

DEPARTMENT OF TRANSPORTATION

Research and Special Programs
Administration

49 CFR Parts 105, 106, and 107

[Docket No. RSPA-98-3974]

RIN 2137-AD20

Revised and Clarified Hazardous
Materials Safety Rulemaking and
Program ProceduresAGENCY: Research and Special Programs
Administration (RSPA), DOT.ACTION: Notice of proposed rulemaking
(NPRM).

SUMMARY: In response to President Clinton's mandate to Federal agencies to make communications with the public more understandable, RSPA is issuing this NPRM in which it proposes to revise and clarify the hazardous materials safety rulemaking and program procedures by:

- Putting them into plain language and making minor substantive changes.
- Creating a new part that will contain all defined terms used in RSPA's procedural regulations.
- Demonstrating clearer **Federal Register** and Code of Federal Regulations (CFR) formats.

DATES: Send your comments on or before February 9, 1999.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW, Washington, DC 20590-0001. You must identify the docket number RSPA-98-3974 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that RSPA has received your comments, include a self-addressed, stamped postcard. You may also submit comments by e-mail to rspa.counsel@rspa.dot.gov. You may review public dockets containing comments to these proposed regulations in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the Nassif Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Karin Christian, Office of the Chief Counsel, (202) 366-4400, Research and Special Programs Administration.

SUPPLEMENTARY INFORMATION:

1. Proposed Substantive Changes

RSPA ("we") proposes to revise all of parts 106 and 107, and to create a new part 105 that will eventually contain all definitions for terms used in Title 49, parts 106, 107 and 110, and perhaps parts 130 and 171 through 180. The proposed revisions respond to President Clinton's June 1, 1998 Executive Memorandum directing Federal agencies to make communications with the public more understandable. We propose to clarify existing requirements and make minor substantive changes which are explained in the following paragraphs. We will revise the remainder of subchapter A into plain language in a future rulemaking.

Part 105

We propose to create a new part 105 that will tell you how to obtain information from us about our procedural regulations and the Hazardous Materials Regulations (HMR). It will also explain subpoenas and service of documents. We also have revised mailing addresses throughout parts 105 and 106 to ensure that documents you send us reach the appropriate RSPA office in a timely manner.

Also, proposed part 105 would eventually contain all definitions that are now in various places throughout subchapter A and may eventually include the definitions now found throughout subchapters B and C. This change would let you go to a single location for all defined terms. Part 105 would also include some definitions found in section 5102 of Federal hazardous material transportation law, 49 U.S.C. 5101 et seq, that apply to terms used in the Hazardous Materials Regulations but do not appear in the regulations themselves. As a result of the present deficiency, you must refer to the statute to determine what particular words in the regulations mean.

At this time, proposed part 105 contains a limited number of definitions that have been rewritten into plain language. Many of these terms are also defined in 49 CFR parts 107 and 171. Consequently, the same term may be defined with different language in part 105 on the one hand and parts 107 and 171 on the other. Nevertheless, the plain language definitions in proposed part 105 are intended to have the same meaning as those in parts 107 and 171; we did not intend to make any substantive changes when we rewrote the proposed part 105 definitions into plain language.

Part 106

Proposed § 106.5 contains new information on our rulemaking process. Specifically, it states that we use informal rulemaking procedures under the Administrative Procedure Act. Furthermore, this section sets out the types of rulemaking documents we normally use to propose and adopt changes to our regulations.

Section 106.15 describes an advance notice of proposed rulemaking.

Section 106.20 describes a notice of proposed rulemaking.

Section 106.30 describes a final rule.

Section 106.35 describes an interim final rule.

Section 106.40 describes a direct final rule.

Section 106.70 proposes to allow commenters to electronically file their comments in a rulemaking proceeding. It also would allow us to reject paper and electronic comments that are frivolous, abusive, or repetitious.

Sections 106.80 through 106.95 talk about "public meetings" rather than "informal hearings." We are proposing this language change to more accurately reflect the nature of these public, information-gathering sessions.

Sections 106.115 through 106.140 propose to eliminate the current petition-for-reconsideration procedures in § 106.35 and § 106.38. Current § 106.35 requires that you file a petition for reconsideration of a rule with either RSPA's Associate Administrator for Hazardous Materials Safety or RSPA's Chief Counsel, depending on the subject matter of the regulation you are challenging. Current § 106.38 then allows you to appeal the decision of the Associate Administrator or the Chief Counsel by filing an appeal with RSPA's Administrator.

Only the Administrator has the authority, delegated from the Secretary of Transportation, to grant a petition for reconsideration that results in a new final rule. Therefore, petitions for reconsideration and appeals are currently processed through the Administrator. The proposed regulatory change avoids duplicative appeal procedures by limiting the process to action by the Administrator only.

Part 107

The substance of the procedural regulations in part 107, subpart A, has been captured in proposed parts 105 and 106. Consequently, with the exception of § 107.1—which would contain the definitions now found in

§ 107.3—we propose to remove the regulations currently contained in Part 107 subpart A.

2. Clearer Federal Register and CFR Formats

Plain language helps readers find requirements quickly and understand them easily. To do that, we have reorganized and reworded the parts using plain-language techniques not usually found in the **Federal Register** and CFR, such as these:

- Undesignated center headings cluster related sections within subparts.
- Short sections, paragraphs, sentences, and words speed up reading and enhance understanding.
- Sections as questions and answers focus sections better and combine to establish a rule.
- Personal pronouns reduce passive voice and draw readers into the writing.
- Tables display complex information in a simple, easy-to-read format.

In coordination with the Office of the Federal Register (OFR) and the National Partnership for Reinventing Government (NPR), RSPA is proposing changes in format that would make all regulations easier to read. The changes respond to the call in President Clinton's Executive Memorandum of June 1, 1998, for writing that uses "easy-to-read design features." RSPA intends to use these and other plain language techniques, as appropriate, in future rulemaking projects if the OFR approves them for general use. The public and all agencies are invited to comment on the proposed changes.

Staggering Paragraph Levels

OFR strongly recommends that agencies never use more than three levels of paragraphs (for example (a)(1)(i)), but distinguishing one level from another is hard because all paragraphs in the CFR start at the same distance from the left margin. To make relative importance stand out, we have drafted this proposed rule using the following format features:

- *Different paragraph levels start in different places.* You see the limit of three levels and proposed staggered indentations at § 106.45. Indenting first lines of three levels of paragraphs has virtually no effect on the length of the text.
- *Main paragraphs start at the margin.* This change would show that main paragraphs (those without numbers or letters) are at the highest level. See the first sentence in § 106.45.

Spacing Between Paragraphs

The dense formats of the **Federal Register** and CFR save on pages but hinder reading. Though section headings are framed by blank lines above and below them, there is no such relief to the fine print within a section, where users do their closest reading. To make navigation faster and easier, at least one commercial publisher of the Federal Acquisition Regulations has adopted two techniques that RSPA proposes here:

- *Blank half lines separate paragraphs.* The visual relief helps readers move around and spot things fast. Using this proposed rule document as an example, blank half lines add about one-half page in 10 (or an increase of about 5 percent). Agencies may be able to offset this space increase and resulting increases in publication costs by taking advantage of some economies of plain language.
- *All new paragraphs start on new lines.* Most paragraphs do start on new lines now, with this exception: when a paragraph consists of just a heading, the next paragraph starts beside it. The compression creates an occasional inconsistency that complicates reading. Imagine § 106.40(d)(1) starting next to "Withdrawing a direct final rule." The proposed change makes the placement of section designations entirely consistent. It lets readers devote more of their limited time to understanding the substance and less to compensating for the format's irregularities.

RSPA, OFR and NPR are interested in your views on the need for format changes in the **Federal Register** and CFR. Changes can be implemented over time, as new regulatory documents are published, but where? In the **Federal Register** alone? In the CFR as well? Within the **Federal Register**, should blank half lines between paragraphs be added to regulatory text alone or to preambles as well?

Identifying Defined Terms

RSPA proposes to list, at the beginning of each subpart, the defined terms that are used within the subpart and to refer the reader to the new part 105 definitions. This way, readers will know that RSPA has given a term a precise meaning and will know where to find it. This proposal leaves certain practices unchanged. In a definitions section, writers would still underline a term on its first appearance and OFR would still italicize the defined term. In such a section, writers would still have the option of ending a definition with a cross-reference to the term's first

substantive use. Similarly, writers would still have the option of following the first substantive use of a defined term with a cross-reference back to the section that defines it.

Clarifying Table Format

This proposal illustrates the use of horizontal lines and plain language in a table format, and adopts other standard features of table design. For an example, see the table in § 106.110.

- *Tables use horizontal lines.* This is common practice in newspapers and magazines (stock market tables are an example). But tables in the **Federal Register** and CFR often have vertical lines between columns, separating closely related matter and blocking normal left-to-right reading. Under this proposal, if-then tables would appear with horizontal lines between rows and no vertical lines anywhere.
- *Column widths vary.* Currently, columns may be too wide or too narrow for the amount of text. This proposal would have column widths adjusted to fit the text in them.
- *Column headings start at left margins.* Currently, column headings which are centered do not contribute to the clean left margin that substitutes for a vertical line.
- *Column headings appear in boldface.* In plain text now, they do not stand out as they might. Agencies would continue to have the option of submitting tables in camera-ready form.
- *Tables use text font.* In the past, tables and text have appeared in different fonts, a visual inconsistency we propose to eliminate.

Centering Headings in the Federal Register

After clustering related sections into subparts, writers currently have the option of clustering them further under center headings. They draft these headings in initial caps, without number or letter designations, in both the text and tables of contents. You see the organizing power of center headings throughout parts 105 and 106.

Currently, undesignated center headings appear as intended in the CFR but not in the **Federal Register**. In the latter, center headings appear at the left margin and look like section headings without section numbers. The effect is confusing, especially for first-time readers. The proposed change would improve the placement and look of undesignated center headings in the **Federal Register** by making them appear centered as they do in the CFR.

Using Bulleted Lists in Preamble Summaries

Currently, preamble summaries appear in running text only. But the information required there--what the rule does, why it is necessary, and the intended effect--lends itself to vertical listing with bullets. (See this preamble's summary.)

3. Regulatory Analysis and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866. Consequently, it was not reviewed by the Office of Management and Budget. RSPA will not prepare a regulatory impact analysis or a regulatory evaluation because this proposed rule has minimal economic impact. This determination may change as a result of public comment. This proposed rule is not significant according to the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

Executive Order 12612

RSPA has analyzed this proposed rule in accordance with the principles and criteria in Executive Order 12612 ("Federalism"). RSPA has determined that this proposed rule does not have sufficient Federalism impacts to warrant the preparation of a federalism assessment.

Executive Order 13084

We do not believe that the revised regulations evolving from this NPRM will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Therefore, the funding and consultation requirements of this Executive Order would not apply. Nevertheless, this NPRM specifically requests comments from affected persons, including Indian tribal governments, as to its potential impact.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), RSPA must consider whether a notice of proposed rulemaking would have a significant economic impact on a substantial number of small entities. This proposed rule clarifies and revises RSPA's general procedures and rulemaking procedures to assist the public to better understand our procedures. Therefore, I certify that this proposed rule will not have a

significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This proposed rule does not propose any new information collection requirements.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading of this document to cross-reference this action with the Unified Agenda.

Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

Impact on Business Processes and Computer Systems

Many computers that use two digits to keep track of dates will, on January 1, 2000, recognize "double zero" not as 2000 but as 1900. This glitch, the Year 2000 problem, could cause computers to stop running or to start generating erroneous data. The Year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, Federal agencies are reaching out to increase awareness of the problem and to offer support. We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 problem.

This NPRM does not propose business process changes or require modifications to computer systems. Because this NPRM apparently does not affect organizations' ability to respond to the Year 2000 problem, we do not intend to delay the effectiveness of the proposed requirements in this NPRM.

List of Subjects

49 CFR Part 105

Administrative practice and procedure, Hazardous materials transportation.

49 CFR Part 106

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

Accordingly, RSPA proposes to amend 49 CFR chapter I, subchapter A, as follows:

1. Add part 105 to read as follows:

PART 105—HAZARDOUS MATERIALS PROGRAM DEFINITIONS AND GENERAL PROCEDURES

Subpart A—Definitions

Sec.

105.5 How does RSPA identify defined terms?

105.10 How does RSPA define the terms used in this subchapter?

Subpart B—General Procedures

105.15 Which defined terms are used in this subpart?

Obtaining Guidance and Public Information

105.20 Where can I get guidance and interpretations?

105.25 Where can I review public documents on file with RSPA?

105.30 Is information I submit to RSPA made available to the public?

Serving Documents

105.35 How may RSPA and others serve documents in RSPA proceedings?

105.40 How do I designate an agent to receive documents on my behalf if I am not a United States resident?

Subpoenas

105.45 What is involved in issuing a subpoena?

105.50 How are subpoenas served?

105.55 What if I do not want to obey a subpoena?

Authority: 49 U.S.C. 5101-5127.

Subpart A—Definitions

§ 105.5 How does RSPA identify defined terms?

This part contains the definitions for certain words and phrases used throughout this subchapter (49 CFR parts 105 through 110). At the beginning of each subpart, the Research and Special Programs Administration ("RSPA" or "we") will identify the

defined terms that are used within the subpart -- by listing them -- and refer the reader to the definitions in this part. This way, readers will know that RSPA has given a term a precise meaning and will know where to look for it.

§ 105.10 How does RSPA define the terms used in this subchapter?

Terms used in this subchapter are defined as follows:

Approval means written consent, including a competent authority approval, from the Associate Administrator for Hazardous Materials Safety to perform a function that requires prior consent under subchapter C of this chapter (49 CFR parts 171 through 180).

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 for Hazardous Materials Safety is the United States Competent Authority for purposes of 49 CFR part 107.

Competent Authority Approval means an approval by the competent authority that is required under an international standard (for example, the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air and the International Maritime Dangerous Goods Code). Any of the following may be considered a competent authority approval if it satisfies the requirement of an international standard:

- (1) A specific regulation in subchapter A or C of this chapter.
- (2) An exemption or approval issued under subchapter A or C of this chapter.
- (3) A separate document issued to one or more persons by the Associate Administrator for Hazardous Materials Safety.

Exemption means a document issued by RSPA under the authority of 49 U.S.C. 5117. The document permits a person to perform a function that is not otherwise permitted under subchapter A or C of this chapter, or other regulations issued under 49 U.S.C. 5101 through 5127 (e.g., Federal Highway Administration routing rules at 49 CFR part 397).

Federal hazardous material transportation law and *Federal hazmat law* mean 49 U.S.C. 5101 through 5127.

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

Hazardous material means a substance or material that the Secretary of Transportation determines is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and designates as hazardous under section 5103 of Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see 49 CFR 172.101), and materials that meet the defining criteria for hazard classes and divisions in part 173 of subchapter C of this chapter.

Hazardous materials regulations or *HMR* means the regulations at 49 CFR parts 171 through 180.

Indian tribe has the same meaning as it does under section 4 of the Indian Self-Determination and Education Act (25 U.S.C. 450b).

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) when it offers hazardous materials for transportation in commerce or transports hazardous materials to further a commercial enterprise. Person excludes 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).

Political subdivision includes a municipality; a public agency or other instrumentality of one or more States, municipalities, or other political body of a State; or a public corporation, board, or commission established under the laws of one or more States.

Preemption determination means an administrative decision by RSPA that Federal hazardous materials law does or does not void a specific State, political subdivision, or Indian tribe requirement.

Regulations issued under Federal hazmat law means regulations contained in this subchapter (49 CFR parts 105 through 110) and in subchapter C of this chapter (49 CFR parts 171 through 180).

State means:

(1) Any of the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, American Samoa, Guam, or any other territory or possession of the United States designated by the Secretary of Transportation.

(2) As used in 49 U.S.C. 5119 (uniformity of State registration and permitting forms and procedures), a State of the United States or the District of Columbia.

Transports or *Transportation* means movement of property, and any loading, unloading, or storage incidental to that movement.

Waiver of Preemption means a decision by RSPA to forego preemption of a non-Federal requirement (that is, to allow a State, political subdivision or Indian tribe requirement to remain in effect) that provides at least as much public protection as Federal hazmat law and the regulations issued under Federal hazmat law, and does not unreasonably burden commerce.

Subpart B—General Procedures

§ 105.15 Which defined terms are used in this subpart?

The following defined terms (see subpart A of this part) appear in this subpart: Approval; Exemption; Federal hazardous materials law; Hazardous materials; Hazardous materials regulations; Indian tribe; Preemption determination; State; Transportation; Waiver of preemption.

Obtaining Guidance and Public Information

§ 105.20 Where can I get guidance and interpretations?

(a) *Hazardous materials regulations.* You can get information and answers to your questions on compliance with the hazardous materials regulations (49 CFR parts 171 through 180) and interpretations of those regulations by contacting RSPA's Office of Hazardous Materials Safety as follows:

- (1) Call the hazardous materials information line at 1-800-467-4922 (in the Washington, DC area call 202-366-4488). The line is staffed from 9:00 a.m. through 5:00 p.m. Eastern time, Monday through Friday except Federal holidays.

After hours, you can leave a recorded message and your call will be returned by the next business day.

(2) Access the Office of Hazardous Materials Safety's home page via the Internet at <http://hazmat.dot.gov>.

(3) Send a letter, with your return address and a daytime telephone number, to:

Guidance and Interpretations
Attn: DHM-333
RSPA/U.S. Department of Transportation
(USDOT)
Washington, DC 20590-0001.

(b) *Federal Hazmat law and preemption*. You can get information and answers to your questions on Federal hazardous materials transportation law, 49 U.S.C. 5101 through 5127, and Federal preemption of State, local, and Indian tribe hazardous material transportation requirements, by contacting RSPA's Office of the Chief Counsel as follows:

(1) Call the office of the Chief Counsel at (202) 366-4400 from 9:00 a.m. to 5:00 p.m. Eastern time, Monday through Friday except Federal holidays.

(2) Access the Office of the Chief Counsel's home page via the Internet at <http://rspa-atty.dot.gov>.

(3) Send a letter, with your return address and a daytime telephone number, to:

Office of the Chief Counsel
Attn: DCC-10
RSPA/USDOT
Washington, DC 20590-0001.

§ 105.25 Where can I review public documents on file with RSPA?

RSPA is required by statute to make certain documents and information available to the public. You can review and copy publicly available documents and information at the locations described in this section.

(a) *DOT Docket Management System*. Unless a particular document says otherwise, the following documents are available for public review and copying at the Department of Transportation's Docket Management System, Room PL 401, 400 7th Street, SW, Washington, DC 20590-0001, or for review and downloading through the Internet at <http://dms.dot.gov>:

(1) Rulemaking documents in proceedings started after February 1, 1997, including notices of proposed rulemaking, advance notices of proposed rulemaking, public comments, related **Federal Register** notices, final rules, appeals, and RSPA's decisions in response to appeals.

(2) Applications for exemption received by RSPA after February 1, 1997. Also available are supporting data, memoranda of any informal meetings with applicants, related **Federal Register** notices, public comments, and decisions granting or denying exemptions applications.

(3) Applications for preemption determinations and waiver of preemption determinations received by RSPA after February 1, 1997. Also available are public comments, **Federal Register** notices, and RSPA's rulings, determinations, and orders issued in response to those applications.

(b) *Hazardous Materials Record Center*. Unless a particular document says otherwise, the following documents are available for public review and copying at RSPA's Hazardous Materials Record Center, USDOT, room 8421, 400 7th Street, SW, Washington, DC 20590-0001:

(1) Rulemaking documents in proceedings started before February 1, 1997, including notices of proposed rulemaking, advance notices of proposed rulemaking, public comments, related **Federal Register** notices, final rules, appeals, and RSPA's decisions in response to appeals.

(2) Applications for exemption received by RSPA before February 1, 1997. Also available are supporting data, memoranda of any informal meetings with applicants, related **Federal Register** notices, public comments, and decisions granting or denying exemptions applications.

(3) Applications for preemption determinations and waiver of preemption determinations received by RSPA before February 1, 1997. Also available are public comments, **Federal Register** notices, and RSPA's rulings, determinations, and orders issued in response to those applications.

(4) Interpretations of RSPA's regulations.

(c) *Office of Hazardous Materials Safety*.

(1) Upon your written request, we will make the following documents and information available to you:

(i) Appeals under 49 CFR part 107 and RSPA's decisions issued in response to those appeals.

(ii) Records of compliance order proceedings and RSPA compliance orders.

(iii) Applications for approval, including supporting data, memoranda of any informal meetings with

applicants, and decisions granting or denying approvals applications.

(iv) Other information about RSPA's hazardous materials program required by statute to be made available to the public for review and copying and any other information RSPA decides should be available to the public.

(2) Your written request to review documents should include the following:

(i) A detailed description of the documents you wish to review.

(ii) Your name, address, and telephone number.

(3) Send your written request to:

Request to Review Documents
Attn: DHM-333
RSPA/USDOT
Washington, DC 20590-0001.

§ 105.30 Is information I submit to RSPA made available to the public?

