extent that there are available resources at the time the request for assistance is made. The FHWA notes that the primary responsibility for preparing an application for an exemption rests with the applicant. Prior to requesting assistance from the FHWA, each applicant should carefully review its

plans for achieving a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation from which it would be granted an exemption, and review the safety management controls it would use as an alternative to the regulation.

The FHWA acknowledges that the statutory language suggests, and the interim final rule establishes, an application review process that is not completely data-driven. Specific pass-fail criteria (e.g., crash rates, safety ratings, compliance review results, driving records, etc.) for applications are not required. However, given the broad authority provided by section 4007 of the TEA-21 and the diversity of the motor carrier industry, establishing one-size-fits-all, pass-fail criteria for all exemption applicants is not feasible. The FHWA will make its determination based upon the research, technical, and safety data available at the time it reviews an application and consider the public comments received in response to the **Federal Register** notice required for each exemption application.

With regard to the issue of monitoring of waiver and exemption grantees, the accident register requirements of § 390.15 will remain applicable. The FHWA will provide the specific terms and conditions, including monitoring and reporting provisions, for each waiver and exemption on a case-by-case basis. For exemptions, the terms and conditions will be part of the **Federal Register** notice requesting public comment.

The FHWA believes the notice-and-comment procedures established for exemption applications are consistent with the requirements of section 4007 and will help to ensure the public has the opportunity to participate in the exemption process.

The FHWA disagrees with the AAA's recommendation that minimum requirements for exemption applications include an analysis of the enforcement impacts and how the States would be reimbursed for any substantial expenses involved with enforcing the terms and conditions of the exemption, and monitoring the exemption grantees. The agency also disagrees with the recommendation that applicants be required to identify economic benefits.

The FHWA through its Motor Carrier Safety Assistance Program (MCSAP) provides States with Federal funding to help support motor carrier safety enforcement programs. The FHWA does not intend or expect the level of effort from the State agencies to increase for the purpose of enforcing the terms and conditions of the exemptions that would

be granted. It is expected that the processes/systems used to select drivers and vehicles for inspection, and to visit motor carriers for compliance reviews would remain the same. If a motor carrier operating under the terms and conditions of a waiver or exemption has one of its vehicles inspected, or is selected for a compliance review, the officer or investigator would verify compliance with terms and conditions of the waiver or exemption at that time.

The FHWA believes it is inappropriate to subject a motor carrier to additional roadside inspections and compliance reviews based solely on its receipt of a waiver or exemption. The benefits of granting waivers and exemptions would be lost if regulatory relief were replaced with more rigorous or frequent enforcement activities targeted at the carriers who receive them. The FHWA shares the ARTBA's concerns that motor carriers would be discouraged from taking advantage of the opportunities provided by section 4007 if there were an increased level of enforcement scrutiny.

On the subject of economic benefits, the FHWA does not believe applicants should be required to document the economic benefits to the exemption. The agency believes that it is more likely than not that motor carriers would only apply for an exemption if the motor carrier believes there is a significant economic benefit. There is no readily apparent safety benefit to requiring motor carriers to assign a dollar value to the economic benefits and prove that their estimates are valid.

The FHWA disagrees with the AAA's request that the agency define "public interest" as the term is used in 49 U.S.C. 31315(a) concerning waivers. The FHWA believes that the public interest is being served if alternatives that are likely to achieve safety outcomes that are equal to, or greater than, the outcomes provided by the current regulations are proven to be successful. The agency's objective is to work with the motor carrier industry, States, and safety groups to improve highway safety. Providing motor carriers with flexibility to explore new approaches to improving safety is in the public interest.

The agency has not included a definition of "equivalent" in the interim final rule but requests public comment on whether there is a need to define the term. Commenters are encouraged to include suggestions or recommendations on how the term should be defined.

With regard to the PMA's suggestion that the FHWA consider the creation of a review board for the monitoring of

individual pilot programs, the agency does not believe this is necessary or practical. The terms and conditions for participation in a pilot program would include certain safety-related reports that could be used to help the agency monitor the motor carriers. If a participant fails to comply with the terms and conditions of the pilot program, the FHWA must immediately revoke participation of the motor carrier, driver, or vehicle.

In response to the AGC and the PMA comments about regulatory relief from the hours-of-service regulations, the FHWA believes this rulemaking is not the proper forum for resolving those concerns. Now that procedural rules are in place, the AGC and the PMA members may apply for an exemption and request the development of a pilot program, respectively.

The FHWA agrees with commenters' emphasis on the importance of working with the States. The FHWA will ensure that State officials are informed about the waivers, exemptions, and pilot programs. The States, as well as all interested parties, may comment in response to the **Federal Register** notices required by section 4007 of the TEA-21. The FHWA will notify the States of waivers and exemptions granted.

#### **Discussion of Regulatory Language**

The FHWA is creating Part 381, Waivers, Exemptions, and Pilot Programs, to specify the requirements for requesting waivers and applying for exemptions, the process the agency will use in reviewing waiver requests and exemption applications, and the initiation and administration of pilot programs. Part 381 is divided into six subparts:

*Subpart A—General* describes the purpose and applicability of part 381, and defines certain terms used throughout the part;

*Subpart B—Procedures for Requesting Waivers* provides a plain-language description of waivers, the procedures for requesting a waiver and the process the FHWA will use to review waiver requests;

*Subpart C—Procedures for Applying for Exemptions* provides a plain-language description of exemptions, the procedures for applying for an exemption, the process the FHWA will use to review exemption applications, and the conditions under which the FHWA will revoke an exemption;

*Subpart D—Initiation of Pilot Programs* explains how pilot programs operate, and how a pilot program can be initiated (which includes a detailed list of information the FHWA requests from individuals who would like to

recommend that the agency start a pilot program);

*Subpart E—Administration of Pilot Programs* codifies in the FMCSRs a plain-language version of the statutory requirements concerning the FHWA's administration of pilot programs so that all interested parties will have a convenient reference; and

*Subpart F—Preemption of State Rules* codifies in the FMCSRs a plain-language version of the Federal preemption of any State law and regulation that conflicts with or is inconsistent with a waiver, exemption, or pilot program with respect to a person operating under a waiver or exemption or participating in a pilot program.

#### *Regulations for Which Waivers and Exemptions May Be Granted*

Section 4007 of the TEA-21 authorizes the FHWA to grant waivers and exemptions from any FMCSRs issued under the authority of 49 U.S.C. 31136 and chapter 313. Section 4007 does not give the FHWA the authority to grant waivers and exemptions from regulations issued under the authority of other statutes, for example, the financial responsibility regulations codified at 49 CFR part 387 which were issued under the authority of 49 U.S.C. 31138 and 31139, concerning the transportation of passengers and property, respectively. Also, the FHWA does not have the authority to grant waivers and exemptions from certain requirements (e.g., surety bonds and policies of insurance for motor carriers and property brokers, surety bonds and policies of insurance for freight forwarders) which were transferred from the former Interstate Commerce Commission to the FHWA and are codified at 49 CFR 387. The statutory authority for those requirements is 49 U.S.C. 13101, 13301, 13906, and 14701.

Another example of a requirement from which the FHWA cannot grant a waiver or exemption is 49 CFR 396.25, qualifications of brake inspectors. This rule establishes minimum qualifications for motor carrier employees that are responsible for the inspection, repair, or maintenance of CMV brake systems. This rule was issued under the authority of the Truck and Bus Safety and Regulatory Reform Act of 1988 (the specific provision concerning qualifications of brake inspectors is codified at 49 U.S.C. 31137(b)).

To assist the motor carrier industry and the general public in identifying the requirements for which waivers and exemptions may be granted, the FHWA has included a list in §§ 381.200, 381.300, and 381.400 which define in context, a waiver, exemption, and pilot

program, respectively. Generally, the list of regulations for which a waiver or exemption could be granted includes:

- (1) Part 382—Controlled Substances and Alcohol Use and Testing;
- (2) Part 383—Commercial Driver's License Standards; Requirements and Penalties;
- (3) § 385.21 Motor Carrier Identification Report;
- (4) § 390.21 Marking of commercial motor vehicles;
- (5) Part 391—Qualifications of Drivers;
- (6) Part 392—Driving of Commercial Motor Vehicles;
- (7) Part 393—Parts and Accessories Necessary for Safe Operation;
- (8) Part 395—Hours of Service of Drivers;
- (9) Part 396—Inspection, Repair, and Maintenance (except § 396.25); and
- (10) Part 399—Step, Handhold, and Deck Requirements.

The FHWA has excluded the accident register requirements (49 CFR 390.15) from the list of regulations eligible for a waiver or exemption because the agency believes it has a responsibility to monitor the accident involvement of entities operating under the terms of a waiver. The FHWA requests comments on this issue.

The FHWA has included the motor carrier identification report (Form MCS-150) requirement (49 CFR 385.21) as one of the rules which could be waived because the agency believes there is no apparent benefit to using that report to gather information on entities that have not previously operated CMVs in interstate commerce and do not intend to operate CMVs in interstate commerce after the term of the waiver expires. The information from the Form MCS-150 would be used to create a file in the Motor Carrier Management Information System (MCMIS), a database containing safety information (e.g., compliance review results, roadside inspection results, CMV accidents, etc.) about interstate motor carriers. The entities that would benefit from this action would be certain intrastate motor carriers that are not subject to State requirements to complete the Form MCS-150, and businesses or groups that rarely (except for a unique, non-emergency event) operate CMVs.

Several States currently require intrastate motor carriers to complete Form MCS-150 and obtain a USDOT identification number. These motor carriers are listed in the MCMIS as intrastate only carriers. The addition of these motor carriers to the MCMIS enables the States and the FHWA to work together in determining the number of active motor carriers

operating in the United States, and to monitor the safety performance of motor carriers. The intrastate motor carriers subject to State requirements for completing Form MCS-150 would have already completed the form prior to applying for a waiver to conduct a short-term operation in interstate commerce, and would continue to be subject to the State requirements at the end of the waiver period.

Since intrastate motor carriers and non-motor carrier entities would be subject to the FHWA's jurisdiction for only a short period of time, adding them to the interstate motor carrier census could, depending on the number of intrastate motor carriers and non-motor carrier entities who are granted waivers, skew the data in the MCMIS.

Furthermore, since the agency would be able to identify these entities through the information submitted as part of the waiver application, the submission of Form MCS-150 would be redundant. The FHWA requests comments on whether these entities should be required to submit Form MCS-150. The agency also requests comments on whether waivers granted to intrastate motor carriers and non-motor carrier entities should also include relief from all of the vehicle marking requirements in 49 CFR 390.21, or only the display of the motor carrier census number (i.e., USDOT identification number) that is assigned when Form MCS-150 is completed.

With regard to exemptions, the FHWA is requiring intrastate motor carriers and non-motor carrier entities to complete Form MCS-150 and to mark all CMVs as required in § 390.21. The agency believes an entity that chooses to operate a CMV in interstate commerce for more than 3 months should be treated as an interstate motor carrier for the purposes of the MCMIS. Since exemptions provide regulatory relief for up to two years, and may be renewed, the FHWA believes it is important that all CMVs operated in interstate commerce under the terms of the exemption should be marked. The FHWA requests comments on these issues.

For the purposes of exemptions granted as part of a pilot program, the FHWA is using the same list of regulations provided in § 381.300, *What is an exemption?* The FHWA is using the same list because the agency does not believe entities participating in a pilot program which could continue for up to three years should be treated differently from interstate motor carriers who are required to complete the Form MCS-150 and to mark their CMVs.

The FHWA requests comments from all interested parties on whether any of the regulations on the lists should be considered "off-limits" for the purposes of granting waivers and exemptions. Commenters are encouraged to explain in detail why the agency should refuse to consider waivers or exemptions to those requirements.

#### *Process for Requesting a Waiver and Applying for an Exemption*

The FHWA has attempted to keep the processes for requesting a waiver and applying for an exemption simple. The person requesting a waiver or applying for an exemption is required to send a written request (which could be a typed or handwritten (printed) letter) to the Federal Highway Administrator. The written request must include basic information such as the identity of the person who would be covered by the waiver or exemption, the name of the motor carrier or other entity that would be responsible for the use or operation of CMVs during the waiver or exemption period, and the principal place of business of the motor carrier or other entity. The interim final rule requires that the request or application include a written statement that: (1) Describes the event or CMV operation for which the waiver or exemption would be used; (2) identifies the regulation from which the applicant is requesting relief; (3) estimates the total number of drivers and CMVs that would be operated under the terms and conditions of the waiver or exemption; and (4) explains how the recipient of the waiver or exemption would ensure that they achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation. For exemption applications, the written request must also include an assessment of the safety impacts the exemption may have, describe the impacts (e.g., inability to test innovative safety management control systems, etc.) that would be experienced if the exemption is not granted, and include a copy of all research reports, technical papers, and other publications and documents referenced in the application.

The complete list of information to be included in the requests for waivers and applications for exemptions is provided in § 381.210, *How do I request a waiver?*, and § 381.310, *How do I apply for an exemption?* The FHWA believes these requirements are consistent with the statutory language in TEA-21. The agency requests comments on the information that persons requesting waivers or applying for exemptions are required to submit.

#### *FHWA Procedures for the Review of Waiver Requests*

The Office of Motor Carrier and Highway Safety is responsible for reviewing requests for waivers and making recommendations to the Federal Highway Administrator (the Administrator). A copy of the decision signed by the Administrator will be sent to the applicant. It will include the terms and conditions for the waiver, or the reason(s) for denying the waiver application.

#### *FHWA Procedures for the Review of Exemption Applications*

With regard to exemptions, the review process differs because of the requirements in section 4007 of the TEA-21. The Office of Motor Carrier and Highway Safety will review the application for an exemption and prepare, for the Administrator's signature, a **Federal Register** notice requesting public comment. After a review of the comments received, the Office of Motor Carrier and Highway Safety will make a recommendation to the Administrator. Notice of the Administrator's decision will be published in the **Federal Register**.

#### *Initiation and Administration of Pilot Programs*

Although TEA-21 does not require the agency to develop regulations concerning pilot programs, the FHWA has included, in subparts D and E of part 381, information on how pilot programs are initiated, and the statutory requirements for the agency's administration of pilot programs, respectively. The agency believes that including information on pilot programs in the FMCSRs will provide a more convenient reference to the motor carrier industry and the general public than title 49 of the United States Code. The regulations indicate that the FHWA has the authority to initiate pilot programs after providing notice and an opportunity for public comment; they also provide general information on the types of information that interested parties should submit to the agency if they would like to recommend or suggest a pilot program. The information presented in subpart E is intended to be a plain-language version of the statutory requirements for the administration of pilot programs.

#### **Preemption of State Rules**

Section 4007(d) of the TEA-21 indicates that during the time period that a waiver, exemption, or pilot program is in effect, no State shall enforce a law or regulation that conflicts with or is inconsistent with the waiver,

exemption, or pilot program with respect to a person operating under a waiver or exemption or participating in a pilot program. The FHWA has included the preemption language in part 381, and will also include the language in the waiver documents and **Federal Register** notices concerning exemptions and pilot programs. The agency believes this approach will ensure that State officials are notified about the Federal preemption authority. Including the preemption language in the waiver and in the exemption and pilot project notices will enable motor carriers to present inspectors with one document which informs them of the terms and conditions of the waiver, exemption, or pilot program and advises them that State laws and regulations that conflict with the waiver, exemption or pilot program are automatically preempted, and the duration of the preemption. The agency requests comments on this preliminary decision.

#### **Rescission of Waiver Provision 49 CFR Part 383**

The FHWA is rescinding § 383.7, Waiver provisions, of part 383 concerning commercial driver's license (CDL) standards, requirements and penalties. Section 383.7 sets forth the procedures a person must follow to petition the FHWA for a waiver of the CDL regulations. Because section 4007 of the TEA-21 replaced the statutory standards for CDL waivers in 49 U.S.C. 31315 with a new set of standards for waivers, exemptions, and pilot programs applicable to all safety regulations, § 383.7 is no longer valid and must be rescinded.

#### **Rulemaking Analyses and Notices**

The Administrative Procedure Act (5 U.S.C. 553(b)) provides that its notice and comment requirements do not apply when an agency, for good cause, finds that they are impracticable, unnecessary, or contrary to the public interest. Since section 4007 of the TEA-21 requires the FHWA to specify by regulation the procedures by which a person may request an exemption within 180 days after the enactment of the statute, the FHWA has determined that it is impracticable to publish a notice of proposed rulemaking, review the public comments, and issue a final rule prior to the December 6, 1998, deadline.

Although the FHWA did not publish a notice of proposed rulemaking, the agency held a public meeting on August 20, 1998, to solicit information from interested parties on issues the agency should consider in implementing section 4007 of TEA-21. A notice

announcing the meeting was published on July 29, 1998 (63 FR 40387). The notice also provided interested parties with an opportunity to submit written comments to the docket. The FHWA has considered the remarks of the participants in the August 20 public meeting, and the comments submitted to the docket. Therefore, the agency has, to the greatest extent practicable given the statutory deadline, made an effort to provide the public with an opportunity to offer comments and suggestions on how the agency should develop the procedural rules to implement section 4007 of the TEA-21.

The interim final rule establishes the procedures to request waivers and to apply for exemptions from the FMCSRs, and the procedures the FHWA will use to process the requests for waivers and applications for exemptions. The rule also codifies statutory requirements concerning the agency's administration of pilot programs. Since the interim final does not establish pass-fail criteria (e.g., crash rates, safety ratings, compliance review results, driving records, etc.) for persons who request waivers or apply for exemptions, the requirements are administrative in nature and relate to agency procedure and practice.

Accordingly, the FHWA finds that there is good cause to waive prior notice and comment for the limited reasons described above. For the same reasons, the FHWA finds, pursuant to 5 U.S.C. 553(d)(3), that there is good cause for making the interim final rule effective upon publication.

The interim final rule will remain in effect until the agency reviews the comments received in response to this notice and issues a final rule. Comments received will be considered in evaluating whether any changes to this interim final rule are required.

All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the address section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable, but the FHWA may adopt a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or the Department of Transportation's regulatory policies and procedures. This interim final rule establishes the rules and procedures concerning the handling of requests for waivers and applications for exemptions from the FMCSRs, and the initiation and administration of pilot programs. It is anticipated that these rules will help to promote increased cooperation between the private sector and the government by providing a mechanism for exploring alternatives to certain safety regulations, while ensuring a level of safety equivalent to, or greater than, that obtained by complying with the regulations. The FHWA believes this interim final rule could result in incremental, although not substantial, economic benefits in those cases in which the alternatives provide a more cost-effective approach to ensuring motor carrier safety. Therefore, a full regulatory evaluation is not required.

#### **Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA has evaluated the effects of this interim final rule on small entities. This rulemaking establishes the rules and procedures concerning the handling of requests for waivers and applications for exemptions from the FMCSRs, and the initiation and administration of pilot programs. It is anticipated that these rules will help to promote increased cooperation between the private sector and the government by providing a mechanism for exploring alternatives to certain safety regulations, while ensuring a level of safety equivalent to that obtained by complying with the regulations. The provisions concerning waivers and exemptions will be especially beneficial to small entities since these entities may be more in need of regulatory relief than larger companies. The FHWA has written the regulations in question-and-answer format and attempted to use plain language to help ensure that small entities understand how to request a waiver and apply for an exemption, and how the agency will handle such requests and applications. Since the interim final rule does not require small entities to take any actions unless they request a waiver or apply for an exemption, and the information that would be required as part of the request for a waiver and application for an

exemption has been kept to a minimum, the FHWA believes the economic impact of the rule will be minimal. Any economic benefits that small entities might realize from this interim rule would be incremental and, thus, not significant within the meaning of the Regulatory Flexibility Act. Therefore, the FHWA hereby certifies that this action would not have an adverse economic impact on, a substantial number of small entities.

#### **Unfunded Mandates Reform Act of 1995**

This interim final rule will not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (2 U.S.C. 1532).

#### **Executive Order 12612 (Federalism Assessment)**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Although this rulemaking, in and of itself, does not preempt State and local laws and regulations, the waivers and exemptions that would be granted under the authority of 49 U.S.C. 31136(e) and 31315 would preempt such laws or regulations if they conflict with or are inconsistent with the terms and conditions of the waivers or exemptions. Also, the exemptions granted as part of a pilot program would preempt State and local laws and regulations which conflict with or are inconsistent with the terms and conditions of the pilot program.

The FHWA will consider the preemptive effect of each waiver prior to granting the waiver. With regard to exemptions and pilot programs, State and local governments will have the opportunity to respond to the **Federal Register** notices required by section 4007 of TEA-21 and inform the FHWA of concerns about preemption during the time period that an exemption or pilot program would be in effect.

#### **Executive Order 12372 (Intergovernmental Review)**

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



**Paperwork Reduction Act**

This document does not contain information collection requirements for the purposes of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*]. However, the waivers, exemptions, and pilot programs will include certain information collection requirements as part of the terms and conditions for the regulatory relief granted. The agency is required by section 4007 of the TEA-21 to monitor the implementation of exemptions to ensure compliance with the terms and conditions, and ensure that sufficient records are kept by participants in pilot programs to facilitate the collection and analysis of data. The FHWA will consider the information collection requirements for each waiver, exemption, and pilot program and, if necessary, request approval from the Office of Management and Budget for any special recordkeeping requirements associated with the waiver, exemption, or pilot program.

**National Environmental Policy Act**

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

**Regulation Identification Number**

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

**List of Subjects***49 CFR Part 381*

Motor carriers, Motor vehicle equipment, Waivers and exemptions.

*49 CFR Part 383*

Commercial driver's license, Commercial motor vehicles, Motor carriers.

Issued on: November 30, 1998.

**Kenneth R. Wykle,**  
*Federal Highway Administration.*

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, chapter III, by adding part 381 and by amending part 383 as set forth below:

1. Part 381 is added to read as follows:

**PART 381—WAIVERS, EXEMPTIONS, AND PILOT PROGRAMS****Subpart A—General**

Sec.

- 381.100 What is the purpose of this part?  
381.105 Who is required to comply with the rules in this part?  
381.110 What definitions are applicable to this part?

**Subpart B—Procedures for Requesting Waivers**

- 381.200 What is a waiver?  
381.205 How do I determine when I may request a waiver?  
381.210 How do I request a waiver?  
381.215 What will the FHWA do after the agency receives my request for a waiver?  
381.220 How long will it take the agency to respond to my request for a waiver?  
381.225 Who should I contact if I have questions about the information I am required to submit to the FHWA or about the status of my request for a waiver?

