

is preempted under the Act or any regulations issued thereunder, or whether preemption is waived.

§ 397.221 Timeliness.

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

§ 397.223 Petition for reconsideration.

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

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

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

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

§ 397.225 Judicial review.

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

PART 398—TRANSPORTATION OF MIGRANT WORKERS

Sec.

398.1 Definitions.

398.2 Applicability.

398.3 Qualifications of drivers or operators.

398.4 Driving of motor vehicles.

398.5 Parts and accessories necessary for safe operation.

398.6 Hours of service of drivers; maximum driving time.

398.7 Inspection and maintenance of motor vehicles.

398.8 Administration inspection of motor vehicles in operation.

AUTHORITY: 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, and 31504; sec. 204, Pub. L. 104-88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 212, Pub. L. 106-159, 113 Stat. 1748, 1766; and 49 CFR 1.73.

SOURCE: 33 FR 19765, Dec. 25, 1968, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 398 appear at 66 FR 49874, Oct. 1, 2001.

§ 398.1 Definitions.

(a) *Migrant worker*. "Migrant worker" means any individual proceeding to or returning from employment in agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 203(f)) or section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)).

(b) *Carrier of migrant workers by motor vehicle*. "Carrier of migrant worker by motor vehicle" means any person, including any "contract carrier by motor vehicle", but not including any "common carrier by motor vehicle", who or which transports in interstate or foreign commerce at any one time three or more migrant workers to or from their employment by any motor vehicle other than a passenger automobile or station wagon, except a migrant worker transporting himself/herself or his/her immediate family.

(c) *Motor carrier*. "Motor carrier" means any carrier of migrant workers by motor vehicle as defined in paragraph (b) of this section.

(d) *Motor vehicle*. "Motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof, determined