Title 49
Transportation
Parts 100 to 177

Revised as of October 1, 2012

Containing a codification of documents
of general applicability and future effect

As of October 1, 2012

Published by the Office of the Federal Register
National Archives and Records Administration
as a Special Edition of the Federal Register
(3) If we decide to grant your appeal, we may schedule further proceedings and an opportunity to comment.

(4) PHMSA will notify you, in writing, of the action on your appeal within 90 days after the date that PHMSA 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 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 PHMSA has previously rejected.

(2) PHMSA will notify you, in writing, of the action on your appeal within 90 days after the date that PHMSA 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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§ 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

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(2) Having the knowledge that a reasonable person acting in the same circumstances and exercising due care would have had.

Administrator means the Administrator, Pipeline and Hazardous Materials Safety Administration or his or her delegate.

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

Application means a request under subpart B of this part for a special permit, a renewal or modification of a special permit, party status to a special permit, 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 PHMSA 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, Pipeline and Hazardous Materials Safety 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) A special permit 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.

D OT or Department means U.S. Department of Transportation.

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

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

Holder means the person in whose name a special permit 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).


Manufacturing special permit means a special permit from compliance with specified requirements that otherwise must be met before representing, marking, certifying (including requalifying, inspecting, and testing), selling or offering for transport 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 special permit is a special permit issued to a manufacturer of packagings who does not offer for transportation or transport hazardous materials in packagings subject to the special permit.

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

Person means an individual, firm, copartnership, 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.

Respondent means a person upon whom the PHMSA has served a notice of probable violation.

Special permit means a document issued by the Associate Administrator,
§ 107.101 Purpose and scope.

This subpart prescribes procedures for the issuance, modification and termination of special permits 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 special permit.

(a) General. Each application for a special permit or modification of a special permit and all supporting documents must be written in English and submitted for timely consideration at least 120 days before the requested effective date and conform to the following requirements:

(1) The application, including a table of contents, must:


(ii) Be submitted with any attached supporting documentation by facsimile (fax) to: (202) 366–3753 or (202) 366–3308;

(iii) Be submitted electronically by e-mail to: specialpermits@dot.gov; or

(iv) Be submitted using PHMSA’s online system (table of contents omitted) at: http://www.phmsa.dot.gov/hazmat/regs/sp-a.

(2) The application must state the name, mailing address, physical address(es) of all known locations where the special permit would be used, e-mail address (if available), and telephone number of the applicant. If the applicant is not an individual, the application must state the company name, mailing address, physical address(es) of all known locations where the special permit would be used, e-mail address (if available), and telephone number of an individual designated as the point of contact for the applicant for all purposes related to the application, the name of the company Chief Executive Officer (CEO) or president, or ranking officer; and the Dun and Bradstreet Data Universal Numbering System (D–U–N–S) identifier.

(3) If the applicant is not a resident of the United States, in addition to the information listed in paragraph (a)(2) of this section, the application must identify and designate an agent that is a permanent resident of the United States for service in accordance with §105.40 of this part.

(4) For a manufacturing special permit, in addition to the information listed in paragraph (a)(2) of this section, the application must state the name and street address of each of the facilities of the applicant where manufacturing under the special permit will occur, and the symbol of the packaging manufacturer (‘‘M’’ number), if applicable.

(5) For persons required to be registered in accordance with Subpart F or G of this part, in addition to the information listed in paragraph (a)(2) of this section, the application must provide the registration number or the
name of the company to which the registration number is assigned if different from the applicant. For persons not required to be registered in accordance with Subpart F or G of this part, in addition to the information listed in paragraph (a)(2) of this section, the application must provide a statement indicating that registration is not required.

(b) Confidential treatment. To request confidential treatment for information contained in the application, the applicant must comply with §105.30(a).

(c) Description of special permit proposal. The application must include the following information that is relevant to the special permit proposal:

(1) A citation of the specific regulation from which the applicant seeks relief;

(2) The proposed mode or modes of transportation, including a description of all operational controls required;

(3) A detailed description of the proposed special permit (e.g., alternative packaging, test, procedure, activity, or hazard communication, including marking and labeling requirements) including, as appropriate, written descriptions, drawings, flow charts, plans and other supporting documents;

(4) A specification of the proposed duration or schedule of events for which the special permit is sought;

(5) A statement outlining the applicant’s basis for seeking relief from compliance with the specified regulations and, if the special permit is requested for a fixed period, a description of how compliance will be achieved at the end of that period. For transportation by air, a statement outlining the reason(s) the hazardous material is being transported by air if other modes are available;

(6) If the applicant seeks emergency processing specified in §107.117, a statement of supporting facts and reasons;

(7) Identification and description, including an estimated quantity of each shipment of the hazardous materials planned for transportation under the special permit or;

(8) Description of each packaging, including specification or special permit number, as applicable, to be used in conjunction with the requested special permit;

(9) For alternative packagings, documentation of quality assurance controls, package design, manufacture, performance test criteria, in-service performance and service-life limitations;

(10) An estimate of the number of operations expected to be conducted or number of shipments to be transported under the special permit;

(11) An estimate of the number of packagings expected to be manufactured under the special permit, if applicable;

(12) A statement as to whether the special permit being sought is related to a compliance review, inspection activity, or enforcement action; and

(13) When a Class 1 material is forbidden for transportation by aircraft except under a special permit (see Columns 9A and 9B in the table in 49 CFR 172.101), a certification from an applicant for a special permit to transport such Class 1 material on passenger-carrying or cargo-only aircraft with a maximum certificated takeoff weight of less than 12,500 pounds that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

(14) A statement indicating whether the applicant will be acting as a shipper (offeror), carrier or both under the terms of the special permit.

(d) Justification of special permit proposal. The application must demonstrate that a special permit achieves a level of safety at least equal to that required by regulation, or if a required safety level does not exist, is consistent with the public interest. At a minimum, the application must provide the following:

(1) Information describing all relevant shipping and incident experience of which the applicant is aware that relates to the application; and

(2) A statement identifying any increased risk to safety or property that may result if the special permit is granted, and a description of the measures to be taken to address that risk; and

(3) Either:

(i) Substantiation, with applicable analyses, data or test results (e.g., failure mode and effect analysis), that the proposed alternative will achieve a
§ 107.107 Application for party status.

(a) Any person eligible to apply for a special permit may apply to be a party to an application or an existing special permit, other than a manufacturing special permit.

(b) Each application filed under this section must conform to the following requirements:

(1) The application must:
(i) Be submitted to the Associate Administrator for Hazardous Materials Safety (Attention: General Approvals and Permits, PHH–31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001; or
(ii) Be submitted with any attached supporting documentation by facsimile (fax) to: (202) 366-3753 or (202) 366-3308; or
(iii) Be submitted by electronically by e-mail to: specialpermits@dot.gov, or on-line at: http://www.phmsa.dot.gov/hazmat/regs/sp-a.

(2) The application must identify by number the special permit application or special permit to which the applicant seeks to become a party.

(3) The application must state the name, mailing address, physical address(es) of all known locations where the special permit would be used, e-mail address (if available), and telephone number of the applicant. If the applicant is not an individual, the application must state the company name, mailing address, physical address(es) of all known locations where the special permit would be used, e-mail address (if available), and telephone number of an individual designated as the point of contact for the applicant for all purposes related to the application, the name of the company Chief Executive Officer (CEO), president, or ranking executive officer and the Dun and Bradstreet Data Universal Numbering System (D-U-N-S) identifier. In addition, each applicant must state why party status to the special permit is needed and must submit a certification of understanding of the provisions of the special permit to which party status is being requested.

(4) If the applicant is not a resident of the United States, the application must identify and designate an agent that is a permanent resident of the United States for service in accordance with §105.40 of part.

(5) For a Class 1 material that is forbidden for transportation by aircraft except under a special permit (see Columns 9A and 9B in the table in 49 CFR 172.101), a certification from an applicant for party status to a special permit to transport such Class 1 material on passenger-carrying or cargo-only aircraft with a maximum certificated takeoff weight of less than 12,500 pounds that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

(6) The applicant must certify that the applicant has not previously been granted party status to the special permit. If the applicant has previously been granted party status, the applicant must follow renewal procedures as specified in §107.109.

(7) A statement indicating whether the applicant will be acting as a shipper (offeror), carrier or both under the terms of the special permit.

(c) The Associate Administrator may grant or deny an application for party status in the manner specified in §107.113(e) and (f) of this subpart.

(d) A party to a special permit is subject to all terms of that special permit, including the expiration date. If a party to a special permit wishes to renew party status, the special permit renewal procedures set forth in §107.109 apply.

§ 107.109 Application for renewal.

(a) Each application for renewal of a special permit or party status to a special permit must conform to the following requirements:

(1) The application must:
   (i) Be submitted to the Associate Administrator for Hazardous Materials Safety (Attention: General Approvals and Permits, PHH–31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001;
   (ii) Be submitted with any attached supporting documentation submitted in an appropriate format by facsimile (fax) to: (202) 366–3753 or (202) 366–3308; or
   (iii) Be submitted electronically by e-mail to: specialpermits@dot.gov; or online at: http://www.phmsa.dot.gov/hazmat/regs/sp-a.

(2) The application must identify by number the special permit for which renewal is requested.

(3) The application must state the name, mailing address, physical address(es) of all known new locations not previously identified in the application where the special permit would be used and all locations not previously identified where the special permit was used, e-mail address (if available), and telephone number of the applicant. If the applicant is not an individual, the application must state the name, mailing address, physical address(es) of all known new locations not previously identified in the application where the special permit would be used and all locations not previously identified where the special permit was used, e-mail address (if available), and telephone number of an individual designated as the point of contact for the applicant for all purposes related to the application, the name of the company Chief Executive Officer (CEO), president, or ranking executive officer, and the Dun and Bradstreet Data Universal Numbering System (D-U-N-S) identifier. In addition, each applicant for renewal of party status must state why party status is needed and must submit a certification of understanding of the provisions of the special permit to which party status is being requested.

(4) The application must include either a certification by the applicant that the original application, as it may have been updated by any application for renewal, remains accurate (e.g., all section references, shipping descriptions, etc.) and complete; or include an amendment to the previously submitted application as is necessary to update and ensure the accuracy and completeness of the application, with certification by the applicant that the application as amended is accurate and complete.

(5) The application must include a statement describing all relevant operational, shipping, and incident experience of which the applicant is aware in connection with the special permit since its issuance or most recent renewal. If the applicant is aware of no incidents, the applicant must so certify. When known to the applicant, the statement must indicate the approximate number of shipments made or packages shipped, as applicable, and the number of shipments or packages involved in any loss of contents, including loss by venting other than as authorized in subchapter C.

(6) When a Class 1 material is forbidden for transportation by aircraft, except under a special permit (see Columns 9A and 9B in the table in 49 CFR 172.101), an application to renew a special permit to transport such Class 1 material on passenger-carrying or cargo-only aircraft with a maximum certificated takeoff weight of less than 12,500 pounds must certify that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

(7) If the renewal is requested after the expiration date of the special permit, the following information is required:
   (i) The reason the special permit authorization was allowed to expire;
   (ii) A certification statement that no shipments were transported after the expiration date of the special permit, or a statement describing any transportation under the terms of the special permit after the expiration date, if applicable; and

(iii) A statement describing the action(s) the applicant will take to ensure future renewal is requested before the expiration date.

(b) If no operations or shipments have been made since the issuance or renewal of the special permit, the applicant must provide specific justification as to why the special permit should be renewed.

(9) A statement indicating whether the applicant will be acting as a shipper (offeror), carrier or both under the terms of the special permit.

(b) If, at least 60 days before an existing special permit expires the holder files an application for renewal that is complete and conforms to the requirements of this section, the special permit will not expire until final administrative action on the application for renewal has been taken.

§ 107.113 Application processing and evaluation.

(a) The Associate Administrator reviews an application for a special permit, modification of a special permit, party to a special permit, or party to a special permit, and within 15 days of receipt of an application for renewal of a special permit. If an application is determined to be incomplete, the applicant is informed of the deficiency.

(b) An application, that is not a renewal, party to, or emergency special permit application, and is determined to be complete is docketed. Notice of the application is published in the Federal Register, and an opportunity for public comment is provided. All comments received during the comment period are considered before final action is taken on the application.

(c) No public hearing or other formal proceeding is required under this subpart before the disposition of an application. Unless emergency processing under §107.117 is requested and granted, applications are usually processed in the order in which they are filed.

(d) During the processing and evaluation of an application, the Associate Administrator may conduct an on-site review or request additional information from the applicant. A failure to cooperate with an on-site review may result in the application being deemed incomplete and subsequently being denied. If the applicant does not respond to a written or electronic request for additional information within 30 days of the date the request was received, the application may be deemed incomplete and denied. However, if the applicant responds in writing or by electronic means within the 30-day period requesting an additional 30 days within which it will gather the requested information, the Associate Administrator may grant the 30-day extension.

(e) The Associate Administrator may grant or deny an application, in whole or in part. In the Associate Administrator’s discretion, an application may be granted subject to provisions that are appropriate to protect health, safety or property. The Associate Administrator may impose additional provisions not specified in the application or remove conditions in the application that are unnecessary.

(f) The Associate Administrator may grant an application on finding that—

1) The application complies with this subpart;

2) The application demonstrates that the proposed alternative will achieve a level of safety that:
Pipeline and Hazardous Materials Safety Admin., DOT § 107.117

Emergency processing.

(a) An application is granted emergency processing if the Associate Administrator, on the basis of the application and any inquiry undertaken, finds that—

(1) Emergency processing is necessary to prevent significant injury to persons or property (other than the hazardous material to be transported) that could not be prevented if the application were processed on a routine basis; or

(2) Emergency processing is necessary for immediate national security purposes or to prevent significant economic loss that could not be prevented if the application were processed on a routine basis.

(b) Where the significant economic loss is to the applicant, or to a party in a contractual relationship to the applicant with respect to the activity to be undertaken, the Associate Administrator may deny emergency processing if timely application could have been made.

(c) A request for emergency processing on the basis of potential economic loss must reasonably describe and estimate the potential loss.

(d) An application submitted under this section must conform to §107.105 to the extent that the receiving Department official deems necessary to process the application. An application on an emergency basis must be submitted to the Department modal contact official for the initial mode of transportation to be utilized, as follows:

(1) Certificate-Holding Aircraft: The Federal Aviation Administration Civil Aviation Security Office that serves the place where the flight will originate or that is responsible for the aircraft operator’s overall aviation security program. The nearest Civil Aviation Security Office may be located by calling the FAA Duty Officer, 202–267–3333 (any hour).

(2) Noncertificate-Holding Aircraft (Those Which Operate Under 14 CFR Part 91): The Federal Aviation Administration Civil Aviation Security Office that serves the place where the flight will originate or that is responsible for the aircraft operator’s overall aviation security program. The nearest Civil Aviation Security Office may be located by calling the FAA Duty Officer, 202–267–3333 (any hour).

(3) Motor Vehicle Transportation: Chief, Hazardous Materials Division,
§ 107.121 Modification, suspension or termination of special permit or grant of party status.

(a) The Associate Administrator may modify a special permit or grant of party status on finding that:

(1) Modification is necessary so that the special permit reflects current statutes and regulations; or

(2) Modification is required by changed circumstances to meet the standards of §107.113(f).

(b) The Associate Administrator may modify, suspend or terminate a special permit or grant of party status, as appropriate, on finding that:

(1) Because of a change in circumstances, the special permit or party status no longer is needed or no longer would be granted if applied for;

(2) The application contained inaccurate or incomplete information, and the special permit or party status would not have been granted had the application been accurate and complete;

(3) The application contained deliberately inaccurate or incomplete information; or

(4) The holder or party knowingly has violated the terms of the special permit or an applicable requirement of this chapter in a manner demonstrating the holder or party is not fit to conduct the activity authorized by the special permit.

(c) Except as provided in paragraph (d) of this section, before a special permit or grant of party status is modified, suspended, or terminated, the Associate Administrator notifies the holder in writing or by electronic means of the proposed action and the reasons for it, and provides an opportunity to show cause why the proposed action should not be taken.

(1) Within 30 days of receipt of notice of the proposed action, the holder or party may file a response in writing or by electronic means that shows cause...
why the proposed action should not be taken.

(2) After considering the holder’s or party’s response, or after 30 days have passed without response since receipt of the notice, the Associate Administrator notifies the holder or party in writing or by electronic means of the final decision with a brief statement of reasons.

(d) The Associate Administrator, if necessary to avoid a risk of significant harm to persons or property, may, in the notification, declare the proposed action immediately effective.

[76 FR 463, Jan. 5, 2011]

§ 107.123 Reconsideration.

(a) An applicant for special permit, a special permit holder, or an applicant for party status to a special permit may request that the Associate Administrator reconsider a decision under § 107.113(g), § 107.117(e) or § 107.121(c) of this part. The request must—

(1) Be in writing or by electronic means and filed within 20 days of receipt of the decision;

(2) State in detail any alleged errors of fact and law;

(3) Enclose any additional information needed to support the request to reconsider; and

(4) State in detail the modification of the final decision sought.

(b) The Associate Administrator, if necessary to avoid a risk of significant harm to persons or property, may, in the notification, declare the action immediately effective.

[76 FR 463, Jan. 5, 2011]

§ 107.125 Appeal.

(a) A person who requested reconsideration under § 107.123 and is denied the relief requested may appeal to the Administrator. The appeal must—

(1) Be in writing or by electronic means and filed within 30 days of receipt of the Associate Administrator’s decision on reconsideration; (2) state in detail any alleged errors of fact and law;

(2) State in detail any alleged errors of fact and law;

(b) The Administrator, if necessary to avoid a risk of significant harm to persons or property, may declare the Associate Administrator’s action effective pending a decision on appeal.

(c) The Administrator grants or denies, in whole or in part, the relief requested and informs the appellant in writing or by electronic means of the decision. The Administrator’s decision is the final administrative action.


§ 107.127 Availability of documents for public inspection.

(a) Documents related to an application under this subpart, including the application itself, are available for public inspection, except as specified in paragraph (b) of this section, at the Office of the Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, Approvals and Permits Division, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays when the office is closed. Copies of available documents may be obtained as provided in part 7 of this title. Documents numbered 11832 and above may also be viewed at the website address http://www.regulations.gov.

(b) Documents available for inspection do not include materials determined to be withheld from public disclosure under § 105.30 and in accordance with the applicable provisions of section 552(b) of title 5, United States Code, and part 7 of this title.

§ 107.201 Purpose and scope.

This subpart prescribes procedures by which:

(a) Any person, including a State, political subdivision, or Indian tribe, directly affected by a requirement of a State, political subdivision, or Indian tribe, may apply for a determination as to whether that requirement is preempted under 49 U.S.C. 5125.

(b) A State, political subdivision, or Indian tribe may apply for a waiver of preemption with respect to any requirement that the State, political subdivision, or Indian tribe acknowledges to be preempted by 49 U.S.C. 5125, or that has been determined by a court of competent jurisdiction to be so preempted.

(b) For purposes of this subpart “political subdivision” includes a municipality; a public agency or other instrumentality of one or more States, municipalities, or other political subdivisions of a State; or a public corporation, board, or commission established under the laws of one or more States.

(b) [Reserved]

(d) An application for a preemption determination that includes an application for a waiver of preemption will be treated and processed solely as an application for a preemption determination.

§ 107.202 Standards for determining preemption.

(a) Except as provided in §107.221 and unless otherwise authorized by Federal law, any requirement of a State or political subdivision thereof or an Indian tribe that concerns one of the following subjects and that is not substantively the same as any provision of the Federal hazardous materials transportation law, a regulation issued under the Federal hazardous material transportation law, or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security that concerns that subject, is preempted:

(1) The designation, description, and classification of hazardous material.

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(3) The preparation, execution, and use of shipping documents pertaining to hazardous material and requirements related to the number, content, and placement of those documents.

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(5) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

(b) Except as provided in §107.221 and unless otherwise authorized by Federal law, any requirement of a State or political subdivision or Indian tribe is preempted if—

(1) It is not possible to comply with a requirement of the State, political subdivision, or Indian tribe and a requirement under the Federal hazardous material transportation law, a regulation issued under the Federal hazardous material transportation law, or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security;

(2) The requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to accomplishing and carrying out the Federal hazardous material transportation law, a regulation issued under the Federal hazardous material transportation law, or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security.

(3) It is preempted under 49 U.S.C. 5125 (c).

(c) A State, political subdivision, or Indian tribe may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose related to transporting hazardous material, including enforcement and planning, developing and
maintaining a capability for emergency response.

(d) For purposes of this section, “substantively the same” means that the non-Federal requirement conforms in every significant respect to the Federal requirement. Editorial and other similar de minimis changes are permitted.


PREEMPTION DETERMINATIONS

§ 107.203 Application.

(a) With the exception of highway routing matters covered under 49 U.S.C. 5125(c), any person, including a State or political subdivision thereof or an Indian tribe, directly affected by any requirement of a State or political subdivision thereof or an Indian tribe, may apply to the Chief Counsel for a determination as to whether that requirement is preempted by § 107.202(a), (b), or (c).

(b) Each application filed under this section for a determination must:

(1) Be submitted to the Chief Counsel:
   (i) By mail addressed to the Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHC–1, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001;
   (ii) By facsimile to 202–366–7041; or
   (iii) Electronically to the Chief Counsel at phmsachiefcounsel@dot.gov.

(2) Set forth the text of the State or political subdivision or Indian tribe requirement for which the determination is sought;

(3) Specify each requirement of the Federal hazardous materials transportation law, regulations issued under the Federal hazardous material transportation law, or hazardous material transportation security regulations or directives issued by the Secretary of Homeland Security with which the applicant seeks the State or political subdivision or Indian tribe requirement to be compared;

(4) Explain why the applicant believes the State or political subdivision or Indian tribe requirement should or should not be preempted under the standards of §107.202; and

(5) State how the applicant is affected by the State or political subdivision or Indian tribe requirement.

(c) The filing of an application for a determination under this section does not constitute grounds for noncompliance with any requirement of the Federal hazardous materials transportation law, regulations issued under the Federal hazardous material transportation law, or hazardous material transportation security regulations or directives issued by the Secretary of Homeland Security.

(d) Once the Chief Counsel has published notice in the FEDERAL REGISTER of an application received under paragraph (a) of this section, no applicant for such determination may seek relief with respect to the same or substantially the same issue in any court until final action has been taken on the application or until 180 days after filing of the application, whichever occurs first. Nothing in §107.203(a) prohibits a State or political subdivision thereof or Indian tribe, or any other person directly affected by any requirement of a State or political subdivision thereof or Indian tribe, from seeking a determination of preemption in any court of competent jurisdiction in lieu of applying to the Chief Counsel under paragraph (a) of this section.


§ 107.205 Notice.

(a) If the applicant is other than a State, political subdivision, or Indian tribe, the applicant shall mail a copy of the application to the State, political subdivision, or Indian tribe concerned accompanied by a statement that the State, political subdivision, or Indian tribe may submit comments regarding the application to the Chief Counsel. The application filed with the Chief Counsel must include a certification that the applicant has complied with
§ 107.207 Processing.

(a) The Chief Counsel may initiate an investigation of any statement in an application and utilize in his or her evaluation any relevant facts obtained by that investigation. The Chief Counsel may solicit and accept submissions from third persons relevant to an application and will provide the applicant an opportunity to respond to all third person submissions. In evaluating an application, the Chief Counsel may consider any other source of information. The Chief Counsel on his or her own initiative may convene a hearing or conference, if he or she considers that a hearing or conference will advance his or her evaluation of the application.

(b) The Chief Counsel may dismiss the application without prejudice if:

(1) He or she determines that there is insufficient information upon which to base a determination; or

(2) He or she requests additional information from the applicant and it is not submitted.


§ 107.209 Determination.

(a) Upon consideration of the application and other relevant information received, the Chief Counsel issues a determination.

(b) The determination includes a written statement setting forth the relevant facts and the legal basis for the determination, and provides that any person aggrieved thereby may file a petition for reconsideration with the Chief Counsel.

(c) The Chief Counsel provides a copy of the determination to the applicant and to any other person who substantially participated in the proceeding or requested in comments to the docket to be notified of the determination. A copy of each determination is placed on file in the public docket. The Chief Counsel will publish the determination or notice of the determination in the FEDERAL REGISTER, at which time the determination becomes a final agency action.

(d) A determination issued under this section constitutes an administrative determination as to whether a particular requirement of a State or political subdivision or Indian tribe is preempted under the Federal hazardous materials transportation law. The fact that a determination has not been issued under this section with respect to a particular requirement of a State or political subdivision or Indian tribe carries no implication as to whether the requirement is preempted under the Federal hazardous materials transportation law.


§ 107.211 Petition for reconsideration.

(a) Any person aggrieved by a determination issued under §107.209 may file a petition for reconsideration. The petition must be filed with the Chief Counsel, in the same manner specified for filing an application in §107.203(b), within 20 days of publication of the determination in the FEDERAL REGISTER.

(b) The petition must contain a concise statement of the basis for seeking review, including any specific factual
or legal error alleged. If the petition requests consideration of information that was not previously made available to the Chief Counsel, the petition must include the reasons why such information was not previously made available.

(c) The petitioner shall mail a copy of the petition to each person who participated, either as an applicant or commenter, in the preemption determination proceeding, accompanied by a statement that the person may submit comments concerning the petition to the Chief Counsel within 20 days. The petition filed with the Chief Counsel must contain a certification that the petitioner has complied with this paragraph and include the names and addresses of all persons to whom a copy of the petition was sent. Late-filed comments are considered so far as practicable.

(d) The Chief Counsel will publish the decision on the petition for reconsideration or notice of the decision in the FEDERAL REGISTER, at which time the decision on the petition for reconsideration becomes a final agency action.


§ 107.213 Judicial review.

A party to a proceeding under §107.203(a) may seek review of a determination of the Chief Counsel by filing a petition, within 60 days after the determination becomes final, in the United States Court of Appeals for the District of Columbia or in the Court of Appeals for the United States for the circuit in which the person resides or has its principal place of business.

[71 FR 30068, May 25, 2006]

WAIVER OF PREEMPTION DETERMINATIONS

§ 107.215 Application.

(a) With the exception of requirements preempted under 49 U.S.C. 5125(c), a State or political subdivision thereof, or Indian tribe may apply to the Chief Counsel for a waiver of preemption with respect to any requirement that the State or political subdivision thereof or Indian tribe acknowledges to be preempted under the Federal hazardous materials transportation law, or that has been determined by a court of competent jurisdiction to be so preempted. The Chief Counsel may waive preemption with respect to such requirement upon a determination that such requirement—

(1) Affords an equal or greater level of protection to the public than is afforded by the requirements of the Federal hazardous material transportation law or the regulations issued thereunder, and

(2) Does not unreasonably burden commerce.

(b) Each application filed under this section for a waiver of preemption determination must:

(1) Be submitted to the Chief Counsel;

(2) Contain the text of the State or political subdivision requirement for which the determination is being sought;

(3) Include a copy of any court order and any ruling issued under §107.209 having a bearing on the application;

(4) Contain an express acknowledgment by the applicant that the State, political subdivision, or Indian tribe requirement is preempted under Federal hazardous materials transportation law, unless it has been so determined by a court of competent jurisdiction or in a determination issued under §107.209;

(5) Specify each requirement of the Federal hazardous materials transportation law that preempts the State, political subdivision, or Indian tribe requirement;

(6) State why the applicant believes the State, political subdivision or Indian tribe requirements affords an equal or greater level of protection to the public than is afforded by the requirements of the Federal hazardous material transportation law or the regulations issued thereunder;
§ 107.217 Notice.

(a) The applicant shall mail a copy of the application and any subsequent amendments or other documents relating to the application to each person who is reasonably ascertainable by the applicant as a person who will be affected by the determination sought. The copy of the application must be accompanied by a statement that the person may submit comments regarding the application within 45 days. The application must include a certification that the application has complied with this paragraph and must include the names and addresses of each person to whom the application was sent.

(b) Notwithstanding the provisions of paragraph (a) of this section, if the State or political subdivision determines that compliance with paragraph (a) of this section would be impracticable, the applicant shall:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and practicable to notify; and

(2) Include with the application a description of the persons or class or classes of persons to whom notice was not sent.

(c) The Chief Counsel may require the applicant to provide notice in addition to that required by paragraphs (a) and (b) of this section, or may determine that the notice required by paragraph (a) of the section is not practicable, or that notice should be published in the Federal Register. Late-filed comments are considered so far as practicable.

(d) The Chief Counsel may notify any other persons who may be affected by the outcome of a determination on the application.

(e) Any person submitting written comments with respect to an application filed under this section shall send a copy of the comments to the applicant. The person shall certify that he has complied with the requirements of this paragraph. The Chief Counsel may notify other persons participating in the proceeding of the comments and provide an opportunity for those other persons to respond.

§ 107.219 Processing.

(a) The Chief Counsel may initiate an investigation of any statement in an application and utilize in his or her evaluation any relevant facts obtained by that investigation. The Chief Counsel may solicit and accept submissions from third persons relevant to an application and will provide the applicant an opportunity to respond to all third person submissions. In evaluating an application, the Chief Counsel on his or her own initiative may convene a hearing or conference, if he or she considers that a hearing or conference will advance his or her evaluation of the application.

(b) The Chief Counsel may dismiss the application without prejudice if:

(1) He or she determines that there is insufficient information upon which to base a determination;

(2) Upon his or her request, additional information is not submitted by the applicant; or

(3) The applicant fails to provide the notice required by §107.217.

(c) The Chief Counsel will only consider an application for waiver of preemption determination if—

(1) The applicant State or political subdivision thereof or Indian tribe expressly acknowledges in its application that the State or political subdivision or Indian tribe requirement for which the determination is sought is inconsistent with the requirements of the
§ 107.221 Determination.

(a) After considering the application and other relevant information received or obtained during the proceeding, the Chief Counsel issues a determination.

(b) The Chief Counsel may issue a waiver of preemption only on finding that the requirement of the State or political subdivision thereof or Indian tribe affords the public a level of safety at least equal to that afforded by the requirements of the Federal hazardous material transportation law or the regulations issued thereunder and does not unreasonably burden commerce. In determining if the requirement of the State or political subdivision thereof or Indian tribe unreasonably burdens commerce, the Chief Counsel considers:

1. The extent to which increased costs and impairment of efficiency result from the requirement of the State or political subdivision thereof or Indian tribe.

2. Whether the requirement of the State or political subdivision thereof or Indian tribe has a rational basis.

3. Whether the requirement of the State or political subdivision thereof or Indian tribe achieves its stated purpose.

4. Whether there is need for uniformity with regard to the subject concerned and if so, whether the requirement of the State or political subdivision thereof or Indian tribe competes or conflicts with those of other States or political subdivisions thereof or Indian tribes.

§ 107.223 Petition for reconsideration.

(a) Any person aggrieved by a determination under §107.221 may file a petition for reconsideration. The petition
must be filed with the Chief Counsel, in the same manner specified for filing an application in §107.215(b), within 20 days of publication of the determination in the FEDERAL REGISTER.

(b) The petition must contain a concise statement of the basis for seeking review, including any specific factual or legal error alleged. If the petition requests consideration of information that was not previously made available to the Chief Counsel, the petition must include the reasons why such information was not previously made available.

(c) The petitioner shall mail a copy of the petition to each person who participated, either as an applicant or commenter, in the waiver of preemption proceeding, accompanied by a statement that the person may submit comments concerning the petition to the Chief Counsel within 20 days. The petition filed with the Chief Counsel must contain a certification that the petitioner has complied with this paragraph and include the names and addresses of all persons to whom a copy of the petition was sent. Late-filed comments are considered so far as practicable.

(d) The Chief Counsel will publish the decision on the petition for reconsideration or notice of the decision in the FEDERAL REGISTER, at which time the decision on the petition for reconsideration becomes a final agency action.


§ 107.303 Purpose and scope.

This subchapter describes the various enforcement authorities exercised by the Associate Administrator for Hazardous Materials Safety and the Office of Chief Counsel and the associated sanctions and describes the procedures governing the exercise of those authorities and the imposition of those sanctions.


§ 107.305 Investigations.

(a) General. In accordance with its delegated authority under part 1 of this title, the Associate Administrator may initiate investigations relating to compliance by any person with any provisions of this subchapter or subchapter C of this chapter, or any special permit, approval, or order issued thereunder, or any court decree relating thereto. The Associate Administrator encourages voluntary production of documents in accordance with and subject to §105.45, and hearings may be conducted, and depositions taken pursuant to 49 U.S.C. 5121(a). The Associate Administrator may conduct investigative conferences and hearings in the course of any investigation.

(b) Investigations and Inspections. Investigations under 49 U.S.C. 5121(a) are conducted by personnel duly authorized for that purpose by the Associate Administrator. Inspections under 49
U.S.C. 5121(c) are conducted by Hazardous Materials Enforcement Specialists or Hazardous Materials Compliance Investigators, also known as “hazmat investigators” or “investigators,” whom the Associate Administrator has designated for that purpose.

(1) An investigator will, on request, present his or her credentials for examination, but the credentials may not be reproduced.

(2) An investigator may administer oaths and receive affirmations in any matter under investigation by the Associate Administrator.

(3) An investigator 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, Field Operations, Pipeline and Hazardous Materials Safety Administration, an investigator may issue a subpoena for the production of documentary or other tangible evidence if, on the basis of information available to the investigator, 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.

§ 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 special permit issued thereunder.

(b) A warning letter issued under this section includes:

1. A statement of the facts upon which the Associate Administrator bases its determination that the person has committed a probable violation;
2. A statement that the recurrence of the probable violations cited may subject the person to enforcement action; and
3. An opportunity to respond to the warning letter by submitting pertinent information or explanations concerning the probable violations cited therein.


§ 107.310 Ticketing.

(a) For an alleged violation that does not have a direct or substantial impact on safety, the Associate Administrator may issue a ticket.

(b) The Associate Administrator issues a ticket by mailing it by certified or registered mail to the person alleged to have committed the violation. The ticket includes:

1. A statement of the facts on which the Associate Administrator bases the conclusion that the person has committed the alleged violation;
2. The maximum penalty provided for by statute, the proposed full penalty determined according to PHMSA’s civil penalty guidelines and the statutory criteria for penalty assessment, and the ticket penalty amount; and
3. A statement that within 45 days of receipt of the ticket, the person must pay the penalty in accordance with paragraph (d) of this section, make an informal response under §107.317, or request a formal administrative hearing under §107.319.

(c) If the person makes an informal response or requests a formal administrative hearing, the Associate Administrator forwards the inspection report, ticket and response to the Office of the Chief Counsel for processing under §§107.307–107.339, except that the Office of the Chief Counsel will not issue a Notice of Probable Violation under §107.311. The Office of the Chief Counsel may impose a civil penalty that does not exceed the proposed full penalty set forth in the ticket.

(d) Payment of the ticket penalty amount must be made in accordance with the instructions on the ticket.

(e) If within 45 days of receiving the ticket the person does not pay the ticket amount, make an informal response, or request a formal administrative hearing, the person has waived the right to make an informal response or request a hearing, has admitted the violation and owes the ticket penalty amount to PHMSA.


§ 107.311 Notice of probable violation.

(a) The Office of Chief Counsel may serve a notice of probable violation on a person alleging the violation of one or more provisions of the Federal hazardous material transportation law or any provision of this subchapter or subchapter C of this chapter, or any special permit, or order issued thereunder.

(b) A notice of probable violation issued under this section includes the following information:

1. A citation of the provisions of the Federal hazardous material transportation law, an order issued thereunder, this subchapter, subchapter C of this chapter, or the terms of any special permit issued thereunder which the Office of Chief Counsel believes the respondent is violating or has violated.
2. A statement of the factual allegations upon which the demand for remedial action, a civil penalty, or both, is based.
3. A statement of the respondent’s right to present written or oral explanations, information, and arguments in answer to the allegations and in mitigation of the sanction sought in the notice of probable violation.
§ 107.315 Admission of violations.

(a) In responding to a notice of probable violation issued under § 107.311, the respondent may admit the alleged violations and agree to accept the terms of a proposed compliance order or to pay the amount of the preliminarily assessed civil penalty, or, if proposed in the notice, both.

(b) If the respondent agrees to the terms of a proposed compliance order, the Chief Counsel issues a final order prescribing the remedial action to be taken by the respondent.

(c) Payment of a civil penalty, when the amount of the penalty exceeds $10,000, must be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions on making payments by wire transfer may be obtained from the Financial Operations Division (AMZ–120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125.

§ 107.313 Reply.

(a) Within 30 days of receipt of a notice of probable violation, the respondent must either:

(1) Admit the violation under § 107.315;

(2) Make an informal response under § 107.317; or

(3) Request a hearing under § 107.319.

(b) Failure of the respondent to file a reply as provided in this section constitutes a waiver of the respondent’s right to appear and contest the allegations and authorizes the Chief Counsel, without further notice to the respondent, to find the facts to be as alleged in the notice of probable violation and issue an order directing compliance or assess a civil penalty, or, if proposed in the notice, both. Failure to request a hearing under paragraph (a)(3) of this section constitutes a waiver of the respondent’s right to a hearing.

(c) Upon the request of the respondent, the Office of Chief Counsel may, for good cause shown and filed within the 30 days prescribed in the notice of probable violation, extend the 30-day response period.

§ 107.315 Admission of violations.

(a) In responding to a notice of probable violation issued under § 107.311, the respondent may admit the alleged violations and agree to accept the terms of a proposed compliance order or to pay the amount of the preliminarily assessed civil penalty, or, if proposed in the notice, both.
§ 107.317  Informal response.

(a) In responding to a notice of probable violation under §107.311, the respondent may submit to the official who issued the notice, written explanations, information, or arguments in response to the allegations, the terms of a proposed compliance order, or the amount of the preliminarily assessed civil penalty.

(b) The respondent may include in his informal response a request for a conference. Upon the request of the respondent, the conference may be either in person or by telephone. A request for a conference must set forth the issues the respondent will raise at the conference.

(c) Upon receipt of a request for a conference under paragraph (b) of this section, the Chief Counsel's Office, in consultation with the Associate Administrator, arranges for a conference as soon as practicable at a time and place of mutual convenience.

(d) The respondent’s written explanations, information, and arguments as well as the respondent’s presentation at a conference are considered by the Chief Counsel in reviewing the notice of probable violation. Based upon a review of the proceeding, the Chief Counsel may dismiss the notice of probable violation in whole or in part. If he does not dismiss it in whole, he issues an order directing compliance or assessing a civil penalty, or, if proposed in the notice, both.

§ 107.319  Request for a hearing.

(a) In responding to a notice of probable violation under §107.311, the respondent may request a formal administrative hearing on the record before an Administrative Law Judge (ALJ) obtained by the Office of the Chief Counsel.

(b) A request for a hearing under paragraph (a) of this section must:

(1) State the name and address of the respondent and of the person submitting the request if different from the respondent;

(2) State which allegations of violations, if any, are admitted; and

(3) State generally the issues to be raised by the respondent at the hearing. Issues not raised in the request are not barred from presentation at the hearing; and

(4) Be addressed to the official who issued the notice.

(c) After a request for a hearing that complies with the requirements of paragraph (b) of this section, the Chief Counsel obtains an ALJ to preside over the hearing and notifies the respondent of this fact. Upon assignment of an ALJ, further matters in the proceeding generally are conducted by and through the ALJ, except that the Chief Counsel and respondent may compromise or settle the case under §107.327 of this subpart without order of the ALJ or voluntarily dismiss the case under Rule 41(a)(1) of the Federal Rules of Civil Procedure without order of the ALJ; in the event of such a compromise, settlement or dismissal, the Chief Counsel expeditiously will notify the ALJ thereof.

(d) At any time after requesting a formal administrative hearing but prior to the issuance of a decision and final order by the ALJ, the respondent may withdraw such request in writing, thereby terminating the jurisdiction of the ALJ in the case. Such a withdrawal constitutes an irrevocable waiver of respondent’s right to such a hearing on the facts, allegations, and proposed sanction presented in the notice of probable violation to which the request for hearing relates.

§ 107.321  Hearing.

(a) To the extent practicable, the hearing is held in the general vicinity of the place where the alleged violation occurred or at a place convenient to the respondent. Testimony by witnesses shall be given under oath and the hearing shall be recorded verbatim.

(b) Hearings are conducted in accordance with the Federal Rules of Evidence and Federal Rules of Civil Procedure; however, the ALJ may modify them as he determines necessary in the interest of a full development of the facts. In addition, the ALJ may:
§ 107.325

(a) Hearing proceedings. A party aggrieved by an ALJ’s decision and order issued under §107.323, may file a written appeal in accordance with paragraph (c) of this section with the Administrator, Office of the Administrator, Pipeline and Hazardous Materials Safety Administration, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(b) Non-Hearing proceedings. A respondent aggrieved by an order issued under §107.317, may file a written appeal in accordance with paragraph (c) of this section with the Administrator, Office of the Administrator, Pipeline and Hazardous Materials Safety Administration, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(c) An appeal of an order issued under this subpart must:

(1) Be filed within 20 days of receipt of the order by the appealing party; and

(2) State with particularity the findings in the order that the appealing party challenges, and include all information and arguments pertinent thereto.

(d) If the Administrator, PHMSA, affirms the order in whole or in part, the respondent must comply with the terms of the decision within 20 days of the respondent’s receipt thereof, or within the time prescribed in the order.

§ 107.323 ALJ’s decision.

(a) After consideration of all matters of record in the proceeding, the ALJ shall issue an order dismissing the notice of probable violation in whole or in part or granting the sanction sought by the Office of Chief Counsel in the notice. If the ALJ does not dismiss the notice of probable violation in whole, he issues an order directing compliance or assessing a civil penalty, or, if proposed in the notice, both. The order includes a statement of the findings and conclusions, and the reasons therefore, on all material issues of fact, law, and discretion.

(b) If, within 20 days of receipt of an order issued under paragraph (a) of this section, the respondent does not submit in writing his acceptance of the terms of an order directing compliance, or, where appropriate, pay a civil penalty, or file an appeal under §107.325, the case may be referred to the Attorney General with a request that an action be brought in the appropriate United States District Court to enforce the terms of a compliance order or collect the civil penalty.
§ 107.327 Compromise and settlement.

(a) At any time before an order issued under §107.317 or §107.323 is referred to the Attorney General for enforcement, the respondent or the Office of Chief Counsel may propose a compromise as follows:

(1) In civil penalty cases, the respondent or Chief Counsel may offer to compromise the amount of the penalty by submitting an offer for a specific amount to the other party. An offer of compromise by the respondent shall be submitted to the Chief Counsel who may, after consultation with the Associate Administrator, accept or reject it.

(ii) If a compromise is agreed to by the parties, the respondent is notified in writing. Upon receipt of payment by Office of Chief Counsel, the respondent is notified in writing that acceptance of payment is in full satisfaction of the civil penalty proposed or assessed, and Office of Chief Counsel closes the case with prejudice to the respondent.

(iii) If a compromise cannot be agreed to, the respondent is notified in writing and is given 10 days or the amount of time remaining in the then outstanding response period, whichever is longer, to respond to whatever action was taken by the Office of Chief Counsel or the Administrator, PHMSA.

(b) Notwithstanding paragraph (a)(1) of this section, the respondent or Office of Chief Counsel may propose to settle the case. If the Chief Counsel agrees to a settlement, the respondent is notified and the case is closed without prejudice to the respondent.

§ 107.329 Maximum penalties.

(a) A person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, this subchapter, subchapter C of this chapter, or a special permit or approval issued under this subchapter applicable to the transportation of hazardous materials or the causing of them to be transported or shipped is liable for a civil penalty of not more than $55,000 and not less than $250 for each violation, except the maximum civil penalty is $110,000 if the violation results in death, serious illness or severe injury to any person or substantial destruction of property, and a minimum $495 civil penalty applies to a violation relating to training. When the violation is a continuing one, each day of the violation constitutes a separate offense.

(b) A person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, this subchapter, subchapter C of this chapter, or a special permit or approval issued under
this subchapter applicable to the design, manufacture, fabrication, inspection, marking, maintenance, reconditioning, repair or testing of a package, container, or packaging component which is represented, marked, certified, or sold by that person as qualified for use in the transportation of hazardous materials in commerce is liable for a civil penalty of not more than $55,000 and not less than $250 for each violation, except the maximum civil penalty is $110,000 if the violation results in death, serious illness or severe injury to any person or substantial destruction of property, and a minimum $495 civil penalty applies to a violation relating to training.


§ 107.331 Assessment considerations.

After finding a knowing violation under this subpart, the Office of Chief Counsel assesses a civil penalty taking the following into account:

(a) The nature and circumstances of the violation;

(b) The extent and gravity of the violation;

(c) The degree of the respondent’s culpability;

(d) The respondent’s prior violations;

(e) The respondent’s ability to pay;

(f) The effect on the respondent’s ability to continue in business; and

(g) Such other matters as justice may require.


§ 107.334 Limitation on fines and penalties.

If a State or political subdivision or Indian tribe assesses any fine or penalty determined by the Secretary to be appropriate for a violation concerning a subject listed in §107.202(a), no additional fine or penalty may be assessed for such violation by any other authority.


§ 107.336 Limitation on fines and penalties.

If a State or political subdivision or Indian tribe assesses any fine or penalty determined by the Secretary to be appropriate for a violation concerning a subject listed in §107.202(a), no additional fine or penalty may be assessed for such violation by any other authority.


§ 107.337 Referral for prosecution.

If the Associate Administrator becomes aware of a possible willful violation of the Federal hazardous material transportation law, this subchapter, subchapter C of this chapter, or any special permit, or order issued thereunder, for which the Associate Administrator exercises enforcement responsibility, it shall report it to the Office of the Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590–0001. If appropriate, the Chief Counsel refers the report to the Department of Justice for criminal prosecution of the offender.


§ 107.338 Limitation on fines and penalties.

If a State or political subdivision or Indian tribe assesses any fine or penalty determined by the Secretary to be appropriate for a violation concerning a subject listed in §107.202(a), no additional fine or penalty may be assessed for such violation by any other authority.


§ 107.339 Limitation on fines and penalties.

If a State or political subdivision or Indian tribe assesses any fine or penalty determined by the Secretary to be appropriate for a violation concerning a subject listed in §107.202(a), no additional fine or penalty may be assessed for such violation by any other authority.


§ 107.337 Injunctions generally.

Whenever it appears to the Office of Chief Counsel that a person has engaged, or is engaged, or is about to engage in any act or practice constituting a violation of any provision of the Federal hazardous material transportation law, this subchapter, subchapter C of this chapter, or any special permit, or order issued thereunder, for which the Office of Chief Counsel exercises enforcement responsibility, the Office of Chief Counsel shall refer the report to the Department of Justice for criminal prosecution of the offender.
the Administrator, PHMSA, or his delegate, may request the Attorney General to bring an action in the appropriate United States District Court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages as provided by 49 U.S.C. 5122(a).


§ 107.339 Imminent hazards.

Whenever it appears to the Office of the Chief Counsel that there is a substantial likelihood that death, serious illness, or severe personal injury will result from the transportation of a particular hazardous material or hazardous materials container, before a compliance order proceeding or other administrative hearing or formal proceeding to abate the risk of that harm can be completed, the Administrator, PHMSA, or his delegate, may bring an action under 49 U.S.C. 5122(b) in the appropriate United States District Court for an order suspending or restricting the transportation of that hazardous material or those containers or for such other equitable relief as is necessary or appropriate to ameliorate the hazard.


APPENDIX A TO SUBPART D OF PART 107—GUIDELINES FOR CIVIL PENALTIES

I. This appendix sets forth the guidelines used by the Office of Hazardous Materials Safety (as of October 1, 2005) in making initial baseline determinations for recommending civil penalties. The first part of these guidelines is a list of baseline amounts or ranges for probable violations frequently cited in enforcement reports referred for action. Following the list of violations are general guidelines used by OHMS in making initial penalty determinations in enforcement cases.

II. LIST OF FREQUENTLY CITED VIOLATIONS

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<th>General Requirements</th>
<th>Section or cite</th>
<th>Baseline assessment</th>
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<tbody>
<tr>
<td>A. Registration Requirements: Failure to register as an offeror or carrier of hazard-</td>
<td>107.608, 107.612</td>
<td>$1,000 + $500 each</td>
</tr>
<tr>
<td>ous material and pay registration fee.</td>
<td></td>
<td>additional year.</td>
</tr>
<tr>
<td>B. Training Requirements:</td>
<td>172.702</td>
<td>$700 and up each</td>
</tr>
<tr>
<td>1. Failure to provide initial training to hazmat employees (general awareness,</td>
<td></td>
<td>area.</td>
</tr>
<tr>
<td>function-specific, safety, and security awareness training):</td>
<td></td>
<td>$450 and up each</td>
</tr>
<tr>
<td>a. More than 10 hazmat employees</td>
<td></td>
<td>area.</td>
</tr>
<tr>
<td>b. 10 hazmat employees or fewer</td>
<td></td>
<td>$800 and up.</td>
</tr>
<tr>
<td>2. Failure to provide recurrent training to hazmat employees (general awareness,</td>
<td>172.702</td>
<td>Included in penalty</td>
</tr>
<tr>
<td>function-specific, safety, and security awareness training):</td>
<td></td>
<td>for no plan.</td>
</tr>
<tr>
<td>3. Failure to provide security training when a security plan is required but has</td>
<td>172.702</td>
<td>$2,500.</td>
</tr>
<tr>
<td>not been developed.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Failure to provide security training when a security plan has been developed but</td>
<td>172.704</td>
<td>$800 and up.</td>
</tr>
<tr>
<td>hazmat employees have not been trained concerning the security plan and its</td>
<td></td>
<td>$500 and up.</td>
</tr>
<tr>
<td>implementation.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Failure to create and maintain training records:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. More than 10 hazmat employees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. 10 hazmat employees or fewer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Failure to develop a security plan; failure to adhere to security plan:</td>
<td></td>
<td>$6,000.</td>
</tr>
<tr>
<td>a. § 172.504 table 1 materials</td>
<td></td>
<td>$4,500.</td>
</tr>
<tr>
<td>b. Packing Group I</td>
<td></td>
<td>$3,000.</td>
</tr>
<tr>
<td>c. Packing Group II</td>
<td></td>
<td>One-quarter (25%)</td>
</tr>
<tr>
<td>d. Packing Group III</td>
<td></td>
<td>of above for each</td>
</tr>
<tr>
<td>2. Incomplete security plan or incomplete adherence (one or more of four required</td>
<td>172.802(b)</td>
<td>One-third (33%) of</td>
</tr>
<tr>
<td>elements missing).</td>
<td></td>
<td>baseline for no</td>
</tr>
<tr>
<td>3. Failure to update a security plan to reflect changing circumstances</td>
<td></td>
<td>plan.</td>
</tr>
</tbody>
</table>
### II—List of Frequently Cited Violations—Continued

<table>
<thead>
<tr>
<th>Violation description</th>
<th>Section or cite</th>
<th>Baseline assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. Failure to put security plan in writing; failure to make all copies identical.</td>
<td>172.801(b)</td>
<td>One-third (33%) of baseline for no plan.</td>
</tr>
<tr>
<td>D. Notification to a Foreign Shipper: Failure to provide information of HMR requirements applicable to a shipment of hazardous materials within the United States, to a foreign offeror or forwarding agent at the place of entry into the U.S.</td>
<td>171.12(a)</td>
<td>$1,500 to $7,500 (corresponding to violations by foreign offeror or forwarding agent); $1,000 plus $500 each additional year.</td>
</tr>
<tr>
<td>E. Expired Exemption or Special Permit: Offering or transporting a hazardous material, or otherwise performing a function covered by an exemption or special permit, after expiration of the exemption or special permit</td>
<td>171.2(a), (b), (c), Various.</td>
<td></td>
</tr>
</tbody>
</table>

#### Offeror Requirements—All hazardous materials

A. Undeclared Shipment:
Offering for transportation a hazardous material without shipping papers, package markings, labels, or placards.

B. Shipping Papers:
1. Failure to provide a shipping paper for a shipment of hazardous materials.
   | 172.200, 172.300, 172.400, 172.500. | $15,000 and up. |
2. Failure to follow one or more of the three approved formats for listing hazardous materials on a shipping paper.
   | 172.201 | $3,000 to $6,000. |
3. Failure to retain shipping papers:
   a. by an offeror, for two years after the date the shipment is provided to the carrier (or 3 years if the material is a hazardous waste).
      | 172.201(a)(1) | $1,200. |
   b. by a carrier, for one year after the date the shipment is provided to the carrier (or 3 years if the material is a hazardous waste).
      | 172.201(e), 174.24(b), 175.30(a), 176.24(b), 177.817(f). | $1,000. |
4. Failure to include a proper shipping name in the shipping description or using an incorrect proper shipping name.
   | 172.202 | $800 to $1,600. |
5. Failure to include a hazard class/division number in the shipping description.
   | 172.202 | $1,000 to $2,000. |
6. Failure to include an identification number in the shipping description.
   | 172.202 | $1,000 to $2,000. |
7. Using an incorrect hazard class/identification number:
   a. that does not affect compatibility requirements       | 172.202. | $800. |
   b. that affects compatibility requirements                |              | $3,000 to $6,000. |
   a. that does not change the response information            |              | $3,000 to $6,000. |
   b. that changes the response information                   |              | $3,000 to $6,000. |
9. Failure to include the Packing Group, or using an incorrect Packing Group.
   | 172.202 | $1,200. |
10. Using a shipping description that includes additional unauthorized information (extra or incorrect words).
    | 172.202 | $800. |
12. Using a shipping description with two or more required elements missing or incorrect:
    a. such that the material is misdescribed                 | 172.202 | $3,000. |
    b. such that the material is misclassified               |              | $6,000. |
13. Failure to include the total quantity of hazardous material covered by a shipping description.
    | 172.202(c) | $500. |
14. Failure to list an exemption or special permit number in association with the shipping description.
    | 172.203(a) | $800. |
15. Failure to indicate "Limited Quantity" or "Ld Qty" following the basic shipping description of a material offered for transportation as a limited quantity.
    | 172.203(b) | $500. |
16. Failure to include "RQ" in the shipping description to identify a material that is a hazardous substance.
    | 172.203(c)(2) | $500. |
17. Failure to include a required technical name in parenthesis for a listed generic or "n.o.s." material.
    | 172.203(k) | $1,000. |
18. Failure to include the required shipper’s certification on a shipping paper.
    | 172.204 | $1,000. |
19. Failure to sign the required shipper’s certification on a shipping paper.
    | 172.204 | $800. |

C. Emergency Response Information Requirements:
1. Providing or listing incorrect emergency response information with or on a shipping paper.
   a. No significant difference in response                  | 172.602. | $800. |
   b. Significant difference in response                    |              | $3,000 to $6,000. |
II—List of Frequently Cited Violations—Continued

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<th>Violation description</th>
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</tr>
</thead>
<tbody>
<tr>
<td>2. Failure to include an emergency response telephone number on a shipping paper.</td>
<td>172.604</td>
<td>$2,600.</td>
</tr>
<tr>
<td>3. Failure to have the emergency response telephone number monitored while a hazardous material is in transportation or listing multiple telephone numbers (without specifying the times for each) that are not monitored 24 hours a day.</td>
<td>172.604</td>
<td>$1,300.</td>
</tr>
<tr>
<td>4. Listing an unauthorized emergency response telephone number on a shipping paper.</td>
<td>172.604</td>
<td>$2,600 to $4,200.</td>
</tr>
<tr>
<td>5. Listing an incorrect or non-working emergency response telephone number on a shipping paper.</td>
<td>172.604</td>
<td>$1,300.</td>
</tr>
<tr>
<td>6. Failure to provide required technical information when the listed emergency response telephone number is contacted.</td>
<td>172.604</td>
<td>$1,300.</td>
</tr>
</tbody>
</table>

D. Package Marking Requirements:

1. Failure to mark the proper shipping name on a package or marking an incorrect shipping name on a package. | 172.301(a) | $800 to $1,600. |
2. Failure to mark the identification number on a package | 172.301(a) | $1,000 to $2,000. |
3. Marking a package with an incorrect identification number | 172.301(a) | $800. |
   a. that does not change the response information |
   b. that changes the response information |
4. Failure to mark the proper shipping name and identification number on a package. | 172.301(a) | $3,000 to $6,000. |
5. Marking a package with an incorrect shipping name and identification number. | 172.301(a) | $1,500 to $3,000. |
   a. that does not change the response information |
   b. that changes the response information |
6. Failure to include the required technical name(s) in parenthesis for a listed generic or “n.o.s.” entry. | 172.303(a) | $1,000. |
7. Marking a package as containing hazardous material when it contains no hazardous material. | 172.304(a) | $800. |
8. Failure to locate required markings away from other markings that could reduce their effectiveness. | 172.304(a)(4) | $800. |
9. Failure to mark a package containing liquid hazardous materials with required orientation marking. | 172.312 | $2,500 to $3,500. |
10. Failure to mark “RQ” on a non-bulk package containing a hazardous substance. | 172.324(b) | $500. |

E. Package Labeling Requirements:

1. Failure to label a package. | 172.400 | $5,000. |
2. Placing a label that represents a hazard other than the hazard presented by the hazardous material in the package. | 172.400 | $5,000. |
3. Placing a label on a package that does not contain a hazardous material. | 172.401(a) | $800. |
4. Failure to place a required subsidiary label on a package. | 172.402 | $500 to $2,500. |
5. Placing a label on a different surface of the package than, or away from, the proper shipping name. | 172.406(a) | $800. |
6. Placing an improper size label on a package. | 172.407(c) | $800. |
7. Placing a label on a package that does not meet color specification requirements (depending on the variance). | 172.407(d) | $600 to $2,500. |
8. Failure to provide an appropriate class or division number on a label. | 172.411 | $2,500. |

F. Placarding Requirements:

Failure to properly placard a freight container or vehicle containing hazardous materials: | 172.504 | $1,000 to $9,000. |
   a. when Table 1 is applicable |
   b. when Table 2 is applicable | $800 to $7,200. |

G. Packaging Requirements:

1. Offering a hazardous material for transportation in an unauthorized non-UN standard or non specification packaging (includes failure to comply with the terms of an exemption or special permit authorizing use of a nonstandard or nonspecific packaging). | Various. |
   a. Packing Group I (and §172.504 Table I materials) | $9,000. |
   b. Packing Group II | $7,000. |
   c. Packing Group III | $5,000. |
2. Offering a hazardous material for transportation in a self-certified packaging that has not been subjected to design qualification testing. | 178.601 & Various. |
   a. Packing Group I (and §172.504 Table I materials) | $10,800. |
   b. Packing Group II | $8,400. |
   c. Packing Group III | $6,000. |
3. Offering a hazardous material for transportation in a packaging that has been successfully tested to an applicable UN standard but is not marked with the required UN marking. | 178.503(a) | $3,600. |
II—LIST OF FREQUENTLY CITED VIOLATIONS—Continued

<table>
<thead>
<tr>
<th>Violation description</th>
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</tr>
</thead>
<tbody>
<tr>
<td>4. Failure to close a UN standard packaging in accordance with the closure instructions.</td>
<td>173.22(a)(4)</td>
<td>$2,500.</td>
</tr>
<tr>
<td>5. Offering a hazardous material for transportation in a packaging that leaks during conditions normally incident to transportation:</td>
<td>173.24(b).</td>
<td>$12,000.</td>
</tr>
<tr>
<td>a. Packing Group I (and § 172.504 Table I materials)</td>
<td></td>
<td>$8,000.</td>
</tr>
<tr>
<td>b. Packing Group II</td>
<td></td>
<td>$6,000.</td>
</tr>
<tr>
<td>c. Packing Group III</td>
<td></td>
<td>$6,000.</td>
</tr>
<tr>
<td>6. Overfilling or underfilling a package so that the effectiveness is substantially reduced:</td>
<td>173.24(b).</td>
<td>$9,000.</td>
</tr>
<tr>
<td>a. Packing Group I (and § 172.504 Table I materials)</td>
<td></td>
<td>$6,000.</td>
</tr>
<tr>
<td>b. Packing Group II</td>
<td></td>
<td>$3,000.</td>
</tr>
<tr>
<td>c. Packing Group III</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. Offering a hazardous material for transportation after October 1, 1996, in an unauthorized non-UN standard packaging marked as manufactured to a DOT specification:</td>
<td>171.14.</td>
<td></td>
</tr>
<tr>
<td>a. packaging meets DOT specification</td>
<td></td>
<td>$3,000.</td>
</tr>
<tr>
<td>b. packaging does not meet DOT specification</td>
<td></td>
<td>$5,000 to $9,000.</td>
</tr>
<tr>
<td>8. Failure to mark an overpack with a statement that the inside packages comply with prescribed specifications or standards when specification or standard packaging is required.</td>
<td>173.32(a)(4)</td>
<td>$3,000.</td>
</tr>
<tr>
<td>9. Filling an IBC or a portable tank (DOT, UN, or IM) that is out of test and offering hazardous materials for transportation in that IBC or portable tank.</td>
<td>172.32(a), 180.352, 180.605.</td>
<td></td>
</tr>
<tr>
<td>a. All testing overdue</td>
<td></td>
<td>$3,500 to $7,000.</td>
</tr>
<tr>
<td>b. Only periodic (5 year) test overdue</td>
<td></td>
<td>$3,500.</td>
</tr>
<tr>
<td>c. Only intermediate periodic (2.5 year) tests overdue</td>
<td></td>
<td>$3,500.</td>
</tr>
<tr>
<td>10. Failure to provide the required outage in a portable tank that results in a release of hazardous materials.</td>
<td>173.32(f)(6)</td>
<td>$6,000 to $12,000.</td>
</tr>
</tbody>
</table>

Offeror Requirements—Specific hazardous materials

A. Cigarette Lighters:
Offering for transportation an unapproved cigarette lighter, lighter refill, or similar device, equipped with an ignition element and containing fuel. | 173.21(i) | $7,500. |

B. Class 1—Explosives:
1. Failure to mark the package with the EX number for each substance contained in the package or, alternatively, indicate the EX number for each substance in association with the description on the shipping description. | 173.320 | $1,200. |
2. Offering an unapproved explosive for transportation: | 173.54, 173.56(b). | $5,000 to $10,000. |
3. Offering a leaking or damaged package of explosives for transportation. | 173.54(c) | $10,000 and up. |
4. Packaging explosives in the same outer packaging with other materials. | 173.61 | $2,500 to $5,000. |

C. Class 7—Radioactive Materials:
1. Failure to include required additional entries, or providing incorrect information for these additional entries. | 172.203(d) | $1,000 to $3,000. |
2. Failure to mark the gross mass on the outside of a package of Class 7 material that exceeds 110 pounds. | 172.310(a) | $800. |
3. Failure to mark each package in letters at least 13 mm (1/2 inch) high with the words "Type A" or "Type B" as appropriate. | 172.310(b) | $800. |
4. Placing a label on Class 7 material that understates the proper label category. | 172.403 | $5,000. |
5. Placing a label on Class 7 material that fails to contain (or has erroneous) entries for the name of the radionuclide(s), activity, and transport index. | 172.403(g) | $2,000 to $4,000. |
6. Failure to meet one or more of the general design requirements for a package used to ship a Class 7 material. | 173.410 | $5,000. |
7. Failure to comply with the industrial packaging (IP) requirements when offering a Class 7 material for transportation. | 173.411 | $5,000. |
8. Failure to provide a tamper-indicating device on a Type A package used to ship a Class 7 material. | 173.412(a) | $2,000. |
9. Failure to meet the additional design requirements of a Type A package used to ship a Class 7 material. | 173.412(b)–(i) | $5,000. |
10. Failure to meet the performance requirements for a Type A package used to ship a Class 7 material. | 173.412(j)–(l) | $8,400. |
### Part 107, Subpart D, Appendix A

**II—List of Frequently Cited Violations—Continued**

<table>
<thead>
<tr>
<th>Violation description</th>
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<th>Baseline assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>11. Offering a DOT specification 7A packaging without maintaining complete documentation of tests and an engineering evaluation or comparative data:</td>
<td>173.415(a), 173.461</td>
<td>$8,400.</td>
</tr>
<tr>
<td>a. Tests and evaluation not performed</td>
<td></td>
<td>$8,400.</td>
</tr>
<tr>
<td>b. Complete records not maintained</td>
<td></td>
<td>$2,000 to $5,000.</td>
</tr>
<tr>
<td>12. Offering any Type B, Type B(U), Type B(M) packaging that failed to meet the approved DOT, NRC or DOE design, as applicable.</td>
<td>173.416</td>
<td>$5,000.</td>
</tr>
<tr>
<td>13. Offering a Type B packaging without holding a valid NRC approval certificate:</td>
<td>173.471(a)</td>
<td></td>
</tr>
<tr>
<td>a. Never having obtained one</td>
<td></td>
<td>$3,000.</td>
</tr>
<tr>
<td>b. Holding an expired certificate</td>
<td></td>
<td>$1,000.</td>
</tr>
<tr>
<td>14. Failure to meet one or more of the special requirements for a package used to ship uranium hexafluoride.</td>
<td>173.420</td>
<td>$10,800.</td>
</tr>
<tr>
<td>15. Offering Class 7 material for transportation as a limited quantity without meeting the requirements for limited quantity.</td>
<td>173.421(a)</td>
<td>$4,000.</td>
</tr>
<tr>
<td>16. Offering a multiple-hazard limited quantity Class 7 material without addressing the additional hazard.</td>
<td>173.423(a)</td>
<td>$500 to $2,500.</td>
</tr>
<tr>
<td>17. Offering Class 7 low specific activity (LSA) materials or surface contaminated objects (SCO) with an external dose rate that exceeds an external radiation level of 1 rem/hr at 3 meters from the unshielded material.</td>
<td>173.427(a)(1)</td>
<td>$6,000.</td>
</tr>
<tr>
<td>18. Offering Class 7 LSA materials or SCO as exclusive use without providing specific instructions to the carrier for maintenance of exclusive use shipment controls.</td>
<td>173.427(a)(6)</td>
<td>$1,000.</td>
</tr>
<tr>
<td>19. Offering in excess of Type A quantity of a Class 7 material in a Type A packaging.</td>
<td>173.431</td>
<td>$12,000.</td>
</tr>
<tr>
<td>20. Offering a package that exceeds the permitted limits for surface radiation or transport index.</td>
<td>173.441</td>
<td>$10,000 and up.</td>
</tr>
<tr>
<td>21. Offering a package without determining the level of removable external contamination, or that exceeds the limit for removable external contamination.</td>
<td>173.443</td>
<td>$5,000 and up.</td>
</tr>
<tr>
<td>22. Storing packages of radioactive material in a group with a total transport index more than 50.</td>
<td>173.447(a)</td>
<td>$5,000 and up.</td>
</tr>
<tr>
<td>23. Offering for transportation or transporting aboard a passenger aircraft any single package or overpack of Class 7 material with a transport index greater than 3.0.</td>
<td>173.448(e)</td>
<td>$5,000 and up.</td>
</tr>
<tr>
<td>24. Exporting a Type B, Type B(U), Type B(M), or fissile package without obtaining a U.S. Competent Authority Certificate or, after obtaining a U.S. Competent Authority Certificate, failing to submit a copy to the national competent authority of each country into or through which the package is transported.</td>
<td>173.471(d)</td>
<td>$3,000.</td>
</tr>
<tr>
<td>25. Offering special form radioactive materials without maintaining a complete safety analysis or Certificate of Competent Authority.</td>
<td>173.476(a), (b)</td>
<td>$2,500.</td>
</tr>
</tbody>
</table>

#### D. Class 2—Compressed Gases in Cylinders:

1. Filling and offering a cylinder with compressed gas when the cylinder is out of test. | 173.301(a)(6) | $4,200 to $10,400. |
2. Failure to check each day the pressure of a cylinder charged with acetylene that is representative of that day’s compression, after the cylinder has cooled to a settled temperature, or failure to keep a record of this test for 30 days. | 173.303(d) | $5,000. |
3. Offering a limited quantity of a compressed gas in a metal container for the purpose of propelling a nonpoisonous material and failure to heat the cylinder until the pressure is equivalent to the equilibrium pressure at 130 °F, without evidence of leakage, distortion, or other defect. | 173.306(a)(3), (h) | $1,500 to $6,000. |

#### Manufacturing, Reconditioning, Retesting Requirements

**A. Third-Party Packaging Certifiers (General):**

Issuing a certification that directs the packaging manufacturer to improperly mark a packaging (e.g., steel drum to be marked UN 4G). | 171.2(e), 178.2(b), 178.3(a), 178.503(a). |
| $500 per item. |

**B. Packaging Manufacturers (General):**

1. Failure of a manufacturer or distributor to notify each person to whom the packaging is transferred of all the requirements not met at the time of transfer, including closure instructions. | 178.2(c) | $2,500. |
2. Failure to insure a packaging certified as meeting the UN standard is capable of passing the required performance testing. | 178.601(b) | |

| a. Packing Group I (and § 172.504 Table 1 materials) | | $10,800. |
| b. Packing Group II | | $8,400. |
| c. Packing Group III | | $6,000. |
### II—LIST OF FREQUENTLY CITED VIOLATIONS—Continued

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</tr>
</thead>
<tbody>
<tr>
<td>3. Certifying a packaging as meeting a UN standard when design qualification testing was not performed.</td>
<td>178.601(d).</td>
<td>$10,800.</td>
</tr>
<tr>
<td>a. Packing Group I (and §172.504 table 1 materials)</td>
<td></td>
<td>$8,400.</td>
</tr>
<tr>
<td>b. Packing Group II</td>
<td></td>
<td>$6,000.</td>
</tr>
<tr>
<td>c. Packing Group III</td>
<td></td>
<td>$2,000 to $10,800.</td>
</tr>
<tr>
<td>4. Failure to conduct periodic retesting on UN standard packaging (depending on length of time and Packing Group).</td>
<td>178.601(e)</td>
<td>$2,000 to $10,800.</td>
</tr>
<tr>
<td>5. Failure to properly conduct testing for UN standard packaging (e.g., testing with less weight than marked on packaging; drop testing from lesser height than required; failing to condition fiberboard boxes before design test).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Design qualification testing</td>
<td>178.601(d)</td>
<td>$2,000 to $10,800.</td>
</tr>
<tr>
<td>b. Periodic retesting</td>
<td>178.601(e)</td>
<td>$500 to $10,800.</td>
</tr>
<tr>
<td>6. Marking, or causing the marking of, a packaging with the symbol of a manufacturer or packaging certifier other than the company that actually manufactured or certified the packaging.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Design qualification testing</td>
<td>178.601(l)</td>
<td>$1,000 to $5,000.</td>
</tr>
<tr>
<td>b. Periodic retesting</td>
<td></td>
<td>$500 to $2,000.</td>
</tr>
<tr>
<td>7. Failure to maintain testing records</td>
<td>178.601(l)</td>
<td>$1,000 to $5,000.</td>
</tr>
<tr>
<td>a. Design qualification testing</td>
<td></td>
<td>$1,000 to $3,000.</td>
</tr>
<tr>
<td>b. Periodic retesting</td>
<td></td>
<td>$3,000 to $5,000.</td>
</tr>
<tr>
<td>8. Improper marking of UN certification</td>
<td>178.503</td>
<td>$500 per item.</td>
</tr>
<tr>
<td>9. Manufacturing DOT specification packaging after October 1, 1994 that is not marked as meeting a UN performance standard.</td>
<td>171.14.</td>
<td></td>
</tr>
<tr>
<td>a. If packaging does meet DOT specification</td>
<td></td>
<td>$3,000.</td>
</tr>
<tr>
<td>b. If packaging does not meet DOT specification</td>
<td></td>
<td>$6,000 to $10,800.</td>
</tr>
<tr>
<td>C. Drum Manufacturers &amp; Reconditioners:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Failure to properly conduct production leakproofness test on a new or reconditioned drum.</td>
<td>178.604(b), (d), 173.28(b)(2)(i).</td>
<td>$2,000.</td>
</tr>
<tr>
<td>a. Improper testing</td>
<td></td>
<td>$3,000 to $5,000.</td>
</tr>
<tr>
<td>b. No testing performed</td>
<td>173.28(b)(2)(ii).</td>
<td>$800.</td>
</tr>
<tr>
<td>a. Incorrect number</td>
<td></td>
<td>$7,200.</td>
</tr>
<tr>
<td>b. Unauthorized use of another reconditioner’s number</td>
<td>173.28(c), (d)</td>
<td>$6,000 to $10,800.</td>
</tr>
<tr>
<td>3. Representing, marking, or certifying a drum as a reconditioned UN standard packaging when the drum does not meet a UN standard.</td>
<td>173.28(d)</td>
<td>$500.</td>
</tr>
<tr>
<td>4. Representing, marking, or certifying a drum as altered from one UN standard to another, when the drum has not actually been altered.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>D. IBC and Portable Tank Requalification:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Failure to properly mark an IBC or portable tank with the most current test and/or inspection information.</td>
<td>180.352(e), 180.703(b), 180.605(a).</td>
<td>$500 per item.</td>
</tr>
<tr>
<td>2. Failure to keep complete and accurate records of IBC or portable tank test and reinspection.</td>
<td>180.352(f), 180.605(f).</td>
<td></td>
</tr>
<tr>
<td>a. No records kept</td>
<td></td>
<td>$4,000.</td>
</tr>
<tr>
<td>b. Incomplete or inaccurate records</td>
<td>180.352(f), 49 U.S.C. 5121(b)(d).</td>
<td>$1,000.</td>
</tr>
<tr>
<td>3. Failure to make reinspection and test records available to a DOT representative upon request.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>E. Cylinder Manufacturers &amp; Rebuilders:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Manufacturing, representing, marking, certifying, or selling a DOT high-pressure cylinder that was not inspected and verified by an approved independent inspection agency.</td>
<td>Various</td>
<td>$7,500 to $15,000.</td>
</tr>
<tr>
<td>2. Failure to have a registration number or failure to mark the registration number on the cylinder.</td>
<td>Various</td>
<td>$800.</td>
</tr>
<tr>
<td>3. Marking another company’s number on a cylinder</td>
<td>Various</td>
<td>$7,200.</td>
</tr>
<tr>
<td>4. Failure to mark the date of manufacture or lot number on a DOT-39 cylinder.</td>
<td>Various</td>
<td>$3,000.</td>
</tr>
<tr>
<td>5. Failure to have a chemical analysis performed in the U.S. for a material manufactured outside the U.S. to obtain a chemical analysis from the foreign manufacturer.</td>
<td>Various</td>
<td>$5,000.</td>
</tr>
<tr>
<td>6. Failure to meet wall thickness requirements</td>
<td>Various</td>
<td>$7,500 to $15,000.</td>
</tr>
<tr>
<td>7. Failure to heat treat cylinders prior to testing</td>
<td>Various</td>
<td>$5,000 to $15,000.</td>
</tr>
<tr>
<td>8. Failure to conduct a complete visual internal examination</td>
<td>Various</td>
<td>$2,500 to $6,200.</td>
</tr>
<tr>
<td>9. Failure to conduct a hydrostatic test, or conducting a hydrostatic test with inaccurate test equipment.</td>
<td>Various</td>
<td>$2,500 to $6,200.</td>
</tr>
<tr>
<td>10. Failure to conduct a flattening test</td>
<td>Various</td>
<td>$7,500 to $15,000.</td>
</tr>
<tr>
<td>11. Failure to conduct a burst test on a DOT-39 cylinder</td>
<td>178.65(l)(2)</td>
<td>$5,000 to $15,000.</td>
</tr>
<tr>
<td>12. Failure to have inspections and verifications performed by an inspector.</td>
<td>Various</td>
<td>$7,500 to $15,000.</td>
</tr>
<tr>
<td>13. Failure to maintain required inspector’s reports</td>
<td>Various</td>
<td>$5,000.</td>
</tr>
<tr>
<td>a. No reports at all</td>
<td></td>
<td>$1,000 to $4,000.</td>
</tr>
<tr>
<td>b. Incomplete or inaccurate reports</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### II—List of Frequently Cited Violations—Continued