When you submit information to RSPA during a rulemaking proceeding, as part of your application for exemption or approval, or for any other reason, we may make that information publicly available unless you ask that we keep the information confidential.

(a) *Asking for confidential treatment*. You may ask us to give confidential treatment to information you give to the agency by taking the following steps:

(1) Mark "confidential" on each page of the original document you would like to keep confidential.

(2) Send us, along with the original document, a second copy of the original document with the confidential information deleted.

(3) Explain why the information you are submitting is confidential (for example, it is exempt from mandatory public disclosure under the Freedom of Information Act, 5 U.S.C. 552; it is information referred to in 18 U.S.C. 1905).

(b) *RSPA Decision*. RSPA will decide whether or not to treat your information as confidential. We will notify you, in writing, of a decision to grant or deny confidentiality at least five days before the information is publicly disclosed, and give you an opportunity to respond.

Serving Documents

§ 105.35 How may RSPA and others serve documents in RSPA proceedings?

(a) *Service by RSPA*. We may serve the document by one of the following methods, except where a different method of service is specifically required:

(1) Registered or certified mail.

(i) If we serve a document by registered or certified mail, it is considered served when mailed.

(ii) An official United States Postal Service receipt from the registered or certified mailing is proof of service.

(iii) We may serve a person's authorized representative or agent by registered or certified mail, or in any other manner authorized by law. Service on a person's authorized agent is the same as service on the person.

(2) Personal service.

(3) Publication in the **Federal Register**.

(b) *Service by others*. If you are required under this subchapter to serve a person with a document, serve the document by one of the following methods, except where a different method of service is specifically required:

(1) Registered or certified mail.

(i) If you serve a document by registered or certified mail, it is considered served when mailed.

(ii) An official United States Postal Service receipt from the registered or certified mailing is proof of service.

(iii) You may serve a person's authorized representative or agent by registered or certified mail, return receipt requested, or in any other manner authorized by law. Service on a person's authorized agent is the same as service on the person.

(2) Personal service.

(3) Electronic service.

(i) In a proceeding under § 107.317 of this subchapter (an administrative law judge proceeding), you may electronically serve documents on us.

(ii) Serve documents electronically through the Internet at <http://dms.dot.gov>.

§ 105.40 How do I designate an agent to receive documents on my behalf if I am not a United States resident?

(a) *General requirement*. If you are not a resident of the United States but are required by this subchapter or subchapter C of this chapter to designate a permanent resident of the United States to act as your agent and receive documents on your behalf, you must prepare a designation and file it with us.

(b) *Agents*. An agent:

(1) May be an individual, a firm, or a domestic corporation.

(2) May represent any number of principals.

(3) May not reassign responsibilities under a designation to another person.

(c) *Preparing a designation*. Your designation must be written and dated, and it must contain the following information:

(1) The section in the HMR that requires you to file a designation.

(2) A certification that the designation is in the correct legal form required to make it valid and binding on you under the laws, corporate bylaws, or other requirements that apply to designations at the time and place you are making the designation.

(3) Your full legal name, the principal name of your business, and your mailing address.

(4) A statement that your designation will remain in effect until you withdraw or replace it.

(5) The legal name and mailing address of your agent.

(6) A declaration of acceptance signed by your agent.

(d) *Address*. Send your designation to:

Designation of Agent
Attn: DHM-333
RSPA/USDOT
Washington, D.C. 20590-0001.

(e) *Designations are binding*. You are bound by your designation of an agent, even if you did not follow all the requirements in this section, until we reject your designation.

Subpoenas**§ 105.45 What is involved in issuing a subpoena?**

(a) *Subpoenas explained*. A subpoena is a document that may require you to attend a hearing or produce documents or other physical evidence in your possession or control. RSPA may issue a subpoena either on its initiative or at the request of someone participating in a hearing. Anyone who requests that RSPA issue a subpoena must show that the subpoena seeks information that will materially advance the hearing.

(b) *Attendance and mileage expenses*.

(1) If you receive a subpoena to attend a hearing under this part, you may receive money to cover attendance and mileage expenses. The attendance and mileage fees will be the same as those paid to a witness in a proceeding in the district courts of the United States.

(2) If RSPA issues a subpoena to you based upon a request, the requester

must serve a copy of the original subpoena on you, as required in § 105.50. The requester must also include attendance and mileage fees with the subpoena unless they ask RSPA to pay the attendance and mileage fees because of demonstrated financial hardship.

