

### § 397.103

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

[57 FR 44131, Sept. 24, 1992, as amended at 66 FR 49874, Oct. 1, 2001; 72 FR 55703, Oct. 1, 2007; 77 FR 59828, Oct. 1, 2012; 78 FR 58485, Sept. 24, 2013; 81 FR 68359, Oct. 4, 2016]

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

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

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

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

(1) The State gives written notice to the Federal Motor Carrier Safety Administration:

(i) By email to *HMRouting@dot.gov*; or

(ii) By certified mail, return receipt requested, to the Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance (MC-EC), 1200 New Jersey Ave., SE., Washington, DC 20590-0001. Attention: National Hazardous Materials Route Registry.

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

(3) The route is published in the National Hazardous Materials Route Registry on FMCSA’s website at *https://www.fmcsa.dot.gov/regulations/hazardous-materials/national-hazardous-materials-route-registry*.

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(d) A list of State-designated preferred routes and a copy of the “Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials” are available upon request to Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance (MC-EC), 1200 New Jersey Ave. SE, Washington, DC 20590-0001, or by email to *HMRouting@dot.gov*.

[57 FR 44131, Sept. 24, 1992, as amended at 66 FR 49874, Oct. 1, 2001; 72 FR 55703, Oct. 1, 2007; 79 FR 59458, Oct. 2, 2014; 81 FR 68359, Oct. 4, 2016; 83 FR 22881, May 17, 2018; 83 FR 48726, Sept. 27, 2018]

## Subpart E—Preemption Procedures

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

#### § 397.201 Purpose and scope of the procedures.

(a) This subpart prescribes procedures by which:

(1) Any person, including a State, political subdivision thereof, or Indian tribe, directly affected by any highway routing designation for hazardous materials may apply to the Administrator for a determination as to whether that highway routing designation is preempted under 49 U.S.C. 5125, or § 397.69 or § 397.203 of this part; and

(2) A State, political subdivision thereof, or Indian tribe may apply to the Administrator for a waiver of preemption with respect to any highway routing designation that the State, political subdivision thereof, or Indian tribe acknowledges to be preempted by 49 U.S.C. 5125, or § 397.69 or § 397.203 of this part, or that has been determined by a court of competent jurisdiction to be so preempted.

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

(c) For purposes of this part:

*Act* means 49 U.S.C. 5101 *et seq.*, formerly known as the Hazardous Materials Transportation Act.