

**§ 397.9**

operation require the vehicle to be parked and make it impracticable to park the vehicle in any other place.

(b) A motor vehicle which contains hazardous materials other than Division 1.1, 1.2, or 1.3 materials must not be parked on or within five feet of the traveled portion of public street or highway except for brief periods when the necessities of operation require the vehicle to be parked and make it impracticable to park the vehicle in any other place.

[59 FR 63925, Dec. 12, 1994]

**§ 397.9 [Reserved]**

**§ 397.11 Fires.**

(a) A motor vehicle containing hazardous materials must not be operated near an open fire unless its driver has first taken precautions to ascertain that the vehicle can safely pass the fire without stopping.

(b) A motor vehicle containing hazardous materials must not be parked within 300 feet of an open fire.

**§ 397.13 Smoking.**

No person may smoke or carry a lighted cigarette, cigar, or pipe on or within 25 feet of—

(a) A motor vehicle which contains Class 1 materials, Class 5 materials, or flammable materials classified as Division 2.1, Class 3, Divisions 4.1 and 4.2; or

(b) An empty tank motor vehicle which has been used to transport Class 3, flammable materials, or Division 2.1 flammable gases, which when so used, was required to be marked or placarded in accordance with the rules in § 177.823 of this title.

[59 FR 63925, Dec. 12, 1994]

**§ 397.15 Fueling.**

When a motor vehicle which contains hazardous materials is being fueled—

(a) Its engine must not be operating; and

(b) A person must be in control of the fueling process at the point where the fuel tank is filled.

**§ 397.17 Tires.**

(a) A driver must examine each tire on a motor vehicle at the beginning of

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each trip and each time the vehicle is parked

(b) If, as the result of an examination pursuant to paragraph (a) of this section, or otherwise, a tire is found to be flat, leaking, or improperly inflated, the driver must cause the tire to be repaired, replaced, or properly inflated before the vehicle is driven. However, the vehicle may be driven to the nearest safe place to perform the required repair, replacement, or inflation.

(c) If, as the result of an examination pursuant to paragraph (a) of this section, or otherwise, a tire is found to be overheated, the driver shall immediately cause the overheated tire to be removed and placed at a safe distance from the vehicle. The driver shall not operate the vehicle until the cause of the overheating is corrected.

(d) Compliance with the rules in this section does not relieve a driver from the duty to comply with the rules in §§ 397.5 and 397.7.

**§ 397.19 Instructions and documents.**

(a) A motor carrier that transports Division 1.1, 1.2, or 1.3 (explosive) materials must furnish the driver of each motor vehicle in which the explosives are transported with the following documents:

(1) A copy of the rules in this part;

(2) [Reserved]

(3) A document containing instructions on procedures to be followed in the event of accident or delay. The documents must include the names and telephone numbers of persons (including representatives of carriers or shippers) to be contracted, the nature of the explosives being transported, and the precautions to be taken in emergencies such as fires, accidents, or leakages.

(b) A driver who receives documents in accordance with paragraph (a) of this section must sign a receipt for them. The motor carrier shall maintain the receipt for a period of one year from the date of signature.

(c) A driver of a motor vehicle which contains Division 1.1, 1.2, or 1.3 materials must be in possession of, be familiar with, and be in compliance with

(1) The documents specified in paragraph (a) of this section;

(2) The documents specified in § 177.817 of this title; and

(3) The written route plan specified in § 397.67.

[59 FR 63925, Dec. 12, 1994, as amended at 63 FR 33280, June 18, 1998]

### Subpart B [Reserved]

### Subpart C—Routing of Non-Radioactive Hazardous Materials

SOURCE: 59 FR 51830, Oct. 12, 1994, unless otherwise noted.

#### § 397.61 Purpose and scope.

This subpart contains routing requirements and procedures that States and Indian tribes are required to follow if they establish, maintain, or enforce routing designations over which a non-radioactive hazardous material (NRHM) in a quantity which requires placarding may or may not be transported by a motor vehicle. It also provides regulations for motor carriers transporting placarded or marked NRHM and procedures for dispute resolutions regarding NRHM routing designations.

#### § 397.63 Applicability.

The provisions of this subpart apply to any State or Indian tribe that establishes, maintains, or enforces any routing designations over which NRHM may or may not be transported by motor vehicle. They also apply to any motor carrier that transports or causes to be transported placarded or marked NRHM in commerce.

#### § 397.65 Definitions.

For purposes of this subpart, the following definitions apply:

*Administrator.* The Federal Motor Carrier Safety Administrator, who is the chief executive of the Federal Motor Carrier Safety Administration, an agency within the United States Department of Transportation, or his/her designate.

*Commerce.* Any trade, traffic, or transportation in the United States which:

(1) Is between a place under the jurisdiction of a State or Indian tribe and

any place outside of such jurisdiction; or

(2) Is solely within a place under the jurisdiction of a State or Indian tribe but which affects trade, traffic, or transportation described in subparagraph (a).

*FMCSA.* The Federal Motor Carrier Safety Administration, an agency within the Department of Transportation.

*Hazardous material.* A substance or material, including a hazardous substance, which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, or property when transported in commerce, and which has been so designated.

*Indian tribe.* Has the same meaning as contained in § 4 of the Indian Self-Determination and Education Act, 25 U.S.C. 450b.

*Motor carrier.* A for-hire motor carrier or a private motor carrier of property. 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.

*Motor vehicle.* 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.

*NRHM.* A non-radioactive hazardous material transported by motor vehicle in types and quantities which require placarding, pursuant to Table 1 or 2 of 49 CFR 172.504.

*Political subdivision.* A municipality, public agency or other instrumentality of one or more States, or a public corporation, board, or commission established under the laws of one or more States.

*Radioactive material.* Any material having a specific activity greater than 0.002 microcuries per gram (uCi/g), as defined in 49 CFR 173.403.

*Routing agency.* The State highway agency or other State agency designated by the Governor of that State, or an agency designated by an Indian tribe, to supervise, coordinate, and approve the NRHM routing designations for that State or Indian tribe.