

**FOR FURTHER INFORMATION CONTACT:**  
Vicki Stamper, EPA Region VIII, (303)  
312-6445.

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

Dated: July 20, 1998.

**William P. Yellowtail,**

*Regional Administrator, Region VIII.*

[FR Doc. 98-20283 Filed 7-28-98; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL MARITIME COMMISSION

### 46 CFR Part 503

[Docket No. 98-11]

#### Availability of Records to the Public— Electronic Freedom of Information Act; Correction

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of Proposed Rulemaking; correction.

**SUMMARY:** This document corrects proposed § 503.23(a)(3) in a proposed rule published in the **Federal Register** on July 22, 1998, regarding Availability of Records to the Public—Electronic Freedom of Information Act.

**FOR FURTHER INFORMATION CONTACT:**  
Joseph C. Polking, 202-523-5725.

#### Correction

In the proposed rule FR Doc. 98-19432, beginning on page 39263 in the issue of July 22, 1998, make the following correction in the rule text. On page 39265 in the first column, § 503.23, paragraph (a)(3), correct “§§ 514.20(c) or 514.8(k)” to read “§§ 514.21(d) or 514.8(k)(2).”

Dated: July 23, 1998.

**Ronald D. Murphy,**

*Assistant Secretary.*

[FR Doc. 98-20215 Filed 7-28-98; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 49 CFR Part 389

[FHWA Docket No. FHWA-98-4145]

#### Federal Motor Carrier Safety Regulations; Waivers, Exemptions, and Pilot Programs; Public Meeting

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

**ACTION:** Announcement of meeting.

**SUMMARY:** The FHWA is announcing a public meeting to solicit information that will assist the agency in implementing section 4007 of the Transportation Equity Act for the 21st Century (TEA 21), effective on June 9, 1998, governing waivers, exemptions, and pilot programs. Section 4007 amended 49 U.S.C. 31315 and 31136(e) by changing the agency's authority to grant waivers and exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs) and to conduct pilot programs. The new statutory language requires the FHWA, within 180 days of enactment of TEA 21, to establish procedures by which a person may request a waiver or an exemption.

The FHWA recognizes the public's interest in how the agency applies its waiver and exemption authority. For that reason, we are scheduling a public meeting to obtain comments and ideas from interested persons to assist the FHWA in implementing section 4007 expeditiously.

**DATES:** The public meeting will be held on Thursday, August 20, 1998, between 9 a.m. and 4 p.m. Comments for inclusion in the docket must be received no later than August 20, 1998.

**ADDRESSES:** The public meeting will be held in Room 2230 of the DOT Headquarters Building, 400 Seventh Street, SW., Washington, DC. Written, signed comments to the docket identified at the beginning of this document should be sent to: 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., e.t., Monday through Friday, except Federal holidays. Persons desiring notification of receipt of comments must enclose a self-addressed, stamped envelope or postcard.

#### FOR FURTHER INFORMATION CONTACT:

**General Information.** To request time to be heard and for other general information, contact Dianne Porter, Office of Motor Carrier Planning and Customer Liaison, (202) 366-4073.

**Specific Rulemaking Information.** For information concerning rulemaking, contact Neill L. Thomas, Office of Motor Carrier Research and Standards, (202) 366-4009 or Charles E. Medalen, Office of Chief Counsel, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

#### Electronic Availability

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 computer, modem, and suitable communications software from the Government Printing Office (GPO) electronic bulletin board service (telephone: 202-512-1661). Internet users may reach the GPO's web page at: <http://www.access.gpo.gov/su-docs/aces/aaces002.html>.

#### Participation and Attendance

All persons who would like to participate in the public meeting must notify the agency by contacting Dianne Porter by telephone at (202) 366-4073; E-Mail: [dporter@fhwa.dot.gov](mailto:dporter@fhwa.dot.gov); or FAX: (202) 366-7298 by 4 p.m., e.t., on Friday, August 14, 1998. All persons attending will be subject to Federal and DOT workplace security measures. Attendees must enter the building at the southwest quadrant which is located near the intersection of Seventh and "E" Streets, SW.

#### Background

The Motor Carrier Act of 1935 gave the FHWA and its predecessor, the Interstate Commerce Commission (ICC), broad authority to regulate qualifications and maximum hours of service of employees of, and safety of operation and equipment of motor carriers (now recodified at 49 U.S.C. 31502), which carried with it implicit authority to waive any regulation or exempt any entity.

