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(2) Complete details concerning the dimensions, materials of construction, wall thickness, water capacity, shape, type of joints, location and size of openings and other pertinent physical characteristics of each specification or special permit cylinder for which approval is being requested, including calculations for cylinder wall stress and wall thickness, which may be shown on a drawing or on separate sheets attached to a descriptive drawing;

(3) The name of the independent inspection agency to be used; and

(4) The signature of the person making the certification and the date on which it was signed.

(c) *Facility inspections.* Upon the request of the Associate Administrator, the applicant must allow the Associate Administrator or the Associate Administrator's designee to inspect the applicant's cylinder manufacturing and testing facilities and records, and must provide such materials and cylinders for analyses and tests as the Associate Administrator may specify. The applicant or holder must bear the cost of the initial and subsequent inspections, analyses, and tests.

§ 107.809 Conditions of UN pressure receptacle approvals.

(a) Each approval issued under this subpart contains the following conditions:

(1) Upon the request of the Associate Administrator, the applicant or holder must allow the Associate Administrator or the Associate Administrator's designee to inspect the applicant's pressure receptacle manufacturing and testing facilities and records, and must provide such materials and pressure receptacles for analyses and tests as the Associate Administrator may specify. The applicant or holder must bear the cost of the initial and subsequent inspections, analyses, and tests.

(2) Each holder must comply with all of the terms and conditions stated in the approval letter issued under this subpart.

(b) In addition to the conditions specified in §107.713, an approval may be denied or if issued, suspended or terminated if the Competent Authority of the country of manufacture fails to initiate, maintain or recognize an IIA approved under this subpart; fails to recognize UN standard packagings manufactured in accordance with this subchapter; or implements a condition or limitation on United States citizens or organizations that is not required of its own citizenry.

[71 FR 33874, June 12, 2006]

PART 109—DEPARTMENT OF TRANSPORTATION HAZARDOUS MATERIALS PROCEDURAL REGULATIONS FOR OPENING OF PACKAGES, EMERGENCY ORDERS, AND EMERGENCY RECALLS

Subpart A—Definitions

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AUTHORITY: 49 U.S.C. §§5101–5128, 44701; Pub. L. 101–410 §4 (28 U.S.C. 2461 note); Pub. L. 104–121 §§212–213; Pub. L. 104–134 §31001; 49 CFR 1.45, 1.53.

SOURCE: 76 FR 11592, Mar. 2, 2011, unless otherwise noted.

Subpart A—Definitions

§ 109.1 Definitions.

For purposes of this part, all terms defined in 49 U.S.C. 5102 are used in their statutory meaning. Other terms used in this part are defined as follows:

Administrator means the head of any operating administration within the Department of Transportation, and includes the Administrators of the Federal Aviation Administration, Federal

Motor Carrier Safety Administration, Federal Railroad Administration, and Pipeline and Hazardous Materials Safety Administration, to whom the Secretary has delegated authority in part 1 of this title, and any person within an operating administration to whom an Administrator has delegated authority to carry out this part.

Agent of the Secretary or *agent* means a Federal officer, employee, or agent authorized by the Secretary to conduct inspections or investigations under the Federal hazardous material transportation law.

Chief Safety Officer or *CSO* means the Assistant Administrator of the Pipeline and Hazardous Materials Safety Administration.

Emergency order means an emergency restriction, prohibition, recall, or out-of-service order set forth in writing.

Freight container means a package configured as a reusable container that has a volume of 64 cubic feet or more, designed and constructed to permit being lifted with its contents intact and intended primarily for containment of smaller packages (in unit form) during transportation.

Immediately adjacent means a packaging that is in direct contact with the hazardous material or is otherwise the primary means of containment of the hazardous material.

Imminent hazard means the existence of a condition relating to hazardous material that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment.

In writing means unless otherwise specified, the written expression of any actions related to this part, rendered in paper or digital format, and delivered in person; via facsimile, commercial delivery, U.S. Mail; or electronically.

Objectively reasonable and articulable belief means a belief based on particularized and identifiable facts that provide an objective basis to believe or suspect that a package may contain a hazardous material.

Out-of-service order means a written requirement issued by the Secretary, or a designee, that an aircraft, vessel, motor vehicle, train, railcar, locomotive, other vehicle, transport unit, transport vehicle, freight container, portable tank, or other package not be moved or cease operations until specified conditions have been met.

