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AUTHORITY: 49 U.S.C. 5101–5127, 44701; Sec. 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45, 1.53.

**Subpart A—General Provisions**

**§ 107.1 Purpose and scope.**

(a) This part prescribes procedures utilized by the Research and Special Programs Administration, the Associate Administrator and the Office of Chief Counsel in carrying out their duties under the laws pertaining to the transportation of hazardous materials.

(b) This subpart defines certain terms and prescribes procedures that are applicable to each proceeding described in this part.

[40 FR 48470, Oct. 15, 1975, as amended by Amdt. 107–4, 43 FR 43307, Sept. 25, 1978; Amdt. 107–23, 56 FR 66156, Dec. 20, 1991; 66 FR 45377, Aug. 28, 2001]

**§ 107.3 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.

*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 a written authorization, including a competent authority approval, from the Associate Administrator to perform a function for which prior authorization by the Associate Administrator is required under subchapter C of this chapter.

*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 responsible under its national law for the control or regulation of a particular aspect of the transportation of hazardous materials (dangerous goods). The term *Appropriate authority*, as used in the ICAO Technical Instructions, has the same meaning as *Competent Authority*. The Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, is the United States Competent Authority for purposes of this part.

*Competent Authority Approval* means an approval by the competent authority which is required under the provisions of an international standard, such as the International Civil Aviation Organization’s Technical Instructions for the Safe Transport of Dangerous Goods by Air or the International Maritime Dangerous Goods Code. To the extent that it satisfies the requirement of the international standard, any of the following may serve as

a competent authority approval: a specific regulation of this subchapter or subchapter C of this chapter, an exemption or approval issued under the provisions of this subchapter or subchapter C of this chapter, or 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 under the authority of 49 U.S.C. 5117 by the Associate Administrator that authorizes a person to perform a function that is not otherwise authorized under this subchapter, subchapter C, or other regulations issued under 49 U.S.C. 5101–5127 (e.g., Federal Motor Carrier Safety Administration routing).

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

*Filed* means received at the Research and Special Programs Administration office designated in the applicable provision or, if no office is specified, at the Office of Hazardous Materials Exemptions and Approvals (DHM-30), Research and Special Programs Administration, U.S. Department of Transportation, 400 7th Street SW., Washington DC, 20590-0001.

*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* shall have the meaning given that term under section 4 of the Indian Self-Determination and Education 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, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, or government, Indian tribe, or agency or instrumentality of any government or Indian tribe when it offers hazardous materials for transportation in commerce or transports hazardous materials in furtherance of a commercial enterprise, but such term does not include:

(1) The United States Postal Service, or

(2) For the purposes of 49 U.S.C. 5123 and 5124, any agency or instrumentality of the Federal Government.

*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 with RSPA as a cylinder retester pursuant to 49 CFR 173.34(e)(1), or 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; except that as used in 49 U.S.C. 5119, relating to uniformity of State registration and permitting forms and procedures, such term means a State of the United States and the District of Columbia.

*Transports or transportation* means any movement of property by any mode, and any loading, unloading, or storage incidental thereto.

[Amdt. 107-3, 41 FR 38170, Sept. 9, 1976, as amended by Amdt. 107-4, 43 FR 43307, Sept. 25, 1978; Amdt. 107-5, 43 FR 48642, Oct. 19, 1978; Amdt. 107-8, 46 FR 9888, Jan. 29, 1981; Amdt. 107-12, 48 FR 53711, Nov. 29, 1983; 50 FR 45730, Nov. 1, 1985; Amdt. 107-24, 56 FR 8621, Feb. 28, 1991; Amdt. 107-23, 56 FR 66157, Dec. 20, 1991; Amdt. 107-32, 59 FR 49130, Sept. 26, 1994; Amdt. 107-38, 61 FR 21094, May 9, 1996; 65 FR 58618, Sept. 29, 2000; 66 FR 45377, Aug. 28, 2001]

#### § 107.5 Request for confidential treatment.

(a) If any person filing a document with the Associate Administrator claims that some or all the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure, and if that person requests the Associate Administrator not to disclose the information, that person shall file, together with the document, a second copy of the document with the confidential information deleted. The person shall indicate each page of the original document that is confidential or contains confidential information by marking or stamping "confidential" on each page for which a claim of confidentiality is made, and may file a statement specifying the justification for the claim of confidentiality. If the person states that the information comes within the exception in 5 U.S.C. 552(b)(4) for trade secrets and commer-

cial or financial information, that person shall include a statement as to why the information is privileged or confidential. If the person filing a document does not mark or stamp a document as confidential or submit a second copy of the document with the confidential information deleted, the Associate Administrator may assume that there is no objection to public disclosure of the document in its entirety.

(b) The Associate Administrator retains the right to make its own determination with regard to any claim of confidentiality. Notice of a decision by the Associate Administrator to deny the claim, in whole or in part, and an opportunity to respond shall be given to a person claiming confidentiality of information no less than five days prior to its public disclosure.

[40 FR 48470, Oct. 15, 1975, as amended by Amdt. 107-24, 56 FR 8621, Feb. 28, 1991; Amdt. 107-38, 61 FR 21095, May 9, 1996]

#### § 107.7 Service of process on non-residents of the United States.

(a) *Designation of agent for service.* When a person who is not a resident of the United States is required by this subchapter or subchapter C of this chapter to designate a permanent resident of the United States as his agent upon whom service of process may be made for him and on his behalf, the agent may be an individual, a firm, or a domestic corporation. Any number of principals may designate the same person as agent. A designation is binding on a principal even if the designation is not in compliance with all the requirements of this section, until rejected by the Associate Administrator. A designated agent may not assign performance of his functions under the designation to another person.

(b) *Form and contents of designation.* The designation shall:

- (1) Be in writing and dated;
- (2) Be made in the legal form required to make it valid and binding on the principal under the laws, corporate bylaws, or other requirements governing the making of the designation by the principal at the place and time where it is made and the person or persons signing the designation shall certify that it is so made;