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

§ 105.50 How are subpoenas served?

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

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

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

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

§ 105.55 What if I do not want to obey a subpoena?

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

- (1) Deny your request.
- (2) Quash or modify the subpoena.
- (3) Grant your request on the condition that you satisfy certain specified requirements.

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

- 2. Revise part 106 to read as follows:

PART 106—RULEMAKING PROCEDURES

Subpart A—RSPA Rulemaking Documents

Sec.

- 106.5 Which defined terms are used in this subpart?
- 106.10 How does RSPA issue rules?
- 106.15 What is an advance notice of proposed rulemaking?
- 106.20 What is a notice of proposed rulemaking?
- 106.25 May RSPA change its regulations without first issuing an ANPRM or NPRM?
- 106.30 What is a final rule?
- 106.35 What is an interim final rule?
- 106.40 What is a direct final rule?
- 106.45 How can I track RSPA's rulemaking activities?

Subpart B—Participating in the Rulemaking Process.

- 106.50 Which defined terms are used in this subpart?
- 106.55 How may I participate in RSPA's rulemaking process?

Written Comments

- 106.60 Who may file comments?
- 106.65 What information must I put in my written comments?
- 106.70 Where and when do I file my comments?
- 106.75 May I ask for more time to file my comments?

Public Meetings and Other Proceedings

- 106.80 What takes place at a public meeting?
- 106.85 May I ask RSPA to hold a public meeting?
- 106.90 How will RSPA handle my request for a public meeting?
- 106.95 What other proceedings might I take part in?

Petitions for Rulemaking

- 106.100 May I ask RSPA to add, amend, or delete a regulation?
- 106.105 What information must I include in a petition for rulemaking?
- 106.110 How will RSPA handle my petition for rulemaking?

Appeals

- 106.115 May I appeal an action that RSPA has taken?

- 106.120 What information must I put in my appeal?
- 106.125 What is the deadline for filing my appeal?
- 106.130 Where do I file my appeal?
- 106.135 Will the filing of my appeal keep a final rule from becoming effective?
- 106.140 How will RSPA handle my appeal?

Authority: 49 U.S.C. 5101-5127.

Subpart A—RSPA Rulemaking Documents

§ 106.5 Which defined terms are used in this subpart?

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

§ 106.10 How does RSPA issue rules?

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

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

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

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

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

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

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

§ 106.15 What is an advance notice of proposed rulemaking?

An advance notice of proposed rulemaking (ANPRM) tells the public

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

§ 106.20 What is a notice of proposed rulemaking?

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

§ 106.25 May RSPA change its regulations without first issuing an ANPRM or NPRM?

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

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

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

§ 106.30 What is a final rule?

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

§ 106.35 What is an interim final rule?

An interim final rule sets out new regulatory requirements and their effective date. RSPA may issue an interim final rule without first issuing a notice of proposed rulemaking and accepting public comment if it finds, for good cause, that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. RSPA will clearly set out this finding in the interim final rule. After receiving and reviewing public comments, as well as any other relevant documents, RSPA may revise the interim final rule and issue it as a final rule.

§ 106.40 What is a direct final rule?

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

direct final rule is published in the **Federal Register**.

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

(1) Make minor substantive changes to regulations.

(2) Incorporate by reference the latest edition of technical or industry standards.

(3) Extend compliance dates.

(4) Make noncontroversial changes to regulations. We must determine and publish a finding that use of direct final rulemaking, in this situation, is in the public interest and unlikely to result in adverse comment.

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

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

(2) A frivolous or insubstantial comment.

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

(d) *Withdrawing a direct final rule.*

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

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

(e) *Appeal.* You may appeal RSPA's issuance of a direct final rule (see

§ 106.115) only if you have previously filed written comments (see § 106.60) to the direct final rule.

§ 106.45 How can I track RSPA's rulemaking activities?

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

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

(1) Associate related documents that appear in the **Federal Register**.

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

(i) Visit the public docket room and review and copy any docketed materials during regular business hours. The DOT Docket Management System is located at the U.S. Department of Transportation, plaza level 401, 400 7th Street, SW, Washington, DC 20590-0001.

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

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

Subpart B—Participating in the Rulemaking Process

§ 106.50 Which defined terms are used in this subpart?

