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

(4) PHMSA will notify you, in writing, of the action on your appeal within 90 days after the date that PHMSA 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 PHMSA has previously rejected.

(2) PHMSA will notify you, in writing, of the action on your appeal within 90 days after the date that PHMSA 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.

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APPENDIX A TO PART 107—STANDARD OPERATING PROCEDURES FOR SPECIAL PERMITS AND APPROVALS

AUTHORITY: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 Section 4; Pub. L. 104–121 Sections 212–213; Pub. L. 104–134 Section 31001; Pub. L. 114–74 Section 701 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97; 33 U.S.C. 1321.

EDITORIAL NOTE: Nomenclature changes to part 107 appear at 67 FR 61011, Sept. 27, 2002, 70 FR 56089, Sept. 23, 2005, and 70 FR 73159, Dec. 9, 2005.

Subpart A—Definitions

§ 107.1 Definitions.

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:

Acting knowingly means acting or failing to act while

(1) Having actual knowledge of the facts giving rise to the violation, or

(2) Having the knowledge that a reasonable person acting in the same circumstances and exercising due care would have had.

Administrator means the Administrator, Pipeline and Hazardous Materials Safety Administration or his or her delegate.

Applicant means the person in whose name a special permit, approval, registration, a renewed or modified special permit or approval, or party status to a special permit is requested to be issued.

Applicant fitness means a determination by PHMSA, the Associate Administrator's designee, or as otherwise prescribed in the HMR, that a special permit or approval applicant is fit to conduct operations requested in the application or an authorized special permit or approval.

Application means a request under subpart B of this part for a special permit, a renewal or modification of a special permit, party status to a special permit, or a request under subpart H of this part for an approval, or renewal or modification of an approval.

Approval means a written authorization, including a competent authority approval, issued by the Associate Administrator, the Associate Administrator's designee, or as otherwise prescribed in the HMR, 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).

Approval Agency means an organization or a person designated by the PHMSA to certify packagings as having been designed, manufactured, tested, modified, marked or maintained in compliance with applicable DOT regulations.

Associate Administrator means the Associate Administrator for Hazardous

Materials Safety, Pipeline and Hazardous Materials Safety Administration.

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) A special permit 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.

DOT or Department means U.S. Department of Transportation.

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

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

Fit or *fitness* means demonstrated and documented knowledge and capabilities resulting in the assurance of a level of safety and performance necessary to ensure compliance with the applicable provisions and requirements of subchapter C of this chapter or a special permit or approval issued under subchapter C of this chapter.

Fitness coordinator means the PHMSA Field Operations (FOPS) Division officer or an authorized representative or special agent of DOT upon request, such as an Operating Administration (OA) representative, that conducts reviews regarding an organization's hazardous materials operations, including such areas as accident history, on-site inspection, compliance data, and other safety and transportation records to determine whether a special permit or approval applicant is determined to be fit as prescribed in §§107.113(f)(5) and 107.709(d)(5).

Holder means the person in whose name a special permit or approval has been issued.

Imminent Hazard means the existence of a condition which presents a substantial likelihood that death, serious illness, severe personal injury, or substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion of an administrative hearing or other formal proceeding initiated to abate the risks of those effects.

Incident means an event resulting in the unintended and unanticipated release of a hazardous material or an event meeting incident reporting requirements in §171.15 or §171.16 of this chapter.

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).

Insufficient corrective action means that either a PHMSA Field Operations (FOPS) Division officer or an authorized representative or special agent of DOT upon request, such as an Operating Administration (OA) representative, has determined that evidence of an applicant's corrective action in response to prior enforcement cases is inadequate or incomplete and the basic safety management controls proposed for the type of hazardous material, packaging, procedures, and/or mode of transportation remain inadequate to prevent recurrence of a violation.

Investigation includes investigations authorized under 49 U.S.C. 5121 and inspections authorized under 49 U.S.C. 5118 and 5121.

Manufacturing special permit means a special permit from compliance with specified requirements that otherwise must be met before representing, marking, certifying (including requalifying, inspecting, and testing), selling or offering a packaging or container as

meeting the requirements of subchapter C of this chapter governing its use in the transportation in commerce of a hazardous material. A manufacturing special permit is a special permit issued to a manufacturer of packagings who does not offer for transportation or transport hazardous materials in packagings subject to the special permit.

Party means a person, other than a holder, authorized to act under the terms of a special permit.

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.

Registration means a written acknowledgment from the Associate Administrator that a registrant is authorized to perform a function for which registration is required under subchapter C of this chapter (e.g., registration in accordance with 49 CFR 178.503 regarding marking of packagings). For purposes of subparts A through E, ''registration'' does not include registration under subpart F or G of this part.

Report means information, other than an application, registration or part thereof, required to be submitted to the Associate Administrator pursuant to this subchapter, subchapter B or subchapter C of this chapter.

Respondent means a person upon whom the PHMSA has served a notice of probable violation.

Special permit means a document issued by the Associate Administrator, the Associate Administrator's designee, or as otherwise prescribed in the HMR, under the authority of 49 U.S.C. 5117 permitting a person to perform a function that is not otherwise permitted under subchapters 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).

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.

Sufficient corrective action means that either a PHMSA Field Operations officer or an authorized representative or special agent of DOT upon request, such as an Operating Administration (OA) representative, has determined that evidence of an applicant's corrective action in response to prior enforcement cases is sufficient and the basic safety management controls proposed for the type of hazardous material, packaging, procedures, and/or mode of transportation are adequate.

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

[Amdt. 107–3, 41 FR 38170, Sept. 9, 1976]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §107.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

Subpart B—Special Permits

SOURCE: Amdt. 107–38, 61 FR 21095, May 9, 1996, unless otherwise noted.

§ 107.101 Purpose and scope.

This subpart prescribes procedures for the issuance, modification and termination of special permits from requirements of this subchapter, subchapter C of this chapter, or regulations issued under chapter 51 of 49 U.S.C.

§ 107.105 Application for special permit.

(a) *General.* Each application for a special permit or modification of a special permit and all supporting documents must be written in English and submitted for timely consideration at least 120 days before the requested effective date and conform to the following requirements:

(1) The application, including a table of contents, must:

(i) Be submitted to the Associate Administrator for Hazardous Materials Safety (Attention: General Approvals and Permits, PHH–31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001;

(ii) Be submitted with any attached supporting documentation by facsimile (fax) to: (202) 366–3753 or (202) 366–3308;

(iii) Be submitted electronically by e-mail to: *specialpermits@dot.gov*; or

(iv) Be submitted using PHMSA's online system (table of contents omitted) at: *http://www.phmsa.dot.gov/hazmat/regs/sp-a*.

(2) The application must state the name, mailing address, physical address(es) of all known locations where the special permit would be used, e-mail address (if available), and telephone number of the applicant. If the applicant is not an individual, the application must state the company name, mailing address, physical address(es) of all known locations where the special permit would be used, e-mail address (if available), and telephone number of an individual designated as the point of contact for the applicant for all purposes related to the application, the name of the company Chief Executive Officer (CEO) or president, or ranking officer; and the Dun and Bradstreet Data Universal Numbering System (D–U–N–S) identifier.

(3) If the applicant is not a resident of the United States, in addition to the information listed in paragraph (a)(2) of this section, the application must identify and designate an agent that is a permanent resident of the United States for service in accordance with § 105.40 of this part.

(4) For a manufacturing special permit, in addition to the information listed in paragraph (a)(2) of this section, the application must state the name and street address of each of the facilities of the applicant where manufacturing under the special permit will occur, and the symbol of the packaging manufacturer (''M'' number), if applicable.

(5) For persons required to be registered in accordance with Subpart F or G of this part, in addition to the information listed in paragraph (a)(2) of this section, the application must provide the registration number or the name of the company to which the registration number is assigned if different from the applicant. For persons not required to be registered in accordance with Subpart F or G of this part, in addition to the information listed in paragraph (a)(2) of this section, the application must provide a statement indicating that registration is not required.

(b) *Confidential treatment.* To request confidential treatment for information contained in the application, the applicant must comply with § 105.30(a).

(c) *Description of special permit proposal.* The application must include the following information that is relevant to the special permit proposal:

(1) A citation of the specific regulation from which the applicant seeks relief;

(2) The proposed mode or modes of transportation, including a description of all operational controls required;

(3) A detailed description of the proposed special permit (*e.g.*, alternative packaging, test, procedure, activity, or hazard communication, including marking and labeling requirements) including, as appropriate, written descriptions, drawings, flow charts, plans and other supporting documents;

(4) A specification of the proposed duration or schedule of events for which the special permit is sought;

(5) A statement outlining the applicant's basis for seeking relief from compliance with the specified regulations and, if the special permit is requested for a fixed period, a description of how compliance will be achieved at the end of that period. For transportation by air, a statement outlining

the reason(s) the hazardous material is being transported by air if other modes are available;

(6) If the applicant seeks emergency processing specified in §107.117, a statement of supporting facts and reasons;

(7) Identification and description, including an estimated quantity of each shipment of the hazardous materials planned for transportation under the special permit or;

(8) Description of each packaging, including specification or special permit number, as applicable, to be used in conjunction with the requested special permit;

(9) For alternative packagings, documentation of quality assurance controls, package design, manufacture, performance test criteria, in-service performance and service-life limitations;

(10) An estimate of the number of operations expected to be conducted or number of shipments to be transported under the special permit;

(11) An estimate of the number of packagings expected to be manufactured under the special permit, if applicable;

(12) A statement as to whether the special permit being sought is related to a compliance review, inspection activity, or enforcement action; and

(13) When a Class 1 material is forbidden for transportation by aircraft except under a special permit (*see* Columns 9A and 9B in the table in 49 CFR 172.101), a certification from an applicant for a special permit to transport such Class 1 material on passenger-carrying or cargo-only aircraft with a maximum certificated takeoff weight of less than 12,500 pounds that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

(14) A statement indicating whether the applicant will be acting as a shipper (offeror), carrier or both under the terms of the special permit.

(d) *Justification of special permit proposal.* The application must demonstrate that a special permit achieves a level of safety at least equal to that required by regulation, or if a required safety level does not exist, is consistent with the public interest. At a minimum, the application must provide the following:

(1) Information describing all relevant shipping and incident experience of which the applicant is aware that relates to the application; and

(2) A statement identifying any increased risk to safety or property that may result if the special permit is granted, and a description of the measures to be taken to address that risk; and

(3) Either:

(i) Substantiation, with applicable analyses, data or test results (*e.g.*, failure mode and effect analysis), that the proposed alternative will achieve a level of safety that is at least equal to that required by the regulation from which the special permit is sought; or

(ii) If the regulations do not establish a level of safety, an analysis that identifies each hazard, potential failure mode and the probability of its occurrence, and how the risks associated with each hazard and failure mode are controlled for the duration of an activity or life-cycle of a packaging.

[76 FR 460, Jan. 5, 2011, as amended at 76 FR 44500, July 26, 2011; 76 FR 43524, July 20, 2011; 76 FR 56310, Sept. 13, 2011]

§107.107 Application for party status.

(a) Any person eligible to apply for a special permit may apply to be a party to an application or an existing special permit, other than a manufacturing special permit.

(b) Each application filed under this section must conform to the following requirements:—

(1) The application must:

(i) Be submitted to the Associate Administrator for Hazardous Materials Safety (Attention: General Approvals and Permits, PHH–31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001;

(ii) Be submitted with any attached supporting documentation by facsimile (fax) to: (202) 366–3753 or (202) 366–3308; or

(iii) Be submitted by electronically by e-mail to: *specialpermits@dot.gov*, or on-line at: *http://www.phmsa.dot.gov/hazmat/regs/sp-a*.

(2) The application must identify by number the special permit application or special permit to which the applicant seeks to become a party.

(3) The application must state the name, mailing address, physical address(es) of all known locations where the special permit would be used, e-mail address (if available), and telephone number of the applicant. If the applicant is not an individual, the application must state the company name, mailing address, physical address(es) of all known locations where the special permit would be used, e-mail address (if available), and telephone number of an individual designated as the point of contact for the applicant for all purposes related to the application, the name of the company Chief Executive Officer (CEO), president, or ranking executive officer and the Dun and Bradstreet Data Universal Numbering System (D–U–N–S) identifier. In addition, each applicant must state why party status to the special permit is needed and must submit a certification of understanding of the provisions of the special permit to which party status is being requested.

(4) If the applicant is not a resident of the United States, the application must identify and designate an agent that is a permanent resident of the United States for service in accordance with §105.40 of part.

(5) For a Class 1 material that is forbidden for transportation by aircraft except under a special permit (*see* Columns 9A and 9B in the table in 49 CFR 172.101), a certification from an applicant for party status to a special permit to transport such Class 1 material on passenger-carrying or cargo-only aircraft with a maximum certificated takeoff weight of less than 12,500 pounds that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

(6) The applicant must certify that the applicant has not previously been granted party status to the special permit. If the applicant has previously been granted party status, the applicant must follow renewal procedures as specified in §107.109.

(7) A statement indicating whether the applicant will be acting as a shipper (offeror), carrier or both under the terms of the special permit.

(c) The Associate Administrator may grant or deny an application for party status in the manner specified in §107.113(e) and (f) of this subpart.

(d) A party to a special permit is subject to all terms of that special permit, including the expiration date. If a party to a special permit wishes to renew party status, the special permit renewal procedures set forth in §107.109 apply.

[76 FR 461, Jan. 5, 2011, as amended at 76 FR 44500, July 26, 2011; 76 FR 43524, July 20, 2011; 76 FR 56310, Sept. 13, 2011]

§ 107.109 Application for renewal.

(a) Each application for renewal of a special permit or party status to a special permit must conform to the following requirements:

(1) The application must:

(i) Be submitted to the Associate Administrator for Hazardous Materials Safety (Attention: General Approvals and Permits, PHH–31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001;

(ii) Be submitted with any attached supporting documentation submitted in an appropriate format by facsimile (fax) to: (202) 366–3753 or (202) 366–3308; or

(iii) Be submitted electronically by e-mail to: *specialpermits@dot.gov;* or online at: *http://www.phmsa.dot.gov/hazmat/regs/sp-a*.

(2) The application must identify by number the special permit for which renewal is requested.

(3) The application must state the name, mailing address, physical address(es) of all known new locations not previously identified in the application where the special permit would be used and all locations not previously identified where the special permit was used, e-mail address (if available), and telephone number of the applicant. If the applicant is not an individual, the application must state the name, mailing address, physical address(es) of all known new locations not previously identified in the application where the

special permit would be used and all locations not previously identified where the special permit was used, e-mail address (if available), and telephone number of an individual designated as the point of contact for the applicant for all purposes related to the application, the name of the company Chief Executive Officer (CEO), president, or ranking executive officer, and the Dun and Bradstreet Data Universal Numbering System (D–U–N–S) identifier. In addition, each applicant for renewal of party status must state why party status to the special permit is needed and must submit a certification of understanding of the provisions of the special permit to which party status is being requested.

(4) The application must include either a certification by the applicant that the original application, as it may have been updated by any application for renewal, remains accurate (*e.g.*, all section references, shipping descriptions, email address, etc.) and complete; or include an amendment to the previously submitted application as is necessary to update and ensure the accuracy and completeness of the application, with certification by the applicant that the application as amended is accurate and complete.

(5) The application must include a statement describing all relevant operational, shipping, and incident experience of which the applicant is aware in connection with the special permit since its issuance or most recent renewal. If the applicant is aware of no incidents, the applicant must so certify. When known to the applicant, the statement must indicate the approximate number of shipments made or packages shipped, as applicable, and the number of shipments or packages involved in any loss of contents, including loss by venting other than as authorized in subchapter C.

(6) When a Class 1 material is forbidden for transportation by aircraft, except under a special permit (*see* Columns 9A and 9B in the table in 49 CFR 172.101), an application to renew a special permit to transport such Class 1 material on passenger-carrying or cargo-only aircraft with a maximum certificated takeoff weight of less than 12,500 pounds must certify that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

(7) If the renewal is requested after the expiration date of the special permit, the following information is required:

(i) The reason the special permit authorization was allowed to expire;

(ii) A certification statement that no shipments were transported after the expiration date of the special permit, or a statement describing any transportation under the terms of the special permit after the expiration date, if applicable; and

(iii) A statement describing the action(s) the applicant will take to ensure future renewal is requested before the expiration date.

(8) If no operations or shipments have been made since the issuance or renewal of the special permit, the applicant must provide specific justification as to why the special permit should be renewed.

(9) A statement indicating whether the applicant will be acting as a shipper (offeror), carrier or both under the terms of the special permit.

(b) If, at least 60 days before an existing special permit expires the holder files an application for renewal that is complete and conforms to the requirements of this section, the special permit will not expire until final administrative action on the application for renewal has been taken.

[76 FR 462, Jan. 5, 2011, as amended at 76 FR 44501, July 26, 2011; 76 FR 43524, July 20, 2011; 76 FR 56310, Sept. 13, 2011; 87 FR 79764, Dec. 27, 2022]

§ 107.111 Withdrawal.

An application may be withdrawn at any time before a decision to grant or deny it is made. Withdrawal of an application does not authorize the removal of any related records from the PHMSA dockets or files. Applications that are eligible for confidential treatment under §105.30 will remain confidential after the application is withdrawn. The duration of this confidential treatment for trade secrets and commercial or financial information is indefinite, unless the party requesting

the confidential treatment of the materials notifies the Associate Administrator that the confidential treatment is no longer required.

§ 107.113 Application processing and evaluation.

(a) The Associate Administrator reviews an application for a special permit, modification of a special permit, party to a special permit, or renewal of a special permit in conformance with the standard operating procedures specified in appendix A of this part (''Standard Operating Procedures for Special Permits and Approvals'') to determine if it is complete and conforms with the requirements of this subpart. This determination will typically be made within 30 days of receipt of the application for a special permit, modification of a special permit, or party to a special permit, and typically within 15 days of receipt of an application for renewal of a special permit. If an application is determined to be incomplete, the Associate Administrator may reject the application. If that occurs, PHMSA will inform the applicant of the deficiency in writing.

(b) An application, that is not a renewal, party to, or emergency special permit application, and is determined to be complete is docketed. Notice of the application is published in the FEDERAL REGISTER, and an opportunity for public comment is provided. All comments received during the comment period are considered before final action is taken on the application.

(c) No public hearing or other formal proceeding is required under this subpart before the disposition of an application. Unless emergency processing under § 107.117 is requested and granted, applications are usually processed in the order in which they are filed.

(d) During the processing and evaluation of an application, the Associate Administrator may conduct an on-site review or request additional information from the applicant. A failure to cooperate with an on-site review may result in the application being deemed incomplete and subsequently being denied. If the applicant does not respond to a written or electronic request for additional information within 30 days of the date the request was received, the application may be deemed incomplete and denied. However, if the applicant responds in writing or by electronic means within the 30-day period requesting an additional 30 days within which it will gather the requested information, the Associate Administrator may grant the 30-day extension.

(e) The Associate Administrator may grant or deny an application, in whole or in part. In the Associate Administrator's discretion, an application may be granted subject to provisions that are appropriate to protect health, safety or property. The Associate Administrator may impose additional provisions not specified in the application or remove conditions in the application that are unnecessary.

(f) The Associate Administrator may grant an application on finding that—

(1) The application complies with this subpart;

(2) The application demonstrates that the proposed alternative will achieve a level of safety that:

(i) Is at least equal to that required by the regulation from which the special permit is sought, or

(ii) If the regulations do not establish a level of safety, is consistent with the public interest and adequately will protect against the risks to life and property inherent in the transportation of hazardous materials in commerce;

(3) The application states all material facts, and contains no materially false or materially misleading statement;

(4) The applicant meets the qualifications required by applicable regulations; and

(5) The applicant is fit to conduct the activity authorized by the special permit. This assessment may be based on information in the application, prior compliance history of the applicant, and other information available to the Associate Administrator.

(g) An applicant is notified in writing or by electronic means whether the application is granted or denied. A denial contains a brief statement of reasons.

(h) The initial special permit terminates according to its terms or, if not otherwise specified, 24 months from the date of issuance. A subsequent renewal of a special permit terminates according to its terms or, if not otherwise

specified, 48 months after the date of issuance. A grant of party status to a special permit, unless otherwise stated, terminates on the date that the special permit expires.

(i) The Associate Administrator, on determining that an application concerns a matter of general applicability and future effect and should be the subject of rulemaking, may initiate rulemaking under part 106 of this chapter in addition to or instead of acting on the application.

(j) The Associate Administrator publishes in the FEDERAL REGISTER a list of all special permit grants, denials, and modifications and all special permit applications withdrawn under this section.

[Amdt. 107–38, 61 FR 21095, May 9, 1996, as amended at 67 FR 61011, Sept. 27, 2002; 70 FR 73161, Dec. 9, 2005; 76 FR 463, Jan. 5, 2011; 80 FR 54437, Sept. 10, 2015]

§ 107.117 Emergency processing.

(a) An application is granted emergency processing if the Associate Administrator, on the basis of the application and any inquiry undertaken, finds that:

(1) Emergency processing is necessary to prevent significant injury to persons or property (other than the hazardous material to be transported) that could not be prevented if the application were processed on a routine basis;

(2) Emergency processing is necessary for immediate national security purposes;

(3) Emergency processing is necessary to prevent significant economic loss that could not be prevented if the application were processed on a routine basis; or

(4) Emergency processing is necessary in support of an essential governmental (domestic or foreign) function that could not be satisfied if the application were processed on a routine basis.

(b) Where the significant economic loss is to the applicant, or to a party in a contractual relationship to the applicant with respect to the activity to be undertaken, the Associate Administrator may deny emergency processing if timely application could have been made.

(c) A request for emergency processing on the basis of potential economic loss must reasonably describe and estimate the potential loss.

(d) An application submitted under this section must conform to §107.105 to the extent that the receiving Department official deems necessary to process the application. An application on an emergency basis must be submitted to the Department modal contact official for the initial mode of transportation to be utilized, as follows:

(1) *Certificate-Holding Aircraft:* The Federal Aviation Administration (FAA) Director, Office of Hazardous Materials Safety is responsible for the aircraft operator's hazardous materials safety program. The Director, Office of Hazardous Materials Safety, may be reached by calling the FAA Washington Operations Center at 202–267–3333 (any hour), or visiting FAA's website.

(2) *Noncertificate-Holding Aircraft (Those Which Operate Under 14 CFR part 91):* The Federal Aviation Administration (FAA) Regional Office that serves the place where the flight will originate. The nearest Regional Office may be located by calling the FAA Washington Operations Center at 202–267–3333 or visiting FAA's website.

(3) *Motor Vehicle Transportation:* Chief, Hazardous Materials Division, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, Washington, DC 20590–0001, 202–385–2400 (day); 1–800–424–8802 (night).

(4) *Rail Transportation:* Staff Director, Hazardous Materials Division, Office of Safety Assurance and Compliance, Federal Railroad Administration, U.S. Department of Transportation, Washington, DC 20590–0001, 202–493–6248 or 202–493–6244 (day); 1–800–424–8802 (night).

(5) *Water Transportation:* Chief, Hazardous Materials Standards Division, Office of Operating and Environmental Standards, U.S. Coast Guard, U.S. Department of Homeland Security, Washington, DC 20593–0001; 202–372–1420 (day); 1–800–424–8802 (night).

(e) Upon receipt of all information necessary to process the application, the receiving Department official transmits to the Associate Administrator, by the most rapidly available

means of communication, an evaluation as to whether an emergency exists under §107.117(a) and, if appropriate, recommendations as to the conditions to be included in the special permit. The Associate Administrator will review an application for emergency processing of a special permit in conformance with the standard operating procedures specified in appendix A of this part (''Standard Operating Procedures for Special Permits and Approvals'') to determine if it is complete and conforms with the requirements of this subpart. If the Associate Administrator determines that an emergency exists under §107.117(a) and that, with reference to the criteria of §107.113(f), granting of the application is in the public interest, the Associate Administrator will grant the application subject to such terms as necessary and immediately notify the applicant. If the Associate Administrator determines that an emergency does not exist or that granting of the application is not in the public interest, the applicant will be notified immediately.

(f) A determination that an emergency does not exist is not subject to reconsideration under §107.123 of this part.

(g) Within 90 days following issuance of an emergency special permit, the Associate Administrator will publish, in the FEDERAL REGISTER, a notice of issuance with a statement of the basis for the finding of emergency and the scope and duration of the special permit.

[Amdt. 107–38, 61 FR 21095, May 9, 1996, as amended at 62 FR 51556, Oct. 1, 1997; 64 FR 51914, Sept. 27, 1999; 65 FR 58618, Sept. 29, 2000; 66 FR 45377, Aug. 28, 2001; 67 FR 61011, Sept. 27, 2002; 70 FR 56090, Sept. 23, 2005; 75 FR 53596, Sept. 1, 2010; 76 FR 463, Jan. 5, 2011; 80 FR 54437, Sept. 10, 2015; 85 FR 83374, Dec. 21, 2020; 89 FR 15662, Mar. 4, 2024]

§107.121 Modification, suspension or termination of special permit or grant of party status.

(a) The Associate Administrator may modify a special permit or grant of party status on finding that:

(1) Modification is necessary so that the special permit reflects current statutes and regulations; or

(2) Modification is required by changed circumstances to meet the standards of §107.113(f).

(b) The Associate Administrator may modify, suspend or terminate a special permit or grant of party status, as appropriate, on finding that:

(1) Because of a change in circumstances, the special permit or party status no longer is needed or no longer would be granted if applied for;

(2) The application contained inaccurate or incomplete information, and the special permit or party status would not have been granted had the application been accurate and complete;

(3) The application contained deliberately inaccurate or incomplete information; or

(4) The holder or party knowingly has violated the terms of the special permit or an applicable requirement of this chapter in a manner demonstrating the holder or party is not fit to conduct the activity authorized by the special permit.

(c) Except as provided in paragraph (d) of this section, before a special permit or grant of party status is modified, suspended, or terminated, the Associate Administrator notifies the holder or party in writing or by electronic means of the proposed action and the reasons for it, and provides an opportunity to show cause why the proposed action should not be taken.

(1) Within 30 days of receipt of notice of the proposed action, the holder or party may file a response in writing or by electronic means that shows cause why the proposed action should not be taken.

(2) After considering the holder's or party's response, or after 30 days have passed without response since receipt of the notice, the Associate Administrator notifies the holder or party in writing or by electronic means of the final decision with a brief statement of reasons.

(d) The Associate Administrator, if necessary to avoid a risk of significant harm to persons or property, may, in the notification, declare the proposed action immediately effective.

[76 FR 463, Jan. 5, 2011]

§ 107.123 Reconsideration.

(a) An applicant for special permit, a special permit holder, or an applicant for party status to a special permit may request that the Associate Administrator reconsider a decision under § 107.113(g), § 107.117(e) or § 107.121(c) of this part. The request must—

(1) Be in writing or by electronic means and filed within 20 days of receipt of the decision;

(2) State in detail any alleged errors of fact and law;

(3) Enclose any additional information needed to support the request to reconsider; and

(4) State in detail the modification of the final decision sought.

(b) The Associate Administrator grants or denies, in whole or in part, the relief requested and informs the requesting person in writing or by electronic means of the decision. If necessary to avoid a risk of significant harm to persons or property, the Associate Administrator may, in the notification, declare the action immediately effective.

[76 FR 463, Jan. 5, 2011]

§ 107.125 Appeal.

(a) A person who requested reconsideration under § 107.123 and is denied the relief requested may appeal to the Administrator. The appeal must—

(1) Be in writing or by electronic means and filed within 30 days of receipt of the Associate Administrator's decision on reconsideration;

(2) State in detail any alleged errors of fact and law;

(3) Enclose any additional information needed to support the appeal; and

(4) State in detail the modification of the final decision sought.

(b) The Administrator, if necessary to avoid a risk of significant harm to persons or property, may declare the Associate Administrator's action effective pending a decision on appeal.

(c) The Administrator grants or denies, in whole or in part, the relief requested and informs the appellant in writing or by electronic means of the decision. The Administrator's decision is the final administrative action.

[Amdt. 107–38, 61 FR 21095, May 9, 1996, as amended at 76 FR 463, Jan. 5, 2011; 85 FR 83374, Dec. 21, 2020]

§ 107.127 Availability of documents for public inspection.

(a) Documents related to an application under this subpart, including the application itself, are available for public inspection, except as specified in paragraph (b) of this section, at the Office of the Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, Approvals and Permits Division, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays when the office is closed. Copies of available documents may be obtained as provided in part 7 of this title. Documents numbered 11832 and above may also be viewed at the website address *http://www.regulations.gov*.

(b) Documents available for inspection do not include materials determined to be withheld from public disclosure under § 105.30 and in accordance with the applicable provisions of section 552(b) of title 5, United States Code, and part 7 of this title.

[Amdt. 107–38, 61 FR 21095, May 9, 1996, as amended at 65 FR 58618, Sept. 29, 2000; 66 FR 45377, Aug. 28, 2001; 67 FR 61011, Sept. 27, 2002; 70 FR 73162, Dec. 9, 2005; 72 FR 55683, Oct. 1, 2007; 76 FR 56310, Sept. 13, 2011]

Subpart C—Preemption

§ 107.201 Purpose and scope.

(a) This subpart prescribes procedures by which:

(1) Any person, including a State, political subdivision, or Indian tribe, directly affected by a requirement of a State, political subdivision, or Indian tribe, may apply for a determination as to whether that requirement is preempted under 49 U.S.C. 5125.

(2) A State, political subdivision, or Indian tribe may apply for a waiver of preemption with respect to any requirement that the State, political

subdivision, or Indian tribe acknowledges to be preempted by 49 U.S.C. 5125, or that has been determined by a court of competent jurisdiction to be so preempted.

(b) For purposes of this subpart ''political subdivision'' includes a municipality; a public agency or other instrumentality of one or more States, municipalities, or other political subdivisions of a State; or a public corporation, board, or commission established under the laws of one or more States.

(c) [Reserved]

(d) An application for a preemption determination that includes an application for a waiver of preemption will be treated and processed solely as an application for a preemption determination.

[Amdt. 107–3, 41 FR 38171, Sept. 9, 1976, as amended by Amdt. 107–24, 56 FR 8622, Feb. 28, 1991; Amdt. 107–25, 57 FR 20428, May 13, 1992; Amdt. 107–32, 59 FR 49130, Sept. 26, 1994; Amdt. 107–35, 60 FR 49108, Sept. 21, 1995; Amdt. 107–38, 61 FR 21098, May 9, 1996; 68 FR 52846, Sept. 8, 2003; 71 FR 30067, May 25, 2006]

§ 107.202 Standards for determining preemption.

(a) Except as provided in § 107.221 and unless otherwise authorized by Federal law, any requirement of a State or political subdivision thereof or an Indian tribe that concerns one of the following subjects and that is not substantively the same as any provision of the Federal hazardous materials transportation law, a regulation issued under the Federal hazardous material transportation law, or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security that concerns that subject, is preempted:

(1) The designation, description, and classification of hazardous material.

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(3) The preparation, execution, and use of shipping documents pertaining to hazardous material and requirements related to the number, content, and placement of those documents.

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material and other written hazardous materials transportation incident reporting involving State or local emergency responders in the initial response to the incident.

(5) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

(b) Except as provided in § 107.221 and unless otherwise authorized by Federal law, any requirement of a State or political subdivision or Indian tribe is preempted if—

(1) It is not possible to comply with a requirement of the State, political subdivision, or Indian tribe and a requirement under the Federal hazardous material transportation law, a regulation issued under the Federal hazardous material transportation law, or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security;

(2) The requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to accomplishing and carrying out the Federal hazardous material transportation law, a regulation issued under the Federal hazardous material transportation law, or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security.

(3) It is preempted under 49 U.S.C. 5125 (c).

(c) A State, political subdivision, or Indian tribe may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose related to transporting hazardous material, including enforcement and planning, developing and maintaining a capability for emergency response.

(d) For purposes of this section, ''substantively the same'' means that the non-Federal requirement conforms in every significant respect to the Federal requirement. Editorial and other

similar *de minimis* changes are permitted.

[Amdt. 107–24, 56 FR 8622, Feb. 28, 1991, as amended by Amdt. 107–25, 57 FR 20428, May 13, 1992; Amdt. 107–29, 58 FR 51527, Oct. 1, 1993; Amdt. 107–32, 59 FR 49130, Sept. 26, 1994; Amdt. 107–38, 61 FR 21098, May 9, 1996; Amdt. 107–39, 61 FR 51337, Oct. 1, 1996; 68 FR 52847, Sept. 8, 2003; 77 FR 60939, Oct. 5, 2012]

PREEMPTION DETERMINATIONS

§ 107.203 Application.

(a) With the exception of highway routing matters covered under 49 U.S.C. 5125(c), any person, including a State or political subdivision thereof or an Indian tribe, directly affected by any requirement of a State or political subdivision thereof or an Indian tribe, may apply to the Chief Counsel for a determination as to whether that requirement is preempted by §107.202(a), (b), or (c).

(b) Each application filed under this section for a determination must:

(1) Be submitted to the Chief Counsel:

(i) By mail addressed to the Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHC–1, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001;

(ii) By facsimile to 202–366–7041; or

(iii) Electronically to the Chief Counsel at *phmsachiefcounsel@dot.gov*.

(2) Set forth the text of the State or political subdivision or Indian tribe requirement for which the determination is sought;

(3) Specify each requirement of the Federal hazardous materials transportation law, regulations issued under the Federal hazardous material transportation law, or hazardous material transportation security regulations or directives issued by the Secretary of Homeland Security with which the applicant seeks the State or political subdivision or Indian tribe requirement to be compared;

(4) Explain why the applicant believes the State or political subdivision or Indian tribe requirement should or should not be preempted under the standards of §107.202; and

(5) State how the applicant is affected by the State or political subdivision or Indian tribe requirement.

(c) The filing of an application for a determination under this section does not constitute grounds for noncompliance with any requirement of the Federal hazardous materials transportation law, regulations issued under the Federal hazardous material transportation law, or hazardous material transportation security regulations or directives issued by the Secretary of Homeland Security.

(d) Once the Chief Counsel has published notice in the FEDERAL REGISTER of an application received under paragraph (a) of this section, no applicant for such determination may seek relief with respect to the same or substantially the same issue in any court until final action has been taken on the application or until 180 days after filing of the application, whichever occurs first. Nothing in §107.203(a) prohibits a State or political subdivision thereof or Indian tribe, or any other person directly affected by any requirement of a State or political subdivision thereof or Indian tribe, from seeking a determination of preemption in any court of competent jurisdiction in lieu of applying to the Chief Counsel under paragraph (a) of this section.

[Amdt. 107–24, 56 FR 8622, Feb. 28, 1991, as amended by Amdt. 107–25, 57 FR 20428, May 13, 1992; Amdt. 107–32, 59 FR 49131, Sept. 26, 1994; Amdt. 107–38, 61 FR 21098, May 9, 1996; 68 FR 52847, Sept. 8, 2003; 71 FR 30067, May 25, 2006; 72 FR 55683, Oct. 1, 2007]

§ 107.205 Notice.

(a) If the applicant is other than a State, political subdivision, or Indian tribe, the applicant shall mail a copy of the application to the State, political subdivision, or Indian tribe concerned accompanied by a statement that the State, political subdivision, or Indian tribe may submit comments regarding the application to the Chief Counsel. The application filed with the Chief Counsel must include a certification that the applicant has complied with this paragraph and must include the names and addresses of each State, political subdivision, or Indian tribe official to whom a copy of the application was sent.

(b) The Chief Counsel will publish notice of, including an opportunity to comment on, an application in the

FEDERAL REGISTER and may notify in writing any person readily identifiable as affected by the outcome of the determination.

(c) Each person submitting written comments to the Chief Counsel with respect to an application filed under this section must send a copy of the comments to the applicant and certify to the Chief Counsel that he or she has complied with this requirement. The Chief Counsel may notify other persons participating in the proceeding of the comments and provide an opportunity for those other persons to respond. Late-filed comments are considered so far as practicable.

[Amdt. 107–38, 61 FR 21098, May 9, 1996, as amended at 71 FR 30067, May 25, 2006]

§ 107.207 Processing.

(a) The Chief Counsel may initiate an investigation of any statement in an application and utilize in his or her evaluation any relevant facts obtained by that investigation. The Chief Counsel may solicit and accept submissions from third persons relevant to an application and will provide the applicant an opportunity to respond to all third person submissions. In evaluating an application, the Chief Counsel may consider any other source of information. The Chief Counsel on his or her own initiative may convene a hearing or conference, if he or she considers that a hearing or conference will advance his or her evaluation of the application.

(b) The Chief Counsel may dismiss the application without prejudice if:

(1) He or she determines that there is insufficient information upon which to base a determination; or

(2) He or she requests additional information from the applicant and it is not submitted.

[Amdt. 107–3, 41 FR 38171, Sept. 9, 1976, as amended by Amdt. 107–24, 56 FR 8621, 8622, Feb. 28, 1991; Amdt. 107–38, 61 FR 21098, May 9, 1996; 71 FR 30067, May 25, 2006]

§ 107.209 Determination.

(a) Upon consideration of the application and other relevant information received, the Chief Counsel issues a determination.

(b) The determination includes a written statement setting forth the relevant facts and the legal basis for the determination, and provides that any person aggrieved thereby may file a petition for reconsideration with the Chief Counsel.

(c) The Chief Counsel provides a copy of the determination to the applicant and to any other person who substantially participated in the proceeding or requested in comments to the docket to be notified of the determination. A copy of each determination is placed on file in the public docket. The Chief Counsel will publish the determination or notice of the determination in the FEDERAL REGISTER, at which time the determination becomes a final agency action.

(d) A determination issued under this section constitutes an administrative determination as to whether a particular requirement of a State or political subdivision or Indian tribe is preempted under the Federal hazardous materials transportation law. The fact that a determination has not been issued under this section with respect to a particular requirement of a State or political subdivision or Indian tribe carries no implication as to whether the requirement is preempted under the Federal hazardous materials transportation law.

[Amdt. 107–24, 56 FR 8623, Feb. 28, 1991, as amended by Amdt. 107–25, 57 FR 20428, May 13, 1992; Amdt. 107–32, 59 FR 49131, Sept. 26, 1994; Amdt. 107–38, 61 FR 21098, May 9, 1996; 68 FR 52847, Sept. 8, 2003; 71 FR 30067, May 25, 2006]

§ 107.211 Petition for reconsideration.

(a) Any person aggrieved by a determination issued under § 107.209 may file a petition for reconsideration. The petition must be filed with the Chief Counsel, in the same manner specified for filing an application in § 107.203(b), within 20 days of publication of the determination in the FEDERAL REGISTER.

(b) The petition must contain a concise statement of the basis for seeking review, including any specific factual or legal error alleged. If the petition requests consideration of information that was not previously made available to the Chief Counsel, the petition must include the reasons why such information was not previously made available.

(c) The petitioner shall mail a copy of the petition to each person who participated, either as an applicant or commenter, in the preemption determination proceeding, accompanied by a statement that the person may submit comments concerning the petition to the Chief Counsel within 20 days. The petition filed with the Chief Counsel must contain a certification that the petitioner has complied with this paragraph and include the names and addresses of all persons to whom a copy of the petition was sent. Late-filed comments are considered so far as practicable.

(d) The Chief Counsel will publish the decision on the petition for reconsideration or notice of the decision in the FEDERAL REGISTER, at which time the decision on the petition for reconsideration becomes a final agency action.

[Amdt. 107–25, 57 FR 20428, May 13, 1992, as amended by Amdt. 107–38, 61 FR 21099, May 9, 1996; 71 FR 30067, May 25, 2006]

§ 107.213 Judicial review.

A party to a proceeding under §107.203(a) may seek review of a determination of the Chief Counsel by filing a petition, within 60 days after the determination becomes final, in the United States Court of Appeals for the District of Columbia or in the Court of Appeals for the United States for the circuit in which the person resides or has its principal place of business.

[71 FR 30068, May 25, 2006]

WAIVER OF PREEMPTION DETERMINATIONS

§ 107.215 Application.

(a) With the exception of requirements preempted under 49 U.S.C. 5125(c), a State or political subdivision thereof, or Indian tribe may apply to the Chief Counsel for a waiver of preemption with respect to any requirement that the State or political subdivision thereof or Indian tribe acknowledges to be preempted under the Federal hazardous materials transportation law, or that has been determined by a court of competent jurisdiction to be so preempted. The Chief Counsel may waive preemption with respect to such requirement upon a determination that such requirement—

(1) Affords an equal or greater level of protection to the public than is afforded by the requirements of the Federal hazardous material transportation law or the regulations issued thereunder, and

(2) Does not unreasonably burden commerce.

(b) Each application filed under this section for a waiver of preemption determination must:

(1) Be submitted to the Chief Counsel:

(i) By mail addressed to the Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHC–1, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001;

(ii) By facsimile to 202–366–7041; or

(iii) Electronically to the Chief Counsel at *phmsachiefcounsel@dot.gov*.

(2) Set forth the text of the State or political subdivision requirement for which the determination is being sought;

(3) Include a copy of any court order and any ruling issued under §107.209 having a bearing on the application;

(4) Contain an express acknowledgment by the applicant that the State, political subdivision, or Indian tribe requirement is preempted under Federal hazardous materials transportation law, unless it has been so determined by a court of competent jurisdiction or in a determination issued under §107.209;

(5) Specify each requirement of the Federal hazardous materials transportation law that preempts the State, political subdivision, or Indian tribe requirement;

(6) State why the applicant believes the State, political subdivision or Indian tribe requirements affords an equal or greater level of protection to the public than is afforded by the requirements of the Federal hazardous material transportation law or the regulations issued thereunder;

(7) State why the applicant believes the State, political subdivision or Indian tribe requirement does not unreasonably burden commerce; and

(8) Specify what steps the State, political subdivision or Indian tribe is

taking to administer and enforce effectively its inconsistent requirement.

[Amdt. 107–3, 41 FR 38171, Sept. 9, 1976, as amended by Amdt. 107–22, 55 FR 39978, Oct. 1, 1990; Amdt. 107–24, 56 FR 8621, 8623, Feb. 28, 1991; 56 FR 15510, Apr. 17, 1991; Amdt. 107–23, 56 FR 66156, Dec. 20, 1991; Amdt. 107–25, 57 FR 20428, May 13, 1992; Amdt. 107–32, 59 FR 49131, Sept. 26, 1994; Amdt. 107–38, 61 FR 21099, May 9, 1996; 68 FR 52847, Sept. 8, 2003; 71 FR 30068, May 25, 2006; 72 FR 55683, Oct. 1, 2007]

§ 107.217 Notice.

(a) The applicant shall mail a copy of the application and any subsequent amendments or other documents relating to the application to each person who is reasonably ascertainable by the applicant as a person who will be affected by the determination sought. The copy of the application must be accompanied by a statement that the person may submit comments regarding the application within 45 days. The application must include a certification that the application has complied with this paragraph and must include the names and addresses of each person to whom the application was sent.

(b) Notwithstanding the provisions of paragraph (a) of this section, if the State or political subdivision determines that compliance with paragraph (a) of this section would be impracticable, the applicant shall:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and practicable to notify; and

(2) Include with the application a description of the persons or class or classes of persons to whom notice was not sent.

(c) The Chief Counsel may require the applicant to provide notice in addition to that required by paragraphs (a) and (b) of this section, or may determine that the notice required by paragraph (a) of the section is not impracticable, or that notice should be published in the FEDERAL REGISTER. Late-filed comments are considered so far as practicable.

(d) The Chief Counsel may notify any other persons who may be affected by the outcome of a determination on the application.

(e) Any person submitting written comments with respect to an application filed under this section shall send a copy of the comments to the applicant. The person shall certify that he has complied with the requirements of this paragraph. The Chief Counsel may notify other persons participating in the proceeding of the comments and provide an opportunity for those other persons to respond.

[Amdt. 107–3, 41 FR 38171, Sept. 9, 1976, as amended by Amdt. 107–24, 56 FR 8621, Feb. 28, 1991; Amdt. 107–25, 57 FR 20429, May 13, 1992; Amdt. 107–38, 61 FR 21099, May 9, 1996; 71 FR 30068, May 25, 2006]

§ 107.219 Processing.

(a) The Chief Counsel may initiate an investigation of any statement in an application and utilize in his or her evaluation any relevant facts obtained by that investigation. The Chief Counsel may solicit and accept submissions from third persons relevant to an application and will provide the applicant an opportunity to respond to all third person submissions. In evaluating an application, the Chief Counsel on his or her own initiative may convene a hearing or conference, if he or she considers that a hearing or conference will advance his or her evaluation of the application.

(b) The Chief Counsel may dismiss the application without prejudice if:

(1) He or she determines that there is insufficient information upon which to base a determination;

(2) Upon his or her request, additional information is not submitted by the applicant; or

(3) The applicant fails to provide the notice required by § 107.217.

(c) The Chief Counsel will only consider an application for waiver of preemption determination if—

(1) The applicant State or political subdivision thereof or Indian tribe expressly acknowledges in its application that the State or political subdivision or Indian tribe requirement for which the determination is sought is inconsistent with the requirements of the Federal hazardous materials transportation law, regulations issued under the Federal hazardous material transportation law, or hazardous material transportation security regulations or directives issued by the Secretary of Homeland Security.

(2) The State or political subdivision thereof or Indian tribe requirement has been determined by a court of competent jurisdiction or in a ruling issued under §107.209 to be inconsistent with the requirements of the Federal hazardous materials transportation law, regulations issued under the Federal hazardous material transportation law, or hazardous material transportation security regulations or directives issued by the Secretary of Homeland Security.

(d) When the Chief Counsel has received all substantive information it considers necessary to process an application for a waiver of preemption determination, it serves notice of that fact upon the applicant and all other persons who received notice of the proceeding pursuant to §107.217.

(e) To the extent possible, each application for a waiver of preemption determination will be acted upon in a manner consistent with the disposition of previous applications for waiver of preemption determinations.

[Amdt. 107–3, 41 FR 38171, Sept. 9, 1976, as amended by Amdt. 107–24, 56 FR 8621, 8623, Feb. 28, 1991; Amdt. 107–32, 59 FR 49131, Sept. 26, 1994; Amdt. 107–38, 61 FR 21099, May 9, 1996; 65 FR 58618, Sept. 29, 2000; 68 FR 52847, Sept. 8, 2003; 69 FR 54044, Sept. 7, 2004; 71 FR 30068, May 25, 2006]

§107.221 Determination.

(a) After considering the application and other relevant information received or obtained during the proceeding, the Chief Counsel issues a determination.

(b) The Chief Counsel may issue a waiver of preemption only on finding that the requirement of the State or political subdivision thereof or Indian tribe affords the public a level of safety at least equal to that afforded by the requirements of the Federal hazardous material transportation law or the regulations issued thereunder and does not unreasonably burden commerce. In determining if the requirement of the State or political subdivision thereof or Indian tribe unreasonably burdens commerce, the Chief Counsel considers:

(1) The extent to which increased costs and impairment of efficiency result from the requirement of the State or political subdivision thereof or Indian tribe.

(2) Whether the requirement of the State or political subdivision thereof or Indian tribe has a rational basis.

(3) Whether the requirement of the State or political subdivision thereof or Indian tribe achieves its stated purpose.

(4) Whether there is need for uniformity with regard to the subject concerned and if so, whether the requirement of the State or political subdivision thereof or Indian tribe competes or conflicts with those of other States or political subdivisions thereof or Indian tribes.

(c) The determination includes a written statement setting forth relevant facts and legal bases and providing that any person aggrieved by the determination may file a petition for reconsideration with the Chief Counsel.

(d) The Chief Counsel provides a copy of the determination to the applicant and to any other person who substantially participated in the proceeding or requested in comments to the docket to be notified of the determination. A copy of the determination is placed on file in the public docket. The Chief Counsel will publish the determination or notice of the determination in the FEDERAL REGISTER, at which time the determination becomes a final agency action.

(e) A determination under this section constitutes an administrative finding of whether a particular requirement of a State or political subdivision thereof or Indian tribe is preempted under the Federal hazardous materials transportation law, or whether preemption is waived.

[Amdt. 107–38, 61 FR 21099, May 9, 1996, as amended at 68 FR 52848, Sept. 8, 2003; 71 FR 30068, May 25, 2006]

§107.223 Petition for reconsideration.

(a) Any person aggrieved by a determination under §107.221 may file a petition for reconsideration. The petition must be filed with the Chief Counsel, in the same manner specified for filing an application in §107.215(b), within 20 days of publication of the determination in the FEDERAL REGISTER.

(b) The petition must contain a concise statement of the basis for seeking review, including any specific factual or legal error alleged. If the petition requests consideration of information that was not previously made available to the Chief Counsel, the petition must include the reasons why such information was not previously made available.

(c) The petitioner shall mail a copy of the petition to each person who participated, either as an applicant or commenter, in the waiver of preemption proceeding, accompanied by a statement that the person may submit comments concerning the petition to the Chief Counsel within 20 days. The petition filed with the Chief Counsel must contain a certification that the petitioner has complied with this paragraph and include the names and addresses of all persons to whom a copy of the petition was sent. Late-filed comments are considered so far as practicable.

(d) The Chief Counsel will publish the decision on the petition for reconsideration or notice of the decision in the FEDERAL REGISTER, at which time the decision on the petition for reconsideration becomes a final agency action.

[Amdt. 107–25, 57 FR 20429, May 13, 1992, as amended by Amdt. 107–38, 61 FR 21099, May 9, 1996; 71 FR 30068, May 25, 2006]

§ 107.227 Judicial review.

A party to a proceeding under § 107.215(a) may seek review of a determination of the Chief Counsel by filing a petition, within 60 days after the determination becomes final, in the United States Court of Appeals for the District of Columbia or in the Court of Appeals for the United States for the circuit in which the person resides or has its principal place of business.

[71 FR 30068, May 25, 2006]

Subpart D—Enforcement

SOURCE: Amdt. 107–11, 48 FR 2651, Jan. 20, 1983, unless otherwise noted.

§ 107.301 Delegated authority for enforcement.

Under redelegation from the Administrator of the Pipeline and Hazardous Materials Safety Administration, the Associate Administrator for Hazardous Materials Safety and the Office of the Chief Counsel exercise their authority for enforcement of the Federal hazardous material transportation law, Federal Water Pollution Control Act, this subchapter, and subchapters B and C of this chapter, in accordance with § 1.97 of this title.

[84 FR 6947, Feb. 28, 2019]

§ 107.303 Purpose and scope.

This subchapter describes the various enforcement authorities exercised by the Associate Administrator for Hazardous Materials Safety and the Office of Chief Counsel and the associated sanctions and prescribes the procedures governing the exercise of those authorities and the imposition of those sanctions.

[Amdt. 107–11, 48 FR 2651, Jan. 20, 1983, as amended by Amdt. 107–15, 51 FR 34986, Oct. 1, 1986; Amdt. 107–24, 56 FR 8621, Feb. 28, 1991]

§ 107.305 Investigations.

(a) *General.* In accordance with its delegated authority under part 1 of this title, the Associate Administrator may initiate investigations relating to compliance by any person with any provisions of this subchapter, subchapter B of this chapter, or subchapter C of this chapter, or any special permit, approval, response plan, or order issued thereunder, or any court decree relating thereto. The Associate Administrator encourages voluntary production of documents in accordance with and subject to § 105.45 of this subchapter, and hearings may be conducted, and depositions taken pursuant to 49 U.S.C. 5121(a). The Associate Administrator may conduct investigative conferences and hearings in the course of any investigation.

(b) *Investigations and Inspections.* Investigations under 49 U.S.C. 5121(a) are conducted by personnel duly authorized for that purpose by the Associate Administrator. Inspections under 49 U.S.C. 5121(c) are conducted by Hazardous Materials Enforcement Specialists or Hazardous Materials Compliance Investigators, also known as

''hazmat investigators'' or ''investigators,'' whom the Associate Administrator has designated for that purpose.

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

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

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

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

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

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

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

[Amdt. 107–11, 48 FR 2651, Jan. 20, 1983, as amended by Amdt. 107–24, 56 FR 8621, Feb. 28, 1991; Amdt. 107–32, 59 FR 49131, Sept. 26, 1994; Amdt. 107–38, 61 FR 21099, May 9, 1996; 66 FR 45377, Aug. 28, 2001; 67 FR 61011, Sept. 27, 2002; 73 FR 4711, Jan. 28, 2008; 76 FR 56311, Sept. 13, 2011; 84 FR 6947, Feb. 28, 2019]

COMPLIANCE ORDERS AND CIVIL PENALTIES

§ 107.307 General.

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

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

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

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

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

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

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

§ 107.309 Warning letters.

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

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

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

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

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

[Amdt. 107–11, 48 FR 2651, Jan. 20, 1983, as amended by Amdt. 107–15, 51 FR 34986, Oct. 1, 1986; Amdt. 107–24, 56 FR 8621, Feb. 28, 1991; Amdt. 107–32, 59 FR 49131, Sept. 26, 1994; Amdt. 107–36, 61 FR 7183, Feb. 26, 1996; 66 FR 45377, Aug. 28, 2001; 84 FR 6947, Feb. 28, 2019]

§ 107.310 Ticketing.

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

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

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

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

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

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

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

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

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

§ 107.311 Notice of probable violation.

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

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

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

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

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

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

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

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

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

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

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

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

[Amdt. 107–11, 48 FR 2651, Jan. 20, 1983, as amended at 50 FR 45730, Nov. 1, 1985; Amdt. 107–24, 56 FR 8624, Feb. 28, 1991; Amdt. 107–32, 59 FR 49131, Sept. 26, 1994; Amdt. 107–35, 60 FR 49108, Sept. 21, 1995; Amdt. 107–36, 61 FR 7184, Feb. 26, 1996; 84 FR 6947, Feb. 28, 2019]

§ 107.313 Reply.

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

(1) Admit the violation under § 107.315;

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

(3) Request a hearing under § 107.319.

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

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

§ 107.315 Admission of violations.

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

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

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

(d) Payment of a civil penalty, when the amount of the penalty is $10,000 or less, must be made either by wire transfer, as set forth in paragraph (c) of this section, or certified check or

money order payable to ''U.S. Department of Transportation'' and submitted to the Financial Operations Division (AMZ–120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125.

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

§ 107.317 Informal response.

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

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

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

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

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

§ 107.319 Request for a hearing.

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

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

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

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

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

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

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

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

[Amdt. 107–11, 48 FR 2651, Jan. 20, 1983, as amended at 48 FR 17094, Apr. 21, 1983; Amdt. 107–19, 54 FR 22899, May 30, 1989]

§ 107.321 Hearing.

(a) To the extent practicable, the hearing is held in the general vicinity of the place where the alleged violation

occurred or at a place convenient to the respondent. Testimony by witnesses shall be given under oath and the hearing shall be recorded verbatim.

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

(1) Administer oaths and affirmations;

(2) Issue subpoenas as provided by §105.45;

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

(4) Take or cause depositions to be taken;

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

(6) Examine witnesses at the hearing;

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

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

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

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

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

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

§107.323 ALJ's decision.

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

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

§107.325 Appeals.

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

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

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

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

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

(d) If the Administrator, PHMSA, affirms the order in whole or in part, the respondent must comply with the terms of the decision within 20 days of

the respondent's receipt thereof, or within the time prescribed in the order. If the respondent does not comply with the terms of the decision within 20 days of receipt, or within the time prescribed in the order, the case may be referred to the Attorney General for action to enforce the terms of the decision.

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

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

§ 107.327 Compromise and settlement.

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

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

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

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

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

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

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

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

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

(iv) An admission of all jurisdictional facts; and

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

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

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

§ 107.329 Maximum penalties.

(a) A person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, this subchapter, subchapter C of this chapter, or a special permit or approval issued under this subchapter applicable to the transportation of hazardous materials or the causing of them to be transported or shipped is liable for a civil penalty of not more than $102,348 for each violation, except the maximum civil penalty is $238,809 if the violation results in death, serious illness, or severe injury to any person or substantial destruction of property. There is no minimum civil penalty, except for a minimum civil penalty of $617 for violations relating to training. When the violation is a continuing one, each day

of the violation constitutes a separate offense.

(b) A person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, this subchapter, subchapter C of this chapter, or a special permit or approval issued under this subchapter applicable to the design, manufacture, fabrication, inspection, marking, maintenance, reconditioning, repair or testing of a package, container, or packaging component which is represented, marked, certified, or sold by that person as qualified for use in the transportation of hazardous materials in commerce is liable for a civil penalty of not more than $102,348 for each violation, except the maximum civil penalty is $238,809 if the violation results in death, serious illness, or severe injury to any person or substantial destruction of property. There is no minimum civil penalty, except for a minimum civil penalty of $617 for violations relating to training.

[89 FR 106293, Dec. 30, 2024]

§ 107.331 Assessment considerations.

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

(a) The nature and circumstances of the violation;

(b) The extent and gravity of the violation;

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

(d) The respondent's prior violations;

(e) The respondent's ability to pay;

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

(g) Such other matters as justice may require.

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

CRIMINAL PENALTIES

§ 107.333 Criminal penalties generally.

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

[71 FR 8487, Feb. 17, 2006]

§ 107.335 Criminal referrals.

(a) If a PHMSA employee becomes aware of any actual or possible activity subject to criminal penalties under § 107.333, the employee must report it to the Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration, and to the employee's supervisor. The Chief Counsel may refer the report to the Associate Administrator to investigate. If appropriate, the Chief Counsel shall refer the report to the Office of Inspector General, or other law enforcement as appropriate (with notification to the Office of Inspector General as soon as possible).

(b) A PHMSA employee also has the option of making a direct referral to the Office of Inspector General (OIG), either by directly contacting an OIG investigator, or via the OIG hotline at (800) 424–9071, at *https://www.oig.dot.gov/hotline*, by email at *hotline@oig.dot.gov*, or by mail to the Office of Inspector General, 1200 New Jersey Ave. SE, West Bldg. 7th Floor, Washington, DC 20590.

[87 FR 28780, May 11, 2022]

§ 107.336 Limitation on fines and penalties.

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

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

INJUNCTIVE ACTION

§ 107.337 Injunctions generally.

Whenever it appears to the Office of Chief Counsel that a person has engaged, or is engaged, or is about to engage in any act or practice constituting a violation of any provision of

the Federal hazardous material transportation law, this subchapter, subchapter C of this chapter, or any special permit, or order issued thereunder, for which the Office of Chief Counsel exercises enforcement responsibility, the Administrator, PHMSA, or his delegate, may request the Attorney General to bring an action in the appropriate United States District Court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages as provided by 49 U.S.C. 5122(a).

[Amdt. 107–11, 48 FR 2651, Jan. 20, 1983, as amended by Amdt. 107–32, 59 FR 49131, Sept. 26, 1994]

§ 107.338 Prohibition of hazardous materials operations.

As provided for in subpart E of part 109 of this subchapter, a person who fails to pay a civil penalty in accordance with agreed upon installments or in full within prescribed time lines, is prohibited from conducting hazardous materials operations and shall immediately cease all hazardous materials operations.

[79 FR 46199, Aug. 7, 2014]

§ 107.339 Imminent hazards.

Whenever it appears to the Office of the Chief Counsel that there is a substantial likelihood that death, serious illness, or severe personal injury will result from the transportation of a particular hazardous material or hazardous materials container, before a compliance order proceeding or other administrative hearing or formal proceeding to abate the risk of that harm can be completed, the Administrator, PHMSA, or his delegate, may bring an action under 49 U.S.C. 5122(b) in the appropriate United States District Court for an order suspending or restricting the transporation of that hazardous material or those containers or for such other equitable relief as is necessary or appropriate to ameliorate the hazard.

[Amdt. 107–11, 48 FR 2651, Jan. 20, 1983, as amended by Amdt. 107–15, 51 FR 34987, Oct. 1, 1986; Amdt. 107–32, 59 FR 49131, Sept. 26, 1994]

APPENDIX A TO SUBPART D OF PART 107—GUIDELINES FOR CIVIL PENALTIES

I. This appendix sets forth the guidelines PHMSA uses (as of October 2, 2013) in making initial baseline determinations for civil penalties. The first part of these guidelines is a list of baseline amounts or ranges for frequently-cited probable violations. Following the list of violations are general guidelines PHMSA uses in making penalty determinations in enforcement cases.

II. LIST OF FREQUENTLY CITED VIOLATIONS

Violation description	Section or cite	Baseline assessment
General Requirements		
A. Registration Requirements: Failure to register as an offeror or carrier of hazardous material and pay registration fee:	107.608, 107.612.	
1. Small business or not-for-profit		$1,200 + $600 each additional year.
2. All others		$3,500 + $1,000 each additional year.
B. Training Requirements:		
1. Failure to provide initial training to hazmat employees (general awareness, function-specific, safety, and security awareness training):	172.702.	
a. More than 10 hazmat employees		$1,500 for each area.
b. 10 hazmat employees or fewer		$1,000 for each area.
2. Failure to provide recurrent training to hazmat employees (general awareness, function-specific, safety, and security awareness training).	172.702	$1,000 for each area.
3. Failure to provide in-depth security training when a security plan is required but has not been developed.	172.702	Included in penalty for no security plan.
4. Failure to provide in-depth security training when a security plan is required and has been developed.	172.702	$3,100.
5. Failure to create and maintain training records:	172.704.	
a. More than 10 hazmat employees		$1,000.

Violation description	Section or cite	Baseline assessment
b. 10 hazmat employees or fewer		$600.
C. Security Plans:		
1. Failure to develop a security plan; failure to adhere to security plan:	172.800.	
a. Section 172.504 Table 1 materials		$9,300.
b. Packing Group I		$7,500.
c. Packing Group II		$5,600.
d. Packing Group III		$3,700.
2. Incomplete security plan or incomplete adherence (one or more of four required elements missing).		One-quarter (25 percent) of above for each element.
3. Failure to update a security plan to reflect changing circumstances.	172.802(b)	One-third (33 percent) of baseline for no plan.
4. Failure to put security plan in writing; failure to make all copies identical.	172.800(b)	One-third (33 percent) of baseline for no plan.
D. Notification to a Foreign Shipper: Failure to provide a foreign offeror or forwarding agent written information of HMR requirements applicable to a shipment of hazardous materials within the United States, at the place of entry into the United States:	171.22(f).	
1. Packing Group I and §172.504 Table 1 materials		$9,300.*
2. Packing Group II		$5,500.*
3. Packing Group III		$1,800.*

*The baseline applied to the importer shall be equal to or less than the baseline applied to the foreign offeror or forwarding agent.

Violation description	Section or cite	Baseline assessment
E. Special Permits and Approvals:		
1. Offering or transporting a hazardous material, or otherwise performing a function covered by a special permit or approval, without authorization:	171.2.	
a. After the special permit or approval has expired.		$1,200 + $600 for each additional year.
b. After the special permit or approval has been terminated.		$5,000 to $25,000.
2. Failure to comply with a provision of a special permit or approval (when no other baseline is applicable):	171.2.	
a. That relates to safety		$4,000 and up.
b. That does not relate to safety		$500 and up.
3. Failure to maintain a copy of the special permit in the transport vehicle or facility, when required by the terms of the special permit.	Special Permit	$1,000.
4. Use an approval or approval symbol issued to another person.	Approval, Various	$9,000.
Offeror Requirements—All hazardous materials		
A. Undeclared Shipment:	172.200, 172.300, 172.400, 172.500.	
1. Offering for transportation a hazardous material without shipping papers, package markings, labels, and placards (where required):		
a. Packing Group I and §172.504 Table 1 materials.		$30,000 and up.
b. Packing Group II		$20,000.
c. Packing Group III		$17,500.
2. Offering for transportation a hazardous material that is misclassified on the shipping paper, markings, labels, and placards:.		
a. Packing Group I and §172.504 Table I materials.		$20,000.
b. Packing Group II		$12,000.
c. Packing Group III		$8,000.
3. Offering for transportation a forbidden hazardous material:		
a. Packing Group I and §172.504 Table I materials.		$35,000.
b. Packing Group II		$25,000.
c. Packing Group III		$20,000.
4. Offering for transportation a lithium battery, without shipping papers, package markings, labels, or placards (when required):		

Violation description	Section or cite	Baseline assessment
a. For air transport		$40,000.
b. For ground transport		$20,000.
B. Shipping Papers:		
1. Failure to provide a shipping paper for a shipment of hazardous materials or accepting hazardous materials for transportation without a shipping paper:	172.201, 177.817(a).	
a. Packing Group I and §172.504 Table 1 materials.		$7,500.
b. Packing Group II		$5,600.
c. Packing Group III		$3,700.
2. Failure to follow one or more of the three approved formats for listing hazardous materials and non-hazardous materials on a shipping paper.	172.201(a)(1)	$1,500.
3. Failure to retain shipping papers as required	172.201(e)	$1,200.
4. Failure to include a proper shipping name in the shipping description or using an incorrect proper shipping name:	172.202.	
a. Packing Group I and §172.504 Table 1 materials.		$2,000.
b. Packing Group II		$1,500.
c. Packing Group III		$1,000.
5. Failure to include a hazard class/division number in the shipping description:	172.202.	
a. Packing Group I and §172.504 Table 1 materials.		$2,000.
b. Packing Group II		$1,500.
c. Packing Group III		$1,000.
6. Failure to include an identification number in the shipping description:	172.202.	
a. Packing Group I and §172.504 Table 1 materials.		$2,500.
b. Packing Group II		$1,800.
c. Packing Group III		$1,200.
7. Using an incorrect hazard class:	172.202.	
a. That does not affect compatibility requirements.		$1,000.
b. That affects compatibility requirements:		
i. Packing Group I and §172.504 Table 1 materials.		$7,500.
ii. Packing Group II		$5,600.
iii. Packing Group III		$3,700.
8. Using an incorrect identification number:	172.202.	
a. That does not change the response information.		$1,000.
b. That changes response information:		
i. Packing Group I and §172.504 Table 1 materials.		$7,500.
ii. Packing Group II		$5,600.
iii. Packing Group III		$3,700.
9. Failure to include the Packing Group or using an incorrect Packing Group:	172.202.	
a. Packing Group I and §172.504 Table 1 materials.		$1,700.
b. Packing Group II and III		$1,300.
10. Using a shipping description that includes additional unauthorized information (extra or incorrect words).	172.202	$1,000.
11. Using a shipping description not in required sequence.	172.202	$600.
12. Failure to include the total quantity of hazardous material covered by a shipping description (including net explosive mass).	172.202	$600.
13. Failure to include any of the following on a shipping paper, as required: Special permit number; ''Limited Quantity or ''Ltd Qty;'' ''RQ'' for a hazardous substance; technical name in parentheses for a listed generic or ''n.o.s.'' material; or marine pollutant.	172.203(a), (b), (c)(2), (k), (l)	$600.
14. Failure to indicate poison inhalation hazard on a shipping paper.	172.203(m)	$2,500.
15. Failure to include or sign the required shipper's certification on a shipping paper.	172.204	$1,000.
C. Emergency Response Information Requirements:		

Violation description	Section or cite	Baseline assessment
1. Providing incorrect emergency response information with or on a shipping paper:	172.602.	
a. No significant difference in response		$1,000.
b. Significant difference in response:		
i. Packing Group I and §172.504 Table 1 materials.		$7,500.
ii. Packing Group II		$5,600.
iii. Packing Group III		$3,700.
2. Failure to include an emergency response telephone number on a shipping paper.	172.604	$3,200.
3. Failure to have the emergency response telephone number monitored while a hazardous material is in transportation; or listing the number in a manner that it is not readily identifiable or cannot be found easily and quickly (e.g., multiple telephone numbers); or failing to include the name, contract number, or other unique identifier of the person registered with the emergency response provider.	172.604	$1,600.
4. Listing an emergency response telephone number on a shipping paper that causes emergency responders delay in obtaining emergency response information (e.g., listing a telephone number that not working, incorrect, or otherwise not capable of providing required information).	172.604	$3,200 to $5,200
D. Package Marking Requirements:		
1. Failure to mark the proper shipping name and identification number on a package:	172.301(a).	
a. Packing Group I and §172.504 Table 1 materials.		$6,000.
b. Packing Group II		$4,500.
c. Packing Group III		$3,000.
2. Marking a package with an incorrect shipping name and identification number:	172.301(a).	
a. That does not change the response information:		
i. Packing Group I and §172.504 Table 1 materials.		$3,700.
ii. Packing Group II		$2,700.
iii. Packing Group III		$2,200.
b. That changes the response information:		
i. Packing Group I and §172.504 Table 1 materials.		$9,500.
ii. Packing Group II		$7,100.
iii. Packing Group III		$4,700.
3. Failure to mark the proper shipping name on a package or marking an incorrect shipping name on a package:	172.301(a).	
a. Packing Group I and §172.504 Table 1 materials.		$2,000.
b. Packing Group II		$1,500.
c. Packing Group III		$1,000.
4. Failure to mark the identification number on a package:.	172.301(a).	
a. Packing Group I and §172.504 Table 1 materials.		$2,500.
b. Packing Group II		$1,800.
c. Packing Group III		$1,200.
5. Marking a package with an incorrect identification number:.	172.301(a).	
a. That does not change the response information.		$1,000.
b. That changes the response information:		
i. Packing Group I and §172.504 Table 1 materials.		$7,500.
ii. Packing Group II		$5,600.
iii. Packing Group III		$3,700.
6. Failure to include the required technical name(s) in parentheses for a listed generic or ''n.o.s.'' entry.	172.301(c)	$600.
7. Failure to mark ''non-odorized'' on a cylinder containing liquefied petroleum gas.	172.301(f)	$2,000.
8. Marking a package as containing hazardous material when it contains no hazardous material.	172.303(a)	$1,000.

Violation description	Section or cite	Baseline assessment
9. Failure to locate required markings away from other markings that could reduce their effectiveness.	172.304(a)(4)	$1,000.
10. Failure to mark a package containing liquid hazardous materials with required orientation markings:	172.312.	
a. Packing Group I and §172.504 Table 1 materials.		$4,000.
b. Packing Group II		$3,500.
c. Packing Group III		$3,000.
11. Failure to mark "Biohazard on an infectious substance or "Inhalation Hazard" on a package containing a poison by inhalation hazard.	172.313(a), 172.323	$4,000.
12. Failure to apply limited quantity marking or "RQ" marking on a non-bulk package containing a hazardous substance.	172.315, 172.324(b)	$600.
13. Listing the technical name of a select agent hazardous material when it should not be listed.	172.301(b)	$1,600.
14. Failure to apply a "Keep away from heat," marine pollutant, or elevated temperature ("HOT") marking.	172.317, 172.322, 172.325	$1,200.
15. Failure to properly mark a bulk container	172.331, 172.334, 172.336, 172.338.	$1,000.
E. Package Labeling Requirements:		
1. Failure to label a package or applying a label that represents a hazard other than the hazard presented by the hazardous material in the package.	172.400	$7,000.
2. Placing a label on a package that does not contain a hazardous material.	172.401(a)	$1,000.
3. Failure to place a required subsidiary label on a package:.	172.402.	
a. Packing Group I and §172.504 Table 1 materials.		$3,100.
b. Packing Group II		$1,800.
c. Packing Group III		$600.
4. Placing a label on a different surface of the package than, or away from, the proper shipping name.	172.406(a)	$1,000.
5. Placing an improper size label on a package	172.407(c)	$1,000.
6. Placing a label on a package that does not meet color specification requirements (depending on the variance).	172.407(d)	$1,000.
7. Failure to place a Cargo Aircraft Only label on a package intended for air transportation, when required.	172.402(c)	$5,000.
8. Failure to place a Cargo Aircraft Only label on a package containing a primary lithium battery or failure to mark a package containing a primary lithium battery as forbidden for transport on passenger aircraft:	172.402(c), 172.102(c)(1) Special Provision 188, 189, 190.	
a. For air transport		$10,000.
b. For ground transport		$1,000.
9. Failure to provide an appropriate class or division number on an explosive label.	172.411	$3,100.
F. Placarding Requirements:		
1. Improperly placarding a freight container or vehicle containing hazardous materials:	172.504.	
a. Packing Group I and §172.504 Table 1 materials.		$1,200 to $11,200.
b. Packing Group II and III		$1,000 to $9,000.
2. Failure to placard a freight container or vehicle containing hazardous materials (no placard at all):	172.504.	
a. Packing Group I and §172.504 Table 1 materials.		$12,000.
b. Packing Group II and III		$8,500.
G. Packaging Requirements:		
1. Failure to comply with package testing requirements for small quantities, excepted quantities, de minimis, materials of trade, and limited quantities.	173.4, 173.4a, 173.4b, 173.6, 173.156, 173.306.	$1,000 to $5,000.

Violation description	Section or cite	Baseline assessment
2. Offering a hazardous material for transportation in an unauthorized non-UN standard or non-specification packaging (includes failure to comply with the terms of a special permit authorizing use of a non-standard or non-specification packaging):	Various.	
a. Packing Group I, § 172.504 Table 1 materials, and Division 2.3 gases.		$11,200.
b. Packing Group II and Divisions 2.1 and 2.2 gases.		$8,700.
c. Packing Group III		$6,200.
3. Offering a hazardous material for transportation in a package that was not retested as required:	Various.	
a. Packing Group I and § 172.504 Table 1 materials.		$8,000.
b. Packing Group II		$5,000.
c. Packing Group III		$3,000.
4. Offering a hazardous material for transportation in an improper package:	Various.	
a. When Packing Group I material is packaged in a Packing Group III package.		$8,000.
b. When Packing Group I material is packaged in a Packing Group II package.		$5,000.
c. When Packing Group II material is packaged in a Packing Group III package.		$3,000.
5. Offering a hazardous material for transportation in a packaging (including a packaging manufactured outside the United States) that is torn, damaged, has hazardous material present on the outside of the package, or is otherwise not suitable for shipment.	Various	$7,500.
6. Offering a hazardous material for transportation in a self-certified packaging that has not been subjected to design qualification testing:	178.601, Various.	
a. Packing Group I and § 172.504 Table 1 materials.		$13,500.
b. Packing Group II		$10,500.
c. Packing Group III		$7,500.
7. Offering a hazardous material for transportation in a packaging that has been successfully tested to an applicable UN standard but is not marked with the required UN marking (including missing specification plates).	173.32(d), 173.24(c)	$4,500.
8. Failure to close a UN standard packaging in accordance with the closure instructions:	173.22(a)(4).	
a. Packing Group I and § 172.504 Table 1 materials.		$2,000 to $5,000.
b. Packing Group II		$1,000 to $4,000.
c. Packing Group III		$500 to $3,000.
9. Offering a hazardous material for transportation in a packaging that leaks during conditions normally incident to transportation:	173.24(b).	
a. Packing Group I and § 172.504 Table 1 materials.		$16,500.
b. Packing Group II		$11,200.
c. Packing Group III		$7,500.
10. Overfilling or underfilling a package so that the effectiveness is substantially reduced:	173.24(b).	
a. Packing Group I and § 172.504 Table 1 materials.		$11,200.
b. Packing Group II		$7,500.
c. Packing Group III		$3,700.
11. Failure to ensure packaging is compatible with hazardous material lading.	173.24(e)	$9,000 to $12,000.
12. Failure to mark an overpack as required	173.25(a)(4)	$3,700.
13. Packaging incompatible materials in an overpack	173.25(a)(5)	$9,300.
14. Marking a package ''overpack'' when the inner packages do not meet the requirements of the HMR:	173.25(a).	
a. Packing Group I and § 172.504 Table 1 materials.		$15,000.
b. Packing Group II		$10,000.
c. Packing Group III		$7,000.
15. Failure to comply with additional requirements for transportation by aircraft.	173.27	$1,000 to $10,000.

Violation description	Section or cite	Baseline assessment
16. Filling an IBC, portable tank, or cargo tank (DOT, UN, or IM) that is out of test and offering hazardous materials for transportation in that IBC or portable tank. (Penalty amount depends on number of units and time out of test.).	173.32(a), 173.33(a)(3), 180.352, 180.407, 180.605.	
a. Packing Group I and §172.504 Table 1 materials:		
i. All testing overdue		$8,700.
ii. Only periodic (5 year) tests overdue or only intermediate periodic (2.5 year) tests overdue.		$4,600.
b. Packing Group II:		
i. All testing overdue		$6,600.
ii. Only periodic (5 year) tests overdue or only intermediate periodic (2.5 year) tests overdue.		$3,300.
c. Packing Group III:		
i. All testing overdue		$4,600.
ii. Only periodic (5 year) tests overdue or only intermediate periodic (2.5 year) tests overdue.		$2,300.
17. Manifolding cylinders without conforming to manifolding requirements.	173.301(g)	$3,700 and up.
18. Failure to ensure a cargo tank motor vehicle in metered delivery service has an operational off-truck remote shut-off activation device.	173.315(n)(3)	$2,500.
19. Offering a hazardous material in a cargo tank motor vehicle when the material does not meet compatibility requirements with the tank or other lading or residue.	173.33	$15,000.
20. Failure to provide the required outage in a portable tank that results in a release of hazardous materials:.	173.32(f)(6).	
a. Packing Group I and §172.504 Table 1 materials.		$15,000.
b. Packing Group II		$11,200.
c. Packing Group III		$7,500.
Offeror Requirements—Specific hazardous materials		
A. Cigarette Lighters:		
1. Offering for transportation an unapproved cigarette lighter, lighter refill, or similar device, equipped with an ignition element and containing fuel.	173.21(i)	$7,500.
2. Failure to include the cigarette lighter test report identifier on the shipping paper.	173.308(d)(1)	$1,000.
3. Failure to mark the approval number on the package..	173.308(d)(2)	$1,000.
B. Class 1—Explosives:		
1. Failure to mark the package with the EX number for each substance contained in the package or, alternatively, indicate the EX number for each substance in association with the description on the shipping description.	172.320	$1,000.
2. Offering an unapproved explosive for transportation:	173.54, 173.56(b).	
a. Division 1.4 fireworks meeting the chemistry requirements of APA 87–1A or 87–1C.		$5,000.
b. Division 1.3 fireworks meeting the chemistry requirements of APA 87–1B.		$7,500.
c. All other explosives (including forbidden)		$12,500 and up.
3. Offering an unapproved explosive for transportation that minimally deviates from an approved design in a manner that does not impact safety:	173.54, 173.56(b).	
a. Division 1.4		$3,000.
b. Division 1.3		$4,000.
c. All other explosives		$6,000.
4. Offering a leaking or damaged package of explosives for transportation:	173.54(c)..	
a. Division 1.3 and 1.4		$12,500.
b. All other explosives		$16,500.

Violation description	Section or cite	Baseline assessment
5. Offering a Class 1 material that is fitted with its own means of ignition or initiation, without providing protection from accidental actuation.	173.60(b)(5)	$15,000.
6. Packaging explosives in the same outer packaging with other materials.	173.61	$9,300.
7. Transporting a detonator on the same vehicle as incompatible materials using the approved method listed in 177.835(g)(3) without meeting the requirements of IME Standard 22.	177.835(g)(3)	$10,000.
C. Class 7—Radioactive Materials:		
1. Failure to include required additional entries for radioactive material on a shipping paper, or providing incorrect information for these additional entries.	172.203(d)	$2,000 to $5,000.
2. Failure to mark the gross mass on the outside of a package of Class 7 material that exceeds 110 pounds.	172.310(a)	$1,000.
3. Failure to mark each package with the words ''Type A'' or ''Type B,'' as appropriate.	172.310(b)	$3,700.
4. Placing a label on Class 7 material that understates the proper label category.	172.403	$6,200.
5. Placing a label on Class 7 material that fails to contain (or has erroneous) entries for the name of the radionuclide(s), activity, and transport index.	172.403(g)	$2,000 to $5,000.
6. Failure to meet one or more of the general design requirements for a package used to ship a Class 7 material.	173.410	$6,200.
7. Failure to comply with the industrial packaging (IP) requirements when offering a Class 7 material for transportation.	173.411	$6,200.
8. Failure to provide a tamper-indicating device on a Type A package used to ship a Class 7 material.	173.412(a)	$5,000.
9. Failure to meet the additional design requirements of a Type A package used to ship a Class 7 material.	173.412(b)–(i)	$6,200.
10. Failure to meet the performance requirements for a Type A package used to ship a Class 7 material.	173.412(j)–(l)	$11,200.
11. Offering a DOT specification 7A packaging without maintaining complete documentation of tests and an engineering evaluation or comparative data:	173.415(a), 173.461.	
a. Tests and evaluation not performed		$13,500.
b. Test performed but complete records not maintained.		$2,500 to $6,200.
12. Offering any Type B, Type B(U), or Type B(M) packaging that failed to meet the approved DOT, NRC or DOE design, as applicable.	173.416	$16,500.
13. Offering a Type B packaging without registering as a party to the NRC approval certificate:	173.471(a).	
a. Never obtained approval		$3,700.
b. Holding an expired certificate		$1,200.
14. Failure to meet one or more of the special requirements for a package used to ship more than 0.1 kg of uranium hexafluoride.	173.420	$13,500.
15. Offering Class 7 materials for transportation as a limited quantity without meeting the requirements for a limited quantity.	173.421(a)	$8,000.
16. Offering a multiple-hazard limited quantity Class 7 material without addressing the additional hazard.	173.423(a)	$600 to $3,100.
17. Offering Class 7 materials for transportation under exceptions for radioactive instruments and articles while failing to meet the applicable requirements.	173.424	$6,200 to $12,500.
18. Offering Class 7 low specific activity (LSA) materials or surface contaminated objects (SCO) while failing to comply with applicable transport requirements (including, an external dose rate that exceeds an external radiation level of 10 mSv/h at 3 meters from the unshielded material).	173.427	$7,500 to $12,500.
19. Offering Class 7 LSA materials or SCO as exclusive use without providing specific instructions to the carrier for maintenance of exclusive use shipment controls.	173.427(a)(6)	$1,200.
20. Offering in excess of a Type A quantity of a Class 7 material in a Type A packaging.	173.431	$15,000.

Violation description	Section or cite	Baseline assessment
21. Offering a package that exceeds the permitted radiation level or transport index.	173.441	$12,500.
22. Offering a package without determining the level of removable external contamination, or that exceeds the limit for removable external contamination.	173.443	$6,200 and up.
23. Storing packages of radioactive material in a group with a total criticality safety index of more than 50.	173.447(a)	$6,200 and up.
24. Offering for transportation or transporting aboard a passenger aircraft any single package or overpack of Class 7 material with a transport index greater than 3.0.	173.448(e)	$6,200 and up.
25. Exporting a Type B, Type B(U), Type B(M), or fissile package without obtaining a U.S. Competent Authority Certificate or, after obtaining a U.S. Competent Authority Certificate, failing to submit a copy to the national competent authority of each country into or through which the package is transported.	173.471(d)	$3,700.
26. Offering or exporting special form radioactive materials without maintaining a complete safety analysis or Certificate of Competent Authority, as required.	173.476(a), (b)	$3,700.
27. Shipping a fissile material as fissile-exempt without meeting one of the exemption requirements or otherwise not complying with fissile material requirements.	173.417, 173.453, 173.457	$12,500.
28. Offering Class 7 fissile materials while failing to have a DOT Competent Authority Certificate or NRC Certificate of Compliance, as required, or failing to meet the requirements of the applicable Certificate.	173.417	$1,000 to $12,500.
D. Class 2—Compressed Gases in Cylinders:		
1. Filling and offering a cylinder with compressed gas when the cylinder is out of test or after its authorized service life:	173.301(a)(6), (a)(7).	
a. Table 1 and compressed gas in solution		$10,000 to $15,000.
b. Division 2.1 gases		$7,500 to $10,000.
c. Division 2.2 gases		$5,000 to $7,500.
2. Overfilling cylinders:	Various.	
a. Division 2.3 gases		$15,000.
b. Division 2.1 gases		$10,000.
c. Division 2.2 gases		$7,500.
d. Aerosols, limited quantities, consumer commodities.		$5,000.
3. Failure to check each day the pressure of a cylinder charged with acetylene that is representative of that day's compression, after the cylinder has cooled to a settled temperature, or failure to keep a record of this test for 30 days.	173.303(d)	$6,200.
4. Offering a limited quantity of a compressed gas in a metal container for the purpose of propelling a nonpoisonous material and failure to heat the cylinder until the pressure is equivalent to the equilibrium pressure at 131 °F, without evidence of leakage, distortion, or other defect.	173.306(a)(3)	$1,800 to $5,000.
5. Offering a limited quantity of a compressed gas in a metal container intended to expel a non-poisonous material, while failing to subject the filled container to a hot water bath, as required.	173.306(a)(3)(v)	$5,000.
6. Offering liquefied petroleum gas for permanent installation on consumer premises when the requirements are not met.	173.315(j)	$7,500 to $10,000.
E. Oxygen Generators Offered by Air:		
1. Offering an unapproved oxygen generator for transportation.	173.168	$25,000.
2. Offering an oxygen generator for transportation without installing a means of preventing actuation, as required.	173.168	$12,500 to $25,000.
3. Offering an oxygen generator as spent when the ignition and chemical contents were still present.	172.102(c)(1) Special Provision 61.	$35,000.
F. Batteries:	173.159, 173.185, 173.21(c).	
1. Offering lithium batteries in transportation that have not been tested:		

Violation description	Section or cite	Baseline assessment
a. Ground transport		$15,000.
b. Air transport		$30,000.
2. Offering lithium batteries in transportation that have been assembled from tested cells, but have not been tested.		$5,000 + 25 percent increase for each additional design.
3. Failure to create records of design testing		$2,500 to $9,300.
4. Offering lithium batteries in transportation that have not been protected against short circuit.		$15,000.
5. Offering lithium batteries in transportation in unauthorized packages.		$12,500.
6. Offering lead acid batteries in transportation in unauthorized packages.		$10,000.
7. Offering lithium batteries in transportation on passenger aircraft or misclassifying them for air transport.		$30,000.
8. Failure to prepare batteries so as to prevent damage in transit.		$6,000.
Manufacturing, Reconditioning, Retesting Requirements		
A. Activities Subject to Approval:		
1. Failure to report in writing a change in name, address, ownership, test equipment, management, or test personnel.	171.2(c), Approval Letter	$700 to $1,500.
2. Failure by an independent inspection agency of specification cylinders to satisfy all inspector duties, including inspecting materials, and verifying materials of construction and cylinders comply with applicable specifications.	178.35(c)(1), (2), (3)	$5,000 to $16,500.
3. Failure to properly complete or retain inspector's report for specification packages.	178.25(c)(4), Various	$4,000.
4. Failure to have a cylinder manufacturing registration number/symbol, when required.	Various	$2,500.
B. Packaging Manufacturers (General):		
1. Failure of a manufacturer or distributor to notify each person to whom the packaging is transferred of all the requirements not met at the time of transfer, including closure instructions.	178.2(c)	$3,100.
2. Failure to comply with specified construction requirements for non-bulk packagings:	178.504 to 178.523.	
a. Packing Group I and §172.504 Table 1 materials.		$12,000.
b. Packing Group II		$8,000.
c. Packing Group III		$4,000.
3. Fail testing: Failure to ensure a packaging certified as meeting the UN standard is capable of passing the required performance testing (depending on size of package):	178.601(b), 178.609, part 178 subparts O, Q.	
a. Infectious substances		$16,500.
b. Packing Group I and §172.504 Table 1 materials.		$13,500 to $16,500.
c. Packing Group II		$10,500 to $13,500.
d. Packing Group III		$7,500 to $10,500.
4. No testing: Certifying a packaging as meeting a UN standard when design qualification testing was not performed (depending on size of package):	178.601(d), 178.609, part 178 subparts O, Q.	
a. Infectious substances		$16,500.
a. Packing Group I and §172.504 table 1 materials.		$13,500 to $16,500.
b. Packing Group II		$10,500 to $13,500.
c. Packing Group III		$7,500 to $10,500.
5. Failure to conduct periodic testing on UN standard packaging (depending on length of time, Packing Group, and size of package).	178.601(e), part 178 subparts O, Q.	$2,500 to $16,500.
6. Improper testing: Failure to properly conduct testing for UN standard packaging (e.g., testing with less weight than marked on packaging; drop testing from lesser height than required; failing to condition fiberboard boxes before design test) (depending on size of package):		
a. Design qualification testing:	178.601(d), 178.609, part 178 subparts O, Q.	
i. Infectious substances		$13,500.
ii. Packing Group I		$10,500 to $13,500.

