

## § 107.307

(3) An inspector 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, Office of Hazardous Materials Enforcement, Research and Special Programs Administration, an inspector may issue a subpoena for the production of documentary or other tangible evidence if, on the basis of information available to the inspector, 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]

## 49 CFR Ch. I (10-1-02 Edition)

### COMPLIANCE ORDERS AND CIVIL PENALTIES

#### § 107.307 General.

(a) When the Associate Administrator and the Office of the 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, or order issued thereunder, for which the Associate Administrator or the Office of the 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, the allegation of a violation of a term or condition thereof is considered by the Associate Administrator and the Office of the Chief Counsel to constitute an allegation that the exemption holder or party to the exemption is failing, or has failed to comply with the underlying regulations from which relief was granted by the exemption.

[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]

#### § 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 or any provision of this subchapter, subchapter C of this chapter, or any exemption issued thereunder.