Packaging means a receptacle and any other components or materials necessary for the receptacle to perform its containment function in conformance with the minimum packing requirements of this subchapter. For radioactive materials packaging, see §173.403 of subchapter C of this chapter.

Perishable hazardous material means a hazardous material that is subject to significant risk of speedy decay, deterioration, or spoilage, or hazardous materials consigned for medical use, in the prevention, treatment, or cure of a disease or condition in human beings or animals where expeditious shipment and delivery meets a critical medical need.

Properly qualified personnel means a company, partnership, proprietorship, or individual who is technically qualified to perform designated tasks necessary to assist an agent in inspecting, examining, opening, removing, testing, or transporting packages.

Related packages means any packages in a shipment, series or group of packages that can be traced to a common nexus of facts, including, but not limited to: The same offeror or packaging manufacturer; the same hazard communications information (marking, labeling, shipping documentation); or other reasonable and articulable facts that may lead an agent to believe such packages are related to a package that may pose an imminent hazard. Packages that are located within the same trailer, freight container, unit load device, *etc.* as a package removed subject to this enhanced authority without additional facts to substantiate its nexus to an imminent hazard are not ''related packages'' for purposes of removal. The related packages must also demonstrate that they may pose an imminent hazard. They must exhibit a commonality or nexus of origin, which may include, but are not limited to, a common offeror, package manufacturer,

marking, labeling, shipping documentation, hazard communications, *etc.*

Remove means to keep a package from entering the stream of transportation in commerce; to take a package out of the stream of transportation in commerce by physically detaining a package that was offered for transportation in commerce; or stopping a package from continuing in transportation in commerce.

Safe and expeditious means prudent measures or procedures designed to minimize delay.

Subpart B—Inspections and Investigations

§ 109.3 Inspections and Investigations.

(a) *General authority.* An Administrator may initiate an inspection or investigation to determine compliance with Federal hazardous material transportation law, or a regulation, order, special permit, or approval prescribed or issued under the Federal hazardous material transportation law, or any court decree or order relating thereto.

(b) *Inspections and investigations.* Inspections and investigations are conducted by designated agents of the Secretary who will, upon request, present their credentials for examination. Such an agent is authorized to:

(1) Administer oaths and receive affirmations in any matter under investigation.

(2) Gather information by any reasonable means, including, but not limited to, gaining access to records and property (including packages), interviewing, photocopying, photographing, and video- and audio-recording in a reasonable manner.

(3) Serve subpoenas for the production of documents or other tangible evidence if, on the basis of information available to the agent, the evidence is relevant to a determination of compliance with the Federal hazardous material transportation law, regulation, order, special permit, or approval prescribed or issued under the Federal hazardous material transportation law, or any court decree or order relating thereto. Service of a subpoena shall be in accordance with the requirements of the agent's operating administration as set forth in 14 CFR 13.3 (Federal Aviation Administration); 49 CFR 209.7 (Federal Railroad Administration), 49 U.S.C. 502(d), 5121(a) (Federal Motor Carrier Safety Administration), and 49 CFR 105.45–105.55 (Pipeline and Hazardous Materials Safety Administration).

§ 109.5 Opening of packages.

(a) When an agent has an objectively reasonable and articulable belief that a package offered for or in transportation in commerce may contain a hazardous material and that such a package does not otherwise comply with this chapter, the agent may—

(1) Stop movement of the package in transportation and gather information from any person to learn the nature and contents of the package;

(2) Open any overpack, outer packaging, or other component of the package that is not immediately adjacent to the hazardous materials contained in the package and examine the inner packaging(s) or packaging components.

§ 109.7 Removal from transportation.

An agent may remove a package and related packages in a shipment or a freight container from transportation in commerce for up to forty-eight (48) hours when the agent has an objectively reasonable and articulable belief that the packages may pose an imminent hazard. The agent must record this belief in writing as soon as practicable and provide written notification stating the reason for removal to the person in possession.

§ 109.9 Transportation for examination and analysis.

(a) An agent may direct a package to be transported to a facility for examination and analysis when the agent determines that:

(1) Further examination of the package is necessary to evaluate whether the package conforms to subchapter C of this chapter;

(2) Conflicting information concerning the package exists; or

(3) Additional investigation is not possible on the immediate premises.

(b) In the event of a determination in accordance with paragraph (a) of this section, an agent may: