

## SUBCHAPTER A—HAZARDOUS MATERIALS AND OIL TRANSPORTATION

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

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

SOURCE: 67 FR 42951, June 25, 2002, unless otherwise noted.

#### Subpart A—Definitions

##### § 105.5 Definitions

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

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

*Associate Administrator* means Associate Administrator for Hazardous Ma-

terials Safety, Research and Special Programs Administration.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) The United States Postal Service.
- (2) Any agency or instrumentality of the Federal government, for the purposes of 49 U.S.C. 5123 (civil penalties) and 5124 (criminal penalties).
- (3) Any government or Indian tribe (or an agency or instrumentality of any government or Indian tribe) that transports hazardous material for a governmental purpose.

*Political subdivision* means a municipality; a public agency or other instrumentality of one or more States, municipalities, or other political body of a

State; or a public corporation, board, or commission established under the laws of one or more States.

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

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

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

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

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

## Subpart B—General Procedures

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

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

OBTAINING GUIDANCE AND PUBLIC  
INFORMATION**§ 105.20 Guidance and interpretations.**

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

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

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

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

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

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

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

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

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

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

**§ 105.25 Reviewing public documents.**

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

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

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

(2) Applications for exemption numbered DOT-E 11832 and above. Also available are supporting data, memoranda of any informal meetings with applicants, related FEDERAL REGISTER notices, public comments, and decisions granting or denying exemptions applications.

(3) Applications for preemption determinations and waiver of preemption determinations received by RSPA after February 1, 1997. Also available are public comments, FEDERAL REGISTER notices, and RSPA's rulings, determinations, decisions on reconsideration, and orders issued in response to those applications.

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

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

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

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

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

(iv) Applications for exemptions numbered below DOT-E 11832 and related background information are available for public review and copying at the Office of Hazardous Materials Safety, Office of Hazardous Materials Exemptions and Approvals, U.S. Department of Transportation, Room 8100, 400 7th Street, SW., Washington, DC 20590-0001.

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

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

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

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

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

[67 FR 42951, June 25, 2002, as amended at 67 FR 61010, Sept. 27, 2002]

## § 105.26 Obtaining records on file with RSPA.

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

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

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

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

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

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

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

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

### SERVING DOCUMENTS

### § 105.35 Serving documents in RSPA proceedings.

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

(1) Registered or certified mail.

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

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

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

- (2) Personal service.
- (3) Publication in the FEDERAL REGISTER.
- (b) *Service by others.* If you are required under this subchapter to serve a person with a document, serve the document by one of the following methods, except where a different method of service is specifically required:
  - (1) Registered or certified mail.
    - (i) If you serve a document by registered or certified mail, it is considered served when mailed.
    - (ii) An official United States Postal Service receipt from the registered or certified mailing is proof of service.
    - (iii) You may serve a person's authorized representative or agent by registered or certified mail or in any other manner authorized by law. Service on a person's authorized agent is the same as service on the person.
  - (2) Personal service.
  - (3) Electronic service.
    - (i) In a proceeding under §107.317 of this subchapter (an administrative law judge proceeding), you may electronically serve documents on us.
    - (ii) Serve documents electronically through the Internet at <http://dms.dot.gov>.

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

- (a) *General requirement.* If you are not a resident of the United States but are required by this subchapter or subchapter C of this chapter to designate a permanent resident of the United States to act as your agent and receive documents on your behalf, you must prepare a designation and file it with us.
  - (b) *Agents.* An agent:
    - (1) May be an individual, a firm, or a domestic corporation.
    - (2) May represent any number of principals.
    - (3) May not reassign responsibilities under a designation to another person.
  - (c) *Preparing a designation.* Your designation must be written and dated, and it must contain the following information:
    - (1) The section in the HMR that requires you to file a designation.
    - (2) A certification that the designation is in the correct legal form required to make it valid and binding on

- you under the laws, corporate bylaws, and other requirements that apply to designations at the time and place you are making the designation.
- (3) Your full legal name, the principal name of your business, and your mailing address.
- (4) A statement that your designation will remain in effect until you withdraw or replace it.
- (5) The legal name and mailing address of your agent.
- (6) A declaration of acceptance signed by your agent.
- (d) *Address.* Send your designation to: Office of Hazardous Materials Exemptions and Approvals Research and Special Programs Administration, Attn: DHM-30, U.S. Department of Transportation 400 7th Street, SW., Washington, DC 20590-0001.
- (e) *Designations are binding.* You are bound by your designation of an agent, even if you did not follow all the requirements in this section, until we reject your designation.

SUBPOENAS

**§ 105.45 Issuing a subpoena.**

- (a) *Subpoenas explained.* A subpoena is a document that may require you to attend a proceeding, produce documents or other physical evidence in your possession or control, or both. RSPA may issue a subpoena either on its initiative or at the request of someone participating in a proceeding. Anyone who requests that RSPA issue a subpoena must show that the subpoena seeks information that will materially advance the proceeding.
  - (b) *Attendance and mileage expenses.*
    - (1) If you receive a subpoena to attend a proceeding under this part, you may receive money to cover attendance and mileage expenses. The attendance and mileage fees will be the same as those paid to a witness in a proceeding in the district courts of the United States.
    - (2) If RSPA issues a subpoena to you based upon a request, the requester must serve a copy of the original subpoena on you, as required in §105.50. The requester must also include attendance and mileage fees with the subpoena unless the requester asks

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RSPA to pay the attendance and mileage fees because of demonstrated financial hardship and RSPA agrees to do so.

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

### § 105.50 Serving a subpoena.

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

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

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

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

### § 105.55 Refusal to obey a subpoena.

(a) *Quashing or modifying a subpoena.* If you receive a subpoena, you can ask RSPA to overturn ("quash") or modify the subpoena within 10 days after the

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subpoena is served on you. Your request must briefly explain the reasons you are asking for the subpoena to be quashed or modified. RSPA may then do the following:

(1) Deny your request.

(2) Quash or modify the subpoena.

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

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

## PART 106—RULEMAKING PROCEDURES

### Subpart A—RSPA Rulemaking Documents

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#### PETITIONS FOR RULEMAKING

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