**Subpart C—Procedures for Applying for Exemptions**

- 381.300 What is an exemption?  
381.305 How do I determine when I may apply for an exemption?  
381.310 How do I apply for an exemption?  
381.315 What will the FHWA do after the agency receives my application for an exemption?  
381.320 How long will it take the agency to respond to my application for an exemption?  
381.325 Who should I contact if I have questions about the information I am required to submit to the FHWA or about the status of my application for an exemption?  
381.330 What am I required to do if the FHWA grants my application for an exemption?

**Subpart D—Initiation of Pilot Programs**

- 381.400 What is a pilot program?  
381.405 Who determines whether a pilot program should be initiated?  
381.410 What may I do if I have an idea or suggestion for a pilot program?  
381.415 Who should I contact if I have questions about the information to be included in my suggestion?  
381.420 What will the FHWA do after the agency receives my suggestion for a pilot program?

**Subpart E—Administrative Procedures for Pilot Programs**

- 381.500 What are the general requirements the agency must satisfy in conducting a pilot program?  
381.505 What are the minimum elements required for a pilot program?  
381.510 May the FHWA end a pilot program before its scheduled completion date?  
381.515 May the FHWA remove approved participants from a pilot program?  
381.520 What will the FHWA do with the results from a pilot program?

**Subpart F—Preemption of State Rules**

381.600 Do waivers, exemptions, and pilot programs preempt State laws and regulations?

**Authority:** 49 U.S.C. 31136(e), 31315; 49 CFR 1.48.

**Subpart A—General****§ 381.100 What is the purpose of this part?**

This part prescribes the rules and procedures for requesting waivers and applying for exemptions from those provisions of the Federal Motor Carrier Safety Regulations (FMCSRs) which were issued on the authority of 49 U.S.C. 31136 or chapter 313, and the initiation and administration of pilot programs.

**§ 381.105 Who is required to comply with the rules in this part?**

(a) You must comply with the rules in this part if you are going to request a waiver or apply for an exemption.

(b) You should follow the instructions in subpart D of this part if you would like to recommend the agency initiate a pilot program.

**§ 381.110 What definitions are applicable to this part?**

*Commercial motor vehicle* means any motor vehicle that meets the definition of "commercial motor vehicle" found at 49 CFR 382.107 concerning controlled substances and alcohol use and testing, 49 CFR 383.5 concerning commercial driver's license standards, or 49 CFR 390.5 concerning parts 390 through 399 of the FMCSRs.

*Federal Highway Administrator (the Administrator)* means the chief executive of the Federal Highway Administration, an agency within the Department of Transportation.

*FMCSRs* means Federal Motor Carrier Safety Regulations (49 CFR parts 382 and 383, §§ 385.21 and 390.21, parts 391 through 393, 395, 396, and 399).

*You* means an individual or motor carrier or other entity that is, or will be, responsible for the operation of a CMV(s). 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 and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories. *You* also includes any interested party who would like to suggest or recommend that the FHWA initiate a pilot program.

**Subpart B—Procedures for Requesting Waivers****§ 381.200 What is a waiver?**

(a) A waiver is temporary regulatory relief from one or more FMCSR given to a person subject to the regulations, or a person who intends to engage in an activity that would be subject to the regulations.

(b) A waiver provides the person with relief from the regulations for up to three months.

(c) A waiver is intended for unique, non-emergency events and is subject to conditions imposed by the Administrator.

(d) Waivers may only be granted from one or more of the requirements contained in the following parts and sections of the FMCSRs:

(1) Part 382—Controlled Substances and Alcohol Use and Testing;

(2) Part 383—Commercial Driver's License Standards; Requirements and Penalties;

(3) § 385.21 Motor Carrier Identification Report;

(4) § 390.21 Marking of commercial motor vehicles;

(5) Part 391—Qualifications of Drivers;

(6) Part 392—Driving of Commercial Motor Vehicles;

(7) Part 393—Parts and Accessories Necessary for Safe Operation;

(8) Part 395—Hours of Service of Drivers;

(9) Part 396—Inspection, Repair, and Maintenance (except § 396.25); and

(10) Part 399—Step, Handhold and Deck Requirements.

**§ 381.205 How do I determine when I may request a waiver?**

(a) You may request a waiver if one or more FMCSR would prevent you from using or operating CMVs, or make it unreasonably difficult to do so, during a unique, non-emergency event that will take no more than three months to complete.

(b) Before you decide to request a waiver, you should carefully review the regulation to determine whether there are any practical alternatives already available that would allow your use or operation of CMVs during the event. You should also determine whether you need a waiver from all of the requirements in one or more parts of the regulations, or whether a more limited waiver of certain sections within one or more of the parts of the regulations would provide an acceptable level of regulatory relief. For example, if you need relief from one of the recordkeeping requirements concerning driver qualifications, you should not

request relief from all of the requirements of part 391.

**§ 381.210 How do I request a waiver?**

(a) You must send a written request (for example, a typed or handwritten (printed) letter), which includes all of the information required by this section, to the Federal Highway Administrator, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

(b) You must identify the person who would be covered by the waiver. The application for a waiver must include:

(1) Your name, job title, mailing address, and daytime telephone number;

(2) The name of the individual, motor carrier, or other entity that would be responsible for the use or operation of CMVs during the unique, non-emergency event;

(3) Principal place of business for the motor carrier or other entity (street address, city, State, and zip code); and

(4) The USDOT identification number for the motor carrier, if applicable.

(c) You must provide a written statement that:

(1) Describes the unique, non-emergency event for which the waiver would be used, including the time period during which the waiver is needed;

(2) Identifies the regulation that you believe needs to be waived;

(3) Provides an estimate of the total number of drivers and CMVs that would be operated under the terms and conditions of the waiver; and

(4) Explains how you would ensure that you could achieve a level a safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation.

**§ 381.215 What will the FHWA do after the agency receives my request for a waiver?**

(a) The Office of Motor Carrier and Highway Safety will review your request and make a recommendation to the Administrator. The final decision whether to grant or deny the application for a waiver will be made by the Administrator.

(b) After a decision is signed by the Administrator, you will be sent a copy of the document, which will include the terms and conditions for the waiver or the reason for denying the application for a waiver.

**§ 381.220 How long will it take the agency to respond to my request for a waiver?**

You should receive a response from the agency within 60 calendar days from the date the Administrator receives your request. However, depending on the

complexity of the issues discussed in your application, and the availability of staff to review the material, a final decision may take up to 120 days.

**§ 381.225 Who should I contact if I have questions about the information I am required to submit to the FHWA or about the status of my request for a waiver?**

You should contact the Office of Motor Carrier Research and Standards, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. The telephone number is (202) 366-1790.

**Subpart C—Procedures for Applying for Exemptions****§ 381.300 What is an exemption?**

(a) An exemption is temporary regulatory relief from one or more FMCSR given to a person or class of persons subject to the regulations, or who intend to engage in an activity that would make them subject to the regulations.

(b) An exemption provides the person or class of persons with relief from the regulations for up to two years, and may be renewed.

(c) Exemptions may only be granted from one or more of the requirements contained in the following parts and sections of the FMCSRs:

(1) Part 382—Controlled Substances and Alcohol Use and Testing;

(2) Part 383—Commercial Driver's License Standards; Requirements and Penalties;

(3) Part 391—Qualifications of Drivers;

(4) Part 392—Driving of Commercial Motor Vehicles;

(5) Part 393—Parts and Accessories Necessary for Safe Operation;

(6) Part 395—Hours of Service of Drivers;

(7) Part 396—Inspection, Repair, and Maintenance (except for § 396.25); and

(8) Part 399—Step, Handhold and Deck Requirements.

**§ 381.305 How do I determine when I may apply for an exemption?**

(a) You may apply for an exemption if one or more FMCSR prevents you from implementing more efficient or effective operations that would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption.

(b) Before you decide to apply for an exemption you should carefully review the regulation to determine whether there are any practical alternatives already available that would allow you to conduct your motor carrier operations. You should also determine whether you need an exemption from

all of the requirements in one or more parts of the regulations, or whether a more limited exemption from certain sections within one or more parts of the regulations would provide an acceptable level of regulatory relief. For example, if you need regulatory relief from one of the recordkeeping requirements concerning driver qualifications, you should not request regulatory relief from all of the requirements of part 391.

**§ 381.310 How do I apply for an exemption?**

(a) You must send a written request (for example, a typed or handwritten (printed) letter), which includes all of the information required by this section, to the Federal Highway Administrator, U.S. Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

(b) You must identify the person or class of persons who would be covered by the exemption. The application for an exemption must include:

(1) Your name, job title, mailing address, and daytime telephone number;

(2) The name of the individual or motor carrier that would be responsible for the use or operation of CMVs;

(3) Principal place of business for the motor carrier (street address, city, State, and zip code); and

(4) The USDOT identification number for the motor carrier.

(c) You must provide a written statement that:

(1) Describes the reason the exemption is needed, including the time period during which it is needed;

(2) Identifies the regulation from which you would like to be exempted;

(3) Provides an estimate of the total number of drivers and CMVs that would be operated under the terms and conditions of the exemption;

(4) Assesses the safety impacts the exemption may have;

(5) Explains how you would ensure that you could achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation; and

(6) Describes the impacts (e.g., inability to test innovative safety management control systems, etc.) you could experience if the exemption is not granted by the FHWA.

(d) Your application must include a copy of all research reports, technical papers, and other publications and documents you reference.

**§ 381.315 What will the FHWA do after the agency receives my application for an exemption?**

(a) The Office of Motor Carrier and Highway Safety will review your application and prepare, for the Administrator's signature, a **Federal Register** notice requesting public comment on your application for an exemption. The notice will give the public an opportunity to review your request and your safety assessment or analysis (required by § 381.310) and any other relevant information known to the agency.

(b) After a review of the comments received in response to the **Federal Register** notice described in paragraph (a) of this section, the Office of Motor Carrier and Highway Safety will make a recommendation(s) to the Administrator to either to grant or deny the exemption. Notice of the Administrator's decision will be published in the **Federal Register**.

(c)(1) If the exemption is granted, the notice will identify the provisions of the FMCSRs from which you will be exempt, the effective period, and all terms and conditions of the exemption.

(2) If the exemption is denied, the notice will explain the reason for the denial.

(d) A copy of your application for an exemption and all comments received in response to the **Federal Register** notice will be included in a public docket and be available for review by interested parties.

(1) Interested parties may view the information contained in the docket by visiting the Department of Transportation, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington DC. All information in the exemption docket will be available for examination at this address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

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

**§ 381.320 How long will it take the agency to respond to my application for an exemption?**

The agency will attempt to issue a final decision within 180 days of the date it receives your application. However, if you leave out important details or other information necessary for the FHWA to prepare a meaningful request for public comments, the agency will attempt to issue a final decision

within 180 days of the date it receives the additional information.

**§ 381.325 Who should I contact if I have questions about the information I am required to submit to the FHWA or about the status of my application for an exemption?**

You should contact the Office of Motor Carrier Research and Standards, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. The telephone number is (202) 366-1790.

**§ 381.330 What am I required to do if the FHWA grants my application for an exemption?**

(a) You must comply with all the terms and conditions of the exemption.

(b) The FHWA will immediately revoke your exemption if:

(1) You fail to comply with the terms and conditions of the exemption;

(2) The exemption has resulted in a lower level of safety than was maintained before the exemption was granted; or

(3) Continuation of the exemption is determined by the FHWA to be inconsistent with the goals and objectives of the FMCSRs.

