

(5) If a request for administrative review is referred to an administrative law judge, the recommended decision of the administrative law judge becomes the final decision of the Chief Safety Officer 45 days after service of the recommended decision is served, unless either the motor carrier or the Office of the Chief Counsel submits a petition for review to the Chief Safety Officer (and serves a copy of its petition on the other party) within 15 days after service of the recommended decision. In response to a petition for review of a recommended decision of an administrative law judge:

(i) The other party may submit a written reply within 15 days of service of the petition for review.

(ii) The Chief Safety Officer may adopt, modify, or set aside the recommended decision of an administrative law judge, and may also remand the petition for review to the administrative law judge for further proceedings.

(6) The Chief Safety Officer will issue a final decision on any request for administrative review when:

(i) The request for administrative review has not been referred to an administrative law judge;

(ii) A petition for review of a recommended decision by an administrative law judge has not been remanded to the administrative law judge for further proceedings; or

(iii) An administrative law judge has held further proceedings on a petition for review and issued a supplementary recommended decision.

(7) The decision of the Chief Safety Officer (including a recommended decision of an administrative law judge that becomes the decision of the Chief Safety Officer under paragraph (c)(5) of this section) constitutes final agency action, and there is no right to further administrative reconsideration or review.

(8) Any appeal of a final agency action under this section must be taken to an appropriate United States Court of Appeals. Unless the Court of Appeals issues a stay pending appeal, the final agency action shall not be suspended while the appeal is pending.

4. Appendix B to Part 385 is amended by adding to the List of Acute and Critical Regulations under Paragraph VII the following information in numerical order between §§ 171.16 and 177.800:

APPENDIX B TO PART 385— EXPLANATION OF SAFETY RATING PROCESS

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VII. List of Acute and Critical Regulations

§ 172.313(a) Accepting for transportation or transporting a package containing a poisonous-by-inhalation material that is not marked with the words "Inhalation Hazard" (acute).

§ 172.704(a)(4) Failing to provide security awareness training (critical).

§ 172.704(a)(5) Failing to provide in-depth security awareness training (critical).

§ 172.800(b) Offering or transporting HM without a security plan that conforms to Subpart I requirements (acute).

§ 172.800(b) Failure to adhere to a required security plan (acute).

§ 172.802(b) Failure to make copies of security plan available to hazmat employees (critical).

§ 173.24(b)(1) Accepting for transportation or transporting a package that has an identifiable release of a hazardous material to the environment (acute).

§ 173.421(a) Accepting for transportation or transporting a Class 7 (radioactive) material described, marked, and packaged as a limited quantity when the radiation level on the surface of the package exceeds 0.005mSv/hour (0.5 mrem/hour) (acute).

§ 173.431(a) Accepting for transportation or transporting in a Type A packaging a greater quantity of Class 7 (radioactive) material than authorized (acute).

§ 173.431(b) Accepting for transportation or transporting in a Type B packaging a greater quantity of Class 7 (radioactive) material than authorized (acute).

§ 173.441 Accepting for transportation or transporting a package containing Class 7 (radioactive) material with external radiation exceeding allowable limits (acute).

§ 173.442(b) Accepting for transportation or transporting a package containing Class 7 (radioactive) material when the temperature of the accessible external surface of the loaded package exceeds 50°C (122°F) in other than an exclusive use shipment, or 85°C (185°F) in an exclusive use shipment (acute).

§ 173.443 Accepting for transportation or transporting a package containing Class 7 (radioactive) material with removable contamination on the external surfaces of the package in excess of permissible limits (acute).

4a. Appendix B to Part 385 is amended by adding to the List of Acute and Critical Regulations under Paragraph VII the following information in numerical order after § 177.800(c):

§ 177.801 Accepting for transportation or transporting a forbidden material (acute).

4b. Appendix B to Part 385 is amended by adding to the List of Acute and Critical Regulations under

Paragraph VII the following information in numerical order after § 177.823(a):

§ 177.835(a) Loading or unloading a Class 1 (explosive) material with the engine running (acute).

§ 177.835(c) Accepting for transportation or transporting Division 1.1 or 1.2 (explosive) materials in a motor vehicle or combination of vehicles that is not permitted (acute).

§ 177.835(j) Transferring Division 1.1, 1.2, or 1.3 (explosive) materials between containers or motor vehicles when not permitted (acute).

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PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

5. The authority citation for Part 390 continues to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31131, 31133, 31502, and 31504, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); and 49 CFR 1.73.

§ 390.3 General applicability.

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(g) *Motor carriers that transport hazardous materials in intrastate commerce.* The rules in the following provisions of subchapter B of this chapter apply to motor carriers that transport hazardous materials in intrastate commerce and to the motor vehicles that transport hazardous materials in intrastate commerce:

(1) Subparts A, C, and E of Part 385, for carriers subject to the requirements of § 385.403(a) of this subchapter.

(2) Part 386, Rules of practice for motor carrier, broker, freight forwarder, and hazardous materials proceedings.

(3) Part 387, Minimum Levels of Financial Responsibility for Motor Carriers, to the extent provided in § 387.3 of this subchapter.

(4) Section 390.19, Motor carrier identification report, and § 390.21, Marking of CMVs, for carriers subject to the requirements of § 385.403(a) of this subchapter. Intrastate motor carriers operating prior to January 1, 2005, are excepted from § 390.19(a)(1).

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES [AMENDED]

7. The authority citation for Part 397 continues to read as follows:

Authority: 49 U.S.C. 322, 5112; 49 CFR 1.73. Subpart A also issued under 49 U.S.C. 5103, 31136, 31502, and 49 CFR 1.53. Subparts C, D, and E also issued under 49 U.S.C. 5112, 5125.

8. Amend § 397.67 to revise paragraph (d) to read as follows: