

**DEPARTMENT OF TRANSPORTATION****Research and Special Programs Administration****49 CFR Parts 105, 106, 107, and 171**

[Docket No. RSPA-98-3974]

RIN 2137-AD20

**Revised and Clarified Hazardous Materials Safety Rulemaking and Program Procedures****AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Final rule.

**SUMMARY:** In this final rule, RSPA revises and clarifies its hazardous materials safety rulemaking and program procedures. RSPA has re-written the rulemaking procedures in plain language and made minor substantive changes for clarification. In addition, RSPA created a new part that contains defined terms used in RSPA's procedural regulations.

**DATES:** This final rule is effective July 25, 2002.

**FOR FURTHER INFORMATION CONTACT:** Karin V. Christian, Office of the Chief Counsel, (202) 366-4400, Research and Special Programs Administration.

**SUPPLEMENTARY INFORMATION:****1. Background Information**

On December 11, 1998, RSPA ("we") published a Notice of Proposed Rulemaking ("Notice") that had two purposes: (1) To re-write in plain language, clarify, and make minor substantive changes to RSPA's hazardous materials safety rulemaking and program procedures, and (2) to propose a new **Federal Register** format. (63 FR 68624). These changes responded to a June 1, 1998 Executive Memorandum directing Federal agencies to make communications with the public more understandable.

The Office of the Federal Register (OFR) is currently considering various format options and has not made any final decisions with regard to format changes. On March 23, 2001, OFR printed a document in the **Federal Register** illustrating a possible new two-column format and possible changes in fonts, headings, line spacing, and tables. (66 FR 16374). On May 14, 2002, OFR published a document with a modified two-column format. (67 FR 34573). OFR invited agencies and the public to comment on the proposed format. Because OFR is in the process of considering format changes, in this final rule we are finalizing only our plain language re-write and some minor

substantive changes to clarify the regulations. We are not making format changes.

We received 18 comments, including comments from industry associations, private citizens, and other Federal agencies. Other Federal agencies and groups filed comments directly with the Office of the Federal Register commenting on the proposed new **Federal Register** format. Comments from Federal agencies focused on the new format we proposed, while private citizens and industry groups commented on the minor substantive changes, the proposed format, or both.

In addition to the comments we received in response to our Notice, RSPA received additional comments on the procedural regulations in response to a December 20, 1999 notice published as part of its Regulatory Flexibility Act review. Section 610 of the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires agencies to conduct periodic reviews of rules that have a significant economic impact on a substantial number of small business entities. In the December 20, 1999 Notice, focusing on parts 106, 107 and 171, RSPA invited comments on both the economic impact of its regulations and on ways to make the regulations easier to read and understand. In response to the Notice, RSPA received comments from the Institute of Makers of Explosives and E.I. DuPont de Nemours & Co. (DuPont) regarding plain language efforts.

Many commenters applauded RSPA's efforts to make the regulations easier to read and understand. Commenters stated that the proposed plain language changes would make it easier to find and understand the regulations. Most supported various minor substantive changes and format changes.

Several commenters expressed caution regarding future efforts to re-write the regulations. The Association of Waste Hazardous Materials Transporters stated that, in view of the limited resources available to RSPA to accomplish its more substantive rulemakings, it believes that additional plain language changes should only be made when we are issuing new rules or substantively revising or updating existing rules. The Hazardous Materials Advisory Council [now the Dangerous Goods Advisory Council] expressed concern that plain language efforts not delay other important rules.

RSPA agrees with commenters' concerns about using limited resources to re-write regulations when substantive rulemaking actions are pending. In order to maximize resources, we plan to

make plain language improvements only as sections or parts are being reviewed and revised for substantive reasons.

RSPA used a question-and-answer format for the proposed changes to the procedural regulations. After reviewing the question headings, we decided to convert them to non-question headings. These are more concise and direct. In addition, because we may not re-write the rest of the procedural regulations for quite some time, the non-question headings are consistent with the headings currently used in the rest of the regulations. If we used question headings in a portion of the procedural regulations, the format would not have been consistent.

The Chemical Manufacturers' Association (CMA) [now the American Chemistry Council] said that RSPA should ensure the regulatory intent is not lost when regulations are rewritten in plain language. CMA also stated that new substantive and procedural regulations should be in separate notices and not in plain language re-write notices. In this final rule, RSPA is making only minor changes to clarify the existing regulations.

Below is a discussion of the minor substantive changes we proposed and the comments we received.

**2. Minor Substantive Changes**

In this rule, we are revising all of part 106 and creating a new part 105. We are clarifying existing requirements and making minor substantive changes that are explained in the following paragraphs.

**Part 105**

We are creating a new part 105 to contain general information and definitions. To do this, we are moving the general information on how to obtain information from us about our procedural regulations and the Hazardous Materials Regulations (HMR; Parts 171-180) from part 107 into a newly created part 105. The new part 105 also contains information on subpoenas and service of documents.

We are revising mailing addresses throughout parts 105 and 106 to ensure that documents reach the appropriate RSPA office. In this final rule, we are also up-dating some information contained in the Notice of Proposed Rulemaking because the location of certain information in RSPA changed since the time of the proposal. For example, RSPA's Hazardous Materials Record Center no longer houses rulemaking documents, interpretations, or preemption documents. This information can now be accessed by visiting the Docket Management System

(<http://dms.dot.gov>) or through the Internet Web site (<http://hazmat.dot.gov>). For older information received by RSPA before February 1, 1997, you may obtain rulemaking information from the Office of Hazardous Materials Standards and preemption information from the Office of the Chief Counsel. In this final rule, we are also adding a reference under § 105.25 to the Office of Hazardous Materials Safety's "Fax On Demand System" through which a requester may choose documents (e.g., proposed and final rules, DOT forms, letters of clarification, and safety notices) to be faxed to his or her fax machine by dialing 1-800-467-4922 and selecting Option 2.

The Association of Waste Hazardous Materials Transporters requested that we clarify the regulations in part 105 concerning filing requests for information under the Freedom of Information Act (FOIA). In response to that comment, we added § 105.26 referring readers to the Department's FOIA regulations in 49 CFR part 7. Part 7 explains the procedures for filing requests for records under FOIA and also provides RSPA contact information.

