AUTHENTICATED
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INFORMATION
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U.S.C. 5121(c) are conducted by Hazardous Materials Enforcement Specialists or Hazardous Materials Compliance Investigators, also known as ''hazmat investigators'' or ''investigators,'' whom the Associate Administrator has designated for that purpose.

(1) An investigator will, on request, present his or her credentials for examination, but the credentials may not be reproduced.

(2) An investigator may administer oaths and receive affirmations in any matter under investigation by the Associate Administrator.

(3) An investigator may gather information by reasonable means including, but not limited to, interviews, statements, photocopying, photography, and video- and audio-recording.

(4) With concurrence of the Director, Field Operations, Pipeline and Hazardous Materials Safety Administration, an investigator may issue a subpoena for the production of documentary or other tangible evidence if, on the basis of information available to the investigator, the documents and evidence materially will advance a determination of compliance with this subchapter or subchapter C. Service of a subpoena shall be in accordance with §105.50. A person to whom a subpoena is directed may seek review of the subpoena by applying to the Office of Chief Counsel in accordance with §105.55(a). A subpoena issued under this paragraph may be enforced in accordance with §105.55(b).

(c) *Notification.* Any person who is the subject of an Associate Administrator investigation and who is requested to furnish information or documentary evidence is notified as to the general purpose for which the information or evidence is sought.

(d) *Termination.* When the facts disclosed by an investigation indicate that further action is unnecessary or unwarranted at that time, the person being investigated is notified and the investigative file is closed without prejudice to further investigation by the Associate Administrator.

(e) *Confidentiality.* Information received in an investigation under this section, including the identity of the person investigated and any other person who provides information during the investigation, shall remain confidential under the investigatory file exception, or other appropriate exception, to the public disclosure requirements of 5 U.S.C. 552.

[Amdt. 107–11, 48 FR 2651, Jan. 20, 1983, as amended by Amdt. 107–24, 56 FR 8621, Feb. 28, 1991; Amdt. 107–32, 59 FR 49131, Sept. 26, 1994; Amdt. 107–38, 61 FR 21099, May 9, 1996; 66 FR 45377, Aug. 28, 2001; 67 FR 61011, Sept. 27, 2002; 73 FR 4711, Jan. 28, 2008; 76 FR 56311, Sept. 13, 2011]

COMPLIANCE ORDERS AND CIVIL PENALTIES

§ 107.307 General.

(a) When the Associate Administrator and the Office of Chief Counsel have reason to believe that a person is knowingly engaging or has knowingly engaged in conduct which is a violation of the Federal hazardous material transportation law or any provision of this subchapter or subchapter C of this chapter, or any exemption, special permit, or order issued thereunder, for which the Associate Administrator or the Office of Chief Counsel exercise enforcement authority, they may—

(1) Issue a warning letter, as provided in §107.309;

(2) Initiate proceedings to assess a civil penalty, as provided in either §§107.310 or 107.311;

(3) Issue an order directing compliance, regardless of whether a warning letter has been issued or a civil penalty assessed; and

(4) Seek any other remedy available under the Federal hazardous material transportation law.

(b) In the case of a proceeding initiated for failure to comply with an exemption or special permit, the allegation of a violation of a term or condition thereof is considered by the Associate Administrator and the Office of Chief Counsel to constitute an allegation that the special permit holder or party to the special permit is failing, or has failed to comply with the underlying regulations from which relief was granted by the special permit.

[Amdt. 107–11, 48 FR 2651, Jan. 20, 1983, as amended by Amdt. 107–32, 59 FR 49131, Sept. 26, 1994; Amdt. 107–36, 61 FR 7183, Feb. 26, 1996; 66 FR 45377, Aug. 28, 2001; 70 FR 73162, Dec. 9, 2005]

§ 107.309 Warning letters.

(a) The Associate Administrator may issue a warning letter to any person whom the Associate Administrator believes to have committed a probable violation of the Federal hazardous material transportation law or any provision of this subchapter, subchapter C of this chapter, or any special permit issued thereunder.