<table>
<thead>
<tr>
<th>Violation description</th>
<th>Section or cite</th>
<th>Baseline assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>14. Representing a DOT-4 series cylinder as repaired or rebuilt to the requirements of the HMR without being authorized by the Associate Administrator.</td>
<td>180.211(a)</td>
<td>$6,000 to $10,800.</td>
</tr>
<tr>
<td></td>
<td>173.23(c)</td>
<td>$800.</td>
</tr>
<tr>
<td>15. Failure to notify the cylinder owner in writing when a cylinder has been condemned.</td>
<td>180.205(i)(2)</td>
<td>$1,000.</td>
</tr>
<tr>
<td>16. Failure to perform hydrostatic retesting at the minimum specified test pressure.</td>
<td>180.205(a)(3)</td>
<td>$2,100 to $5,200.</td>
</tr>
<tr>
<td>17. Representing, marking, or certifying a cylinder as meeting the requirements of an exemption or special permit when the cylinder was not maintained or retested in accordance with the exemption or special permit.</td>
<td>180.209(a)(1)</td>
<td>$2,000.</td>
</tr>
<tr>
<td>18. Marking a star on a cylinder that does not qualify for that mark.</td>
<td>180.205(b)(1)</td>
<td>$2,000 to $4,000.</td>
</tr>
<tr>
<td></td>
<td>173.302a(b)</td>
<td>$2,000 to $4,000.</td>
</tr>
<tr>
<td>19. Marking a cylinder in or on the sidewalk when not permitted by the applicable specification.</td>
<td>180.213(b)</td>
<td>$6,000 to $10,800.</td>
</tr>
<tr>
<td>20. Failure to maintain legible markings on a cylinder.</td>
<td>180.213(c)(3)</td>
<td>$6,000 to $10,800.</td>
</tr>
<tr>
<td>21. Failure to perform retest, after equipment failure, at a pressure increased by the lesser of 10% or 100 psi (includes exceeding 90% of test pressure prior to conducting a retest).</td>
<td>180.205(g)(3)</td>
<td>$2,100 to $5,200.</td>
</tr>
<tr>
<td>22. Improper marking of the RIN or retest date on a cylinder.</td>
<td>180.205(g)(5)</td>
<td>$3,100.</td>
</tr>
<tr>
<td>23. Improper marking of the RIN or retest date on a cylinder.</td>
<td>180.205(g)(6)</td>
<td>$800.</td>
</tr>
<tr>
<td>24. Failure to maintain current copies of 49 CFR, DOT exemption or special permits, and CGA Pamphlets applicable to inspection, retesting, and marking activities.</td>
<td>180.213(c)(3)</td>
<td>$6,000 to $10,800.</td>
</tr>
</tbody>
</table>

#### Carrier Requirements

A. Incident Notification:

1. Failure to give immediate notification of a reportable hazardous materials incident.                         | 171.15         | $3,000.                |
2. Failure to file a written hazardous material incident report within 30 days following an unintentional release of hazardous materials in transportation (or other reportable incident). | 171.16         | $500 to $2,500.        |

B. Shipping Papers:
II—LIST OF FREQUENTLY CITED VIOLATIONS—Continued

<table>
<thead>
<tr>
<th>Violation description</th>
<th>Section or cite</th>
<th>Baseline assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to retain shipping papers for 375 days after a hazardous material (or 3 years for a hazardous waste) is accepted by the initial carrier.</td>
<td>174.24(b), 175.30(a)(2), 176.24(b), 177.817(d).</td>
<td>$1,000.</td>
</tr>
<tr>
<td>C. Stowage/transportation Requirements:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Transporting packages of hazardous material that have not been secured against movement.</td>
<td>Various .................</td>
<td>$3,000.</td>
</tr>
<tr>
<td>2. Failure to properly segregate hazardous materials</td>
<td>Various .................</td>
<td>$7,500 and up.</td>
</tr>
<tr>
<td>3. Transporting explosives in a motor vehicle containing metal or other articles or materials likely to damage the explosives or any package in which they are contained, without segregating in different parts of the load or securing them in place in or on the motor vehicle and separated by bulkheads or other suitable means to prevent damage.</td>
<td>177.836(i) .............</td>
<td>$5,200.</td>
</tr>
<tr>
<td>4. Transporting railway track torpedoes outside of flagging kits, in violation of DOT-E 7991.</td>
<td>171.2(b) &amp; (e) ..........</td>
<td>$7,000.</td>
</tr>
<tr>
<td>5. Transporting Class 7 (radioactive) material having a total transport index greater than 50.</td>
<td>177.842(a) ..........</td>
<td>$5,000 and up.</td>
</tr>
<tr>
<td>6. Transporting Class 7 (radioactive) material without maintaining the required separation distance.</td>
<td>177.842(b) ...........</td>
<td>$5,000 and up.</td>
</tr>
<tr>
<td>7. Failure to comply with requirements of an exemption or special permit authorizing the transportation of Class 7 (radioactive) material having a total transportation index of 50.</td>
<td>171.2(b) &amp; (e) ........</td>
<td>$5,000.</td>
</tr>
<tr>
<td>a. Failure to have the required radiation survey record</td>
<td>..........................</td>
<td>$500 each.</td>
</tr>
<tr>
<td>b. Failure to have other required documents</td>
<td>..........................</td>
<td></td>
</tr>
<tr>
<td>c. Other violations</td>
<td>..........................</td>
<td>$5,000 and up.</td>
</tr>
</tbody>
</table>

III. CONSIDERATION OF STATUTORY CRITERIA

A. These guidelines are used by the Office of Hazardous Materials Safety (OHMS) in setting initial proposed penalties for hazmat violations. They indicate baseline amounts or ranges for probable violations frequently cited in enforcement reports and set forth general OHMS policy for considering statutory criteria.

B. The initial baseline determination partially considers the nature, extent, circumstances, and gravity of the alleged violation. That determination then is adjusted to consider all other evidence concerning the nature, extent, circumstances, and gravity of the alleged violation; degree of culpability; history of prior violations; ability to pay; effect of the penalty on ability to continue to do business; and such other matters as justice may require (a major component of which is corrective action taken by a respondent to prevent a recurrence of similar violations). In making a penalty recommendation, the baseline or range may be increased or decreased on the basis of evidence pertaining to these factors.

C. The following miscellaneous factors are used to implement one or more of the statutory assessment criteria.

IV. MISCELLANEOUS FACTORS AFFECTING PENALTY AMOUNTS

A. Corrective Action

1. A proposed penalty is mitigated for documented corrective action of alleged violations taken by a respondent. Corrective action may occur: (1) After an inspection and before a Notice of Probable Violation (NOPV) is issued; (2) on receipt of an NOPV; or (3) after receipt of an NOPV (possibly after it is solicited by an PHMSA attorney).

In general, corrective action may reduce a penalty up to 25%. Mitigation may be taken into account in the referral memo or may be recommended prior to issuance of an Order by PHMSA’s Chief Counsel.

2. The two primary factors in determining the penalty reduction are extent and timing of the corrective action. In other words, mitigation will be determined on the basis of how much corrective action was taken and when it was taken. Systemic action to prevent future violations is given greater consideration than action simply to remedy violations identified during the inspection.

3. Mitigation is applied to individual violations. Thus, in a case with two violations, if corrective action for the first violation is more extensive than for the second, the penalty for the first will be mitigated more than that for the second.

B. Respondents That Re-Ship

A shipper that reships materials received from another company, in the same packaging and without opening or altering the package, independently is responsible for ensuring that the shipment complies with Federal hazmat law, and independently may be subject to enforcement action if the package does not comply. Nevertheless, the reshipper is considered to have a lesser level of responsibility for compliance in those respects in which it reasonably relies on the compliance of the package as received. In most cases of
this type, OHMS will discount the applicable baseline standard by about 25%. The specific knowledge and expertise of all parties must be considered in discounting for reliance on a prior shipper. This discount is applied before any consideration of mitigation based on corrective action.

C. Penalty Increases for Multiple Counts

Under the Federal hazmat law, 49 U.S.C. 5123(a), each violation of the HMR and each day of a continuing violation (except for violations pertaining to packaging manufacture or qualification) is subject to a civil penalty of up to $55,000 or $110,000 for a violation occurring on or after January 1, 2010. Absent aggravating factors, OHMS, in its exercise of discretion, ordinarily will apply a single penalty for multiple counts or days of violation. In a number of cases, particularly those involving shippers, an inspector may cite two or more similar packaging violations for different hazardous materials. For example, the inspector may cite the same marking violation for two or more packages. OHMS usually will consider those additional violations as counts of the same violation and will not recommend multiples of the same baseline penalty. Rather, OHMS usually will recommend the baseline penalty for a single violation, increased by 25% for each additional violation.

D. Financial Considerations

1. Mitigation is appropriate when the baseline penalty would (1) exceed an amount that the respondent is able to pay, or (2) have an adverse effect on the respondent’s ability to continue in business. These criteria relate to a respondent’s entire business, and not just the product line or part of its operations involved in the violation(s). Beyond the overall financial size of the respondent’s business, the relevant items of information on a respondent’s balance sheet include the current ratio (current assets to current liabilities), the nature of current assets, and net worth (total assets minus total liabilities).

2. These figures are considered on a case-by-case basis. In general, however, a current ratio close to or below 1.0 means that the company may have difficulty in paying a large penalty, and may justify reduction of the penalty or an installment payment plan. A small amount of cash on hand representing limited liquidity, even with substantial other current assets (such as accounts receivable or inventory), may warrant a short-term payment plan. Respondent’s income statement also will be reviewed to determine whether a payment plan is appropriate.

3. Many companies are able to continue in business for extended periods of time with a small or negative net worth, and many respondents have paid substantial civil penalties in installments even though net worth was negative. For this reason, negative net worth alone does not always warrant reduction of a proposed penalty or even, in the absence of factors discussed above, a payment plan.

4. In general, an installment payment plan may be justified where reduction of a proposed penalty is not, but the appropriateness of either (or both) will depend on the circumstances of the case. The length of a payment plan should be as short as possible, but the plan may consider seasonal fluctuations in a company’s income if the company’s business is seasonal (e.g., swimming pool chemical sales, fireworks sales) or if the company has documented specific reasons for current non-liquidity.

5. Evidence of financial condition is used only to decrease a penalty, and not to increase it.

E. Penalty Increases for Prior Violations

The baseline penalty presumes an absence of prior violations. If prior violations exist, generally they will serve to increase a proposed penalty. The general standards for increasing a baseline proposed penalty on the basis of prior violations are as follows:

1. For each prior civil or criminal enforcement case—25% increase over the pre-mitigation recommended penalty.

2. For each prior ticket—10% increase over the pre-mitigation recommended penalty.

3. A baseline proposed penalty will not be increased more than 100% on the basis of prior violations.

4. A case or ticket of prior violations initiated in a calendar year more than six years before the calendar in which the current case is initiated normally will not be considered in determining a proposed penalty for the current violation(s).

F. Penalty Increases for Use of Expired Special Permits

Adjustments to the base line figures for use of expired special permits can be made depending on how much material has been shipped during the period between the expiration date and the renewal date. If the company previously has been found to have operated under an expired special permit, the penalty is normally doubled. If the company has been previously cited for other violations, the penalty generally will be increased by about 25%.

Subpart E—Designation of Approval and Certification Agencies

§ 107.401 Purpose and scope.
(a) This subpart establishes procedures for the designation of agencies to issue approval certificates and certifications for types of packagings designed, manufactured, tested, or maintained in conformance with the requirements of this subchapter, subchapter C of this chapter, and standards set forth in the United Nations (U.N.) Recommendations (Transport of Dangerous Goods). Except for certifications of compliance with U.N. packaging standards, this subpart does not apply unless made applicable by a rule in subchapter C of this chapter.

(b) The Associate Administrator may issue approval certificates and certifications addressed in paragraph (a) of this section.


§ 107.402 Application for designation as an approval or certification agency.

(a) Any organization or person seeking designation as an approval or certification agency shall apply in writing to the Associate Administrator for Hazardous Materials Safety (PHH–32), Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington DC 20590–0001. Alternatively, the application with any attached supporting documentation in an appropriate format may be submitted by facsimile (fax) to: (202) 366–3753 or (202) 366–3308 or by electronic mail (e-mail) to: approvals@dot.gov. Each application must be signed and certified to be correct by the applicant or, if the applicant is an organization, by an authorized officer or official representative of the organization. Any false statement or representation, or the knowing and willful concealment of a material fact, may subject the applicant to prosecution under the provisions of 18 U.S.C. 1001, result in the denial or termination of a designation.

(b) Each application for designation must be in English and include the following information:

(1) Name and address of the applicant, including place of incorporation if a corporation. In addition, if the applicant is not a resident of the United States, the name and address of a permanent resident of the United States designated in accordance with §105.40 to serve as agent for service of process.

(2) If the applicant’s principal place of business is in a country other than the United States, a copy of the designation from the Competent Authority of that country delegating to the applicant an approval or designated agency authority for the type of packaging for which a DOT designation is sought, and a statement that the Competent Authority also delegates similar authority to U.S. Citizens or organizations having designations under this subpart from the PHMSA.

(3) A listing, by DOT specification (or special permit) number, or U.N. designation, of the types of packagings for which approval authority is sought.

(4) A personnel qualifications plan listing the qualifications that the applicant will require of each person to be used in the performance of each packaging approval or certification function. As a minimum, these qualifications must include:

(i) The ability to review and evaluate design drawings, design and stress calculations;

(ii) A knowledge of the applicable regulations of subchapter C of this chapter and, when applicable, U.N. standards; and

(iii) The ability to conduct or monitor and evaluate test procedures and results; and

(iv) The ability to review and evaluate the qualifications of materials and fabrication procedures.

(5) A statement that the applicant will perform its functions independent of the manufacturers and owners of the packagings concerned.

(6) A statement that the applicant will allow the Associate Administrator or his representative to inspect its records and facilities in so far as they relate to the approval or certification of specification packagings and shall cooperate in the conduct of such inspections.