**Subpart D—Initiation of Pilot Programs**

**§ 381.400 What is a pilot program?**

(a) A pilot program is a study in which temporary regulatory relief from one or more FMCSR is given to a person or class of persons subject to the regulations, or a person or class of persons who intend to engage in an activity that would be subject to the regulations.

(b) During a pilot program, the participants would be given an exemption from one or more sections or parts of the regulations for a period of up to three years.

(c) A pilot program is intended for use in collecting specific data for evaluating alternatives to the regulations or innovative approaches to safety while ensuring that the safety performance goals of the regulations are satisfied.

(d) The number of participants in the pilot program must be large enough to ensure statistically valid findings.

(e) Pilot programs must include an oversight plan to ensure that participants comply with the terms and conditions of participation, and procedures to protect the health and safety of study participants and the general public.

(f) Exemptions for pilot programs may be granted only from one or more of the requirements contained in the following parts and sections of the FMCSRs:

(1) Part 382—Controlled Substances and Alcohol Use and Testing;

(2) Part 383—Commercial Driver's License Standards; Requirements and Penalties;

(3) Part 391—Qualifications of Drivers;

(4) Part 392—Driving of Commercial Motor Vehicles;

(5) Part 393—Parts and Accessories Necessary for Safe Operation;

(6) Part 395—Hours of Service of Drivers;

(7) Part 396—Inspection, Repair, and Maintenance (except for § 396.25); and

(8) Part 399—Step, Handhold and Deck Requirements.

**§ 381.405 Who determines whether a pilot program should be initiated?**

(a) Generally, pilot programs are initiated by the FHWA when the agency determines that there may be an effective alternative to one or more of the requirements in the FMCSRs, but does not have sufficient research data to support the development of a notice of proposed rulemaking to change the regulation.

(b) You may request the FHWA to initiate a pilot program. However, the decision of whether to propose a pilot program will be made at the discretion of the FHWA. The FHWA is not required to publish a notice in the **Federal Register** requesting public comment on your ideas or suggestions for pilot programs.

**§ 381.410 What may I do if I have an idea or suggestion for a pilot program?**

(a) You may send a written statement (for example, a typed or handwritten (printed) letter) to the Federal Highway Administrator, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

(b) You should identify the persons or class of persons who would be covered by the pilot program exemptions. Your letter should include:

(1) Your name, job title, mailing address, and daytime telephone number;

(2) The name of the individuals or motor carrier that would be responsible for the use or operation of CMVs covered by the pilot program, if there are motor carriers that have expressed an interest in participating in the program;

(3) Principal place of business for the motor carrier (street address, city, State, and zip code); and

(4) The USDOT identification number for the motor carrier.

(c) You should provide a written statement that:

(1) Presents your estimate of the potential benefits to the motor carrier industry, the FHWA, and the general

public if the pilot program is conducted, and describes how you developed your estimate;

(2) Estimates of the amount of time that would be needed to conduct the pilot program (e.g., the time needed to complete the collection and analysis of data);

(3) Identifies the regulation from which the participants would need to be exempted;

(4) Recommends a reasonable number of participants necessary to yield statistically valid findings;

(5) Provides ideas or suggestions for a monitoring plan to ensure that participants comply with the terms and conditions of participation;

(6) Provides ideas or suggestions for a plan to protect the health and safety of study participants and the general public.

(7) Assesses the safety impacts the pilot program exemption may have; and

(8) Provides recommendations on how the safety measures in the pilot project would be designed to achieve a level a safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation.

(d) Your recommendation should include a copy of all research reports, technical papers, publications and other documents you reference.

**§ 381.415 Who should I contact if I have questions about the information to be included in my suggestion?**

You should contact the Office of Motor Carrier Research and Standards, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. The telephone number is (202) 366-1790.

**§ 381.420 What will the FHWA do after the agency receives my suggestion for a pilot program?**

(a) The Office of Motor Carrier and Highway Safety will review your suggestion for a pilot program and make a recommendation to the Administrator. The final decision whether to propose the development of a pilot program based upon your recommendation will be made by the Administrator.

(b) You will be sent a copy of the Administrator's decision. If the pilot program is approved, the agency will follow the administrative procedures contained in subpart E of this part.

**Subpart E—Administrative Procedures for Pilot Programs**

**§ 381.500 What are the general requirements the agency must satisfy in conducting a pilot program?**

(a) The FHWA may conduct pilot programs to evaluate alternatives to

regulations, or innovative approaches, concerning motor carrier, CMV, and driver safety.

(b) Pilot programs may include exemptions from the regulations listed in § 381.400(f) of this part.

(c) Pilot programs must, at a minimum, include all of the program elements listed in § 381.505.

(d) The FHWA will publish in the **Federal Register** a detailed description of each pilot program, including the exemptions to be considered, and provide notice and an opportunity for public comment before the effective date of the pilot program.

**§ 381.505 What are the minimum elements required for a pilot program?**

(a) *Safety measures.* Before granting exemptions for a pilot program, the FHWA will ensure that the safety measures in a pilot program are designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved by complying with the regulations.

(b) *Pilot program plan.* Before initiating a pilot program, the FHWA will ensure that there is a pilot program plan which includes the following elements:

(1) A scheduled duration of three years or less;

(2) A specific data collection and safety analysis plan that identifies a method of comparing the safety performance for motor carriers, CMVs, and drivers operating under the terms and conditions of the pilot program, with the safety performance of motor carriers, CMVs, and drivers that comply with the regulation;

(3) A reasonable number of participants necessary to yield statistically valid findings;

(4) A monitoring plan to ensure that participants comply with the terms and conditions of participation in the pilot program;

(5) Adequate safeguards to protect the health and safety of study participants and the general public; and

(6) A plan to inform the States and the public about the pilot program and to identify approved participants to enforcement personnel and the general public.