(b) A warning letter issued under this section includes:

(1) A statement of the facts upon which the Associate Administrator bases its determination that the person has committed a probable violation;

(2) A statement that the recurrence of the probable violations cited may subject the person to enforcement action; and

(3) An opportunity to respond to the warning letter by submitting pertinent information or explanations concerning the probable violations cited therein.

[Amdt. 107–11, 48 FR 2651, Jan. 20, 1983, as amended by Amdt. 107–15, 51 FR 34986, Oct. 1, 1986; Amdt. 107–24, 56 FR 8621, Feb. 28, 1991; Amdt. 107–32, 59 FR 49131, Sept. 26, 1994; Amdt. 107–36, 61 FR 7183, Feb. 26, 1996; 66 FR 45377, Aug. 28, 2001]

§ 107.310 Ticketing.

(a) For an alleged violation that does not have a direct or substantial impact on safety, the Associate Administrator may issue a ticket.

(b) The Associate Administrator issues a ticket by mailing it by certified or registered mail to the person alleged to have committed the violation. The ticket includes:

(1) A statement of the facts on which the Associate Administrator bases the conclusion that the person has committed the alleged violation;

(2) The maximum penalty provided for by statute, the proposed full penalty determined according to PHMSA's civil penalty guidelines and the statutory criteria for penalty assessment, and the ticket penalty amount; and

(3) A statement that within 45 days of receipt of the ticket, the person must pay the penalty in accordance with paragraph (d) of this section, make an informal response under § 107.317, or request a formal administrative hearing under § 107.319.

(c) If the person makes an informal response or requests a formal administrative hearing, the Associate Administrator forwards the inspection report, ticket and response to the Office of the Chief Counsel for processing under §§ 107.307–107.339, except that the Office of the Chief Counsel will not issue a Notice of Probable Violation under § 107.311. The Office of the Chief Counsel may impose a civil penalty that does not exceed the proposed full penalty set forth in the ticket.

(d) Payment of the ticket penalty amount must be made in accordance with the instructions on the ticket.

(e) If within 45 days of receiving the ticket the person does not pay the ticket amount, make an informal response, or request a formal administrative hearing, the person has waived the right to make an informal response or request a hearing, has admitted the violation and owes the ticket penalty amount to PHMSA.

[Amdt. 107–36, 61 FR 7183, Feb. 26, 1996, as amended at 66 FR 45377, Aug. 28, 2001]

§ 107.311 Notice of probable violation.

(a) The Office of Chief Counsel may serve a notice of probable violation on a person alleging the violation of one or more provisions of the Federal hazardous material transportation law or any provision of this subchapter or subchapter C of this chapter, or any special permit, or order issued thereunder.

(b) A notice of probable violation issued under this section includes the following information:

(1) A citation of the provisions of the Federal hazardous material transportation law, an order issued thereunder, this subchapter, subchapter C of this chapter, or the terms of any special permit issued thereunder which the Office of Chief Counsel believes the respondent is violating or has violated.

(2) A statement of the factual allegations upon which the demand for remedial action, a civil penalty, or both, is based.

(3) A statement of the respondent's right to present written or oral explanations, information, and arguments in answer to the allegations and in mitigation of the sanction sought in the notice of probable violation.

(4) A statement of the respondent's right to request a hearing and the procedures for requesting a hearing.

(5) In addition, in the case of a notice of probable violation proposing a compliance order, a statement of the proposed actions to be taken by the respondent to achieve compliance.

(6) In addition, in the case of a notice of probable violation proposing a civil penalty:

(i) A statement of the maximum civil penalty for which the respondent may be liable;

(ii) The amount of the preliminary civil penalty being sought by the Office of Chief Counsel, constitutes the maximum amount the Chief Counsel may seek throughout the proceeding; and

(iii) A description of the manner in which the respondent makes payment of any money due the United States as a result of the proceeding.

(c) The Office of Chief Counsel may amend a notice of probable violation at any time before issuance of a compliance order or an order assessing a civil penalty. If the Office of Chief Counsel alleges any new material facts or seeks new or additional remedial action or an increase in the amount of the proposed civil penalty, it issues a new notice of probable violation under this section.

[Amdt. 107–11, 48 FR 2651, Jan. 20, 1983, as amended at 50 FR 45730, Nov. 1, 1985; Amdt. 107–24, 56 FR 8624, Feb. 28, 1991; Amdt. 107–32, 59 FR 49131, Sept. 26, 1994; Amdt. 107–35, 60 FR 49108, Sept. 21, 1995; Amdt. 107–36, 61 FR 7184, Feb. 26, 1996]

§ 107.313 Reply.

(a) Within 30 days of receipt of a notice of probable violation, the respondent must either:

(1) Admit the violation under § 107.315;

(2) Make an informal response under § 107.317; or

(3) Request a hearing under § 107.319.

(b) Failure of the respondent to file a reply as provided in this section constitutes a waiver of the respondent's right to appear and contest the allegations and authorizes the Chief Counsel, without further notice to the respondent, to find the facts to be as alleged in the notice of probable violation and issue an order directing compliance or assess a civil penalty, or, if proposed in the notice, both. Failure to request a hearing under paragraph (a)(3) of this section constitutes a waiver of the respondent's right to a hearing.

(c) Upon the request of the respondent, the Office of Chief Counsel may, for good cause shown and filed within the 30 days prescribed in the notice of probable violation, extend the 30-day response period.

§ 107.315 Admission of violations.

(a) In responding to a notice of probable violation issued under § 107.311, the respondent may admit the alleged violations and agree to accept the terms of a proposed compliance order or to pay the amount of the preliminarily assessed civil penalty, or, if proposed in the notice, both.

(b) If the respondent agrees to the terms of a proposed compliance order, the Chief Counsel issues a final order prescribing the remedial action to be taken by the respondent.

(c) Payment of a civil penalty, when the amount of the penalty exceeds $10,000, must be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions on making payments by wire transfer may be obtained from the Financial Operations Division (AMZ–120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125.

(d) Payment of a civil penalty, when the amount of the penalty is $10,000 or less, must be made either by wire transfer, as set forth in paragraph (c) of this section, or certified check or money order payable to ''U.S. Department of Transportation'' and submitted to the Financial Operations Division (AMZ–120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125.

[Amdt. 107–11, 48 FR 2651, Jan. 20, 1983, as amended by Amdt. 107–23, 57 FR 45453, Oct. 1, 1992; Amdt. 107–29, 58 FR 51527, Oct. 1, 1993; Amdt. 107–38, 61 FR 21100, May 9, 1996; 68 FR 52848, Sept. 8, 2003]

§ 107.317 Informal response.

(a) In responding to a notice of probable violation under §107.311, the respondent may submit to the official who issued the notice, written explanations, information, or arguments in response to the allegations, the terms of a proposed compliance order, or the amount of the preliminarily assessed civil penalty.

(b) The respondent may include in his informal response a request for a conference. Upon the request of the respondent, the conference may be either in person or by telephone. A request for a conference must set forth the issues the respondent will raise at the conference.

(c) Upon receipt of a request for a conference under paragraph (b) of this section, the Chief Counsel's Office, in consultation with the Associate Administrator, arranges for a conference as soon as practicable at a time and place of mutual convenience.

(d) The respondent's written explanations, information, and arguments as well as the respondent's presentation at a conference are considered by the Chief Counsel in reviewing the notice of probable violation. Based upon a review of the proceeding, the Chief Counsel may dismiss the notice of probable violation in whole or in part. If he does not dismiss it in whole, he issues an order directing compliance or assessing a civil penalty, or, if proposed in the notice, both.

[Amdt. 107–11, 48 FR 2651, Jan. 20, 1983, as amended by Amdt. 107–23, 56 FR 66157, Dec. 20, 1991; 66 FR 45377, Aug. 28, 2001]

§ 107.319 Request for a hearing.