(c) The applicant shall furnish any additional information relevant to the
§ 107.403 Designation of approval agencies.

(a) If the Associate Administrator determines that an application contains all the required information, the applicant is sent a letter of designation and assigned an identification code.

(b) If the Associate Administrator determines that an application does not contain all the required information, the application is denied and the applicant is sent a written notice containing all the reasons for the denial.

(c) Within 30 days of an initial denial of an application under paragraph (b) of this section, the applicant may file an amended application. If after considering the amended application, the Associate Administrator determines that it should be denied, he notifies the applicant, and the denial constitutes the final action of the Associate Administrator on the application. Within 60 days of receipt of the final denial the applicant may appeal the denial to the Administrator, PHMSA, setting forth in writing where the Associate Administrator for Hazardous Materials Safety erred in this determination.

§ 107.404 Conditions of designation.

(a) Each designation made under this subpart contains the following conditions:

1. The designated approval or certification agency may use only testing equipment that it has determined, through personal inspection, to be suitable for the purpose.

2. Each approval certificate and certification issued by the designated approval agency must contain the name and identification code of the approval agency.

3. Each approval certificate and certification must be in a format acceptable to the Associate Administrator.

(b) The designated approval agency shall comply with all of the terms and conditions stated in its letter of designation under the subpart.

(d) Nothing in this part relieves a manufacturer or owner of a packaging of responsibility for compliance with any of the applicable requirements of this title.

§ 107.405 Termination of designation.

(a) Any designation issued under §107.403 of this subchapter may be suspended or terminated if the Associate Administrator determines that:

1. The application for designation contained a misrepresentation, or the applicant willfully concealed a material fact.

2. The approval agency failed to comply with a term or condition stated in the agency’s letter of designation.

3. The Competent Authority of an approval agency of a country outside the United States has failed to initiate, maintain or recognize a qualified U.S. approval agency.

(b) Before a designation is suspended or terminated, the Associate Administrator shall give to the approval agency:

1. Written notice of the facts or conduct believed to warrant suspension or termination of the designation.

2. Sixty days in which to show in writing why the designation should not be suspended or terminated.

§ 107.501 Scope.

(a) This subpart establishes a registration procedure for persons who are engaged in the manufacture, assembly, inspection and testing, certification, or repair of a cargo tank or a cargo tank motor vehicle manufactured in accordance with a DOT specification under subchapter C of this chapter or under terms of a special permit issued under this part.

(b) Persons engaged in continuing qualification and maintenance of cargo tanks and cargo tank motor vehicles must be familiar with the requirements set forth in part 180, subpart E, of this chapter.


§ 107.502 General registration requirements.

(a) Definitions: For purposes of this subpart—

(1) Assembly means the performance of any of the following functions when the function does not involve welding on the cargo tank wall:

(i) The mounting of one or more tanks or cargo tanks on a motor vehicle or to a motor vehicle suspension component;

(ii) The installation of equipment or components necessary to meet the specification requirements prior to the certification of the cargo tank motor vehicle; or

(iii) The installation of linings, coatings, or other materials to the inside of a cargo tank wall.

(2) The terms Authorized Inspector, Cargo tank, Cargo tank motor vehicle, Design Certifying Engineer, Registered Inspector, and Person are defined in §171.8 of this chapter.

(b) No person may engage in the manufacture, assembly, certification, inspection or repair of a cargo tank or cargo tank motor vehicle manufactured under the terms of a DOT specification under subchapter C of this chapter or a special permit issued under this part unless the person is registered with the Department in accordance with the provisions of this subpart. A person employed as an inspector or design certifying engineer is considered to be registered if the person’s employer is registered.

(c) A person who performs functions which are subject to the provisions of this subpart may perform only those functions which have been identified to the Department in accordance with the procedures of this subpart.

(d) Registration statements must be in English, contain all of the information required by this subpart, and be submitted to: FMCSA Hazardous Materials Division—MC–ECH, West Building, MC–ECH, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(e) Upon determination that a registration statement contains all the information required by this subpart, the Department will send the registrant a letter confirming receipt of the registration application and assigning a registration number to that person. A separate registration number will be assigned for each cargo tank manufacturing, assembly, repair facility or other place of business identified by the registrant.


§ 107.503 Registration statement.

(a) Each registration statement must be in English and contain the following information:

(1) Name;

(2) Street address, mailing address and telephone number for each facility or place of business;

(3) A statement indicating whether the facility uses mobile testing/inspection equipment to perform inspections, tests, or repairs at a location other than the address listed in paragraph (a)(2) of this section.
§ 107.504 Period of registration, updates, and record retention.

(a) Registration will be for a maximum of six years from the date of the original registration.

(b) Any correspondence with the Department must contain the registrant’s name and registration number.

(c) A registration must be renewed every six years or within thirty days of reissuance of an ASME or National Board Certification, whichever occurs first, by submitting an up-to-date registration statement containing the information prescribed by §107.503. Any person initially registered under the provisions of §107.502 and who is in good standing is eligible for renewal.

(d) A registrant shall provide written notification to the Department within thirty days of any of the following occurrences:

(1) Any change in the registration information submitted under §107.503;

(2) Replacement of the person responsible for compliance with the requirements in §107.503(a)(4). If this occurs, the registrant shall resubmit the required certification;

(3) Loss of ASME or National Board Certificate of Authorization; or
§ 107.606 Exceptions.

(a) The following are excepted from the requirements of this subpart:

(1) An agency of the Federal government.

(2) A State agency.

(3) An agency of a political subdivision of a State.

(4) An Indian tribe.

(5) An employee of any of those entities in paragraphs (a)(1) through (a)(4) of this section with respect to the employee’s official duties.

(6) A hazmat employee (including, for purposes of this subpart, the owner-operator of a motor vehicle that transports in commerce hazardous materials, if that vehicle at the time of those activities, is leased to a registered motor carrier under a 30-day or longer lease as prescribed in 49 CFR part 376 or an equivalent contractual agreement).

(7) A person domiciled outside the United States, who offers solely from a location outside the United States, hazardous materials for transportation in commerce, provided that the country of which such a person is a domiciliary does not require persons domiciled in

(4) A change in function; such as, from assembly to manufacture, an addition of a function, or a change to the types of inspections, tests or certifications of cargo tanks or cargo tank motor vehicles.

(e) Each registrant shall maintain a current copy of the registration information submitted to the Department and a current copy of the registration number identification received from the Department at the location identified in §107.503(a)(2) during such time the person is registered with the Department and for two years thereafter.

(f) The issuance of a registration number under this subpart is not an approval or endorsement by the Department of the qualifications of any person to perform the specified functions.


Subpart G—Registration of Persons Who Offer or Transport Hazardous Materials

§ 107.601 Applicability.

(a) The registration and fee requirements of this subpart apply to any person who offers for transportation, or transports, in foreign, interstate or intrastate commerce—

(1) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in §173.403 of this chapter;

(2) More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material (see §173.50 of this chapter) in a motor vehicle, rail car or freight container;

(3) More than one L (1.06 quarts) per package of a material extremely toxic by inhalation (i.e., “material poisonous by inhalation,” as defined in §171.8 of this chapter, that meets the criteria for “hazard zone A,” as specified in §§173.116(a) or 173.133(a) of this chapter);

(4) A shipment of a quantity of hazardous materials in a bulk packaging (see §171.8 of this chapter) having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids;

(5) A shipment in other than a bulk packaging of 2,268 kg (5,000 pounds) gross weight or more of one class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required for that class, under the provisions of subpart F of part 172 of this chapter; or

(6) Except as provided in paragraph (b) of this section, a quantity of hazardous material that requires placarding, under provisions of subpart F of part 172 of this chapter.

§ 107.606 Exceptions.

(a) The following are excepted from the requirements of this subpart:

(1) An agency of the Federal government.

(2) A State agency.

(3) An agency of a political subdivision of a State.

(4) An Indian tribe.

(5) An employee of any of those entities in paragraphs (a)(1) through (a)(4) of this section with respect to the employee’s official duties.

(6) A hazmat employee (including, for purposes of this subpart, the owner-operator of a motor vehicle that transports in commerce hazardous materials, if that vehicle at the time of those activities, is leased to a registered motor carrier under a 30-day or longer lease as prescribed in 49 CFR part 376 or an equivalent contractual agreement).

(7) A person domiciled outside the United States, who offers solely from a location outside the United States, hazardous materials for transportation in commerce, provided that the country of which such a person is a domiciliary does not require persons domiciled in

§ 107.606 Exceptions.

(a) The following are excepted from the requirements of this subpart:

(1) An agency of the Federal government.

(2) A State agency.

(3) An agency of a political subdivision of a State.

(4) An Indian tribe.

(5) An employee of any of those entities in paragraphs (a)(1) through (a)(4) of this section with respect to the employee’s official duties.

(6) A hazmat employee (including, for purposes of this subpart, the owner-operator of a motor vehicle that transports in commerce hazardous materials, if that vehicle at the time of those activities, is leased to a registered motor carrier under a 30-day or longer lease as prescribed in 49 CFR part 376 or an equivalent contractual agreement).

(7) A person domiciled outside the United States, who offers solely from a location outside the United States, hazardous materials for transportation in commerce, provided that the country of which such a person is a domiciliary does not require persons domiciled in
§ 107.608 General registration requirements.

(a) Each person subject to this subpart must submit a complete and accurate registration statement on DOT Form F 5800.2 not later than June 30 for each registration year, or in time to comply with paragraph (b) of this section, whichever is later. Each registration year begins on July 1 and ends on June 30 of the following year.

(b) No person required to file a registration statement may transport a hazardous material or cause a hazardous material to be transported or shipped, unless such person has on file, in accordance with §107.620, a current Certificate of Registration in accordance with the requirements of this subpart.

(c) A registrant whose name or principal place of business has changed during the year of registration must notify PHMSA of that change by submitting an amended registration statement not later than 30 days after the change.

(d) Copies of DOT Form F 5800.2 and instructions for its completion may be obtained from the Outreach, Training and Grants Division, PHH-50, U.S. Department of Transportation, Washington, DC 20590–0001, by calling 202–366–4109, or via the Internet at http://phmsa.dot.gov/hazmat/registration.

(e) If the registrant is not a resident of the United States, the registrant must attach to the registration statement the name and address of a permanent resident of the United States, designated in accordance with §105.40, to serve as agent for service of process.


§ 107.612 Amount of fee.

(a) For the registration year 2010–2011 and subsequent years, each person offering for transportation or transporting in commerce a material listed in §107.601(a) must pay an annual registration fee, as follows:

(1) Small business. Each person that qualifies as a small business, under criteria specified in 13 CFR part 121 applicable to the North American Industry Classification System (NAICS) code that describes that person’s primary commercial activity, must pay an annual registration fee of $250 and the processing fee required by paragraph (a)(4) of this section.

(2) Not-for-profit organization. Each not-for-profit organization must pay an annual registration fee of $250 and the processing fee required by paragraph (a)(4) of this section. A not-for-profit organization is an organization exempt from taxation under 26 U.S.C. 501(a).

(3) Other than a small business or not-for-profit organization. Each person that does not meet the criteria specified in paragraph (a)(1) or (a)(2) of this section must pay an annual registration fee of $2,575 and the processing fee required by paragraph (a)(4) of this section.

(b) For registration years 2009–2010 and prior years, each person that offered for transportation or transported in commerce a material listed in §107.601(a) during that year must pay
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§ 107.616 Payment procedures.

(a) Each person subject to the requirements of this subpart must mail the registration statement and payment in full to the U.S. Department of Transportation, Hazardous Materials Registration, P.O. Box 530273, Atlanta, GA 30353–0273, or submit the statement and payment electronically through the Department’s e-Commerce Internet site. Access to this service is provided at http://phmsa.dot.gov/hazmat/registration. A registrant required to file an amended registration statement under § 107.608(c) must mail it to the same address or submit it through the same Internet site.

(b) Payment must be made by certified check, cashier’s check, personal check, or money order in U.S. funds and drawn on a U.S. bank, payable to the U.S. Department of Transportation and identified as payment for the “Hazmat Registration Fee,” or by completing an authorization for payment by credit card or other electronic means of payment acceptable to the Department on the registration statement or as part of an Internet registration as provided in paragraph (a) of this section.

(c) Payment must correspond to the total fees properly calculated in the “Amount Due” block of the DOT form F 5800.2. A person may elect to register and pay the required fees for up to three registration years by filing one

the annual registration fee, including the processing fee, specified under the requirements of this subchapter in effect for the specific registration year.


(1) Small business. Each person that qualifies as a small business, under criteria specified in 13 CFR part 121 applicable to the North American Industry Classification System (NAICS) code that describes that person’s primary commercial activity, must pay an annual registration fee of $125 and the processing fee required by paragraph (c)(4) of this section.

(2) Not-for-profit organization. Each not-for-profit organization must pay an annual registration fee of $125 and the processing fee required by paragraph (c)(4) of this section. A not-for-profit organization is an organization exempt from taxation under 26 U.S.C. 501(a).

(3) Other than a small business or not-for-profit organization. Each person that does not meet the criteria specified in paragraph (d)(1) or (d)(2) of this section must pay an annual registration fee of $975 and the processing fee required by paragraph (d)(4) of this section.

(4) Processing fee. The processing fee is $25 for each registration statement filed. A single statement may be filed for one, two, or three registration years as provided in § 107.616(e).

§ 107.616 Payment procedures.

(a) Each person subject to the requirements of this subpart must mail the registration statement and payment in full to the U.S. Department of Transportation, Hazardous Materials Registration, P.O. Box 530273, Atlanta, GA 30353–0273, or submit the statement and payment electronically through the Department’s e-Commerce Internet site. Access to this service is provided at http://phmsa.dot.gov/hazmat/registration. A registrant required to file an amended registration statement under § 107.608(c) must mail it to the same address or submit it through the same Internet site.

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(c) Payment must correspond to the total fees properly calculated in the “Amount Due” block of the DOT form F 5800.2. A person may elect to register and pay the required fees for up to three registration years by filing one
§ 107.620 Recordkeeping requirements.

(a) Each person subject to the requirements of this subpart, or its agent designated under §107.608(e), must maintain at its principal place of business for a period of three years from the date of issuance of each Certificate of Registration:

(1) A copy of the registration statement filed with PHMSA; and

(2) The Certificate of Registration issued to the registrant by PHMSA.

(b) After January 1, 1993, each motor carrier subject to the requirements of this subpart must carry a copy of its current Certificate of Registration issued by PHMSA or another document bearing the registration number identified as the “U.S. DOT Hazmat Reg. No.” on board each truck and truck tractor (not including trailers and semi-trailers) used to transport hazardous materials subject to the requirements of this subpart. The Certificate of Registration or document bearing the registration number must be made available, upon request, to enforcement personnel.

(c) In addition to the requirements of paragraph (a) of this section, after January 1, 1995, each driver who transports by vessel a hazardous material subject to the requirements of this subpart must carry on board the vessel a copy of its current Certificate of Registration or another document bearing the current registration number identified as the “U.S. DOT Hazmat Reg. No.”