We received a number of comments concerning the location of definitions and the "plain language" definitions themselves. CMA, the Truck Trailer Manufacturers Association, the National Propane Gas Association, and DuPont supported locating all definitions in one section. Several urged RSPA to expand part 105 and incorporate in a single location all the definitions currently spread throughout the regulations and the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*). Because States do not adopt the procedural regulations contained in parts 105, 106, and 107 and instead adopt only the Hazardous Materials Regulations (HMR), beginning at part 171, RSPA is not moving all other definitions into new part 105. This approach will facilitate State incorporation of the HMR as a self-contained unit with necessary definitions in § 171.8. New part 105 contains a limited number of definitions rewritten in plain language. Other definitions are contained in part 171 and apply to sections of the HMR.

We are not making any substantive changes to the definitions in new part 105. For definitions contained in part 105 that are also contained in parts 107 and 171, we are changing the definitions in parts 107 and 171 to make them consistent.

Several commenters expressed concern that several definitions in § 105.10 are different than those found

in the current regulatory text and different from the statutory definitions. One commenter asked whether definitions in the statute could be changed and mentioned the definition for "transports" or "transportation" as an example of a definition that differed in the proposed rule and the statute.

Based on these concerns, we compared the definitions that we proposed in § 105.10 with the definitions in other parts of the HMR and in the statute. After comparing these, we are making the definitions more consistent in this final rule.

The following is a discussion of each of the definitions proposed in § 105.10 and the changes we are making.

In this final rule, we are adding "(49 CFR parts 171 through 180)" after "subchapter C of this chapter" to the definition of "approval" that we proposed and are adopting. This change will advise readers about the parts in subchapter C. In addition, in this final rule, we are clarifying that an approval may be issued by agencies or officials other than the Associate Administrator for Hazardous Materials Safety. Therefore, we are adding the words "or other designated Department official" after "from the Associate Administrator for Hazardous Materials Safety." We are also making the definitions of "approval" in part 107 and § 171.8 consistent with the definition in part 105.

In the definition of "exemption" we proposed and are adopting, we are now updating the reference to the Federal Highway Administration to the Federal Motor Carrier Safety Administration to reflect the new DOT agency. In this final rule, we are also changing the definition of "exemption" in part 107 to make it consistent with part 105.

Upon review, we decided not to adopt the plain language definition of "Federal hazardous material transportation law" we proposed, but to adopt instead the definition of that term now in part 107 and § 171.8. The definition we are adopting uses the legal citation 49 U.S.C. 5101 *et seq.*, rather than the cite 49 U.S.C. 5101 through 5127.

We are adopting the new definition of "filed" as proposed. We are using the same new definition of "filed" in part 107 for consistency.

With regard to the definition of "hazardous material," we are changing the verbs "determines" to "has determined" and "designates" to "has designated" because this language accurately reflects that the designation has already been made. We are also replacing the current definition of

hazardous material in § 171.8 to be consistent.

With regard to the definition of "Indian tribe," we will not adopt the proposed definition because "Indian tribe" is currently defined in the Federal hazardous materials transportation law. To be consistent with the Federal hazardous materials transportation law, we will use the statutory definition in part 105. We are also replacing the definition in part 107 with the statutory definition.

To further clarify the definition of "person" we proposed and are adopting in this final rule, we are replacing the words "when it" with "that" and the word "excludes" with "does not include." We are also adding a sentence to clarify that "person" does not include any government or Indian tribe that transports hazardous material for a governmental purpose. To be consistent, we are replacing the definitions of "person" in part 107 and § 171.8 with the clarified definition of "person."

In the definition of "political subdivision" that we proposed and are adopting, we are changing the word "includes" to "means" because the current definition covers all applicable entities.

In the definition of "preemption determination," we are replacing "RSPA" with "Associate Administrator for Hazardous Materials Safety" to clarify who in RSPA issues a preemption determination decision.

In the definition of "regulations issued under Federal hazmat law," we are changing "hazmat law" to "Federal hazardous materials transportation law." In addition, we are clarifying that the first reference is to subchapter A by deleting "this" before subchapter and adding "A" to it.

With regard to the definition of "state," we decided not to adopt the proposed definition of "state." After reviewing the definitions, we decided to use the definition of "state" set out in § 171.8 because it is clear and simple. In this final rule, we are using that definition in the new part 105 and replacing the definition in part 107 with that definition.

A commenter expressed concern that the definition of "transportation" we proposed differed from the definition in the statute. The statutory definition has the word "the" before "movement," has no comma after property, does not have the word "any" before loading, and has the words "the movement" instead of the proposed "that movement." Although we believe these plain language changes were minor editorial changes, we are not adopting the plain language definition. Rather, to be

consistent with the statute, we are using the definition currently set out in the Federal hazardous materials transportation law in both the new part 105 and in part 107.

We are revising the definition of “waiver of preemption” we proposed. We are replacing “RSPA” with “Associate Administrator for Hazardous Materials Safety” to clarify who in RSPA makes the waiver decision and dividing the long sentence that was proposed into two so that it is easier to understand.

#### Part 106

Section 106.10 contains new information about our rulemaking process. Specifically, it states that we use informal rulemaking procedures under the Administrative Procedure Act. Furthermore, this section sets out the types of rulemaking documents we normally use to propose and adopt changes to our regulations.

Section 106.15 describes an advance notice of proposed rulemaking.

Section 106.20 describes a notice of proposed rulemaking.

Section 106.30 describes a final rule.

Section 106.35 describes an interim final rule.

Section 106.40 describes a direct final rule.

Section 106.70 states that commenters may electronically file their comments in a rulemaking proceeding through the Internet to <http://dms.dot.gov>.

Commenters support the option of filing comments electronically and the availability of internet web sites that increase public access to information.

In the Notice, with regard to § 106.70, we also proposed to add that we may reject paper and electronic comments that are “frivolous, abusive, or repetitious.” Several commenters expressed concerns about the phrase “frivolous, abusive, or repetitious.” This proposed change was partially intended to address the types of comments the agency has received over the Internet that do not relate to a rulemaking. Commenters were concerned about the subjective nature of the proposed standard and about the possible rejection of comments under such a standard. A commenter asked, for example, whether a comment would be considered repetitious and rejected if it is the same or similar to one submitted by another commenter. All relevant comments will be considered, including those similar to those submitted by other commenters. We agree with commenters’ concern about the proposed language and revised the language to state that we may reject comments not relevant to a rulemaking.

Generally, all comments received will be part of the docket; however, comments that are not relevant to the rulemaking may not be considered for that particular rulemaking.

In §§ 106.80 through 106.90, we are using the terms “public meetings” rather than “informal hearings.” This language more accurately reflects the nature of these public, information-gathering sessions. One commenter requested confirmation that no present protections afforded to parties are reduced or eliminated by replacing the term “informal hearings” with “public meetings.” By replacing the term “informal hearing” with “public meeting,” no rights or protections are reduced or eliminated. The nature of the proceeding is unchanged. In a public meeting, interested parties may present information and arguments. RSPA officials preside over public meetings and keep a transcript or minutes.

In §§ 106.110 through 106.130, we are eliminating the petition for reconsideration procedures to streamline the appeal process. Commenters supported the proposed change for processing petitions for reconsideration and appeals to the Administrator, and stated that the change will simplify the process. DuPont stated that revising the petition for reconsideration procedures to effectively remove those from the process who cannot grant a petition in the first place results in a more efficient procedure.

Section 106.35 currently requires a person to file a petition for reconsideration of a rule with either RSPA’s Associate Administrator for Hazardous Materials Safety or RSPA’s Chief Counsel, depending on the subject matter of the regulation the person is challenging. Currently, § 106.38 then allows a person to appeal the decision of the Associate Administrator or the Chief Counsel to RSPA’s Administrator. However, only the Administrator can issue a final rule. Consequently, the Associate Administrator does not have the authority to grant a petition for reconsideration that would result in issuance of a new final rule, only deny it. By eliminating the petition for reconsideration procedures, we are eliminating a step that procedurally cannot produce the end result often sought by the petitioner—a new final rule. Appeals will now be directly addressed to the Administrator. This change does not deprive anyone of the ability to appeal a final rule.

In this final rule, we are also further clarifying the RSPA actions that an interested person may appeal. In §§ 106.110–106.130, we are clarifying

that you may appeal RSPA’s withdrawal of a notice of proposed rulemaking, in addition to RSPA’s issuance of a final rule.

#### Part 107

With the exception of the definitions in part 107, we are moving the rest of subpart A in part 107 to new part 105. The definitions section, § 107.3, remains in part 107 and is redesignated as § 107.1. We are replacing the definitions of “approval,” “competent authority approval,” “exemption,” “filed,” and “person” with definitions that we adopted in section 105.10.

With regard to the definition of “Indian tribe,” we are replacing the definition in part 107 with the statutory definition.

We are replacing the definition of “state” in part 107 with the definition of “state” found in § 171.8 because it is clear and simple.

With regard to the definition of “transports” or “transportation,” we are replacing the definition in part 107 with the current statutory definition.

#### Part 171

To make the definitions in § 171.8 consistent with the definitions in new part 105, we are replacing the definitions of “approval,” “exemption,” “hazardous material,” and “person” in § 171.8 with the new definitions we are adopting in § 105.10.

### 3. Regulatory Analysis and Notices

#### *Executive Order 12866 and DOT Regulatory Policies and Procedures*

This rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866. Consequently, it was not reviewed by the Office of Management and Budget. RSPA has not prepared a regulatory impact analysis or a regulatory evaluation because this proposed rule has minimal economic impact. This rule is not significant according to the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

#### *Executive Order 13132*

RSPA has analyzed this rule in accordance with the principles and criteria in Executive Order 13132 (“Federalism”). RSPA has determined that the rule does not have sufficient Federalism impacts to warrant the preparation of a Federalism assessment.

#### *Executive Order 13175*

These clarified procedural regulations will not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal

Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes when analyzed under the principles and criteria contained in Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”). Therefore, the funding and consultation requirements of this Executive Order do not apply.

#### *Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), RSPA must consider whether a regulation would have a significant economic impact on a substantial number of small entities. This rule merely clarifies and revises RSPA's general procedures and rulemaking procedures to assist the public to better understand our procedures. Therefore, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

#### *Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. The information collection requirements in 49 CFR parts 106 and 107 have been approved under OMB Control No. 2137-0051, “Rulemaking and Exemptions Petitions.” This final rule does not impose new information collection requirements.

#### *Regulation Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading of this document to cross-reference this action with the Unified Agenda.

#### *Unfunded Mandates Reform Act*

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

#### **List of Subjects**

##### *49 CFR Part 105*

Administrative practice and procedure, Hazardous materials transportation.

#### **49 CFR Part 106**

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

#### **49 CFR Part 107**

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

#### **49 CFR Part 171**

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

Accordingly, RSPA amends 49 CFR chapter I, subchapter A, as follows:

1. Add part 105 to read as follows:

### **PART 105—HAZARDOUS MATERIALS PROGRAM DEFINITIONS AND GENERAL PROCEDURES**

#### **Subpart A—Definitions**

Sec.

##### **105.5 Definitions.**

#### **Subpart B—General Procedures**

105.15 Defined terms are used in this subpart.

#### **Obtaining Guidance and Public Information**

105.20 Guidance and interpretations.

105.25 Reviewing public documents.

105.26 Obtaining records on file with RSPA.

105.30 Information made available to the public and request for confidential treatment.

#### **Serving Documents**

105.35 Serving documents in RSPA proceedings.

105.40 Designated agents for non-residents.

#### **Subpoenas**

105.45 Issuing a subpoena.

105.50 Serving a subpoena.

105.55 Refusal to obey a subpoena.

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

#### **Subpart A—Definitions**

##### **§ 105.5 Definitions**

(a) This part contains the definitions for certain words and phrases used throughout this subchapter (49 CFR parts 105 through 110). At the beginning of each subpart, the Research and Special Programs Administration (“RSPA” or “we”) will identify the defined terms that are used within the subpart—by listing them—and refer the reader to the definitions in this part. This way, readers will know that RSPA has given a term a precise meaning and will know where to look for it.

(b) Terms used in this part are defined as follows:

*Associate Administrator* means

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

*Approval* means written consent, including a competent authority approval, from the Associate Administrator or other designated Department official, to perform a function that requires prior consent under subchapter C of this chapter (49 CFR parts 171 through 180).

*Competent Authority* means a national agency that is responsible, under its national law, for the control or regulation of some aspect of hazardous materials (dangerous goods) transportation. Another term for Competent Authority is “Appropriate authority” which is used in the International Civil Aviation Organization's (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air. The Associate Administrator is the United States Competent Authority for purposes of 49 CFR part 107.

*Competent Authority Approval* means an approval by the competent authority that is required under an international standard (for example, the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air and the International Maritime Dangerous Goods Code). Any of the following may be considered a competent authority approval if it satisfies the requirement of an international standard:

(1) A specific regulation in subchapter A or C of this chapter.

(2) An exemption or approval issued under subchapter A or C of this chapter.

(3) A separate document issued to one or more persons by the Associate Administrator.

*Exemption* means a document issued by the Associate Administrator under the authority of 49 U.S.C. 5117. The document permits a person to perform a function that is not otherwise permitted under subchapter A or C of this chapter, or other regulations issued under 49 U.S.C. 5101 *et seq.* (e.g., Federal Motor Carrier Safety routing requirements.)

*Federal hazardous material transportation law* means 49 U.S.C. 5101 *et seq.*

*File* or *Filed* means received by the appropriate RSPA or other designated office within the time specified in a regulation or rulemaking document.

*Hazardous material* means a substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk

to health, safety, and property when transported in commerce, and has designated as hazardous under section 5103 of Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see 49 CFR 172.101), and materials that meet the defining criteria for hazard classes and divisions in part 173 of subchapter C of this chapter.

*Hazardous Materials Regulations* or *HMR* means the regulations at 49 CFR parts 171 through 180.

*Indian tribe* has the same meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

*Person* means an individual, firm, copartnership, corporation, company, association, or joint-stock association (including any trustee, receiver, assignee, or similar representative); or a government or Indian tribe (or an agency or instrumentality of any government or Indian tribe) that transports a hazardous material to further a commercial enterprise or offers a hazardous material for transportation in commerce. Person does not include the following:

(1) The United States Postal Service.  
 (2) Any agency or instrumentality of the Federal government, for the purposes of 49 U.S.C. 5123 (civil penalties) and 5124 (criminal penalties).

(3) Any government or Indian tribe (or an agency or instrumentality of any government or Indian tribe) that transports hazardous material for a governmental purpose.

*Political subdivision* means a municipality; a public agency or other instrumentality of one or more States, municipalities, or other political body of a State; or a public corporation, board, or commission established under the laws of one or more States.

*Preemption determination* means an administrative decision by the Associate Administrator that Federal hazardous materials law does or does not void a specific State, political subdivision, or Indian tribe requirement.

*Regulations issued under Federal hazardous materials transportation law* means regulations contained in subchapter A of this chapter (49 CFR parts 105 through 110) and in subchapter C of this chapter (49 CFR parts 171 through 180).

*State* means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana

Islands, the Virgin Islands, American Samoa, Guam, or any other territory or possession of the United States designated by the Secretary.

*Transports or Transportation* means the movement of property and loading, unloading, or storage incidental to the movement.

*Waiver of Preemption* means a decision by the Associate Administrator to forego preemption of a non-Federal requirement—that is, to allow a State, political subdivision or Indian tribe requirement to remain in effect. The non-Federal requirement must provide at least as much public protection as the Federal hazardous materials transportation law and the regulations issued under Federal hazardous materials transportation law, and may not unreasonably burden commerce.

## Subpart B—General Procedures

### § 105.15 Defined terms used in this subpart.

The following defined terms (see subpart A of this part) appear in this subpart: Approval; Exemption; Federal hazardous material transportation law; Hazardous material; Hazardous materials regulations; Indian tribe; Preemption determination; State; Transportation; Waiver of preemption

### Obtaining Guidance and Public Information

#### § 105.20 Guidance and interpretations.

(a) *Hazardous materials regulations*. You can obtain information and answers to your questions on compliance with the hazardous materials regulations (49 CFR parts 171 through 180) and interpretations of those regulations by contacting RSPA's Office of Hazardous Materials Safety as follows:

(1) Call the Hazardous Materials Information Center at 1-800-467-4922 (in Washington, DC, call 202-366-4488). The Center is staffed from 9 a.m. through 5 p.m. Eastern time, Monday through Friday except Federal holidays. After hours, you can leave a recorded message and your call will be returned by the next business day.

(2) E-mail the Hazardous Materials Information Center at [infocntr@rspa.dot.gov](mailto:infocntr@rspa.dot.gov).

(3) Access the Office of Hazardous Materials Safety home page via the Internet at <http://hazmat.dot.gov>.

(4) Send a letter, with your return address and a daytime telephone number, to: Office of Hazardous Materials Standards, Research and Special Programs Administration, Attn: DHM-10, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590-0001.

(b) *Federal hazardous materials transportation law and preemption*. You can obtain information and answers to your questions on Federal hazardous materials transportation law, 49 U.S.C. 5101 *et seq.*, and Federal preemption of State, local, and Indian tribe hazardous material transportation requirements, by contacting RSPA's Office of the Chief Counsel as follows:

(1) Call the office of the Chief Counsel at (202) 366-4400 from 9 a.m. to 5 p.m. Eastern time, Monday through Friday except Federal holidays.

(2) Access the Office of the Chief Counsel's home page via the Internet at <http://rspa-atty.dot.gov>.

(3) Send a letter, with your return address and a daytime telephone number, to: Office of the Chief Counsel, Research and Special Programs Administration, Attn: DCC-10, U.S. Department of Transportation, Washington, DC 20590-0001.

(4) Contact the Office of the Chief Counsel for a copy of applications for preemption determinations, waiver of preemption determinations, and inconsistency rulings received by RSPA before February 1, 1997.

#### § 105.25 Reviewing public documents.

RSPA is required by statute to make certain documents and information available to the public. You can review and copy publicly available documents and information at the locations described in this section.

(a) *DOT Docket Management System*. Unless a particular document says otherwise, the following documents are available for public review and copying at the Department of Transportation's Docket Management System, Room PL 401, 400 7th Street, SW., Washington, DC 20590-0001, or for review and downloading through the Internet at <http://dms.dot.gov>:

(1) Rulemaking documents in proceedings started after February 1, 1997, including notices of proposed rulemaking, advance notices of proposed rulemaking, public comments, related **Federal Register** notices, final rules, appeals, and RSPA's decisions in response to appeals.

(2) Applications for exemption received by RSPA after February 1, 1997. Also available are supporting data, memoranda of any informal meetings with applicants, related **Federal Register** notices, public comments, and decisions granting or denying exemptions applications.

(3) Applications for preemption determinations and waiver of preemption determinations received by RSPA after February 1, 1997. Also available are public comments, **Federal**

**Register** notices, and RSPA's rulings, determinations, decisions on reconsideration, and orders issued in response to those applications.

(b) *Hazardous Materials Record Center*. Applications for exemptions and related background information received by RSPA before February 1, 1997 are available for public review and copying at the Hazardous Materials Record Center, U.S. Department of Transportation, Room 8421, 400 7th Street, SW., Washington, DC 20590–0001:

(c) *Office of Hazardous Materials Safety*. (1) You may obtain documents (e.g., proposed and final rules, notices, letters of clarification, safety notices, DOT forms and other documents) by using the "Fax On Demand" system. To reach the "Fax On Demand" system, dial 1–800–467–4922 and select Option 2. You may choose documents to be faxed to your machine.

(2) Upon your written request, we will make the following documents and information available to you:

(i) Appeals under 49 CFR part 107 and RSPA's decisions issued in response to those appeals.

(ii) Records of compliance order proceedings and RSPA compliance orders.

(iii) Applications for approvals, including supporting data, memoranda of any informal meetings with applicants, and decisions granting or denying approvals applications.

(iv) Other information about RSPA's hazardous materials program required by statute to be made available to the public for review and copying and any other information RSPA decides should be available to the public.

(3) Your written request to review documents should include the following:

(i) A detailed description of the documents you wish to review.

(ii) Your name, address, and telephone number.

(4) Send your written request to: Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, Attn: DHM–1, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001.

#### **§ 105.26 Obtaining records on file with RSPA.**

To obtain records on file with RSPA, other than those described in § 105.25, you must file a request with RSPA under the Freedom of Information Act (FOIA) (5 U.S.C. 552). The procedures for filing a FOIA request are contained in 49 CFR part 7.

#### **§ 105.30 Information made available to the public and request for confidential treatment.**

When you submit information to RSPA during a rulemaking proceeding, as part of your application for exemption or approval, or for any other reason, we may make that information publicly available unless you ask that we keep the information confidential.

(a) *Asking for confidential treatment*. You may ask us to give confidential treatment to information you give to the agency by taking the following steps:

(1) Mark "confidential" on each page of the original document you would like to keep confidential.

(2) Send us, along with the original document, a second copy of the original document with the confidential information deleted.

(3) Explain why the information you are submitting is confidential (for example, it is exempt from mandatory public disclosure under the Freedom of Information Act, 5 U.S.C. 552 or it is information referred to in 18 U.S.C. 1905).

(b) *RSPA Decision*. RSPA 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.

#### **Serving Documents**

#### **§ 105.35 Serving documents in RSPA proceedings.**

(a) *Service by RSPA*. 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**.

(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://dms.dot.gov>.

#### **§ 105.40 Designated agents for non-residents.**

(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:

(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: Office of Hazardous Materials Exemptions and Approvals Research and Special Programs Administration, Attn: DHM–30, U.S. Department of Transportation 400 7th Street, SW., 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.

## 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. RSPA may issue a subpoena either on its initiative or at the request of someone participating in a proceeding. Anyone who requests that RSPA 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 RSPA 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 RSPA to pay the attendance and mileage fees because of demonstrated financial hardship and RSPA agrees to do so.

(3) If RSPA 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 RSPA 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 RSPA 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 RSPA 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. RSPA 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, RSPA may ask the Attorney General to seek help from the United States District Court for the appropriate District to compel you, after notice, to appear before RSPA and give testimony, produce subpoenaed documents or physical evidence, or both.

2. Revise part 106 to read as follows:

## PART 106—RULEMAKING PROCEDURES

### Subpart A—RSPA Rulemaking Documents

#### Sec.

- 106.5 Defined terms used in this subpart.
- 106.10 Process for issuing rules.
- 106.15 Advance notice of proposed rulemaking.
- 106.20 Notice of proposed rulemaking.
- 106.25 Revising regulations without first issuing an ANPRM or NPRM.
- 106.30 Final rule.
- 106.35 Interim final rule.
- 106.40 Direct final rule.
- 106.45 Tracking rulemaking actions.

### Subpart B—Participating in the Rulemaking Process

- 106.50 Defined terms used in this subpart.
- 106.55 Public participation in the rulemaking process.

### Written Comments

- 106.60 Filing comments.
- 106.65 Required information for written comments.
- 106.70 Where and when to file comments.
- 106.75 Extension of time to file comments.

### Public Meetings and Other Proceedings

- 106.80 Public meeting procedures.
- 106.85 Requesting a public meeting.
- 106.90 Other rulemaking proceedings.

### Petitions for Rulemaking

- 106.95 Requesting a change to the regulations.
- 106.100 Required information for a petition for rulemaking.
- 106.105 RSPA response to a petition for rulemaking.

### Appeals

- 106.110 Appealing a RSPA action.
- 106.115 Required information for an appeal.
- 106.120 Appeal deadline.
- 106.125 Filing an appeal.
- 106.130 RSPA response to an appeal.

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

### Subpart A—RSPA Rulemaking Documents

### § 106.5 Defined terms used in this subpart.

The following defined terms (see part 105, subpart A, of this subchapter) appear in this subpart: File; Person; State.

### § 106.10 Process for issuing rules.

(a) RSPA ("we") uses informal rulemaking procedures under the Administrative Procedure Act (5 U.S.C. 553) to add, amend, or delete regulations. To propose or adopt changes to a regulation, RSPA may issue one or more of the following documents. We publish the following rulemaking documents in the **Federal Register** unless we name and personally serve a copy of a rule on every person subject to it:

(1) An advance notice of proposed rulemaking.

(2) A notice of proposed rulemaking.

(3) A final rule.

(4) An interim final rule.

(5) A direct final rule.

(b) Each of the rulemaking documents in paragraph (a) of this section generally contains the following information:

(1) The topic involved in the rulemaking document.

(2) RSPA's legal authority for issuing the rulemaking document.

(3) How interested persons may participate in the rulemaking proceeding (for example, by filing written comments or making oral presentations).

(4) Whom to call if you have questions about the rulemaking document.

(5) The date, time, and place of any public meetings being held to discuss the rulemaking document.

(6) The docket number and regulation identifier number (RIN) for the rulemaking proceeding.

**§ 106.15 Advance notice of proposed rulemaking.**

An advance notice of proposed rulemaking (ANPRM) tells the public that RSPA is considering an area for rulemaking and requests written comments on the appropriate scope of the rulemaking or on specific topics. An advance notice of proposed rulemaking may or may not include the text of potential changes to a regulation.

**§ 106.20 Notice of proposed rulemaking.**

A notice of proposed rulemaking (NPRM) contains RSPA's specific proposed regulatory changes for public comment and contains supporting information. It generally includes proposed regulatory text.

**§ 106.25 Revising regulations without first issuing an ANPRM or NPRM.**

RSPA may add, amend, or delete regulations without first issuing an ANPRM or NPRM in the following situations:

(a) We may go directly to a final rule or interim final rule if, for good cause, we find that a notice of proposed rulemaking is impracticable, unnecessary, or contrary to the public interest. We must place that finding and a brief statement of the reasons for it in the final rule or interim final rule.

(b) We may issue a direct final rule (see § 106.40).

**§ 106.30 Final rule.**

A final rule sets out new regulatory requirements and their effective date. A final rule will also identify issues raised by commenters in response to the notice of proposed rulemaking and give the agency's response.

**§ 106.35 Interim final rule.**

An interim final rule is issued without first issuing a notice of proposed rulemaking and accepting public comments and sets out new regulatory requirements and their effective date. RSPA may issue an interim final rule if it finds, for good cause, that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. RSPA will clearly set out this finding in the interim final rule. After receiving and reviewing public comments, as well as any other relevant documents, RSPA may revise the interim final rule and then issue a final rule.

**§ 106.40 Direct final rule.**

A direct final rule makes regulatory changes and states that the regulatory changes will take effect on a specified date unless RSPA receives an adverse comment or notice of intent to file an adverse comment within the comment

period—generally 60 days after the direct final rule is published in the **Federal Register**.

(a) *Actions taken by direct final rule.* We may use direct final rulemaking procedures to issue rules that do any of the following:

(1) Make minor substantive changes to regulations.

(2) Incorporate by reference the latest edition of technical or industry standards.

(3) Extend compliance dates.

(4) Make noncontroversial changes to regulations. We must determine and publish a finding that use of direct final rulemaking, in this situation, is in the public interest and unlikely to result in adverse comment.

(b) *Adverse comment.* An adverse comment explains why a rule would be inappropriate, or would be ineffective or unacceptable without a change. It may challenge the rule's underlying premise or approach. Under the direct final rule process, we do not consider the following types of comments to be adverse:

(1) A comment recommending another rule change, in addition to the change in the direct final rule at issue, unless the commenter states why the direct final rule would be ineffective without the change.

(2) A frivolous or irrelevant comment.

(c) *Confirmation of effective date.* We will publish a confirmation document in the **Federal Register**, generally within 15 days after the comment period closes, if we have not received an adverse comment or notice of intent to file an adverse comment. The confirmation document tells the public the effective date of the rule—either the date stated in the direct final rule or at least 30 days after the publication date of the confirmation document, whichever is later.

(d) *Withdrawing a direct final rule.* (1) If we receive an adverse comment or notice of intent to file an adverse comment, we will publish a document in the **Federal Register** before the effective date of the direct final rule advising the public and withdrawing the direct final rule in whole or in part.

(2) If we withdraw a direct final rule because of an adverse comment, we may incorporate the adverse comment into a later direct final rule or may publish a notice of proposed rulemaking.

(e) *Appeal.* You may appeal RSPA's issuance of a direct final rule (see § 106.115) only if you have previously filed written comments (see § 106.60) to the direct final rule.

**§ 106.45 Tracking rulemaking actions.**

The following identifying numbers allow you to track RSPA's rulemaking activities:

(a) *Docket number.* We assign an identifying number, called a docket number, to each rulemaking proceeding. Each rulemaking document that RSPA issues in a particular rulemaking proceeding will display the same docket number. This number allows you to do the following:

(1) Associate related documents that appear in the **Federal Register**.

(2) Search the DOT Docket Management System ("DMS") for information on particular rulemaking proceedings—including notices of proposed rulemaking, public comments, petitions for rulemaking, appeals, records of additional rulemaking proceedings and final rules. There are two ways you can search the DMS:

(i) Visit the public docket room and review and copy any docketed materials during regular business hours. The DOT Docket Management System is located at the U.S. Department of Transportation, Plaza Level 401, 400 7th Street, SW., Washington, DC 20590-0001.

(ii) View and download docketed materials through the Internet at <http://dms.dot.gov>.

(b) *Regulation identifier number.* The Department of Transportation publishes a semiannual agenda of all current and projected Department of Transportation rulemakings, reviews of existing regulations, and completed actions. This semiannual agenda appears in the Unified Agenda of Federal Regulations that is published in the **Federal Register** in April and October of each year. The semiannual agenda tells the public about the Department's—including RSPA's—regulatory activities. The Department assigns a regulation identifier number (RIN) to each individual rulemaking proceeding in the semiannual agenda. This number appears on all rulemaking documents published in the **Federal Register** and makes it easy for you to track those rulemaking proceedings in both the **Federal Register** and the semiannual regulatory agenda itself, as well as to locate all documents in the Docket Management System pertaining to a particular rulemaking.

**Subpart B—Participating in the Rulemaking Process****§ 106.50 Defined terms used in this subpart.**

The following defined terms (see part 105, subpart A, of this subchapter)

appear in this subpart: File; Person; Political subdivision; State.

#### **§ 106.55 Public participation in the rulemaking process.**

You may participate in RSPA's rulemaking process by doing any of the following:

(a) File written comments on any rulemaking document that asks for comments, including an advance notice of proposed rulemaking, notice of proposed rulemaking, interim final rule, or direct final rule.

(b) Ask that we hold a public meeting in any rulemaking proceeding and participate in any public meeting that we hold.

(c) File a petition for rulemaking that asks us to add, amend, or delete a regulation.

(d) File an appeal that asks us to reexamine our decision to issue all or part of a final rule, interim final rule, or direct final rule.

#### **Written Comments**

##### **§ 106.60 Filing comments.**

Anyone may file written comments about proposals made in any rulemaking document that requests public comments, including any State government agency, any political subdivision of a State, and any interested person invited by RSPA to participate in the rulemaking process.

##### **§ 106.65 Required information for written comments.**

Your comments must be in English and must contain the following:

(a) The docket number of the rulemaking document you are commenting on, clearly set out at the beginning of your comments.

(b) Information, views, or arguments that follow the instructions for participation that appear in the rulemaking document on which you are commenting.

(c) All material that is relevant to any statement of fact in your comments.

(d) The document title and page number of any material that you reference in your comments.

##### **§ 106.70 Where and when to file comments.**

(a) Unless you are told to do otherwise in the rulemaking document on which you are commenting, send your comments to us in either of the following ways:

(1) By mail to: Docket Management System, U.S. Department of Transportation, Room PL 401, Washington, DC 20590-0001.

(2) Through the Internet to <http://dms.dot.gov>.

(b) Make sure that your comments reach us by the deadline set out in the rulemaking document on you which are commenting. We will consider late-filed comments to the extent possible.

(c) We may reject comments that are not relevant to the rulemaking. We may reject comments you file electronically if you do not follow the electronic filing instructions at the DOT Web site.

##### **§ 106.75 Extension of time to file comments.**

You may ask for more time to file comments on a rulemaking proceeding. If RSPA grants your request, it is granted to all persons. We will notify the public of the extension by publishing a document in the **Federal Register**. If RSPA denies your request, RSPA will notify you of the denial. To ask for more time, you must do the following:

(a) File a request for extension at least ten days before the end of the comment period established in the rulemaking document.

(b) Show that you have good cause for the extension and that an extension is in the public interest.

(c) Include the docket number of the rulemaking document you are seeking additional time to comment on, clearly set out at the beginning of your request.

(d) Send your request to: Docket Management System, U.S. Department of Transportation, Room PL 401, 400 7th Street, SW., Washington, DC 20590-0001.

#### **Public Meetings and Other Proceedings**

##### **§ 106.80 Public meeting procedures.**

A public meeting is a non-adversarial, fact-finding proceeding conducted by a RSPA representative. Generally, public meetings are announced in the **Federal Register**. Interested persons are invited to attend and to present their views to the agency on specific issues. There are no formal pleadings and no adverse parties, and any regulation issued afterward is not necessarily based exclusively on the record of the meeting. Sections 556 and 557 of the Administrative Procedure Act (5 U.S.C. 556 and 557) do not apply to public meetings under this part.

##### **§ 106.85 Requesting a public meeting.**

(a) You may ask for a public meeting by filing a written request with RSPA no later than 20 days before the expiration of the comment period specified in the rulemaking document. Send your request for a public meeting to: Docket Management System, U.S. Department of Transportation, Room PL 401, 400 7th Street, SW., Washington, DC 20590-0001.

(b) RSPA will review your request and, if you have shown good cause for a public meeting, we will grant it and publish a notice of the meeting in the **Federal Register**.

#### **§ 106.90 Other rulemaking proceedings.**

During a rulemaking proceeding, RSPA may invite you to do the following:

(a) Participate in a conference at which minutes are taken.

(b) Make an oral presentation.

(c) Participate in any other public proceeding to ensure that RSPA makes informed decisions during the rulemaking process and to protect the public interest, including a negotiated rulemaking or work group led by a facilitator.

#### **Petitions for Rulemaking**

##### **§ 106.95 Requesting a change to the regulations.**

You may ask RSPA to add, amend, or delete a regulation by filing a petition for rulemaking as follows:

(a) For regulations in 49 CFR parts 110, 130, 171 through 180, submit the petition to: Office of Hazardous Materials Standards, Research and Special Programs Administration, Attn: DHM-10, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590-0001.

(b) For regulations in 49 CFR parts 105, 106, or 107, submit the petition to: Office of the Chief Counsel, Research and Special Programs Administration, Attn: DCC-10, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590-0001.

##### **§ 106.100 Required information for a petition for rulemaking.**

(a) You must include the following information in your petition for rulemaking:

(1) A summary of your proposed action and an explanation of its purpose.

(2) The language you propose for a new or amended rule, or the language you would delete from a current rule.

(3) An explanation of your interest in your proposed action and the interest of anyone you may represent.

(4) Information and arguments that support your proposed action, including relevant technical and scientific data available to you.

(5) Any specific cases that support or demonstrate the need for your proposed action.

(b) If the impact of your proposed action is substantial, and data or other information about that impact are available to you, we may ask that you provide information about the following:

(1) The costs and benefits of your proposed action to society in general, and identifiable groups within society in particular.

(2) The direct effects, including preemption effects under section 5125 of Federal hazardous materials transportation law, of your proposed action on States, on the relationship between the Federal government and

the States, and on the distribution of power and responsibilities among the various levels of government. (See 49 CFR part 107, subpart C, regarding preemption.)

(3) The regulatory burden of your proposed action on small businesses, small organizations, small governmental jurisdictions, and Indian tribes.

(4) The recordkeeping and reporting burdens of your proposed action and whom they would affect.

(5) The effect of your proposed action on the quality of the natural and social environments.

**§ 106.105 RSPA response to a petition for rulemaking.**

We will review and respond to your petition for rulemaking as follows:

| If your petition is . . . | And if we determine that . . .                      | Then . . .  |
|---------------------------|---|---|
| (a) Incomplete .....      | .....   | We may return your petition with a written explanation.                       |
| (b) Complete .....        | Your petition does not justify a rulemaking action. | We will notify you in writing that we will not start a rulemaking proceeding. |
| (c) Complete .....        | Your petition does justify a rulemaking action      | We will notify you in writing that we will start a rulemaking proceeding.     |

## Appeals

**§ 106.110 Appealing a RSPA Action.**

You may appeal the following RSPA actions:

(a) RSPA's issuance of a final rule or RSPA's withdrawal of a notice of proposed rulemaking under the rulemaking procedures in this part. However, you may appeal RSPA's issuance of a direct final rule only if you previously filed comments to the direct final rule (see § 106.40(e)).

(b) Any RSPA decision on a petition for rulemaking.

**§ 106.115 Required information for an appeal.**

(a) *Appeal of a final rule or withdrawal of a notice of proposed rulemaking.* If you appeal RSPA's issuance of a final rule or RSPA's withdrawal of a notice of proposed rulemaking, your appeal must include the following:

(1) The docket number of the rulemaking you are concerned about, clearly set out at the beginning of your appeal.

(2) A brief statement of your concern about the final rule or the withdrawal of notice of proposed rulemaking at issue.

(3) An explanation of why compliance with the final rule is not practical, reasonable, or in the public interest.

(4) If you want RSPA to consider more facts, the reason why you did not present those facts within the time given during the rulemaking process for public comment.

(b) *Appeal of a decision.* If you appeal RSPA's decision on a petition for rulemaking, you must include the following:

(1) The contested aspects of the decision.

(2) Any new arguments or information.

**§ 106.120 Appeal deadline.**

(a) *Appeal of a final rule or withdrawal of a notice of proposed rulemaking.* If you appeal RSPA's issuance of a final rule or RSPA's withdrawal of a proposed rulemaking, your appeal document must reach us no later than 30 days after the date RSPA published the regulation or the withdrawal notice in the **Federal Register**. After that time, RSPA will consider your petition to be one for rulemaking under § 106.100.

(b) *Appeal of a decision.* If you appeal RSPA's decision on a petition for rulemaking, your appeal document must reach us no later than 30 days from the date RSPA served you with written notice of RSPA's decision.

**§ 106.125 Filing an appeal.**

Send your appeal to: Docket Management System, U.S. Department of Transportation, Room PL 401, 400 7th Street, SW., Washington, DC 20590-0001.

**§ 106.130 RSPA response to an appeal.**

Unless RSPA provides otherwise, filing an appeal will not keep a final rule from becoming effective. We will handle an appeal according to the following procedures:

(a) *Appeal of a final rule or withdrawal of a notice of proposed rulemaking.* (1) We may consolidate your appeal with other appeals of the same rule.

(2) We may grant or deny your appeal, in whole or in part, without further rulemaking proceedings, unless granting your appeal would result in the issuance of a new final rule.

(3) If we decide to grant your appeal, we may schedule further proceedings and an opportunity to comment.

(4) RSPA will notify you, in writing, of the action on your appeal within 90 days after the date that RSPA published the final rule or withdrawal of notice of proposed rulemaking at issue in the **Federal Register**. If we do not issue a decision on your appeal within the 90-day period and we anticipate a substantial delay, we will notify you directly about the delay and will give you an expected decision date. We will also publish a notice of the delay in the **Federal Register**.

(b) *Appeal of a decision.* (1) We will not consider your appeal if it merely repeats arguments that RSPA has previously rejected.

(2) RSPA will notify you, in writing, of the action on your appeal within 90 days after the date that RSPA served you with written notice of its decision on your petition for rulemaking. If we do not issue a decision on your appeal within the 90-day period, and we anticipate a substantial delay, we will notify you directly about the delay and will give you an expected decision date.

## PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

3. The authority citation for part 107 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127, 44701; Sec. 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45, 1.53.

4. The heading for subpart A is revised to read as follows:

**Subpart A—Definitions****§ 107.1, 107.5, 107.7, 107.9, 107.11, 107.13, 107.14 [Removed]**

5. Sections 107.1, 107.5, 107.7, 107.9, 107.11, 107.13, and 107.14 are removed.

6. Section 107.3 is redesignated as § 107.1 and, in newly redesignated § 107.1, the definitions for “Approval,” “Competent Authority,” “Competent Authority Approval,” “Exemption,” “Filed,” “Indian Tribe,” “Person,” “State,” and “Transports or transportation” are revised to read as follows:

**§ 107.1 Definitions.**

\* \* \* \* \*

*Approval* means written consent, including a competent authority approval, from the Associate Administrator or other designated Department official, to perform a function that requires prior consent under subchapter C of this chapter (49 CFR parts 171 through 180).

\* \* \* \* \*

*Competent Authority* means a national agency that is responsible, under its national law, for the control or regulation of some aspect of hazardous materials (dangerous goods) transportation. Another term for Competent Authority is “Appropriate authority,” which is used in the International Civil Aviation Organization’s (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air. The Associate Administrator is the United States Competent Authority for purposes of this part 107.

*Competent Authority Approval* means an approval by the competent authority that is required under an international standard (for example, the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air and the International Maritime Dangerous Goods Code). Any of the following may be considered a competent authority approval if it satisfies the requirement of an international standard:

(1) A specific regulation in subchapter A or C of this chapter.

(2) An exemption or approval issued under subchapter A or C of this chapter.

(3) A separate document issued to one or more persons by the Associate Administrator.

\* \* \* \* \*

*Exemption* means a document issued by the Associate Administrator under the authority of 49 U.S.C. 5117. The document permits a person to perform a function that is not otherwise permitted under subchapter A or C of this chapter, or other regulations issued

under 49 U.S.C. 5101 through 5127 (e.g., Federal Motor Carrier Safety routing requirements.)

\* \* \* \* \*

*Filed* means received by the appropriate RSPA or other designated office within the time specified in a regulation or rulemaking document.

\* \* \* \* \*

*Indian Tribe* has the same meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

\* \* \* \* \*

*Person* means an individual, firm, copartnership, corporation, company, association, or joint-stock association (including any trustee, receiver, assignee, or similar representative); or a government or Indian tribe (or an agency or instrumentality of any government or Indian tribe) that transports a hazardous material to further a commercial enterprise or offers a hazardous material for transportation in commerce. Person does not include the following:

(1) The United States Postal Service.

(2) Any agency or instrumentality of the Federal government, for the purposes of 49 U.S.C. 5123 (civil penalties) and 5124 (criminal penalties.)

(3) Any government or Indian tribe (or an agency or instrumentality of any government or Indian tribe) that transports hazardous material for a governmental purpose.

\* \* \* \* \*

*State* means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, or any other territory or possession of the United States designated by the Secretary.

*Transports or transportation* means the movement of property and loading, unloading, or storage incidental to the movement.

**PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS**

7. The authority citation for part 171 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

8. In § 171.8, the definitions for “Approval,” “Exemption,” “Hazardous material,” and “Person” are revised to read as follows:

**§ 171.8 Definitions and abbreviations.**

\* \* \* \* \*

*Approval* means a written authorization, including a competent

authority approval, from the Associate Administrator or other designated Department official, to perform a function for which prior authorization by the Associate Administrator is required under subchapter C of this chapter (49 CFR parts 171 through 180.)

\* \* \* \* \*

*Exemption* means a document issued by the Associate Administrator under the authority of 49 U.S.C. 5117. The document permits a person to perform a function that is not otherwise permitted under subchapter A or C of this chapter, or other regulations issued under 49 U.S.C. 5101 through 5127 (e.g., Federal Motor Carrier Safety routing).

\* \* \* \* \*

*Hazardous material* means a substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous under section 5103 of Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see 49 CFR 172.101), and materials that meet the defining criteria for hazard classes and divisions in part 173 of subchapter C of this chapter.

\* \* \* \* \*

*Person* means an individual, firm, copartnership, corporation, company, association, or joint-stock association (including any trustee, receiver, assignee, or similar representative); or a government or Indian tribe (or an agency or instrumentality of any government or Indian tribe) that transports a hazardous material to further a commercial enterprise or offers a hazardous material for transportation in commerce. Person does not include the following:

(1) The United States Postal Service.

(2) Any agency or instrumentality of the Federal government, for the purposes of 49 U.S.C. 5123 (civil penalties) and 5124 (criminal penalties.).

(3) Any government or Indian tribe (or an agency or instrumentality of any government or Indian tribe) that transports hazardous material for a governmental purpose.

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Issued at Washington, DC, on May 30,  
2002, under authority delegated in 49 CFR  
part 106.

**Suzanne M. Te Beau,**

*Acting Administrator.*

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