(a) In responding to a notice of probable violation under §107.311, the respondent may request a formal administrative hearing on the record before an Administrative Law Judge (ALJ) obtained by the Office of the Chief Counsel.

(b) A request for a hearing under paragraph (a) of this section must:

(1) State the name and address of the respondent and of the person submitting the request if different from the respondent;

(2) State which allegations of violations, if any, are admitted; and

(3) State generally the issues to be raised by the respondent at the hearing. Issues not raised in the request are not barred from presentation at the hearing; and

(4) Be addressed to the official who issued the notice.

(c) After a request for a hearing that complies with the requirements of paragraph (b) of this section, the Chief Counsel obtains an ALJ to preside over the hearing and notifies the respondent of this fact. Upon assignment of an ALJ, further matters in the proceeding generally are conducted by and through the ALJ, except that the Chief Counsel and respondent may compromise or settle the case under §107.327 of this subpart without order of the ALJ or voluntarily dismiss the case under Rule 41(a)(1) of the Federal Rules of Civil Procedure without order of the ALJ; in the event of such a compromise, settlement or dismissal, the Chief Counsel expeditiously will notify the ALJ thereof.

(d) At any time after requesting a formal administrative hearing but prior to the issuance of a decision and final order by the ALJ, the respondent may withdraw such request in writing, thereby terminating the jurisdication of the ALJ in the case. Such a withdrawal constitutes an irrevocable waiver of respondent's right to such a hearing on the facts, allegations, and proposed sanction presented in the notice of probable violation to which the request for hearing relates.

[Amdt. 107–11, 48 FR 2651, Jan. 20, 1983, as amended at 48 FR 17094, Apr. 21, 1983; Amdt. No. 107–19, 54 FR 22899, May 30, 1989]

§ 107.321 Hearing.

(a) To the extent practicable, the hearing is held in the general vicinity of the place where the alleged violation occurred or at a place convenient to the respondent. Testimony by witnesses shall be given under oath and the hearing shall be recorded verbatim.

(b) Hearings are conducted in accordance with the Federal Rules of Evidence and Federal Rules of Civil Procedure; however, the ALJ may modify them as he determines necessary in the interest of a full development of the facts. In addition, the ALJ may:

(1) Administer oaths and affirmations;

(2) Issue subpoenas as provided by § 105.45;

(3) Adopt procedures for the submission of motions, evidence, and other documents pertinent to the proceeding;

(4) Take or cause depositions to be taken;

(5) Rule on offers of proof and receive relevant evidence;

(6) Examine witnesses at the hearing;

(7) Convene, recess, reconvene, adjourn and otherwise regulate the course of the hearing;

(8) Hold conferences for settlement, simplification of the issues, or any other proper purpose; and

(9) Take any other action authorized by, or consistent with, the provisions of this subpart and permitted by law which may expedite the hearing or aid in the disposition of an issue raised therein.

(c) The official who issued the notice of probable violation, or his representative, has the burden of proving the facts alleged therein.

(d) The respondent may appear and be heard on his own behalf or through counsel of his choice. The respondent or his counsel may offer relevant information including testimony which he believes should be considered in opposition to the allegations or which may bear on the sanction being sought and conduct such cross-examination as may be required for a full disclosure of the facts.

[Amdt. 107–11, 48 FR 2651, Jan. 20, 1983, as amended at 67 FR 61011, Sept. 27, 2002]

§ 107.323 ALJ's decision.

(a) After consideration of all matters of record in the proceeding, the ALJ shall issue an order dismissing the notice of probable violation in whole or in part or granting the sanction sought by the Office of Chief Counsel in the notice. If the ALJ does not dismiss the notice of probable violation in whole, he issues an order directing compliance or assessing a civil penalty, or, if proposed in the notice, both. The order includes a statement of the findings and conclusions, and the reasons therefore, on all material issues of fact, law, and discretion.

(b) If, within 20 days of receipt of an order issued under paragraph (a) of this section, the respondent does not submit in writing his acceptance of the terms of an order directing compliance, or, where appropriate, pay a civil penalty, or file an appeal under § 107.325, the case may be referred to the Attorney General with a request that an action be brought in the appropriate United States District Court to enforce the terms of a compliance order or collect the civil penalty.