(d) Each person subject to this subpart must furnish its Certificate of Registration (or a copy thereof) and all other records and information pertaining to the information contained in the registration statement to an authorized representative or special agent of DOT upon request.


§ 107.701 Purpose and scope.

(a) This subpart prescribes procedures for the issuance, modification and termination of approvals, and the submission of registrations and reports, as required by this chapter.

(b) The procedures of this subpart are in addition to any requirements in subchapter C of this chapter applicable to a specific approval, registration or report. If compliance with both a specific requirement of subchapter C of this chapter and a procedure of this subpart is not possible, the specific requirement applies.

(c) Registration under subpart F or G of this part is not subject to the procedures of this subpart.

[Amtd. 107–38, 61 FR 21100, May 9, 1996, unless otherwise noted]

§ 107.705 Registrations, reports, and applications for approval.

(a) A person filing a registration, report, or application for an approval, or a renewal or modification of an approval subject to the provisions of this subpart must—

(1) File the registration, report, or application with the Associate Administrator for Hazardous Materials Safety (Attention: Approvals, PHH–32), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Alternatively, the document with any attached supporting documentation in an appropriate format may be filed by facsimile (fax) to: (202) 366–3753 or (202) 366–3308 or by electronic mail (e-mail) to: approvals@dot.gov.

(2) Identify the section of the chapter under which the registration, report, or application is made;

(3) If a report is required by an approval, a registration or a special permit, identify the approval, registration or special permit number;

(4) Provide the name, street and mailing addresses, e-mail address optional, and telephone number of the person on whose behalf the registration, report, or application is made and, if different, the person making the filing;

(5) If the person on whose behalf the filing is made is not a resident of the United States, provide a designation of agent for service in accordance with §105.40;

(6) Provide a description of the activity for which the registration or report is required; and

(7) Provide additional information as requested by the Associate Administrator, if the Associate Administrator determines that a filing lacks pertinent information or otherwise does not comply with applicable requirements.

(b) In addition to the provisions in paragraph (a) for an approval, an application for an approval, or an application for modification or renewal of an approval, the applicant must provide—

(1) A description of the activity for which the approval is required;

(2) The proposed duration of the approval;

(3) The transport mode or modes affected, as applicable;

(4) Any additional information specified in the section containing the approval; and

(5) For an approval which provides exceptions from regulatory requirements or prohibitions—

(i) Identification of any increased risk to safety or property that may result if the approval is granted, and specification of the measures that the applicant considers necessary or appropriate to address that risk; and

(ii) Substantiation, with applicable analyses or evaluations, if appropriate, demonstrating that the proposed activity will achieve a level of safety that is at least equal to that required by the regulation.

(c) For an approval with an expiration date, each application for renewal or modification must be filed in the same manner as an original application. If a complete and conforming renewal application is filed at least 60 days before the expiration date of an approval, the Associate Administrator, on written request from the applicant, will issue a written extension to permit operation under the terms of the expired approval until a final decision on the application for renewal has been made. Operation under an expired approval is prohibited absent a written extension. This paragraph does not limit the authority of the Associate Administrator to modify, suspend or terminate an approval under §107.713.

(d) To request confidential treatment for information contained in the application, the applicant shall comply with §105.30(a).

§ 107.709 Processing of an application for approval, including an application for renewal or modification.

(a) No public hearing or other formal proceeding is required under this subpart before the disposition of an application.

(b) At any time during the processing of an application, the Associate Administrator may request additional information from the applicant. If the applicant does not respond to a written request for additional information within 30 days of the date the request was received, the application may be deemed incomplete and denied. However, if the applicant responds in writing within the 30-day period requesting an additional 30 days within which it will gather the requested information, the Associate Administrator may grant the 30-day extension.

(c) The Associate Administrator may grant or deny an application, in whole or in part. At the Associate Administrator’s discretion, an application may be granted subject to provisions that are appropriate to protect health, safety and property. The Associate Administrator may impose additional provisions not specified in the application,
§ 107.711 Withdrawal.

An application may be withdrawn at any time before a decision to grant or deny it is made. Withdrawal of an application does not authorize the removal of any related records from the PHMSA dockets or files. Applications that are eligible for confidential treatment under §105.30 will remain confidential after the application is withdrawn. The duration of this confidential treatment for trade secrets and commercial or financial information is indefinite, unless the party requesting the confidential treatment of the materials notifies the Associate Administrator that the confidential treatment is no longer required.


§ 107.713 Approval modification, suspension or termination.

(a) The Associate Administrator may modify an approval on finding that—

(1) Modification is necessary to conform an existing approval to relevant statutes and regulations as they may be amended from time to time; or

(2) Modification is required by changed circumstances to enable the approval to continue to meet the standards of §107.709(d).

(b) The Associate Administrator may modify, suspend or terminate an approval, as appropriate, on finding that—

(1) Because of a change in circumstances, the approval no longer is needed or no longer would be granted if applied for;

(2) The application contained inaccurate or incomplete information, and the approval would not have been granted had the application been accurate and complete;

(3) The application contained deliberately inaccurate or incomplete information; or

(4) The holder knowingly has violated the terms of the approval or an applicable requirement of this chapter in a manner demonstrating lack of fitness to conduct the activity for which the approval is required.

(c) Except as provided in paragraph (d) of this section, before an approval is modified, suspended or terminated, the Associate Administrator notifies the holder in writing of the proposed action and the reasons for it, and provides an opportunity to show cause why the proposed action should not be taken.

(1) The holder may file a written response with the Associate Administrator within 30 days of receipt of notice of the proposed action.

(2) After considering the holder’s or party’s written response, or after 30 days have passed without response since receipt of the notice, the Associate Administrator notifies the holder in writing of the final decision with a brief statement of reasons.
(d) The Associate Administrator, if necessary to avoid a risk of significant harm to persons or property, may in the notification declare the proposed action immediately effective.

§ 107.715 Reconsideration.

(a) An applicant or a holder may request that the Associate Administrator reconsider a decision under §107.709(f) or §107.713(c). The request must:

(1) Be in writing and filed within 20 days of receipt of the decision;

(2) State in detail any alleged errors of fact and law;

(3) Enclose any additional information needed to support the request to reconsider; and

(4) State in detail the modification of the final decision sought.

(b) The Associate Administrator considers newly submitted information on a showing that the information could not reasonably have been submitted during application processing.

(c) The Associate Administrator grants or denies, in whole or in part, the relief requested and informs the requesting person in writing of the decision.

§ 107.717 Appeal.

(a) A person who requested reconsideration under §107.715 may appeal to the Administrator the Associate Administrator’s decision on the request. The appeal must:

(1) Be in writing and filed within 30 days of receipt of the Associate Administrator’s decision on reconsideration;

(2) State in detail any alleged errors of fact and law;

(3) Enclose any additional information needed to support the appeal; and

(4) State in detail the modification of the final decision sought.

(b) The Administrator, if necessary to avoid a risk of significant harm to persons or property, may declare the Associate Administrator’s action effective pending a decision on appeal.

(c) The Administrator grants or denies, in whole or in part, the relief requested and informs the appellant in writing of the decision on appeal. The Associate Administrator’s decision on appeal is the final administrative action.
§ 107.805 Approval of cylinder and pressure receptacle requalifiers.

(a) General. A person must meet the requirements of this section to be approved to inspect, test, certify, repair, or rebuild a cylinder in accordance with a DOT specification or a UN pressure receptacle under subpart C of part 178 or subpart C of part 180 of this chapter, or under the terms of a special permit issued under this part.

(b) Independent Inspection Agency Review. Each applicant must arrange for an independent inspection agency, approved by the Associate Administrator pursuant to this subpart, to perform a review of its inspection or requalification operation. The person seeking approval must bear the cost of the inspection. A list of approved independent inspection agencies is available from the Associate Administrator at the address

§ 107.705 Approval of cylinder and pressure receptacle requalifiers.

(a) General. A person approved as an independent inspection agency is not a PHMSA agent or representative.

(b) Criteria. No applicant for approval as an independent inspection agency may be engaged in the manufacture of cylinders for use in the transportation of hazardous materials, or be directly or indirectly controlled by, or have a financial involvement with, any entity that manufactures cylinders for use in the transportation of hazardous materials, except for providing services as an independent inspector.

(c) Application information. Each applicant must submit an application in conformance with §107.705 containing the information prescribed in §107.705(a). In addition, the application must contain the following information:

(1) Name and address of each facility where tests and inspections are to be performed.

(2) Detailed description of the inspection and testing facilities to be used by the applicant.

(3) Detailed description of the applicant's qualifications and ability to perform the inspections and to verify the inspections required by part 178 of this chapter or under the terms of a special permit issued under this part.

(4) Name, address, and principal business activity of each person having any direct or indirect ownership interest in the applicant greater than three percent and any direct or indirect ownership interest in each subsidiary or division of the applicant.

(5) Name of each individual whom the applicant proposes to employ as an inspector and who will be responsible for certifying inspection and test results, and a statement of that person's qualifications.

(6) An identification or qualification number assigned to each inspector who is supervised by a certifying inspector identified in paragraph (c)(3) of this section.

(7) A statement that the applicant will perform its functions independent of the manufacturers and owners of the cylinders.

(8) If the applicant's principal place of business is in a country other than the United States, the Associate Administrator may approve the applicant on the basis of an approval issued by the Competent Authority of the country of manufacture. The Competent Authority must maintain a current listing of approved IIAs and their identification marks. The applicant must provide a copy of the designation from the Competent Authority of that country delegating to the applicant an approval or designated agency authority for the type of packaging for which a DOT or UN designation is sought; and

(9) The signature of the person certifying the approval application and the date on which it was signed.

(d) Facility inspection. Upon the request of the Associate Administrator, the applicant must allow the Associate Administrator or the Associate Administrator's designee to inspect the applicant's facilities and records. The person seeking approval must bear the cost of the inspection.

(e) After approval, the Associate Administrator may authorize, upon request, the independent inspection agency to perform other inspections and functions for which the Associate Administrator finds the applicant to be qualified. Such additional authorizations will be noted on each inspection agency's approval documents.

listed in §107.705. Assistance in obtaining an approval is available from the same address.

(c) Application for approval. If the inspection performed by an independent inspection agency is completed with satisfactory results, the applicant must submit a letter of recommendation from the independent inspection agency, an inspection report, and an application containing the information prescribed in §107.705(a). In addition, the application must contain—

(1) The name of the facility manager;
(2) The types of DOT specification or special permit cylinders, or UN pressure receptacles that will be inspected, tested, repaired, or rebuilt at the facility;
(3) A certification that the facility will operate in compliance with the applicable requirements of subchapter C of this chapter; and
(4) The signature of the person making the certification and the date on which it was signed.

(d) Issuance of requalifier identification number (RIN). The Associate Administrator issues a RIN as evidence of approval to requalify DOT specification or special permit cylinders, or UN pressure receptacles if it is determined, based on the applicant’s submission and other available information, that the applicant’s qualifications and, when applicable, facility are adequate to perform the requested functions in accordance with the criteria prescribed in subpart C of part 180 of this subchapter.

(e) Expiration of RIN. Unless otherwise provided in the issuance letter, an approval expires five years from the date of issuance, provided the applicant’s facility and qualifications are maintained at or above the level observed at the time of inspection by the independent inspection agency, or at the date of the certification in the application for approval for requalifiers only performing inspections made under §180.208(g) of this chapter.

(f) Exceptions. Notwithstanding the requirements in paragraphs (b) and (c) of this section, a person who only performs inspections in accordance with §180.209(g) of this chapter may submit an application that, in addition to the information prescribed in §107.705(a), identifies the DOT specification/special permit cylinders to be inspected; certifies the requalifier will operate in compliance with the applicable requirements of subchapter C of this chapter; certifies the persons performing inspections have been trained and have the information contained in each applicable CGA pamphlet incorporated by reference in §171.7 of this chapter applicable to the requalifiers’ activities; and includes the signature of the person making the certification and the date on which it was signed. Each person must comply with the applicable requirements in this subpart. In addition, the procedural requirements in subpart H of this part apply to the filing, processing and termination of an approval issued under this subpart. No person may requalify a DOT specification/special permit cylinder in accordance with §180.209(g) of this chapter unless that person has been issued a RIN as provided in paragraph (d) of this section.

(g) Each holder of a current RIN shall report in writing any change in its name, address, ownership, testing equipment, or management or personnel performing any function under this section, to the Associate Administrator (PHH–32) within 20 days of the change.

§ 107.809     (2) Complete details concerning the dimensions, materials of construction, wall thickness, water capacity, shape, type of joints, location and size of openings and other pertinent physical characteristics of each specification or special permit cylinder for which approval is being requested, including calculations for cylinder wall stress and wall thickness, which may be shown on a drawing or on separate sheets attached to a descriptive drawing;

(3) The name of the independent inspection agency to be used; and

(4) The signature of the person making the certification and the date on which it was signed.

(c) Facility inspections. Upon the request of the Associate Administrator, the applicant must allow the Associate Administrator or the Associate Administrator’s designee to inspect the applicant’s cylinder manufacturing and testing facilities and records, and must provide such materials and cylinders for analyses and tests as the Associate Administrator may specify. The applicant or holder must bear the cost of the initial and subsequent inspections, analyses, and tests.

§ 107.809 Conditions of UN pressure receptacle approvals.

(a) Each approval issued under this subpart contains the following conditions:

(1) Upon the request of the Associate Administrator, the applicant or holder must allow the Associate Administrator or the Associate Administrator’s designee to inspect the applicant’s cylinder manufacturing and testing facilities and records, and must provide such materials and cylinders for analyses and tests as the Associate Administrator may specify. The applicant or holder must bear the cost of the initial and subsequent inspections, analyses, and tests.

(2) Each holder must comply with all of the terms and conditions stated in the approval letter issued under this subpart.

(b) In addition to the conditions specified in §107.713, an approval may be denied or if issued, suspended or terminated if the Competent Authority of the country of manufacture fails to initiate, maintain or recognize an IIA approved under this subpart; fails to recognize UN standard packagings manufactured in accordance with this subchapter; or implements a condition or limitation on United States citizens or organizations that is not required of its own citizenry.

[71 FR 33874, June 12, 2006]

PART 109—DEPARTMENT OF TRANSPORTATION HYDRAULIC MATERI ALIS PROCEDURAL REGU LATIONS FOR OPENING OF PACKAGES, EMERGENCY OR DERS, AND EMERGENCY RECALLS

Subpart A—Definitions

Sec. 109.1 Definitions.

Subpart B—Inspections and investigations

109.3 Inspections and investigations.

109.5 Opening of packages.

109.7 Removal from transportation.

109.9 Transportation for examination and analysis.

109.11 Assistance of properly qualified personnel.

109.13 Closing packages/safe resumption of transportation.

109.15 Termination.

Subpart C—Emergency Orders

109.17 Emergency orders.

109.19 Petitions for review of emergency orders.

109.21 Remedies generally.


SOURCE: 76 FR 11592, Mar. 2, 2011, unless otherwise noted.

Subpart A—Definitions

§ 109.1 Definitions.

For purposes of this part, 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:

Administrator means the head of any operating administration within the Department of Transportation, and includes the Administrators of the Federal Aviation Administration, Federal