Violation description	Section or cite	Baseline assessment
iii. Packing Group II		$7,500 to $10,500.
iv. Packing Group III		$2,500 to $7,500.
b. Periodic testing:	178.601(e), 178.609.	
i. Infectious substances		$10,500.
ii. Packing Group I		$7,000 to $10,500.
iii. Packing Group II		$4,000 to $7,000.
iv. Packing Group III		$600 to $4,000.
7. Failure to keep complete and accurate testing records:.	178.601(l).	
a. No records kept		$5,000.
b. Incomplete or inaccurate records		$1,200 to $3,700.
8. Improper marking of UN certification	178.503	$600 per item.
C. Drum Manufacturers & Reconditioners:		
1. Failure to properly conduct a production leakproofness test on a new or reconditioned drum:	178.604(b), (d), 173.28(b)(2)(i).	
a. Improper testing:		
i. Packing Group I		$3,000.
ii. Packing Group II		$2,500.
iii. Packing Group III		$2,000.
b. No testing performed:		
i. Packing Group I		$6,200.
ii. Packing Group II		$5,000.
iii. Packing Group III		$3,700.
2. Marking incorrect tester information on a reused drum:.	173.28(b)(2)(ii).	
a. Incorrect information		$1,000.
b. Unauthorized use of another's information		$9,000.
3. Representing, marking, or certifying a drum as a reconditioned UN standard packaging when the drum does not meet a UN standard..	173.28(c)	$7,500 to $13,500.
4. Representing, marking, or certifying a drum as altered from one UN standard to another, when the drum has not been altered.	173.28(d)	$600
D. IBC and Portable Tank Requalification:		
1. Failure to properly test and inspect IBCs or portable tanks.	180.352, 180.603.	
a. Packing Group I		$10,000.
b. Packing Group II		$7,500.
c. Packing Group III		$5,000.
2. Failure to properly mark an IBC or portable tank with the most current retest and/or inspection information.	180.352(e), 178.703(b), 180.605(k).	$600 per item.
3. Failure to keep complete and accurate records of IBC or portable tank retest and reinspection:	180.352(f), 180.605(l).	
a. No records kept		$5,000.
b. Incomplete or inaccurate records		$1,200 to $3,700.
4. Failure to make inspection and test records available to a DOT representative upon request.	180.352(g), 49 U.S.C. 5121(b)(2).	$1,200.
5. Failure to perform tests (internal visual, leakproofness) on an IBC as part of a repair.	180.352(d)	$3,700 to $6,200.
6. Failure to perform routine maintenance on an IBC	180.350(c)	$2,500.
E. Cylinder Manufacturers & Rebuilders:		
1. Manufacturing, representing, marking, certifying, or selling a DOT high-pressure cylinder that was not inspected and verified by an approved independent inspection agency.	178.35	$10,000 to $25,000.
2. Failure to mark a registration number/symbol on a cylinder, when required.	178.35, Various	$1,000.
3. Failure to mark the date of manufacture or lot number on a DOT–39 cylinder.	178.65(i)	$3,700.
4. Failure to have a chemical analysis performed in the U.S. for a material manufactured outside the U.S., without an approval.	107.807, 178.35	$6,200.
5. Failure to comply with defect and attachment requirements, safety device requirements, or marking requirements.	178.35(d), (e), (f)	$5,000.
6. Failure to meet wall thickness requirements	Various	$9,300 to $18,700.
7. Failure to heat treat cylinders prior to testing	Various	$6,200 to $18,700.
8. Failure to conduct a complete visual internal examination.	Various	$3,100 to $7,700.
9. Failure to conduct a hydrostatic test, or conducting a hydrostatic test with inaccurate test equipment.	Various	$3,100 to $7,700.
10. Failure to conduct a flattening test	Various	$9,300 to $18,700.

Violation description	Section or cite	Baseline assessment
11. Failure to conduct a burst test on a DOT–2P, 2Q, 2S, or 39 cylinder.	178.33–8, 178.33a–8, 178.33b–8, 178.65(f)(2).	$6,200 to $18,700.
12. Failure to maintain required inspector's reports: ..	178.35, Various.	
a. No reports at all		$5,000.
b. Incomplete or inaccurate reports		$1,200 to $3,700.
13. Failure to complete or retain manufacturer's reports.	178.35(g)	$6,200.
14. Representing a DOT–4 series cylinder as repaired or rebuilt to the requirements of the HMR without being authorized by the Associate Administrator.	180.211(a)	$10,000 to $25,000.
F. Cargo Tank Motor Vehicles:		
1. Failure to maintain complete cargo tank test reports, as required:	180.417(b), (c).	
a. No records		$5,000.
b. Incomplete records		$1,200 to $3,700.
2. Failure to have a cargo tank tested or inspected (e.g., visual, thickness, pressure, leakproofness).	180.407(c)	$8,000 and up; increase by 25 percent for each additional.
3. Failure to mark a cargo tank with test and inspection markings.	180.415	$600 each item.
4. Failure to retain a cargo tank's data report and Certificates or design certification.	178.320(b), 178.337–18, 178.338–19, 178.345–15.	$6,200.
5. Failure to mark a special permit number on a cargo tank.	172.301(c)	$1,800.
6. Constructing a cargo tank or cargo tank motor vehicle not in accordance with a special permit or design certification.	178.320(b), Special Permit	$13,500.
7. Failure to mark manhole assemblies on a cargo tank motor vehicle manufactured after October 1, 2004.	178.345–5(e)	$4,500.
8. Failure to apply specification plate and name plate:.	178.337–17, 178.338–18, 178.345–14.	
a. No marking		$4,500.
b. Incomplete marking		$600 per item.
9. Failure to conduct monthly inspections and tests of discharge system in cargo tanks.	180.416(d)	$2,500.
G. Cylinder Requalification:		
1. Certifying or marking as retested a non-specification cylinder.	180.205(a)	$1,000.
2. Failure to have retester's identification number (RIN).	180.205(b)	$5,000.
3. Failure to have current authority due to failure to renew a RIN.	180.205(b)	$2,500 + $600 each additional year.
4. Marking a RIN before successfully completing a hydrostatic retest.	180.205(b)	$1,000.
5. Representing, marking, or certifying a cylinder as meeting the requirements of a special permit when the cylinder was not maintained or retested in accordance with the special permit.	171.2(c), (e), 180.205(c), Special Permit.	$2,500 to $7,500.
6. Failure to conduct a complete visual external and internal examination.	180.205(f)	$2,600 to $6,500.
7. Performing hydrostatic retesting without confirming the accuracy of the test equipment or failing to conduct hydrostatic testing.	180.205(g)(1), 180.205(g)(3)	$2,600 to $6,500.
8. Failure to hold hydrostatic test pressure for 30 seconds or sufficiently longer to allow for complete expansion.	180.205(g)(5)	$3,800.
9. Failure to perform a second retest, after equipment failure, at a pressure increased by the lesser of 10 percent or 100 psi (includes exceeding 90percent of test pressure prior to conducting a retest).	180.205(g)(5)	$3,800.
10. Failure to condemn a cylinder when required (e.g., permanent expansion exceeds 10 percent of total expansion [5percent for certain special permit cylinders], internal or external corrosion, denting, bulging, evidence of rough usage).	180.205(i)	$7,500 to $13,500.
11. Failure to properly mark a condemned cylinder or render it incapable of holding pressure.	180.205(i)(2)	$1,000 to $5,000.
12. Failure to notify the cylinder owner in writing when a cylinder has been condemned.	180.205(i)(2)	$1,200.
13. Failure to perform hydrostatic retesting at the minimum specified test pressure.	180.209(a)	$2,600 to $6,500.

Violation description	Section or cite	Baseline assessment
14. Marking a star on a cylinder that does not qualify for that mark.	180.209(b)	$2,500 to $5,000.
15. Marking a " + " sign on a cylinder without determining the average or minimum wall stress by calculation or reference to CGA Pamphlet C–5.	173.302a(b)	$2,500 to $5,000.
16. Marking a cylinder in or on the sidewall when not permitted by the applicable specification.	180.213(b)	$7,500 to $13,500.
17. Failure to maintain legible markings on a cylinder	180.213(b)(1)	$1,000.
18. Marking a DOT 3HT cylinder with a steel stamp other than a low-stress steel stamp.	180.213(c)(2)	$7,500 to $13,500.
19. Improper marking of the RIN or retest date on a cylinder.	180.213(d)	$1,000.
20. Marking an FRP cylinder with steel stamps in the FRP area of the cylinder such that the integrity of the cylinder is compromised.	Special Permit	$7,500 to $13,500.
21. Failure to comply with eddy current examination requirements for DOT 3AL cylinders manufactured of aluminum alloy 6351–T6, when applicable.	Appendix C to part 180	$2,600 to $6,500.
22. Failure to maintain current copies of the HMR, DOT special permits, and CGA Pamphlets applicable to inspection, retesting, and marking activities.	180.215(a)	$700 to $1,500.
23. Failure to keep complete and accurate records of cylinder reinspection and retest:	180.215(b).	
a. No records kept		$5,000.
b. Incomplete or inaccurate records		$1,200 to $3,700.
Carrier Requirements		
A. Incident Notification:		
1. Failure to provide immediate telephone/online notification of a reportable hazardous materials incident reportable under 171.15(b).	171.15	$6,000.
2. Failure to file a written hazardous material incident report within 30 days of discovering a hazardous materials incident reportable under 171.15(b) or 171.16(a).	171.16	$4,000.
3. Failure to include all required information in hazardous materials incident notice or report or failure to update report.	171.15, 171.16	$1,000.
B. Shipping Papers:		
1. Failure to retain shipping papers for 1 year after a hazardous material (or 3 years for a hazardous waste) is accepted by the initial carrier.	174.24(b), 175.33(c), 176.24(b), 177.817(f).	$1,200.
C. Stowage/Attendance/Transportation Requirements:		
1. Transporting packages of hazardous material that have not been secured against movement.	Various	$3,700 and up.
2. Failure to properly segregate hazardous materials	Various	$9,300 and up.
3. Failure to remove a package containing hazardous materials from a motor vehicle before discharge of its contents:	177.834(h).	
a. Packing Group I and §172.504 Table 1 materials.		$5,000.
b. Packing Group II		$3,000.
c. Packing Group III		$1,000.
4. Transporting explosives in a motor vehicle containing metal or other articles or materials likely to damage the explosives or any package in which they are contained, without segregating in different parts of the load or securing them in place in or on the motor vehicle and separated by bulkheads or other suitable means to prevent damage.	177.835(i)	$6,500 and up.
5. Failure to attend Class 1 explosive materials during transportation.	177.835(k)	$3,000.
6. Transporting railway track torpedoes outside of flagging kits, in violation of DOT–E 7991.	171.2(b), (e)	$8,700.
7. Failure to carry a hazmat registration letter or number in the transport vehicle.	107.620(b)	$1,000.
8. Transporting Class 7 (radioactive) material having a total transport index greater than 50.	177.842(a)	$6,200 and up.
9. Transporting Class 7 (radioactive) material without maintaining the required separation distance.	177.842(b)	$6,200 and up.

Violation description	Section or cite	Baseline assessment
10. Failure to comply with radiation survey requirements of a special permit that authorizes the transportation of Class 7 (radioactive) material having a total transportation index exceeding 50.	171.2(b), (e), Special Permit ...	$6,200 and up.

The baseline penalty amounts in Part II are used as a starting amount or range appropriate for the normal or typical nature, extent, circumstances, and gravity of the probable violations frequently cited in enforcement reports. PHMSA must also consider any additional factors, as provided in 49 U.S.C. 5123(c) and 49 CFR 107.331, including the nature, circumstances, extent and gravity of a violation, the degree of culpability and compliance history of the respondent, the financial impact of the penalty on the respondent, and other matters as justice requires. Consequently, at each stage of the administrative enforcement process, up to and including issuance of a final order or decision on appeal, PHMSA can adjust the baseline amount in light of the specific facts and circumstances of each case.

As part of this analysis, PHMSA reviews the factors outlined in the next section, *Miscellaneous Factors Affecting Penalty Amounts,* the safety implications of the violation, the pervasiveness of the violation, and all other relevant information. PHMSA considers not only what happened as a result of the violation, but also what could have happened as a result of continued violation of the regulations. As a general matter, one or more specific instances of a violation are presumed to reflect a respondent's general manner of operations, rather than isolated occurrences.

PHMSA may draw factors relevant to the statutory considerations from the initial information gathered by PHMSA's Office of Hazardous Materials Safety Field Operations, the respondent in response to an exit briefing, ticket, or Notice of Probable Violation (NOPV), or information otherwise available to us. We will generally apply the specific statutory factors that are outlined in the next section, *Miscellaneous Factors Affecting Penalty Amounts,* in the following order:

1. Select the appropriate penalty amount within a specific baseline or range, with appropriate increases or decreases depending on the packing group or material involved and other information regarding the frequency or duration of the violation, the culpability of the respondent, and the actual or potential consequences of the violation.

2. Apply decreases for a reshipper or carrier that reasonably relied on an offeror's non-compliant preparation of a hazardous materials shipment.

3. Apply increases for multiple counts of the same violation.

4. Apply increases for prior violations of the HMR within the past six years.

5. Apply decreases for corrective actions.

6. Apply decreases for respondent's inability to pay or adverse effect on its ability to continue in business.

After each adjustment listed above, PHMSA will use the new modified baseline to calculate each subsequent adjustment. PHMSA will apply adjustments separately to each individual violation. All penalty assessments will be subject to additional adjustments as appropriate to reflect other matters as justice requires.

A. Respondents That Reship

A person who either receives hazardous materials from another company and reships them (reshipper), or accepts a hazardous material for transportation, and transports that material (carrier), is responsible for ensuring that the shipment complies in all respects with Federal hazardous materials transportation law. In both cases, the reshipper or carrier independently may be subject to enforcement action if the shipment does not comply.

Depending on all the circumstances, however, the person who originally prepared the shipment and placed it into transportation may have greater culpability for the noncompliance than the reshipper or carrier who reasonably relies on the shipment as received and does not open or alter the package before the shipment continues in transportation. PHMSA will consider the specific knowledge and expertise of all parties, as well as which party is responsible for compliance under the regulations, when evaluating the culpability of a reshipper or carrier. PHMSA recognizes that a reshipper or carrier may have reasonably relied upon information from the original shipper and may reduce the applicable baseline penalty amount up to 25 percent.

B. Penalty Increases for Multiple Counts

A main objective of PHMSA's enforcement program is to obtain compliance with the HMR and the correction of violations which, in many cases, have been part of a company's regular course of business. As such, there may be multiple instances of the same violation. Examples include a company shipping various hazardous materials in the same unauthorized packaging, shipping the same hazardous material in more than one type of unauthorized packaging, shipping

hazardous materials in one or more packagings with the same marking errors, or using shipping papers with multiple errors.

Under the Federal hazmat law, 49 U.S.C. 5123(a), each violation of the HMR and each day of a continuing violation (except for violations relating to packaging manufacture or qualification) is subject to a civil penalty of up to $102,348 or $238,809 for a violation occurring on or after December 30, 2024. As such, PHMSA generally will treat multiple occurrences that violate a single regulatory provision as separate violations and assess the applicable baseline penalty for each distinct occurrence of the violation. PHMSA will generally consider multiple shipments or, in the case of package testers, multiple package designs, to be multiple occurrences; and each shipment or package design may constitute a separate violation.

PHMSA, however, will exercise its discretion in each case to determine the appropriateness of combining into a single violation what could otherwise be alleged as separate violations and applying a single penalty for multiple counts or days of a violation, increased by 25 percent for each additional instance, as directed by 49 U.S.C. 5123(c). For example, PHMSA may treat a single shipment containing three items or packages that violate the same regulatory provision as a single violation and apply a single baseline penalty with a 50 percent increase for the two additional items or packages; and PHMSA may treat minor variations in a package design for a package tester as a single violation and apply a single baseline penalty with a 25 percent increase for each additional variation in design.

When aggravating circumstances exist for a particular violation, PHMSA may handle multiple instances of a single regulatory violation separately, each meriting a separate baseline or increase the civil penalty by 25 percent for each additional instance. Aggravating factors may include increased safety risks, continued violation after receiving notice, or separate and distinct acts. For example, if the multiple occurrences each require their own distinct action, then PHMSA may count each violation separately (e.g., failure to obtain approvals for separate fireworks devices).

C. Penalty Increases for Prior Violations

The baseline penalty in the List of Frequently Cited Violations assumes an absence of prior violations. If a respondent has prior violations of the HMR, generally, PHMSA will increase a proposed penalty.

When setting a civil penalty, PHMSA will review the respondent's compliance history and determine if there are any finally-adjudicated violations of the HMR initiated within the previous six years. Only cases or tickets that have been finally-adjudicated will be considered (i.e., the ticket has been paid, a final order has been issued, or all appeal remedies have been exhausted or expired). PHMSA will include prior violations that were initiated within six years of the present case; a case or ticket will be considered to have been initiated on the date of the exit briefing for both the prior case and the present case. If multiple cases are combined into a single Notice of Probable Violation or ticket, the oldest exit briefing will be used to determine the six-year period. If a situation arises where no exit briefing is issued, the date of the Notice of Probable Violation or Ticket will be used to determine the six-year period. PHMSA may consider prior violations of the Hazardous Materials Regulations from other DOT Operating Administrations.

The general standards for increasing a baseline proposed penalty on the basis of prior violations are as follows:

1. For each prior civil or criminal enforcement case—25 percent increase over the pre-mitigation recommended baseline penalty.

2. For each prior ticket—10 percent increase over the pre-mitigation recommended baseline penalty.

3. If a respondent is cited for operating under an expired special permit and previously operated under an expired special permit (as determined in a finally-adjudicated civil, criminal, or administrative enforcement case or a ticket), PHMSA will increase the civil penalty 100 percent.

4. If a respondent is cited for the exact same violation that it has been previously cited for within the six-year period (in a finally-adjudicated civil, criminal, or administrative enforcement case or a ticket), PHMSA will increase the baseline for that violation by 100 percent. This increase will apply only when the present violation is identical to the previous violation and applies only to the specific violation that has recurred.

5. A baseline proposed penalty (both for each individual violation and the combined total) will not be increased more than 100 percent on the basis of prior violations.

D. Corrective Action

PHMSA may lower a proposed penalty when a respondent's documented corrective action has fixed an alleged violation. Corrective action should demonstrate not only that the specific deficiency is corrected but also that any systemic corrections have been addressed to prevent recurrence of the violation.

The two primary factors that determine the reduction amount are the extent and timing of the corrective action. In other words, PHMSA will determine the amount of mitigation based on how much corrective action a respondent completes and how soon after the exit briefing it performs corrective action. Comprehensive systemic action to

prevent future violations may warrant greater mitigation than actions that simply target violations identified during the inspection. Actions taken immediately (within the 30 calendar day period that respondents have to respond to an exit briefing, or upon approval of Field Operations) may warrant greater mitigation than actions that are not taken promptly.

PHMSA may consider a respondent's corrective action to assess mitigation at various stages in the enforcement process, including: (1) AFTEr an inspection and before an NOPV is issued; (2) on receipt of an NOPV; or (3) after receipt of an NOPV. In order to reduce a civil penalty for corrective action, PHMSA must receive satisfactory documentation that demonstrates the corrective action was completed. If a corrective action is of a type that cannot be documented (e.g., no longer using a particular packaging), then a respondent may provide a signed affidavit describing the action it took. The affidavit must begin with the affirmative oath ''I hereby affirm under the penalties of perjury that the below statements are true and correct to the best of my knowledge, information and belief,'' in accordance with 28 U.S.C. 1746.

Generally, corrective action credit may not exceed 25 percent. Mitigation is applied to individual violations and fact patterns but should not be considered to be automatic reduction. Thus, in a case with two violations, if corrective action for the first violation is more extensive than for the second, the penalty for the first will be mitigated more than that for the second. If a respondent has previously committed the same violation, however, as determined in a finally-adjudicated civil, criminal, or administrative enforcement case or a ticket, PHMSA will not apply any reduction for corrective action.

In determining the appropriate civil penalty reduction, PHMSA will consider the extent to which the respondent corrected the violation and any risks or harms it created, the respondent's actions to prevent the violation from recurring, improvements to overall company practices to address a widespread compliance issue, and how quickly the corrective action was performed. In general, PHMSA will apply the following reductions for corrective action, subject to the facts and circumstances of individual cases and respondents. If a respondent has given full documentation of timely corrective action and PHMSA does not believe that anything else can be done to correct the violation or improve overall company practices, we will generally reduce the civil penalty by no more than 25 percent. As noted above, a 25 percent reduction is not automatic. We will reduce the penalty up to 20 percent when a respondent promptly and completely corrected the cited violation and has taken substantial steps toward comprehensive improvements. PHMSA will generally apply a reduction up to 15 percent when a respondent has made substantial and timely progress toward correcting the specific violation as well as overall company practices, but additional actions are needed. A reduction up to 10 percent is appropriate when a respondent has taken significant steps toward addressing the violation, but minimal or no steps toward correcting broader company policies to prevent future violations. PHMSA may reduce a penalty up to 5 percent when a respondent made untimely or minimal efforts toward correcting the violation.

E. Financial Considerations

PHMSA may mitigate a proposed penalty when a respondent documents that the penalty would either (1) exceed an amount that the respondent is able to pay, or (2) have an adverse effect on the respondent's ability to continue in business. These criteria relate to a respondent's entire business, and not just the product line or part of its operations involved in a violation. PHMSA may apply this mitigation by reducing the civil penalty or instituting a payment plan.

PHMSA will only mitigate a civil penalty based on financial considerations when a respondent supplies financial documentation demonstrating one of the factors above. A respondent may submit documentation of financial hardship at any stage to receive mitigation or an installment payment plan. Documentation includes tax records, a current balance sheet, profit and loss statements, and any other relevant records. Evidence of a respondent's financial condition is used only to decrease a penalty, and not to increase it.

In evaluating the financial impact of a penalty on a respondent, PHMSA will consider all relevant information on a case-by-case basis. Although PHMSA will determine financial hardship and appropriate penalty adjustments on an individual basis, in general, we will consider the following factors.

1. The overall financial size of the respondent's business and information on the respondent's balance sheet, including the current ratio (current assets to current liabilities), the nature of current assets, and net worth (total assets minus total liabilities).

2. A current ratio close to or below 1.0 may suggest that the company would have difficulty in paying a large penalty or in paying it in a single lump sum.

3. A small amount of cash on hand (representing limited liquidity), even with substantial other current assets (such as accounts receivable or inventory), may suggest a company would have difficulty in paying a penalty in a single lump sum.

4. A small or negative net worth may suggest a company would have difficulty in paying a penalty in a single lump sum. Notwithstanding, many respondents have paid substantial civil penalties in installments even though net worth was negative. For this reason, negative net worth alone does not always warrant reduction of a proposed penalty or even, in the absence of factors discussed above, a payment plan.

When PHMSA determines that a proposed penalty poses a significant financial hardship, we may reduce the proposed penalty and/or implement an installment payment plan. The appropriateness of these options will depend on the circumstances of the case.

When an installment payment plan is appropriate, the length of the payment plan should be as short as possible, but may be adjusted as necessary. PHMSA will not usually exceed six months for a payment plan. In unusual circumstances, PHMSA may extend the period of a payment plan. For example, the duration of a payment plan may reflect fluctuations in a company's income if its business is seasonal or if the company has documented specific reasons for current nonliquidity.

[78 FR 60733, Oct. 2, 2013, as amended at 81 FR 42268, June 29, 2016; 82 FR 18399, Apr. 19, 2017; 84 FR 37071, July 31, 2019; 85 FR 75703, Nov. 25, 2020; 86 FR 1756, Jan. 11, 2021; 86 FR 23252, May 3, 2021; 86 FR 29529, June 2, 2021; 87 FR 15866, Mar. 21, 2022; 88 FR 1125, Jan. 6, 2023; 87 FR 79764, Dec. 27, 2022; 88 FR 89560, Dec. 28, 2023; 89 FR 106293, Dec. 30, 2024]

Subpart E—Designation of Approval and Certification Agencies

§ 107.401 Purpose and scope.

(a) This subpart establishes procedures for the designation of agencies to issue certificates and certifications for types of packagings designed, manufactured, tested, or maintained in conformance with the requirements of this subchapter, subchapter C of this chapter, and standards set forth in the United Nations (U.N.) Recommendations (Transport of Dangerous Goods), and for lighters, portable tanks, multi-element gas containers, and Division 1.4G consumer fireworks in conformance with the requirements of this subchapter. Except for certifications of compliance with U.N. packaging standards, this subpart does not apply unless made applicable by a rule in subchapter C of this chapter.

(b) The Associate Administrator may issue approval certificates and certifications addressed in paragraph (a) of this section.

[78 FR 42473, July 16, 2013]

§ 107.402 Application for designation as a certification agency.

(a) Any organization or person seeking to be approved as a certification agency must apply in writing to the Associate Administrator for Hazardous Materials Safety (PHH–32), Department of Transportation, East Building, 1200 New Jersey Avenue SE., Washington DC 20590–0001. Alternatively, the application in an appropriate format may be submitted by facsimile (fax) to: (202) 366–3753 or (202) 366–3308 or by electronic mail (email) to: *approvals@dot.gov*. Each application must be signed and certified to be correct by the applicant or, if the applicant is an organization, by an authorized officer or official representative of the organization. Any false statement or representation, or the knowing and willful concealment of a material fact, may subject the applicant to prosecution under the provisions of 18 U.S.C. 1001, and result in the denial or termination of a designation.

(b) Each application for approval as a certification agency must be in English and include the following information:

(1) Information required by the provisions in subpart H of this part;

(2) Name and address of the applicant, including place of incorporation if a corporation. In addition, if the applicant is not a resident of the United States, the name and address of a permanent resident of the United States designated in accordance with § 105.40 of this subchapter to serve as agent for service of process. A person approved as a certification agency is not a PHMSA agent or representative;

(3) A statement acknowledging that the Associate Administrator or a designated official may inspect, on demand, its records and facilities in so far as they relate to the certification activities and will cooperate in the conduct of such inspections; and

(4) Any additional information relevant to the applicant's qualifications, upon request of the Associate Administrator or a designated official.

(c) *UN Third-Party Packaging Certification Agency.* In addition to the requirements in paragraph (b) of this section, the application must include the following information:

(1) A listing, by DOT specification (or special permit) number, or U.N. designation, of the types of packagings for which certification authority is sought;

(2) A statement showing proof that the applicant has:

(i) The ability to review and evaluate design drawings, design and stress calculations;

(ii) The knowledge of the applicable regulations of subchapter C of this chapter and, when applicable, U.N. standards;

(iii) The ability to conduct or monitor and evaluate test procedures and results; and

(iv) The ability to review and evaluate the qualifications of materials and fabrication procedures.

(3) A statement that the applicant will perform its functions independent of the manufacturers and owners of the packagings concerned.

(4) If the applicant's principal place of business is in a country other than the United States, a copy of the designation from the Competent Authority of that country delegating to the applicant an approval or designated agency authority for the type of packaging for which a DOT designation is sought, and a statement that the Competent Authority also delegates similar authority to U.S. Citizens or organizations having designations under this subpart from PHMSA.

(d) *Fireworks Certification Agency.* Prior to reviewing, and certifying Division 1.4G consumer fireworks (UN0336) for compliance with the APA 87–1A, excluding appendices II through VI, (IBR, see §171.7 of this chapter) as specified in part 173 of this chapter, a person must apply to, and be approved by, the Associate Administrator to act as a Fireworks Certification Agency.

(1) *Fireworks Certification Agency applicant requirements.* The Fireworks Certification Agency applicant must—

(i) Be a U.S. resident, or for a non-U.S. resident, have a designated U.S. agent representative as specified in §105.40 of this subchapter;

(ii) Employ personnel with work experience in manufacturing or testing of fireworks or explosives; or a combination of work experience in manufacturing or testing of fireworks or explosives and a degree in the physical sciences or engineering from an accredited university;

(iii) Have the ability to:

(A) Review design drawings, and applications to certify that they are in accordance with the APA Standard 87–1; and

(B) Verify that the applicant has certified the thermal stability test procedures and results.

(iv) Must be independent of and not owned by any consumer fireworks manufacturer, distributor, import or export company, or proprietorship.

(2) *Fireworks Certification Agency application submittal requirements.* In addition to the requirements of paragraphs (b) and (d)(1) of this section, the Fireworks Certification Agency application must include—

(i) Name, address, and country of each facility where Division 1.4G consumer fireworks applications are reviewed and certified;

(ii) A detailed description of the qualifications of each individual the applicant proposes to employ to review, and certify that the requirements specified by part 173 of this chapter and the APA Standard 87–1 have been met;

(iii) Written operating procedures to be used by the Fireworks Certification Agency to review and certify that a Division 1.4G consumer fireworks application meets the requirements specified in the APA Standard 87–1;

(iv) Name, address, and principal business activity of each person having any direct or indirect interest in the applicant greater than three percent and any direct or indirect ownership interest in each subsidiary or division of the applicant; and

(v) A statement that the applicant will perform its functions independent of the manufacturers, transporters, importers, and owners of the fireworks.

(e) *Lighter certification agency.* Prior to examining and testing lighters (UN1057) for certification of compliance with the requirements of §173.308 of this chapter a person must submit an application to, and be approved by, the

Associate Administrator to act as a lighter certification agency. In addition to paragraph (b) of this section, the application must include the following information:

(1) The name and address of each facility where lighters are examined and tested;

(2) A detailed description of the applicant's qualifications and ability to, examine and test lighters and certify that the requirements specified by §173.308 of this chapter have been met; and

(3) A statement that the agency is independent of and not owned by a lighter manufacturer, distributor, import or export company, or proprietorship.

(f) *Portable tank and MEGC certification agencies.* Prior to inspecting portable tanks or multi-element gas containers (MEGCs) for certification of compliance with the requirements of §§178.273 and 178.74 of this chapter, respectively, a person must submit an application to, and be approved by, the Associate Administrator to act as a certification agency. In addition to paragraph (b) of this section, the application must provide the following information:

(1) The name and address of each facility where the portable tank or MEGC, as applicable, is examined and tested;

(2) A detailed description of the applicant's qualifications and ability to examine and test portable tanks or MEGCs, as applicable, and certify that the requirements specified by §178.273 of this chapter for the approval of UN portable tanks, or §178.74 of this chapter for the approval of MEGCs have been met; and

(3) A statement indicating that the agency is independent of and not owned by a portable tank or MEGC manufacturer, owner, or distributor.

[78 FR 42473, July 16, 2013, as amended at 78 FR 60750, Oct. 2, 2013; 81 FR 35512, June 2, 2016; 85 FR 75704, Nov. 25, 2020]

§ 107.403 Designation of certification agencies.

(a) If the Associate Administrator determines that an application contains all the required information, the applicant is sent a letter of designation and assigned an identification code.

(b) If the Associate Administrator determines that an application does not contain all the required information, the application is denied and the applicant is sent a written notice containing all the reasons for the denial.

(c) Within 30 days of an initial denial of an application under paragraph (b) of this section, the applicant may file an amended application. If the application is denied by the Associate Administrator of Hazardous Materials Safety, the applicant may, within 20 days of receipt of the decision, request reconsideration by the Associate Administrator as set forth in §107.715. If the reconsideration is denied by the Associate Administrator, the applicant may appeal the Associate Administrator's decision, within 30 days of the Associate Administrator's decision, to the Administrator of PHMSA, as specified in §107.717.

(d) The Associate Administrator may modify, suspend, or terminate an approval submitted under this subpart as set forth in §107.713.

[Amdt. 107–13, 50 FR 10062, Mar. 13, 1985, as amended by Amdt. 107–23, 56 FR 66157, Dec. 20, 1991; Amdt. 107–32, 59 FR 49131, Sept. 26, 1994; 66 FR 45377, Aug. 28, 2001; 78 FR 42474, July 16, 2013]

§ 107.404 Conditions of designation.

(a) Each designation made under this subpart contains the following conditions:

(1) The designated approval or certification agency may use only testing equipment that it has determined, through personal inspection, to be suitable for the purpose.

(2) Each approval certificate and certification issued by the designated approval agency must contain the name and identification code of the approval agency.

(3) Each approval certificate and certification must be in a format acceptable to the Associate Administrator.

(b) The designated approval agency shall notify the Associate Administrator within 20 days after the date there is any change in the information submitted under §107.402.

(c) The designated approval agency shall comply with all of the terms and

conditions stated in its letter of designation under the subpart.

(d) Nothing in this part relieves a manufacturer or owner of a packaging of responsibility for compliance with any of the applicable requirements of this title.

[Amdt. 107–13, 50 FR 10062, Mar. 13, 1985, as amended by Amdt. 107–23, 56 FR 66157, Dec. 20, 1991; 66 FR 45377, Aug. 28, 2001]

§ 107.405 [Reserved]

Subpart F—Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers, Assemblers, Repairers, Inspectors, Testers, and Design Certifying Engineers

§ 107.501 Scope.

(a) This subpart establishes a registration procedure for persons who are engaged in the manufacture, assembly, inspection and testing, certification, or repair of a cargo tank or a cargo tank motor vehicle manufactured in accordance with a DOT specification under subchapter C of this chapter or under terms of a special permit issued under this part.

(b) Persons engaged in continuing qualification and maintenance of cargo tanks and cargo tank motor vehicles must be familiar with the requirements set forth in part 180, subpart E, of this chapter.

[Amdt. 107–20, 55 FR 37047, Sept. 7, 1990]

§ 107.502 General registration requirements.

(a) *Definitions:* For purposes of this subpart—

(1) *Assembly* means the performance of any of the following functions when the function does not involve welding on the cargo tank wall:

(i) The mounting of one or more tanks or cargo tanks on a motor vehicle or to a motor vehicle suspension component;

(ii) The installation of equipment or components necessary to meet the specification requirements prior to the certification of the cargo tank motor vehicle; or

(iii) The installation of linings, coatings, or other materials to the inside of a cargo tank wall.

(2) The terms *Authorized Inspector*, *Cargo tank*, *Cargo tank motor vehicle*, *Design Certifying Engineer*, *Registered Inspector*, and *Person* are defined in §171.8 of this chapter.

(3) The terms *cargo tank wall* and *manufacturer* are defined in §178.320(a), and *repair* is defined in §180.403 of this chapter.

(b) No person may engage in the manufacture, assembly, certification, inspection or repair of a cargo tank or cargo tank motor vehicle manufactured under the terms of a DOT specification under subchapter C of this chapter or a special permit issued under this part unless the person is registered with the Department in accordance with the provisions of this subpart. A person employed as an inspector or design certifying engineer is considered to be registered if the person's employer is registered. The requirements of this paragraph (b) do not apply to a person engaged in the repair of a DOT specification cargo tank used in the transportation of hazardous materials in the United States in accordance with §180.413(a)(1)(iii) of this chapter.

(c) A person who performs functions which are subject to the provisions of this subpart may perform only those functions which have been identified to the Department in accordance with the procedures of this subpart.

(d) Registration statements must be in English, contain all the information required by this subpart, and be submitted to: FMCSA Hazardous Materials Division—MC–SEH, West Building, 1200 New Jersey Avenue SE, Washington, DC 20590.

(e) Upon determination that a registration statement contains all the information required by this subpart, the Department will send the registrant a letter confirming receipt of the registration application and assigning a registration number to that person. A separate registration number will be assigned for each cargo tank manufacturing, assembly, repair facility or

other place of business identified by the registrant.

[Amdt. 107–20, 54 FR 25003, June 12, 1989; 55 FR 37047, Sept. 7, 1990, as amended by Amdt. 107–22, 55 FR 39978, Oct. 1, 1990; Amdt. 107–23, 56 FR 66157, Dec. 20, 1991; Amdt. 107–28, 58 FR 46873, Sept. 3, 1993; Amdt. 107–39, 61 FR 51337, Oct. 1, 1996; 67 FR 61011, Sept. 27, 2002; 68 FR 19273, Apr. 18, 2003; 72 FR 55683, Oct. 1, 2007; 82 FR 15832, Mar. 30, 2017; 87 FR 79765, Dec. 27, 2022]

§ 107.503 Registration statement.

(a) Each registration statement must be in English and contain the following information:

(1) Name;

(2) Street address, mailing address and telephone number for each facility or place of business;

(3) A statement indicating whether the facility uses mobile testing/inspection equipment to perform inspections, tests, or repairs at a location other than the address listed in paragraph (a)(2) of this section.

(4) A statement signed by the person responsible for compliance with the applicable requirements of this chapter, certifying knowledge of those requirements and that each employee who is a Registered Inspector or Design Certifying Engineer meets the minimum qualification requirements set forth in §171.8 of this chapter for ''Registered Inspector'' or ''Design Certifying Engineer''. The following language may be used.

I certify that all Registered Inspectors and Design Certifying Engineers used in performance of the prescribed functions meet the minimum qualification requirements set forth in 49 CFR 171.8, that I am the person responsible for ensuring compliance with the applicable requirements of this chapter, and that I have knowledge of the requirements applicable to the functions to be performed.

(5) A description of the specific functions to be performed on cargo tanks or cargo tank motor vehicles, e.g.:

(i) Manufacture,

(ii) Assembly,

(iii) Inspection and testing (specify type, e.g., external or internal visual inspection, lining inspection, hydrostatic pressure test, leakage test, thickness test),

(iv) Certification,

(v) Repair, or

(vi) Equipment manufacture;

(6) An identification of the types of DOT specification and special permit cargo tanks or cargo tank motor vehicles which the registrant intends to manufacture, assemble, repair, inspect, test or certify;

(7) A statement indicating whether the registrant employs Registered Inspectors or Design Certifying Engineers to conduct certification, inspection or testing functions addressed by this subpart. If the registrant engages a person who is not an employee of the registrant to perform these functions, provide the name, address and registration number of that person; and

(8) If the registrant is not a resident of the United States, the name and address of a permanent resident of the United States designated in accordance with §105.40 to serve as agent for service of process.

(b) In addition to the information required under paragraph (a) of this section, each person who manufactures a cargo tank or cargo tank motor vehicle must submit a copy of the manufacturer's current ASME Certificate of Authorization for the use of the ASME ''U'' stamp.

(c) In addition to the information required under paragraph (a) of this section, each person who repairs a cargo tank or cargo tank motor vehicle must submit a copy of the repair facility's current National Board Certificate of Authorization for the use of the ''R'' stamp or ASME Certificate of Authorization for the use of the ASME ''U'' stamp. Any person who repairs MC-series cargo tanks which are not certified to the ASME Code must submit a copy of the National Board or ASME Certificate of Authorization to PHMSA before June 30, 1992.

[Amdt. 107–20, 54 FR 25003, June 12, 1989; 55 FR 37047, Sept. 7, 1990; 57 FR 365, Jan. 6, 1992; Amdt. 107–32, 59 FR 49131, Sept. 26, 1994; Amdt. 107–39, 61 FR 51337, Oct. 1, 1996; 63 FR 52846, Oct. 1, 1998; 68 FR 19273, Apr. 18, 2003]

§ 107.504 Period of registration, updates, and record retention.

(a) Registration will be for a maximum of six years from the date of the original registration.

(b) Any correspondence with the Department must contain the registrant's name and registration number.

(c) A registration must be renewed every six years or within thirty days of reissuance of an ASME or National Board Certification, whichever occurs first, by submitting an up-to-date registration statement containing the information prescribed by §107.503. Any person initially registered under the provisions of §107.502 and who is in good standing is eligible for renewal.

(d) A registrant shall provide written notification to the Department within thirty days of any of the following occurrences:

(1) Any change in the registration information submitted under §107.503;

(2) Replacement of the person responsible for compliance with the requirements in §107.503(a)(4). If this occurs, the registrant shall resubmit the required certification;

(3) Loss of ASME or National Board Certificate of Authorization; or

(4) A change in function; such as, from assembly to manufacture, an addition of a function, or a change to the types of inspections, tests or certifications of cargo tanks or cargo tank motor vehicles.

(e) Each registrant shall maintain a current copy of the registration information submitted to the Department and a current copy of the registration number identification received from the Department at the location identified in §107.503(a)(2) during such time the person is registered with the Department and for two years thereafter.

(f) The issuance of a registration number under this subpart is not an approval or endorsement by the Department of the qualifications of any person to perform the specified functions.

[Amdt. 107–20, 54 FR 25003, June 12, 1989; 55 FR 37048, Sept. 7, 1990, as amended by Amdt. 107–20, 56 FR 27875, June 17, 1991; Amdt. 107–37, 61 FR 18931, Apr. 29, 1996; 71 FR 54390, Sept. 14, 2006]

Subpart G—Registration of Persons Who Offer or Transport Hazardous Materials

SOURCE: Amdt. 107–26, 57 FR 30630, July 9, 1992, unless otherwise noted.

§107.601 Applicability.

(a) The registration and fee requirements of this subpart apply to any person who offers for transportation, or transports, in foreign, interstate or intrastate commerce—

(1) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in §173.403 of this chapter;

(2) More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material (see §173.50 of this chapter) in a motor vehicle, rail car or freight container;

(3) More than one L (1.06 quarts) per package of a material extremely toxic by inhalation (*i.e.*, ''material poisonous by inhalation,'' as defined in §171.8 of this chapter, that meets the criteria for ''hazard zone A,'' as specified in §173.116(a) or §173.133(a) of this chapter);

(4) A shipment of a quantity of hazardous materials in a bulk packaging (see §171.8 of this chapter) having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids;

(5) A shipment in other than a bulk packaging of 2,268 kg (5,000 pounds) gross weight or more of one class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required for that class, under the provisions of subpart F of part 172 of this chapter; or

(6) Except as provided in paragraph (b) of this section, a quantity of hazardous material that requires placarding, under provisions of subpart F of part 172 of this chapter.

(b) Paragraph (a)(6) of this section does not apply to those activities of a farmer, as defined in §171.8 of this chapter, that are in direct support of the farmer's farming operations.

(c) In this subpart, the term ''shipment'' means the offering or loading of hazardous material at one loading facility using one transport vehicle, or the transport of that transport vehicle.

[65 FR 7309, Feb. 14, 2000, as amended at 67 FR 61011, Sept. 27, 2002]

§107.606 Exceptions.

(a) The following are excepted from the requirements of this subpart:

(1) An agency of the Federal government.

(2) A State agency.

(3) An agency of a political subdivision of a State.

(4) An Indian tribe.

(5) An employee of any of those entities in paragraphs (a)(1) through (a)(4) of this section with respect to the employee's official duties.

(6) A hazmat employee (including, for purposes of this subpart, the owner-operator of a motor vehicle that transports in commerce hazardous materials, if that vehicle at the time of those activities, is leased to a registered motor carrier under a 30-day or longer lease as prescribed in 49 CFR part 376 or an equivalent contractual agreement).

(7) A person domiciled outside the United States, who offers solely from a location outside the United States, hazardous materials for transportation in commerce, *provided* that the country of which such a person is a domiciliary does not require persons domiciled in the United States, who solely offer hazardous materials for transportation to the foreign country from places in the United States, to file a registration statement or to pay a registration fee.

(b) Upon making a determination that persons domiciled in the United States, who offer hazardous materials for transportation to a foreign country solely from places in the United States, must file registration statements or pay fees to that foreign country, the U.S. Competent Authority will provide notice of such determination directly to the Competent Authority of that foreign country and by publication in the FEDERAL REGISTER. Persons who offer hazardous materials for transportation to the United States from that foreign country must file a registration statement and pay the required fee no later than 60 days following publication of the determination in the FEDERAL REGISTER.

[Amdt. 107–34, 60 FR 27233, May 23, 1995, as amended at 63 FR 52847, Oct. 1, 1998; 72 FR 24538, May 3, 2007]

§ 107.608 General registration requirements.

(a) Each person subject to this subpart must submit a complete and accurate registration statement on DOT Form F 5800.2 not later than June 30 for each registration year, or in time to comply with paragraph (b) of this section, whichever is later. Each registration year begins on July 1 and ends on June 30 of the following year.

(b) No person required to file a registration statement may transport a hazardous material or cause a hazardous material to be transported or shipped, unless such person has on file, in accordance with § 107.620, a current Certificate of Registration in accordance with the requirements of this subpart.

(c) A registrant whose name or principal place of business has changed during the year of registration must notify PHMSA of that change by submitting an amended registration statement not later than 30 days after the change.

(d) Copies of DOT Form F 5800.2 and instructions for its completion may be obtained from the Outreach, Training and Grants Division, PHH–50, U.S. Department of Transportation, Washington, DC 20590–0001, by calling 202–366–4109, or via the Internet at *http://phmsa.dot.gov/hazmat/registration*.

(e) If the registrant is not a resident of the United States, the registrant must attach to the registration statement the name and address of a permanent resident of the United States, designated in accordance with § 105.40, to serve as agent for service of process.

[Amdt. 107–26, 57 FR 30630, July 9, 1992, as amended by Amdt. 107–31, 59 FR 32932, June 27, 1994; 65 FR 7309, Feb. 14, 2000; 67 FR 61011, Sept. 27, 2002; 70 FR 56090, Sept. 23, 2005; 72 FR 55683, Oct. 1, 2007; 76 FR 56311, Sept. 13, 2011]

§ 107.612 Amount of fee.

(a) For purposes of determining the applicable annual registration fee specified in paragraph (b) of this section, the following classification applies to each person required to register and pay a registration fee:

(1) *Small business.* A person that qualifies as a small business, under criteria specified in 13 CFR part 121 applicable to the North American Industry Classification System (NAICS) code that describes that person's primary commercial activity.

(2) *Not-for-profit organization.* An organization exempt from taxation under 26 U.S.C. 501(a).

(3) *Other than a small business or not-for-profit organization.* Each person that does not meet the criteria specified in paragraph (a)(1) or (a)(2) of this section.

(b) Each person subject to the requirements of this subpart must pay the processing fee specified in paragraph (c) of this section and the annual registration fee set forth in the following table:

Registration year	Small business	Not-for-profit organization	Other than small business or not-for-profit organization
2014–2015 and later	$250	$250	$2,575
2013–2014	125	125	1,300
2012–2013, 2011–2012, 2010–2011	250	250	2,575
2009–2010, 2008–2009, 2007–2008, 2006–2007	250	250	975
2005–2006, 2004–2005, 2003–2004	125	125	275
2002–2003, 2001–2002, 2000–2001	275	(1)	1,975
1999–2000 and earlier	250	250	250

[1] Fee appropriate for small or other than small business.

(c) Each person submitting a registration statement must pay the following processing fee in addition to the registration fees specified in paragraph (b) of this section:

(1) For registration years 2000–2001 and later, the processing fee is $25 for each registration statement filed. A single statement may be filed for one, two, or three registration years as provided in §107.616(c).

(2) For registration years 1999–2000 and earlier, the processing fee is $50 for each registration statement filed. A separate statement must be filed for each registration year.

[78 FR 23506, Apr. 19, 2013]

§107.616 Payment procedures.

(a) Each person subject to the requirements of this subpart must mail the registration statement and payment in full to the U.S. Department of Transportation—Hazardous Materials, P.O. Box 6200–01, Portland, OR 97228–6200, or submit the statement and payment electronically through the Department's e-Commerce internet site. Access to this service is provided at *https://www.phmsa.dot.gov/hazmat/registration*. A registrant required to file an amended registration statement under §107.608(c) of this subpart must mail it to the same address or submit it through the same internet site.

(b) Payment must be made by certified check, cashier's check, personal check, or money order in U.S. funds and drawn on a U.S. bank, payable to the U.S. Department of Transportation and identified as payment for the ''Hazmat Registration Fee,'' or by completing an authorization for payment by credit card or other electronic means of payment acceptable to the Department on the registration statement or as part of an Internet registration as provided in paragraph (a) of this section.

(c) Payment must correspond to the total fees properly calculated in the ''Amount Due'' block of the DOT form F 5800.2. A person may elect to register and pay the required fees for up to three registration years by filing one complete and accurate registration statement.

[Amdt. 107–26, 57 FR 30630, July 9, 1992, as amended by Amdt. 107–26, 58 FR 12545, Mar. 5, 1993; 65 FR 7310, Feb. 14, 2000; 67 FR 58345, Sept. 16, 2002; 68 FR 1346, Jan. 9, 2003; 71 FR 54390, Sept. 14, 2006; 72 FR 24538, May 3, 2007; 76 FR 56311, Sept. 13, 2011; 84 FR 3999, Feb. 14, 2019]

§107.620 Recordkeeping requirements.

(a) Each person subject to the requirements of this subpart, or its agent designated under §107.608(e), must maintain at its principal place of business for a period of three years from the date of issuance of each Certificate of Registration:

(1) A copy of the registration statement filed with PHMSA; and

(2) The Certificate of Registration issued to the registrant by PHMSA.

(b) After January 1, 1993, each motor carrier subject to the requirements of this subpart must carry a copy of its

current Certificate of Registration issued by PHMSA or another document bearing the registration number identified as the ''U.S. DOT Hazmat Reg. No.'' on board each truck and truck tractor (not including trailers and semi-trailers) used to transport hazardous materials subject to the requirements of this subpart. The Certificate of Registration or document bearing the registration number must be made available, upon request, to enforcement personnel.

(c) In addition to the requirements of paragraph (a) of this section, after January 1, 1995, each person who transports by vessel a hazardous material subject to the requirements of this subpart must carry on board the vessel a copy of its current Certificate of Registration or another document bearing the current registration number identified as the ''U.S. DOT Hazmat Reg. No.''

(d) Each person subject to this subpart must furnish its Certificate of Registration (or a copy thereof) and all other records and information pertaining to the information contained in the registration statement to an authorized representative or special agent of DOT upon request.

[Amdt. 107–26, 57 FR 30630, July 9, 1992, as amended at 57 FR 37902, Aug. 21, 1992; Amdt. 107–26, 58 FR 12545, Mar. 5, 1993; Amdt. 107–31, 59 FR 32932, June 27, 1994]

Subpart H—Approvals, Registrations and Submissions

SOURCE: Amdt. 107–38, 61 FR 21100, May 9, 1996, unless otherwise noted.

§ 107.701 Purpose and scope.

(a) This subpart prescribes procedures for the issuance, modification and termination of approvals, and the submission of registrations and reports, as required by this chapter.

(b) The procedures of this subpart are in addition to any requirements in subchapter C of this chapter applicable to a specific approval, registration or report. If compliance with both a specific requirement of subchapter C of this chapter and a procedure of this subpart is not possible, the specific requirement applies.

(c) Registration under subpart F or G of this part is not subject to the procedures of this subpart.

[Amdt. 107–38, 61 FR 21100, May 9, 1996; Amdt. 107–38, 61 FR 27948, June 3, 1996]

§ 107.705 Registrations, reports, and applications for approval.

(a) A person filing a registration, report, or application for an approval, or a renewal or modification of an approval subject to the provisions of this subpart must—

(1) File the registration, report, or application with the Associate Administrator for Hazardous Materials Safety (Attention: Approvals, PHH–32), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Alternatively, the document with any attached supporting documentation in an appropriate format may be filed by facsimile (fax) to: (202) 366–3753 or (202) 366–3308 or by electronic mail (e-mail) to: *approvals@dot.gov*.

(2) Identify the section of the chapter under which the registration, report, or application is made;

(3) If a report is required by an approval, a registration or a special permit, identify the approval, registration or special permit number;

(4) Provide the name, street and mailing addresses, e-mail address optional, and telephone number of the person on whose behalf the registration, report, or application is made and, if different, the person making the filing;

(5) If the person on whose behalf the filing is made is not a resident of the United States, provide a designation of agent for service in accordance with § 105.40;

(6) Provide a description of the activity for which the registration or report is required; and

(7) Provide additional information as requested by the Associate Administrator, if the Associate Administrator determines that a filing lacks pertinent information or otherwise does not comply with applicable requirements.

(b) *Description of approval proposal.* In addition to the provisions in paragraph (a) for an approval, an application for

an approval, or an application for modification or renewal of an approval, the applicant must include the following information that is relevant to the approval application—

(1) A description of the activity for which the approval is required;

(2) The proposed duration of the approval;

(3) The transport mode or modes affected, as applicable;

(4) Any additional information specified in the section containing the approval;

(5) For an approval which provides exceptions from regulatory requirements or prohibitions—

(i) Identification of any increased risk to safety or property that may result if the approval is granted, and specification of the measures that the applicant considers necessary or appropriate to address that risk; and

(ii) Substantiation, with applicable analyses or evaluations, if appropriate, demonstrating that the proposed activity will achieve a level of safety that is at least equal to that required by the regulation; and

(6) For lithium cells and batteries used for a medical device and transported in accordance with §173.185(g) of this chapter, details on the extent to which the destination(s) of the lithium cell or battery is not serviced daily by cargo aircraft.

(c) For an approval with an expiration date, each application for renewal or modification must be filed in the same manner as an original application. If, at least 60 days before an existing approval expires the holder files an application for renewal that is complete and conforms to the requirements of this section, the approval will not expire until final administrative action on the application for renewal has been taken. Operation under an expired approval not filed within 60 days of the expiration date is prohibited. This paragraph does not limit the authority of the Associate Administrator to modify, suspend or terminate an approval under §107.713.

(d) To request confidential treatment for information contained in the application, the applicant shall comply with §105.30(a).

[Amdt. 107–38, 61 FR 21100, May 9, 1996, as amended at 65 FR 50457, Aug. 18, 2000; 67 FR 61011, Sept. 27, 2002; 70 FR 56090, Sept. 23, 2005; 70 FR 73162, Dec. 9, 2005; 72 FR 55683, Oct. 1, 2007; 79 FR 15043, Mar. 18, 2014; 80 FR 54437, Sept. 10, 2015; 87 FR 78010, Dec. 21, 2022]

§107.709 Processing of an application for approval, including an application for renewal or modification.

(a) No public hearing or other formal proceeding is required under this subpart before the disposition of an application.

(b) The Associate Administrator will review an application for an approval, modification of an approval, or renewal of an approval in conformance with the standard operating procedures specified in appendix A of this part (''Standard Operating Procedures for Special Permits and Approvals''). The Associate Administrator will conduct an expedited review process for shipments of lithium cells and batteries specifically used for medical devices, as outlined in §173.185(g) of this chapter. At any time during the processing of an application, the Associate Administrator may request additional information from the applicant. If the applicant does not respond to a written request for additional information within 30 days of the date the request was received, the Associate Administrator may deem the application incomplete and deny it. The Associate Administrator may grant a 30-day extension to respond to the written request for additional information if the applicant makes such a request in writing.

(c) The Associate Administrator may grant or deny an application, in whole or in part. At the Associate Administrator's discretion, an application may be granted subject to provisions that are appropriate to protect health, safety and property. The Associate Administrator may impose additional provisions not specified in the application, or delete conditions in the application which are unnecessary.

(d) The Associate Administrator may grant an application on finding that—

(1) The application complies with this subpart;

(2) The application demonstrates that the proposed activity will achieve a level of safety that—

(i) Is at least equal to that required by the regulation, or

(ii) If the regulations do not establish a level of safety, is consistent with the public interest and adequately will protect against the risks to life and property inherent in the transportation of hazardous materials in commerce;

(3) The application states all material facts, and contains no materially false or materially misleading statement;

(4) The applicant meets the qualifications required by applicable regulations; and

(5) The applicant is fit to conduct the activity authorized by the approval, or renewal or modification of approval. This assessment may be based on information in the application, prior compliance history of the applicant, and other information available to the Associate Administrator.

(e) Unless otherwise specified in this chapter or by the Associate Administrator, an approval in which a term is not specified does not expire.

(f) The Associate Administrator notifies the applicant in writing of the decision on the application. A denial contains a brief statement of reasons. For shipments of lithium cells and batteries specifically used for medical devices, as outlined in §173.185(g) of this chapter, an approval shall be considered and either granted or denied not later than 45 days after receipt of a completed application.

[Amdt. 107-38, 61 FR 21100, May 9, 1996, as amended at 80 FR 54437, Sept. 10, 2015; 87 FR 78010, Dec. 21, 2022]

§ 107.711 Withdrawal.

An application may be withdrawn at any time before a decision to grant or deny it is made. Withdrawal of an application does not authorize the removal of any related records from the PHMSA dockets or files. Applications that are eligible for confidential treatment under §105.30 will remain confidential after the application is withdrawn. The duration of this confidential treatment for trade secrets and commercial or financial information is indefinite, unless the party requesting the confidential treatment of the materials notifies the Associate Administrator that the confidential treatment is no longer required.

[Amdt. 107–38, 61 FR 21100, May 9, 1996, as amended at 67 FR 61011, Sept. 27, 2002]

§ 107.713 Approval modification, suspension or termination.

(a) The Associate Administrator may modify an approval on finding that—

(1) Modification is necessary to conform an existing approval to relevant statutes and regulations as they may be amended from time to time; or

(2) Modification is required by changed circumstances to enable the approval to continue to meet the standards of §107.709(d).

(b) The Associate Administrator may modify, suspend or terminate an approval, as appropriate, on finding that—

(1) Because of a change in circumstances, the approval no longer is needed or no longer would be granted if applied for;

(2) The application contained inaccurate or incomplete information, and the approval would not have been granted had the application been accurate and complete;

(3) The application contained deliberately inaccurate or incomplete information; or

(4) The holder knowingly has violated the terms of the approval or an applicable requirement of this chapter in a manner demonstrating lack of fitness to conduct the activity for which the approval is required.

(c) Except as provided in paragraph (d) of this section, before an approval is modified, suspended or terminated, the Associate Administrator notifies the holder in writing of the proposed action and the reasons for it, and provides an opportunity to show cause why the proposed action should not be taken.

(1) The holder may file a written response with the Associate Administrator within 30 days of receipt of notice of the proposed action.

(2) After considering the holder's or party's written response, or after 30 days have passed without response since receipt of the notice, the Associate Administrator notifies the holder

in writing of the final decision with a brief statement of reasons.

(d) The Associate Administrator, if necessary to avoid a risk of significant harm to persons or property, may in the notification declare the proposed action immediately effective.

§ 107.715 Reconsideration.

(a) An applicant or a holder may request that the Associate Administrator reconsider a decision under §107.709(f) or §107.713(c). The request must:

(1) Be in writing and filed within 20 days of receipt of the decision;

(2) State in detail any alleged errors of fact and law;

(3) Enclose any additional information needed to support the request to reconsider; and

(4) State in detail the modification of the final decision sought.

(b) The Associate Administrator considers newly submitted information on a showing that the information could not reasonably have been submitted during application processing.

(c) The Associate Administrator grants or denies, in whole or in part, the relief requested and informs the requesting person in writing of the decision.

§ 107.717 Appeal.

(a) A person who requested reconsideration under §107.715 may appeal to the Administrator the Associate Administrator's decision on the request. The appeal must:

(1) Be in writing and filed within 30 days of receipt of the Associate Administrator's decision on reconsideration;

(2) State in detail any alleged errors of fact and law;

(3) Enclose any additional information needed to support the appeal; and

(4) State in detail the modification of the final decision sought.

(b) The Administrator, if necessary to avoid a risk of significant harm to persons or property, may declare the Associate Administrator's action effective pending a decision on appeal.

(c) The Administrator grants or denies, in whole or in part, the relief requested and informs the appellant in writing of the decision on appeal. The Administrator's decision on appeal is the final administrative action.

Subpart I—Approval of Independent Inspection Agencies, Cylinder Requalifiers, and Non-domestic Chemical Analyses and Tests of DOT Specification Cylinders

SOURCE: 67 FR 51639, Aug. 8, 2002, unless otherwise noted.

§ 107.801 Purpose and scope.

(a) This subpart prescribes procedures for—

(1) A person who seeks approval to be an independent inspection agency to perform tests, inspections, verifications and certifications of DOT specification cylinders or UN pressure receptacles as required by parts 178 and 180 of this chapter;

(2) A person who seeks approval to engage in the requalification (*e.g.* inspection, testing, or certification), rebuilding, or repair of a cylinder manufactured in accordance with a DOT specification or a pressure receptacle in accordance with a UN standard under subchapter C of this chapter or under the terms of a special permit issued under this part, or a cylinder or tube manufactured in accordance with a TC, CTC, CRC, or BTC specification under the Transport Canada TDG Regulations (IBR; *see* §171.7 of this chapter);

(3) A person who seeks approval to perform the manufacturing chemical analyses and tests of DOT specification cylinders, special permit cylinders, or UN pressure receptacles outside the United States.

(b) No person may engage in a function identified in paragraph (a) of this section unless approved by the Associate Administrator in accordance with the provisions of this subpart. Each person must comply with the applicable requirements in this subpart. In addition, the procedural requirements in subpart H of this part apply to the filing, processing, and termination of an approval issued under this subpart.

[67 FR 51639, Aug. 8, 2002, as amended at 71 FR 33873, June 12, 2006; 78 FR 60750, Oct. 2, 2013; 82 FR 15832, Mar. 30, 2017]

§ 107.803 Approval of an independent inspection agency (IIA).

(a) *General.* Prior to performing cylinder inspections and verifications required by parts 178 and 180 of this chapter, a person must apply to the Associate Administrator for an approval as an independent inspection agency. A person approved as an independent inspection agency is not an PHMSA agent or representative.

