

The requester must also include attendance and mileage fees with the subpoena unless the requester asks RSPA to pay the attendance and mileage fees because of demonstrated financial hardship and RSPA agrees to do so.

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

§ 105.50 Serving a subpoena.

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

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

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

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

§ 105.55 Refusal to obey a subpoena.

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

- (1) Deny your request.
- (2) Quash or modify the subpoena.

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

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

PART 106—RULEMAKING PROCEDURES

Subpart A—RSPA Rulemaking Documents

Sec.

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

Subpart B—Participating in the Rulemaking Process

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

WRITTEN COMMENTS

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

PUBLIC MEETINGS AND OTHER PROCEEDINGS

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

PETITIONS FOR RULEMAKING

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

APPEALS

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

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Subpart A—RSPA Rulemaking Documents

§ 106.5 Defined terms used in this subpart.

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

§ 106.10 Process for issuing rules.

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

- (1) An advance notice of proposed rulemaking.
- (2) A notice of proposed rulemaking.
- (3) A final rule.
- (4) An interim final rule.
- (5) A direct final rule.

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

- (1) The topic involved in the rulemaking document.
- (2) RSPA’s legal authority for issuing the rulemaking document.
- (3) How interested persons may participate in the rulemaking proceeding (for example, by filing written comments or making oral presentations).

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

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

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

§ 106.15 Advance notice of proposed rulemaking.

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

§ 106.20 Notice of proposed rulemaking.

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

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

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

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

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

§ 106.30 Final rule.

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

§ 106.35 Interim final rule.

An interim final rule is issued without first issuing a notice of proposed

rulemaking and accepting public comments and sets out new regulatory requirements and their effective date. RSPA may issue an interim final rule if it finds, for good cause, that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. RSPA will clearly set out this finding in the interim final rule. After receiving and reviewing public comments, as well as any other relevant documents, RSPA may revise the interim final rule and then issue a final rule.

§ 106.40 Direct final rule.

A direct final rule makes regulatory changes and states that the regulatory changes will take effect on a specified date unless RSPA receives an adverse comment or notice of intent to file an adverse comment within the comment period—generally 60 days after the direct final rule is published in the FEDERAL REGISTER.

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

- (1) Make minor substantive changes to regulations.
- (2) Incorporate by reference the latest edition of technical or industry standards.
- (3) Extend compliance dates.
- (4) Make noncontroversial changes to regulations. We must determine and publish a finding that use of direct final rulemaking, in this situation, is in the public interest and unlikely to result in adverse comment.

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

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

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

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

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

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

§ 106.45 Tracking rulemaking actions.

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

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

(1) Associate related documents that appear in the FEDERAL REGISTER.

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

- (i) Visit the public docket room and review and copy any docketed materials during regular business hours.

The DOT Docket Management System is located at the U.S. Department of Transportation, Plaza Level 401, 400 7th Street, SW., Washington, DC 20590-0001.

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

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

Subpart B—Participating in the Rulemaking Process

§ 106.50 Defined terms used in this subpart.

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

§ 106.55 Public participation in the rulemaking process.

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

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

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

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

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

WRITTEN COMMENTS

§ 106.60 Filing comments.

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

§ 106.65 Required information for written comments.

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

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

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

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

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

§ 106.70 Where and when to file comments.

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

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

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

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

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

§ 106.75 Extension of time to file comments.

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

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

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

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

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

PUBLIC MEETINGS AND OTHER PROCEEDINGS

§ 106.80 Public meeting procedures.

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

§ 106.85 Requesting a public meeting.

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

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

§ 106.90 Other rulemaking proceedings.

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

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

(b) Make an oral presentation.

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

PETITIONS FOR RULEMAKING

§ 106.95 Requesting a change to the regulations.

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

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

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

§ 106.100 Required information for a petition for rulemaking.

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

- (1) A summary of your proposed action and an explanation of its purpose.
- (2) The language you propose for a new or amended rule, or the language you would delete from a current rule.
- (3) An explanation of your interest in your proposed action and the interest of anyone you may represent.
- (4) Information and arguments that support your proposed action, including relevant technical and scientific data available to you.
- (5) Any specific cases that support or demonstrate the need for your proposed action.

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

- (1) The costs and benefits of your proposed action to society in general, and

identifiable groups within society in particular.

- (2) The direct effects, including preemption effects under section 5125 of Federal hazardous materials transportation law, of your proposed action on States, on the relationship between the Federal government and the States, and on the distribution of power and responsibilities among the various levels of government. (See 49 CFR part 107, subpart C, regarding preemption.)
- (3) The regulatory burden of your proposed action on small businesses, small organizations, small governmental jurisdictions, and Indian tribes.
- (4) The recordkeeping and reporting burdens of your proposed action and whom they would affect.
- (5) The effect of your proposed action on the quality of the natural and social environments.

§ 106.105 RSPA response to a petition for rulemaking.

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

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

APPEALS

§ 106.110 Appealing a RSPA Action.

You may appeal the following RSPA actions:

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

§ 106.115 Required information for an appeal.

(a) *Appeal of a final rule or withdrawal of a notice of proposed rulemaking.* If you

appeal RSPA's issuance of a final rule or RSPA's withdrawal of a notice of proposed rulemaking, your appeal must include the following:

- (1) The docket number of the rulemaking you are concerned about, clearly set out at the beginning of your appeal.
- (2) A brief statement of your concern about the final rule or the withdrawal of notice of proposed rulemaking at issue.
- (3) An explanation of why compliance with the final rule is not practical, reasonable, or in the public interest.
- (4) If you want RSPA to consider more facts, the reason why you did not present those facts within the time given during the rulemaking process for public comment.

§ 106.120

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

- (1) The contested aspects of the decision.
- (2) Any new arguments or information.

§ 106.120 Appeal deadline.

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

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

§ 106.125 Filing an appeal.

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

§ 106.130 RSPA response to an appeal.

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

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

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

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

(4) RSPA will notify you, in writing, of the action on your appeal within 90 days after the date that RSPA published the final rule or withdrawal of notice of proposed rulemaking at issue in the FEDERAL REGISTER. If we do not issue a decision on your appeal within

49 CFR Ch. I (10-1-03 Edition)

the 90-day period and we anticipate a substantial delay, we will notify you directly about the delay and will give you an expected decision date. We will also publish a notice of the delay in the FEDERAL REGISTER.

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

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

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

Subpart A—Definitions

- Sec.
- 107.1 Definitions.

Subpart B—Exemptions

- 107.101 Purpose and scope.
- 107.105 Application for exemption.
- 107.107 Application for party status.
- 107.109 Application for renewal.
- 107.111 Withdrawal.
- 107.113 Application processing and evaluation.
- 107.117 Emergency processing.
- 107.121 Modification, suspension or termination of exemption or grant of party status.
- 107.123 Reconsideration.
- 107.125 Appeal.
- 107.127 Availability of documents for public inspection.

Subpart C—Preemption

- 107.201 Purpose and scope.
- 107.202 Standards for determining preemption.

PREEMPTION DETERMINATIONS

- 107.203 Application.
- 107.205 Notice.
- 107.207 Processing.
- 107.209 Determination.
- 107.211 Petition for reconsideration.
- 107.213 Judicial review.

WAIVER OF PREEMPTION DETERMINATIONS

- 107.215 Application.
- 107.217 Notice.