AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

(b) *PHMSA Decision*. PHMSA will decide whether or not to treat your information as confidential. We will notify you, in writing, of a decision to grant or deny confidentiality at least five days before the information is publicly disclosed, and give you an opportunity to respond.

[67 FR 42951, June 25, 2002, as amended at 70 FR 73159, Dec. 9, 2005]

SERVING DOCUMENTS

§ 105.35 Serving documents in PHMSA proceedings.

(a) *Service by PHMSA*. We may serve the document by one of the following methods, except where a different method of service is specifically required:

(1) Registered or certified mail.

(i) If we serve a document by registered or certified mail, it is considered served when mailed.

(ii) An official United States Postal Service receipt from the registered or certified mailing is proof of service.

(iii) We may serve a person's authorized representative or agent by registered or certified mail, or in any other manner authorized by law. Service on a person's authorized agent is the same as service on the person.

(2) Personal service.

(3) Publication in the FEDERAL REGISTER.

(4) Electronic service. (i) Service by electronic means if consented to in writing by the party to be served.

(ii) For all special permits and approvals actions, electronic service is authorized.

(b) *Service by others*. If you are required under this subchapter to serve a person with a document, serve the document by one of the following methods, except where a different method of service is specifically required:

(1) Registered or certified mail.

(i) If you serve a document by registered or certified mail, it is considered served when mailed.

(ii) An official United States Postal Service receipt from the registered or certified mailing is proof of service.

(iii) You may serve a person's authorized representative or agent by registered or certified mail or in any other manner authorized by law. Service on a person's authorized agent is the same as service on the person.

(2) Personal service.

(3) Electronic service.

(i) In a proceeding under §107.317 of this subchapter (an administrative law judge proceeding), you may electronically serve documents on us.

(ii) Serve documents electronically through the Internet at *http://www.regulations.gov*.

[67 FR 42951, June 25, 2002, as amended at 72 FR 55682, Oct. 1, 2007; 76 FR 460, Jan. 5, 2011]

§ 105.40 Designated agents for nonresidents.

(a) *General requirement*. If you are not a resident of the United States but are required by this subchapter or subchapter C of this chapter to designate a permanent resident of the United States to act as your agent and receive documents on your behalf, you must prepare a designation and file it with us.

(b) *Agents*. An agent, also known as ''agent for service of process'':

(1) May be an individual, a firm, or a domestic corporation.

(2) May represent any number of principals.

(3) May not reassign responsibilities under a designation to another person.

(c) *Preparing a designation*. Your designation must be written and dated, and it must contain the following information:

(1) The section in the HMR that requires you to file a designation.

(2) A certification that the designation is in the correct legal form required to make it valid and binding on you under the laws, corporate bylaws, and other requirements that apply to designations at the time and place you are making the designation.

(3) Your full legal name, the principal name of your business, and your mailing address.

(4) A statement that your designation will remain in effect until you withdraw or replace it.

(5) The legal name and mailing address of your agent.

(6) A declaration of acceptance signed by your agent.

(d) *Address*. Send your designation to: Approvals and Permits Division, Pipeline and Hazardous Materials Safety

Administration, Attn: PHH–30, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(e) *Designations are binding.* You are bound by your designation of an agent, even if you did not follow all the requirements in this section, until we reject your designation.

[67 FR 42951, June 25, 2002, as amended at 70 FR 56088, Sept. 23, 2005; 70 FR 73159, Dec. 9, 2005; 72 FR 55682, Oct. 1, 2007; 75 FR 27211, May 14, 2010; 76 FR 56310, Sept. 13, 2011]

SUBPOENAS

§ 105.45 Issuing a subpoena.

(a) *Subpoenas explained.* A subpoena is a document that may require you to attend a proceeding, produce documents or other physical evidence in your possession or control, or both. PHMSA may issue a subpoena either on its initiative or at the request of someone participating in a proceeding. Anyone who requests that PHMSA issue a subpoena must show that the subpoena seeks information that will materially advance the proceeding.

(b) *Attendance and mileage expenses.* (1) If you receive a subpoena to attend a proceeding under this part, you may receive money to cover attendance and mileage expenses. The attendance and mileage fees will be the same as those paid to a witness in a proceeding in the district courts of the United States.

(2) If PHMSA issues a subpoena to you based upon a request, the requester must serve a copy of the original subpoena on you, as required in §105.50. The requester must also include attendance and mileage fees with the subpoena unless the requester asks PHMSA to pay the attendance and mileage fees because of demonstrated financial hardship and PHMSA agrees to do so.

(3) If PHMSA issues a subpoena at the request of an officer or agency of the Federal government, the officer or agency is not required to include attendance and mileage fees when serving the subpoena. The officer or agency must pay the fees before you leave the hearing at which you testify.

§ 105.50 Serving a subpoena.

(a) *Personal service.* Anyone who is not an interested party and who is at least 18 years of age may serve you with a subpoena and fees by handing the subpoena and fees to you, by leaving them at your office with the individual in charge, or by leaving them at your house with someone who lives there and is capable of making sure that you receive them. If PHMSA issues a subpoena to an entity, rather than an individual, personal service is made by delivering the subpoena and fees to the entity's registered agent for service of process or to any officer, director or agent in charge of any of the entity's offices.

(b) *Service by mail.* You may be served with a copy of a subpoena and fees by certified or registered mail at your last known address. Service of a subpoena and fees may also be made by registered or certified mail to your agent for service of process or any of your representatives at that person's last known address.

(c) *Other methods.* You may be served with a copy of a subpoena by any method where you receive actual notice of the subpoena and receive the fees before leaving the hearing at which you testify.

(d) *Filing after service.* After service is complete, the individual who served a copy of a subpoena and fees must file the original subpoena and a certificate of service with the PHMSA official who is responsible for conducting the hearing.

§ 105.55 Refusal to obey a subpoena.

(a) *Quashing or modifying a subpoena.* If you receive a subpoena, you can ask PHMSA to overturn (''quash'') or modify the subpoena within 10 days after the subpoena is served on you. Your request must briefly explain the reasons you are asking for the subpoena to be quashed or modified. PHMSA may then do the following:

(1) Deny your request.

(2) Quash or modify the subpoena.

(3) Grant your request on the condition that you satisfy certain specified requirements.

(b) *Failure to obey.* If you disobey a subpoena, PHMSA may ask the Attorney General to seek help from the