(b) *Criteria.* No applicant for approval as an independent inspection agency may be engaged in the manufacture of cylinders for use in the transportation of hazardous materials, or be directly or indirectly controlled by, or have a financial involvement with, any entity that manufactures cylinders for use in the transportation of hazardous materials, except for providing services as an independent inspector.

(c) *Application information.* Each applicant must submit an application in conformance with §107.705 containing the information prescribed in §107.705(a). In addition, the application must contain the following information:

(1) Name and address of each facility where tests and inspections are to be performed.

(2) Detailed description of the inspection and testing facilities to be used by the applicant.

(3) Detailed description of the applicant's qualifications and ability to perform the inspections and to verify the inspections required by parts 178 and 180 of this chapter; or those required under the terms of a special permit issued under this part.

(4) Name, address, and principal business activity of each person having any direct or indirect ownership interest in the applicant greater than three percent and any direct or indirect ownership interest in each subsidiary or division of the applicant.

(5) Name of each individual whom the applicant proposes to employ as an inspector and who will be responsible for certifying inspection and test results, and a statement of that person's qualifications.

(6) An identification or qualification number assigned to each inspector who is supervised by a certifying inspector identified in paragraph (c)(5) of this section.

(7) A statement that the applicant will perform its functions independent of the manufacturers and owners of the cylinders.

(8) If the applicant's principal place of business is in a country other than the United States, the Associate Administrator may approve the applicant on the basis of an approval issued by the Competent Authority of the country of manufacture. The Competent Authority must maintain a current listing of approved IIAs and their identification marks. The applicant must provide a copy of the designation from the Competent Authority of that country delegating to the applicant an approval or designated agency authority for the type of packaging for which a DOT or UN designation is sought; and

(9) The signature of the person certifying the approval application and the date on which it was signed.

(d) *Facility inspection.* 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 facilities and records. The person seeking approval must bear the cost of the inspection.

(e) After approval, the Associate Administrator may authorize, upon request, the independent inspection agency to perform other inspections and functions for which the Associate Administrator finds the applicant to be qualified. Such additional authorizations will be noted on each inspection agency's approval documents.

[67 FR 51639, Aug. 8, 2002, as amended at 68 FR 24659, May 8, 2003; 71 FR 33873, June 12, 2006; 78 FR 60750, Oct. 2, 2013; 85 FR 85415, Dec. 28, 2020]

§ 107.805 Approval of cylinder and pressure receptacle requalifiers.

(a) *General.* A person must meet the requirements of this section to be approved to inspect, test, certify, repair, or rebuild a cylinder in accordance with a DOT specification or a UN pressure receptacle under subpart C of part 178 or subpart C of part 180 of this chapter, or under the terms of a special permit issued under this part, or a TC,

CTC, CRC, or BTC specification cylinder or tube manufactured in accordance with the TDG Regulations (IBR, see §171.7 of this chapter).

(b) *Independent Inspection Agency Review.* Each applicant must arrange for an independent inspection agency, approved by the Associate Administrator pursuant to this subpart, to perform a review of its inspection or requalification operation. The person seeking approval must bear the cost of the inspection. A list of approved independent inspection agencies is available from the Associate Administrator at the address listed in §107.705. Assistance in obtaining an approval is available from the same address.

(c) *Application for approval.* If the inspection performed by an independent inspection agency is completed with satisfactory results, the applicant must submit a letter of recommendation from the independent inspection agency, an inspection report, and an application containing the information prescribed in §107.705(a). In addition, the application must contain—

(1) The name of the facility manager;

(2) The types of DOT specification or special permit cylinders, UN pressure receptacles, or TC, CTC, CRC, or BTC specification cylinders or tubes that will be inspected, tested, repaired, or rebuilt at the facility;

(3) A certification that the facility will operate in compliance with the applicable requirements of subchapter C of this chapter;

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

(5) For a mobile unit operation (as defined in §180.203 of subchapter C of this chapter), the type of equipment to be used, the specific vehicles to be used, the geographic area the applicant is requesting to operate within, and any differences between the mobile operation and the facility operation as described under paragraph (c)(2) of this section.

(d) *Issuance of requalifier identification number (RIN).* The Associate Administrator issues a RIN as evidence of approval to requalify DOT specification or special permit cylinders, or TC, CTC, CRC, or BTC specification cylinders or tubes, or UN pressure receptacles if it is determined, based on the applicant's submission and other available information, that the applicant's qualifications and, when applicable, facility are adequate to perform the requested functions in accordance with the criteria prescribed in subpart C of part 180 of this subchapter or TDG Regulations, as applicable.

(e) *Expiration of RIN.* Unless otherwise provided in the issuance letter, an approval expires five years from the date of issuance, provided the applicant's facility and qualifications are maintained at or above the level observed at the time of inspection by the independent inspection agency, or at the date of the certification in the application for approval for requalifiers only performing inspections made under §180.209(g) of this chapter.

(f) *Exceptions.* The requirements in paragraphs (b) and (c) of this section do not apply to:

(1) A person who only performs inspections in accordance with §180.209(g) of this chapter provided the application contains the following, in addition to the information prescribed in §107.705(a): Identifies the DOT specification/special permit cylinders to be inspected; certifies the requalifier will operate in compliance with the applicable requirements of subchapter C of this chapter; certifies the persons performing inspections have been trained and have the information contained in each applicable CGA publication incorporated by reference in §171.7 of this chapter applicable to the requalifiers' activities; and includes the signature of the person making the certification and the date on which it was signed. Each person must comply with the applicable requirements in this subpart. In addition, the procedural requirements in subpart H of this part apply to the filing, processing and termination of an approval issued under this subpart; or

(2) A person holding a DOT-issued RIN to perform the requalification (inspect, test, certify), repair, or rebuild of DOT specification cylinders, that wishes to perform any of these actions on corresponding TC, CTC, CRC, or BTC cylinders or tubes may submit an application that, in addition to the information prescribed in §107.705(a):

Identifies the TC, CTC, CRC, or BTC specification cylinder(s) or tube(s) to be inspected; certifies the requalifier will operate in compliance with the applicable TDG Regulations; certifies the persons performing requalification have been trained in the functions applicable to the requalifiers' activities; and includes the signature of the person making the certification and the date on which it was signed. In addition, the procedural requirements in subpart H of this part apply to the filing, processing and termination of an approval issued under this subpart.

(3) A person holding a certificate of registration issued by Transport Canada in accordance with the TDG Regulations to perform the requalification (inspect, test, certify), repair, or rebuild of a TC, CTC, CRC, or BTC cylinder who performs any of these actions on corresponding DOT specification cylinders.

(g) Each holder of a current RIN shall report in writing any change in its name, address, ownership, testing equipment, or management or personnel performing any function under this section, to the Associate Administrator (PHH–32) within 20 days of the change.

[67 FR 51639, Aug. 8, 2002, as amended at 68 FR 24659, May 8, 2003; 68 FR 55544, Sept. 26, 2003; 70 FR 56090, Sept. 23, 2005; 70 FR 73162, Dec. 9, 2005; 71 FR 33873, June 12, 2006; 76 FR 56311, Sept. 13, 2011; 82 FR 15833, Mar. 30, 2017; 85 FR 85415, Dec. 28, 2020]

§ 107.807 Approval of non-domestic chemical analyses and tests.

(a) *General.* A person who seeks to manufacture DOT specification or special permit cylinders outside the United States must seek an approval from the Associate Administrator to perform the chemical analyses and tests of those cylinders outside the United States.

(b) *Application for approval.* Each applicant must submit an application containing the information prescribed in § 107.705(a). In addition, the application must contain—

(1) The name, address, and a description of each facility at which cylinders are to be manufactured and chemical analyses and tests are to be performed;

(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 to certify the analyses and tests and a statement from the agency indicating that it is independent of and not owned by a cylinder manufacturer, owner, or distributor; 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.

[67 FR 51639, Aug. 8, 2002, as amended at 81 FR 35513, June 2, 2016]

§ 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]

APPENDIX A TO PART 107—STANDARD OPERATING PROCEDURES FOR SPECIAL PERMITS AND APPROVALS

This appendix sets forth the standard operating procedures (SOPs) for processing an application for a special permit or an approval in conformance with 49 CFR parts 107 and 171 through 180. It is to be used by PHMSA for the internal management of its special permit and approval programs.

The words ''special permit'' and ''approval'' are defined in §107.1. PHMSA receives applications for: (1) Designation as an approval or certification agency, (2) a new special permit or approval, renewal or modification of an existing special permit or an existing approval, (3) granting of party status to an existing special permit, and (4) in conformance with §107.117, emergency processing for a special permit. Depending on the type of application, the SOP review process includes several phases, such as Completeness, Publication, Evaluation, and Disposition.

SPECIAL PERMIT AND APPROVAL EVALUATION REVIEW PROCESS

	Special permit	Non-classification approval	Classification approval	Registration approval
1. Completeness	X	X	X	X
2. Publication	X	.....		
3. Evaluation.				
a. Technical	X	X	X	
b. Safety Profile	X	X	.....	X
4. Disposition.				
a. Approval	X	X	X	X
b. Denial	X	X	X	X
c. Reconsideration/Appeal	X	X	X	X

An approval for assessing an applicant's ability to perform a function that does not involve classifying a hazardous material is described as a non-classification approval and certifies that: An approval holder is qualified to requalify, repair, rebuild, and/or manufacture cylinders stipulated in the HMR; an agency is qualified to perform inspections and other functions outlined in an approval and the HMR; an approval holder is providing an equivalent level of safety or safety that is consistent with the public interest in the transportation of hazardous materials outlined in the approval; and a radioactive package design or material classification fully complies with applicable domestic or international regulations. An approval for assessing the hazard class of a material is described as a classification approval and certifies that explosives, fireworks, chemical oxygen generators, self-reactive materials, and organic peroxides have been classed for manufacturing and/or transportation based on requirements stipulated in the HMR. Registration approvals include the issuance of a unique identification number used solely as an identifier or in conjunction with approval holder's name and address, or the issuance of a registration number that is evidence the approval holder is qualified to perform an HMR-authorized function, such as visually requalifying cylinders. This appendix does not include registrations issued under 49 CFR part 107, subpart G.

1. *Completeness*. PHMSA reviews all special permit and approval applications to determine if they contain all the information required under §107.105 (for a special permit), §107.117 (for emergency processing) or §107.402 (for designation as a certification agency) or §107.705 (for an approval). If PHMSA determines an application does not contain all the information needed to evaluate the safety of the actions requested in the application, the Associate Administrator may reject the application. If the application is rejected, PHMSA will notify the applicant of the deficiencies in writing. An applicant may resubmit a rejected application as a new

application, provided the newly submitted application contains the information PHMSA needs to make a determination.

Emergency special permit applications must comply with all the requirements prescribed in §107.105 for a special permit application, and contain sufficient information to determine that the applicant's request for emergency processing is justified under the conditions prescribed in §107.117.

2. *Publication.* When PHMSA determines an application for a new special permit or a request to modify an existing special permit is complete and sufficient, PHMSA publishes a summary of the application in the FEDERAL REGISTER in conformance with §107.113(b). This provides the public an opportunity to comment on a request for a new or a modification of an existing special permit.

3. *Evaluation.* The evaluation phase consists of two assessments, which may be done concurrently, a technical evaluation and a safety profile evaluation. When applicable, PHMSA consults and coordinates its evaluation of applications with the following Operating Administrations (OAs) that share enforcement authority under Federal hazardous material transportation law: Federal Aviation Administration, Federal Motor Carrier Safety Administration, Federal Railroad Administration, and United States Coast Guard. PHMSA also consults other agencies with hazardous material subject-matter expertise, such as the Nuclear Regulatory Commission and the Department of Energy.

(a) *Technical evaluation.* A technical evaluation considers whether the proposed special permit or approval will achieve a level of safety at least equal to that required under the HMR or, if a required safety level does not exist, considers whether the proposed special permit is consistent with the public interest in that it will adequately protect against the risks to life and property inherent in the transportation of hazardous material. For a classification approval, the technical evaluation is a determination that the application meets the requirements of the regulations for issuance of the approval. If formal coordination with another OA is included as part of the evaluation phase, that OA is responsible for managing this process within the applicable OA. The OA reviews the application materials and PHMSA's technical evaluation, and may provide their own evaluation, comments and recommendations. The OA may also recommend operational controls or limitations to be incorporated into the special permit or approval to improve its safety.

(b) *Safety profile evaluation.* Each applicant for a special permit or non-classification approval is subject to a safety profile evaluation to assess if the applicant is fit to conduct the activity authorized by the special permit or approval application. PHMSA will coordinate the safety profile evaluations with the appropriate OA if a proposed activity is specific to a particular mode of transportation, if the proposed activity will set new precedent or have a significant economic impact, or if an OA requests participation. PHMSA does not conduct initial safety profile reviews as part of processing classification approvals, which include fireworks, explosives, organic peroxides, and self-reactive materials. Additionally, cylinder approvals and certification agency approvals do not follow the same minimum safety profile review model.

(i) *Automated Review.* An applicant for a special permit or approval which requires a safety profile evaluation, but does not include coordination with an OA, is subject to an automated safety profile review. If the applicant passes the initial automated review, the applicant is determined to be fit. If the applicant fails the initial automated review, the applicant is subject to a safety profile evaluation. An applicant that fails a safety profile evaluation may be determined to be unfit. To begin this review, PHMSA or the applicant enters the applicant's information into the web-based Hazardous Materials Information System (HMIS) or Hazmat Intelligence Portal (HIP), or other future application processing technology that provide an integrated information source to identify hazardous material safety trends through the analysis of incident and accident information, and provide access to comprehensive information on hazardous materials incidents, special permits and approvals, enforcement actions, and other elements that support PHMSA's regulatory program. PHMSA then screens the applicant to determine if, within the four years prior to submitting its application, the applicant was involved in any incident attributable to the applicant or package where two or more triggers for a safety profile review or five or more triggers for on-site inspection enforcement case referral events occurred.

(1) The trigger events are listed in the following table:

Trigger for safety profile review	Trigger for on-site inspection*
(1) Any incident that involved a death or injury;	(1) Evidence that an applicant is at risk of being unable to comply with the terms of an application, including those listed below.

Trigger for safety profile review	Trigger for on-site inspection*
(2) Two or more incidents involving a §172.504(e) (placarding) Table 1 hazardous material;	(2) An on-site inspection at the recommendation of the fitness coordinator if the following criteria applies—Any incident listed under automated review in paragraph 3(b)(i) of this appendix is attributable to the applicant or package, other than driver error.
(3) Three or more incidents involving a bulk packaging, or an applicant that is acting as an interstate carrier of hazardous materials under the terms of the special permit or an approval; or	(3) If, during an inspection, evidence is found in the four years prior to submitting its application that an applicant has not implemented sufficient corrective actions for prior violations, or is at risk of being unable to comply with the terms of an application for a special permit or approval, an existing special permit or approval, or the HMR, then PHMSA will determine that the applicant is unfit to conduct the activities requested in an application or authorized special permit or approval.
(4) Any incident that involved: Incorrect package selection; leaking packages; not following closure instructions; failure to test packages, if applicable; and failure to secure packages, including incorrect blocking and/or bracing.	(4) Incorrect or missing: (a) Markings, (b) labels, (c) placards, or (d) shipping papers.

*The Fitness Coordinator assesses and applies these triggers.

(2) If an applicant is acting as an interstate carrier of hazardous materials under the terms of the special permit, they will be screened in an automated manner based upon criteria established by FMCSA, such as that contained in its Safety and Fitness Electronic Records (SAFER) system, which consists of interstate carrier data, several states' intrastate data, interstate vehicle registration data, and may include operational data such as inspections and crashes.

(ii) *Safety profile evaluation.* A fitness coordinator, as defined in §107.1, conducts a safety profile evaluation of all applicants meeting any of the criteria listed earlier in this appendix under ''automated review,'' and all applicants whose safety profile evaluations are subject to coordination with an OA, as described in introductory paragraph 3(b) of this appendix. In a safety profile evaluation, PHMSA or the OA performs an in-depth evaluation of the applicant based upon items the automated review triggered concerning the applicant's four-year performance and compliance history prior to the submission of the application. Information considered during this review may include the applicant's history of prior violations, insufficient corrective actions, or evidence that the applicant is at risk of being unable to comply with the terms of an application for an existing special permit, approval, or the HMR. PHMSA performs the review or coordinates with the OAs, if necessary, if two or more modes of transportation are requested in the application, and coordinates this review with the OA(s) of the applicable mode(s). The applicable OA performs the review if one mode of transportation is requested in the application. If necessary, the fitness coordinator will attempt to contact the applicant for clarifying information. If the information provided is sufficient, an on-site inspection may not be necessary. After conducting an evaluation, if the fitness coordinator determines that the applicant may be unfit to conduct the activities requested in the application, the coordinator will forward the request and supporting documentation to PHMSA's Field Operations Division, or a representative of the Department, such as an authorized Operating Administration representative, to perform an on-site inspection. After the safety profile evaluation is completed, if the applicant is not selected for an on-site inspection, the applicant is determined to be fit. On-site inspections are not required for fitness determinations from modal administrations according to their own procedures.

(iii) *On-Site Inspection.* (A) The factors in paragraph 3(b)(i) and 3(b)(ii) are used as evidence that an applicant is at risk of being unable to comply with the terms of an application, including those listed below. PHMSA's Field Operations Division or representative of the Department, such as an Operating Administration representative, will conduct an on-site inspection at the recommendation of the fitness coordinator if one of the following criteria applies:

(*1*) Any incident listed under automated review in paragraph 3(b)(i) of this appendix is attributable to the applicant or package, other than driver error;

(*2*) Insufficient Corrective Actions, as defined in §107.1, in any enforcement case for a period of four years prior to submitting the application, except when re-inspected with no violations noted; or

(*3*) Items noted by an IIA on a cylinder requalifier inspection report, except when reinspected with no violations noted.

(B) If, during an inspection, the PHMSA investigator or a representative of the Department finds evidence in the four years prior to submitting its application that an applicant has not implemented sufficient corrective actions for prior violations, or is at risk of being unable to comply with the terms of

an application for a special permit or approval, an existing special permit or approval, or the HMR, then PHMSA will determine that the applicant is unfit to conduct the activities requested in an application or authorized special permit or approval.

4. *Disposition*. (a) *Special Permit*. If an application for a special permit is issued, PHMSA provides the applicant, in writing, with a special permit and an authorization letter if party status is authorized.

(b) *Approval*. If an application for approval is issued, PHMSA provides the applicant, in writing, with an approval, which may come in various forms, including:

(1) An ''EX'' approval number for classifying an explosive (including fireworks; see §§ 173.56, 173.124, 173.128, and 173.168(a));

(2) A ''RIN'' (requalification identification number) to uniquely identify a cylinder requalification, repair, or rebuilding facility (see § 180.203);

(3) A ''VIN'' (visual identification number) to uniquely identify a facility that performs an internal or external visual inspection, or both, of a cylinder in conformance with 49 CFR part 180, subpart C, or applicable CGA Pamphlet or HMR provision;

(4) An ''M'' number for identifying packaging manufacturers (see § 178.3); or

(5) A ''CA'' (competent authority) for general approvals (see §§ 107.705, 173.185, and 173.230).

(c) *Denial*. An application for a special permit or approval may be denied in whole or in part. For example, if an application contains sufficient information to successfully complete its technical review but the Associate Administrator determines the applicant is unfit, the application will be denied. If an application for a special permit or an approval is denied, PHMSA provides the applicant with a brief statement, in writing, of the reasons for denial and the opportunity to request reconsideration (see §§ 107.113(g), 107.402, and 107.709(f)).

(d) *Reconsideration and Appeal*. (1) *Special Permit*. If an application for a special permit is denied, the applicant may request reconsideration as provided in § 107.123 and, if the reconsideration is denied, may appeal as provided in § 107.125. Applicants submitting special permit reconsiderations and appeals must do so in the same manner as new applications, provided the new submission is sufficiently complete to make a determination.

(2) *Approval*. If an application for an approval is denied, the applicant may request reconsideration as provided in § 107.715 and, if the reconsideration is denied, may appeal as provided in § 107.717. Applicants submitting approval reconsiderations and appeals must do so in the same manner as new applications, provided the new submission is sufficiently complete to make a determination.

[80 FR 54438, Sept. 10, 2015]

PART 109—DEPARTMENT OF TRANSPORTATION HAZARDOUS MATERIAL PROCEDURAL REGULATIONS

Subpart A—Definitions

Sec.
109.1 Definitions.

Subpart B—Inspections and investigations

109.3 Inspections and investigations.
109.5 Opening of packages.
109.7 Removal from transportation.
109.9 Transportation for examination and analysis.
109.11 Assistance of properly qualified personnel.
109.13 Closing packages/safe resumption of transportation.
109.15 Termination.
109.16 Notification of enforcement measures.

Subpart C—Emergency Orders

109.17 Emergency orders.
109.19 Petitions for review of emergency orders.
109.21 Remedies generally.

Subpart D—Equipment

109.25 Equipment.

Subpart E—Prohibition on Hazardous Materials Operations After Nonpayment of Penalties

109.101 Prohibition of hazardous materials operations.
109.103 Notice of nonpayment of penalties.

AUTHORITY: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 Sec. 4 (28 U.S.C. 2461 note); Pub. L. 104–121 Secs. 212–213; Pub. L. 104–134 Sec. 31001; 49 CFR 1.81, 1.97.

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,