Before TEA 21 (Pub. L. No. 105-178, 112 Stat. 107), the Motor Carrier Safety Act of 1984 (49 U.S.C. 31136) and the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31315) provided the FHWA explicit authority to waive any part of a regulation, as it applies to a person or a class of persons, if the action taken was first determined to be consistent with the public interest and the safe operation of commercial motor vehicles. Before granting a waiver under these provisions of law, the FHWA had to publish the proposed waiver and the reasons for it in the **Federal Register** for public comment. This was a considerable limitation on the implicit authority in the 1935 Act inherited from the ICC in 1967 and presented a difficult test as interpreted by the U.S. Court of Appeals for the D.C. Circuit in *AHAS v. FHWA*, 28 F. 3d 1288 (1994).

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 such a waiver or exemption is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved absent such a waiver or exemption. The TEA 21 makes a clear distinction between "waivers" and "exemptions." It also requires the agency to establish procedures for considering requests for exemptions. We will be developing procedures consistent with section 4007.

### Waivers

The new provision gives the FHWA the authority to grant short-term waivers without public notice and comment. In addition to the safety criterion that applies to both waivers and exemptions, waivers will require a "public interest" finding. These waivers will only be granted to particular persons or groups for specific purposes for periods up to 3 months. The FHWA is interested in receiving comments on how this new authority should be exercised.

### Exemptions

This exemption provision is intended to broaden the agency's discretion to grant exemptions by overcoming the strict interpretation in *AHAS v. FHWA*, supra. 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)

Generally, exemptions issued under this authority may be granted for only 2 years from date of approval, but are renewable. The agency has the authority to immediately revoke an exemption if—

(1) The person fails to comply with the terms and conditions of such 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 49 U.S.C. chapter 311, Commercial Motor Vehicle Safety, or 49 U.S.C. 31136, as the case may be.

Within 180 days of enactment of section 4007 and after notice and comment rulemaking, the FHWA must specify, by regulation, the procedures by which a person may request an exemption. Such regulations, at a minimum, must require a person to submit the following information with each exemption request:

(1) The provisions from which the person requests exemption;

(2) The time period during which the requested exemption would apply;

(3) An analysis of the safety impacts the requested exemption would cause; and

(4) The specific countermeasures the person would undertake to ensure an equivalent or greater level of safety than would be achieved absent the requested exemption.

In addition to the above requirements, each request for exemption, each exemption granted, and each denial must be published in the **Federal Register** and explain the rationale for the action taken.

Before granting a request for exemption, the FHWA must notify State safety compliance and enforcement personnel, including roadside inspectors, and the public that a person will be operating pursuant to an exemption and any terms and conditions that will apply to the exemption.

### Pilot Programs

Section 4007 of TEA 21 also permits the FHWA to conduct pilot programs to evaluate alternatives to regulations relating to, or innovative approaches to, motor carrier, commercial motor vehicle, and driver safety. Such programs may include exemptions from a current safety regulation. Before the agency may initiate a pilot program and before granting exemptions for purposes of the pilot program, the FHWA must ensure that the safety measures in the project are designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would otherwise be achieved through compliance with the current safety

regulations. The FHWA must also 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 program.

### Public Meeting

The FHWA recognizes the public's interest in how the agency applies its waiver and exemption authority and conducts its pilot programs and wants to expedite the promulgation of the procedural rules. For that reason, we are scheduling a public meeting to obtain the comments and ideas from interested persons to assist the agency in implementing section 4007 expeditiously. The meeting will be held on Thursday, August 20, 1998, in Room 2230 of the DOT Headquarters building located at 400 Seventh Street, SW., Washington, DC. Each presentation will be limited to 20 minutes. Written comments will be accepted and placed in the public docket along with a transcript of the meeting. All docket comments and meeting transcripts will subsequently be available for review in the DOT Docket Room (Room PL-401, 400 Seventh Street, SW., Washington, DC) and on the internet (<http://dms.dot.gov>).

During the hearing we plan to discuss all relevant issues concerning the application, consideration, and issuance of waivers and exemptions, and conducting pilot programs. Issues to be discussed include, but are not limited to the following:

(1) What procedural rules should be developed? How detailed should they be?

(2) What conditions should be attached to a waiver or exemption?

(3) How should the waiver or exemption recipients be monitored? What criteria should be used?

(4) What should be the terms for renewal of a waiver or exemption?

(5) How should State compliance and enforcement personnel be notified?

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

Issued on: July 23, 1998.

**Clinton O. Magby, II,**

*Acting Associate Administrator for Motor Carriers.*

[FR Doc. 98-20228 Filed 7-28-98; 8:45 am]

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