§ 107.325 Appeals.

(a) *Hearing proceedings.* A party aggrieved by an ALJ's decision and order issued under § 107.323, may file a written appeal in accordance with paragraph (c) of this section with the Administrator, Office of the Administrator, Pipeline and Hazardous Materials Safety Administration, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(b) *Non-Hearing proceedings.* A respondent aggrieved by an order issued under § 107.317, may file a written appeal in accordance with paragraph (c) of this section with the Administrator, Office of the Administrator, Pipeline and Hazardous Materials Safety Administration, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(c) An appeal of an order issued under this subpart must:

(1) Be filed within 20 days of receipt of the order by the appealing party; and

(2) State with particularity the findings in the order that the appealing party challenges, and include all information and arguments pertinent thereto.

(d) If the Administrator, PHMSA, affirms the order in whole or in part, the respondent must comply with the terms of the decision within 20 days of the respondent's receipt thereof, or within the time prescribed in the order. If the respondent does not comply with the terms of the decision within 20 days of receipt, or within the time prescribed in the order, the case may be referred to the Attorney General for action to enforce the terms of the decision.

(e) The filing of an appeal stays the effectiveness of an order issued under §107.317 or §107.323. However, if the Administrator, PHMSA, determines that it is in the public interest, he may keep an order directing compliance in force pending appeal.

[70 FR 56090, Sept. 23, 2005, as amended at 72 FR 55683, Oct. 1, 2007]

§107.327 Compromise and settlement.

(a) At any time before an order issued under §107.317 or §107.323 is referred to the Attorney General for enforcement, the respondent or the Office of Chief Counsel may propose a compromise as follows:

(1) In civil penalty cases, the respondent or Chief Counsel may offer to compromise the amount of the penalty by submitting an offer for a specific amount to the other party. An offer of compromise by the respondent shall be submitted to the Chief Counsel who may, after consultation with the Associate Administrator, accept or reject it.

(i) A compromise offer stays the running of any response period then outstanding.

(ii) If a compromise is agreed to by the parties, the respondent is notified in writing. Upon receipt of payment by Office of Chief Counsel, the respondent is notified in writing that acceptance of payment is in full satisfaction of the civil penalty proposed or assessed, and Office of Chief Counsel closes the case with prejudice to the respondent.

(iii) If a compromise cannot be agreed to, the respondent is notified in writing and is given 10 days or the amount of time remaining in the then outstanding response period, whichever is longer, to respond to whatever action was taken by the Office of Chief Counsel or the Administrator, PHMSA.

(2) In compliance order cases, the respondent may propose a consent agreement to the Chief Counsel. If the Chief Counsel accepts the agreement, he issues an order in accordance with its terms. If the Chief Counsel rejects the agreement, he directs that the proceeding continue. An agreement submitted to the Chief Counsel must include:

(i) A statement of any allegations of fact which the respondent challenges;

(ii) The reasons why the terms of a compliance order or proposed compliance order are or would be too burdensome for the respondent, or why such terms are not supported by the record in the case;

(iii) A proposed compliance order suitable for issuance by the Chief Counsel;

(iv) An admission of all jurisdictional facts; and

(v) An express waiver of further procedural steps and all right to seek judicial review or otherwise challenge or contest the validity of the order.

(b) Notwithstanding paragraph (a)(1) of this section, the respondent or Office of Chief Counsel may propose to settle the case. If the Chief Counsel agrees to a settlement, the respondent is notified and the case is closed without prejudice to the respondent.

[Amdt. 107–11, 48 FR 2651, Jan. 20, 1983, as amended at 50 FR 45730, Nov. 1, 1985; Amdt. 107–24, 56 FR 8621, Feb. 28, 1991; 56 FR 15510, Apr. 17, 1991; Amdt. 107–29, 58 FR 51527, Oct. 1, 1993; 66 FR 45377, Aug. 28, 2001]

§107.329 Maximum penalties.

