

§ 106.120

(1) The contested aspects of the decision.

(2) Any new arguments or information.

§ 106.120 Appeal deadline.

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

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

§ 106.125 Filing an appeal.

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

§ 106.130 RSPA response to an appeal.

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

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

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

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

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

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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.

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AUTHORITY: 49 U.S.C. 5101-5127, 44701; Pub. L. 101-410 section 4 (28 U.S.C. 2461 note); Pub. L. 104-121 sections 212-213; Pub. L. 104-134 section 31001; 49 CFR 1.45, 1.53.

EDITORIAL NOTE: Nomenclature changes to part 107 appear at 67 FR 61011, Sept. 27, 2002.

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, Research and Special Programs Administration or his or her delegate.

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

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

this part for an approval, or renewal or modification of an approval.

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).

Approval Agency means an organization or a person designated by the RSPA 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, Research and Special Programs 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) 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.

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

Exemption means a document issued by the Associate Administrator under

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

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

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

Holder means the person in whose name an exemption 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).

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

Manufacturing exemption means an exemption 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 exemption is an exemption issued to a manufacturer of packagings who does not offer for transportation or transport hazardous materials in packagings subject to the exemption.

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

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.

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 RSPA has served a notice of probable violation.

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.

[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 on GPO Access.

Subpart B—Exemptions

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 exemptions 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 exemption.

(a) *General.* Each application for an exemption or modification of an exemption must be written in English and must—

(1) Be submitted for timely consideration, at least 120 days before the requested effective date, in duplicate to: Associate Administrator for Hazardous Materials Safety (Attention: Exemptions, DHM-31), Research and Special Programs Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590-0001. Alternatively, the application with any attached supporting documentation submitted in an appropriate format may be sent by facsimile (fax) to: (202) 366-3753 or (202) 366-3308 or by electronic mail (e-mail) to: *Exemptions@rspa.dot.gov*;

(2) State the name, street and mailing addresses, e-mail address optional, and telephone number of the applicant; if the applicant is not an individual, state the name, street and mailing addresses, e-mail address optional, and telephone number of an individual designated as an agent of the applicant for all purposes related to the application;

(3) If the applicant is not a resident of the United States, a designation of agent for service in accordance with § 105.40 of this part; and