**§ 381.510 May the FHWA end a pilot program before its scheduled completion date?**

The FHWA will immediately terminate a pilot program if there is reason to believe the program is not achieving a level of safety that is at least equivalent to the level of safety that would be achieved by complying with the regulations.

**§ 381.515 May the FHWA remove approved participants from a pilot program?**

The Administrator will immediately revoke participation in a pilot program of a motor carrier, CMV, or driver for failure to comply with the terms and conditions of the pilot program, or if continued participation is inconsistent with the goals and objectives of the safety regulations.

**§ 381.520 What will the FHWA do with the results from a pilot program?**

At the conclusion of each pilot program, the FHWA will report to Congress the findings and conclusions of the program and any recommendations it considers appropriate, including suggested amendments to laws and regulations that would enhance motor carrier, CMV, and driver safety and improve compliance with the FMCSRs.

**Subpart F—Preemption of State Rules****§ 381.600 Do waivers, exemptions, and pilot programs preempt State laws and regulations?**

Yes. During the time period that a waiver, exemption, or pilot program authorized by this part is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with the waiver, exemption, or pilot program with respect to a person operating under the waiver or exemption or participating in the pilot program.

**PART 383—[AMENDED]**

2. The authority citation for 49 CFR Part 383 continues to read as follows:

**Authority:** 49 U.S.C. 31136, 31301 *et seq.*, and 31502; and 49 CFR 1.48.

**§ 383.7 [Removed and Reserved]**

3. Section 383.7 is removed and reserved.

[FR Doc. 98-32454 Filed 12-7-98; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION****Federal Transit Administration****49 CFR Parts 653 and 654**

[Docket No. FTA-97-2925]

RIN 2132-AA56

**Prevention of Prohibited Drug Use in Transit Operations: Prevention of Alcohol Misuse in Transit Operations**

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Federal Transit Administration (FTA) is amending its drug and alcohol testing regulations to allow employers to use the results of post-accident drug and alcohol tests administered by State or local law enforcement personnel when the State and local law enforcement officials have independent authority for the tests and when the employer is able to obtain the results in conformance with State and local law. Under the amendment, the employer will be relieved of administering post-accident drug and alcohol tests in certain limited circumstances. This amendment may ease the burden of employers in testing "safety-sensitive" employees after an accident has occurred; it may also relieve some "safety-sensitive" employees from taking duplicative post-accident drug and alcohol tests.

**EFFECTIVE DATE:** January 7, 1999.

**FOR FURTHER INFORMATION CONTACT:** For program issues: Judy Meade, Director of the Office of Safety and Security (202) 366-2896 (telephone) or (202) 366-7951 (fax). For legal issues: Michael Connelly, Office of the Chief Counsel (202) 366-4011 (telephone) or (202) 366-3809 (fax). Electronic access to this and other rules may be obtained through FTA's Transit Safety and Security Bulletin Board at 1-800-231-2061 or through the FTA World Wide Web home page at <http://www.fta.dot.gov>; both services are available seven days a week.

**SUPPLEMENTARY INFORMATION:** On September 30, 1997, FTA published a Notice of Proposed Rulemaking (NPRM) proposing to amend its drug and alcohol testing rules to allow employers to use the results of post-accident drug and alcohol tests administered by State or local law enforcement personnel when the State and local law enforcement officials have independent authority for the tests and the employer obtains the results in conformance with State and local law. FTA received seven comments over a two-month period

**I. Post-Accident Testing***Comments*

Of the seven comments received, five commenters generally favored adoption of the proposal; two opposed allowing employers to use the results from post-accident drug and alcohol tests administered by an entity other than collection site personnel observing the collection procedures mandated by 49 CFR Part 40. Those in favor of adopting the amendment lauded its emphasis on obtaining an actual test result (as opposed to requiring an agency to state why it did not conduct a Federally-mandated post-accident test), and its

ability to assist transit agencies in promoting safety among its safety-sensitive workers. Several commenters, including those in favor of adopting the amendment, raised the following issues:

Nothing that the proposed amendments allowed for use of post-accident test results when those results are "obtained by the employer," two commenters (the National Association of Collection Sites (NACS) and the American Public Transit Association (APTA)) noted the problem of employers receiving test results administered by State or local officials. NACS asserted that obtaining such post-accident results may require a subpoena, while APTA suggested an overall "difficulty" in an employer receiving these results. A third commenter (Atlantic Health Group), while in favor of the amendment, noted the "problem" of getting the results to the correct employer official, and ensuring that such post-accident test results are legally acceptable.

Two commenters (NACS and APTA) interpreted the proposal to mean either that law enforcement officials would be required to conduct Federal post-accident testing, or that transit systems would "rely" on State and local law enforcement authorities to perform Federal post-accident testing.

Two commenters (NACS and Intoximeters) expressed concern that the State and local law enforcement authorities may use faulty testing equipment, and that local testing practices (e.g., no confirmatory test, no DOT chain-of-custody form, no fifteen minute observation period) may result in tests being declared invalid.

*Discussion*

FTA agrees with those commenters that favor allowing employers to use the results of post-accident drug and alcohol tests administered by State and local law enforcement personnel when those officials have independent authority to administer the test and when the employer obtains the test results in conformance with State and local law. The benefits of having properly administered post-accident test, even if that test is not conducted per 49 CFR Part 40, outweigh the concerns of those opposing this amendment.

As a preliminary matter, FTA notes that this amendment would apply in only a small number of instances where the employer is unable to perform a post-accident test according to the FTA drug and alcohol testing regulations but where State or local law enforcement personnel, on their own authority, have conducted post-accident tests. Results