(a) A person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, this subchapter, subchapter C of this chapter, or a special permit or approval issued under this subchapter applicable to the transportation of hazardous materials or the causing of them to be transported or shipped is liable for a civil penalty of not more than $55,000 and not less than $250 for each violation, except the maximum civil penalty is $110,000 if the violation results in death, serious illness or severe injury to any person or substantial destruction of property, and a minimum $495 civil penalty applies to a violation relating to training. When the violation is a continuing one, each day of the violation constitutes a separate offense.

(b) A person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, this subchapter, subchapter C of this chapter, or a special permit or approval issued under

this subchapter applicable to the design, manufacture, fabrication, inspection, marking, maintenance, reconditioning, repair or testing of a package, container, or packaging component which is represented, marked, certified, or sold by that person as qualified for use in the transportation of hazardous materials in commerce is liable for a civil penalty of not more than $55,000 and not less than $250 for each violation, except the maximum civil penalty is $110,000 if the violation results in death, serious illness or severe injury to any person or substantial destruction of property, and a minimum $495 civil penalty applies to a violation relating to training.

[71 FR 8487, Feb. 17, 2006, as amended at 74 FR 68702, Dec. 29, 2009; 75 FR 53596, Sept. 1, 2010]

§ 107.331 Assessment considerations.

After finding a knowing violation under this subpart, the Office of Chief Counsel assesses a civil penalty taking the following into account:

(a) The nature and circumstances of the violation;

(b) The extent and gravity of the violation;

(c) The degree of the respondent's culpability;

(d) The respondent's prior violations;

(e) The respondent's ability to pay;

(f) The effect on the respondent's ability to continue in business; and

(g) Such other matters as justice may require.

[Amdt. 107–11, 48 FR 2651, Jan. 20, 1983, as amended by Amdt. 107–30, 58 FR 50500, Sept. 27, 1993; Amdt. 107–38, 61 FR 21100, May 9, 1996]

CRIMINAL PENALTIES

§ 107.333 Criminal penalties generally.

A person who knowingly violates § 171.2(l) of this title or willfully or recklessly violates a requirement of the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued thereunder shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both, except the maximum amount of imprisonment shall be 10 years in any case in which the violation involves the release of a hazardous material which results in death or bodily injury to any person.

[71 FR 8487, Feb. 17, 2006]

§ 107.335 Referral for prosecution.

If the Associate Administrator becomes aware of a possible willful violation of the Federal hazardous material transportation law, this subchapter, subchapter C of this chapter, or any special permit, or order issued thereunder, for which the Associate Administrator exercises enforcement responsibility, it shall report it to the Office of the Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590–0001. If appropriate, the Chief Counsel refers the report to the Department of Justice for criminal prosecution of the offender.

[Amdt. 107–11, 48 FR 2651, Jan. 20, 1983, as amended by Amdt. 107–22, 55 FR 39978, Oct. 1, 1990; Amdt. 107–24, 56 FR 8621, Feb. 28, 1991; 56 FR 15510, Apr. 17, 1991; Amdt. 107–32, 59 FR 49131, Sept. 26, 1994; Amdt. 107–35, 60 FR 49108, Sept. 21, 1995; 66 FR 45377, Aug. 28, 2001]

§ 107.336 Limitation on fines and penalties.

If a State or political subdivision or Indian tribe assesses any fine or penalty determined by the Secretary to be appropriate for a violation concerning a subject listed in § 107.202(a), no additional fine or penalty may be assessed for such violation by any other authority.

[Amdt. 107–24, 56 FR 8624, Feb. 28, 1991]

INJUNCTIVE ACTION

§ 107.337 Injunctions generally.

Whenever it appears to the Office of Chief Counsel that a person has engaged, or is engaged, or is about to engage in any act or practice constituting a violation of any provision of the Federal hazardous material transportation law, this subchapter, subchapter C of this chapter, or any special permit, or order issued thereunder, for which the Office of Chief Counsel exercises enforcement responsibility,