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

§ 106.55 How may I participate in RSPA's rulemaking process?

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

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

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

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

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

Written Comments

§ 106.60 Who may file comments?

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

§ 106.65 What information must I put in my written comments?

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

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

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

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

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

§ 106.70 Where and when do I file my comments?

(a) Unless you are told to do otherwise in the rulemaking document

on which you are commenting, send your comments to us in either of the following ways:

(1) By mail to:

Docket Management System
USDOT
Room PL 401
Washington, DC 20590-0001.

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

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

(c) We may reject your paper or electronic comments if they are frivolous, abusive, or repetitious. We may reject comments you file electronically if you do not follow the electronic filing instructions at the DOT website.

§ 106.75 May I ask for more time to file my comments?

Yes. If RSPA grants your request, it is granted to all persons. We will notify the public of the extension by publishing a document in the **Federal Register**. If RSPA denies your request, RSPA will notify you of the denial. To ask for more time, you must do the following:

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

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

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

(d) Send your request to:

Request for Extension
Attn: DHM-333
RSPA/USDOT
Washington, DC 20590-0001.

Public Meetings and Other Proceedings

§ 106.80 What takes place at a public meeting?

A public meeting is a nonadversarial, fact-finding proceeding conducted by a RSPA representative. Generally, public meetings are announced in the **Federal Register**. Interested persons are invited to attend and to present their views to the agency on specific issues. There are no formal pleadings and no adverse

parties, and any regulation issued afterward is not necessarily based exclusively on the record of the meeting. Sections 556 and 557 of the Administrative Procedure Act (5 U.S.C. 556 and 557) do not apply to public meetings under this part.

§ 106.85 May I ask RSPA to hold a public meeting?

If a rulemaking document does not provide for a public meeting, you may ask for one by filing a written request with RSPA no later than 20 days before the expiration of the comment period specified in the rulemaking document. Send your request for a public meeting to:

Request for Public Meeting
Attn: DHM-333
RSPA/USDOT
Washington, DC 20590-0001.

§ 106.90 How will RSPA handle my request for a public meeting?

RSPA will review your request and, if you have shown good cause for a public meeting, will grant it and publish a notice of the meeting in the **Federal Register**.

§ 106.95 What other proceedings might I take part in?

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

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

(b) Make an oral presentation.

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

Petitions for Rulemaking

§ 106.100 May I ask RSPA to add, amend, or delete a regulation?

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

(a) For regulations in 49 CFR parts 110, 130, 171 through 180, submit the petition to:

Petition for Rulemaking
Attn: DHM-333
RSPA/USDOT
Washington, DC 20590-0001.

(b) For regulations in 49 CFR parts 105, 106, or 107, submit the petition to:

Office of the Chief Counsel
Attn: DCC-10

RSPA/USDOT
Washington, DC 20590-0001.

§ 106.105 What information must I include in a petition for rulemaking?

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

(1) A summary of your proposed action and an explanation of its purpose.

(2) The language you propose for a new or amended rule, or the language you would delete from a current rule.

(3) An explanation of your interest in your proposed action and the interest of anyone you may represent.

(4) Information and arguments that support your proposed action, including relevant technical and scientific data available to you.

(5) Any specific cases that support or demonstrate the need for your proposed action.

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

(1) The costs and benefits of your proposed action to society in general, and identifiable groups within society in particular.

(2) The direct effects, including preemption effects under section 5125 of Federal hazardous materials transportation law (Title 5, U.S.C.), of your proposed action on States, on the relationship between the Federal government and the States, and on the distribution of power and responsibilities among the various levels of government. (See 49 CFR part 107, subpart C, regarding preemption.)

(3) The regulatory burden of your proposed action on small businesses, small organizations, small governmental jurisdictions, and Indian tribes.

(4) The record keeping and reporting burdens of your proposed action and whom they would affect.

(5) The effect of your proposed action on the quality of the natural and social environments.

§ 106.110 How will RSPA handle my petition for rulemaking?

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

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

Appeals

§ 106.115 May I appeal an action that RSPA has taken?

You may appeal the following RSPA actions:

(a) Any regulation that RSPA issues under the rulemaking procedures in this part. However, you may appeal RSPA's issuance of a direct final rule only if you previously filed comments to the direct final rule (see § 106.40(e)).

(b) Any RSPA decision on a petition for rulemaking.

§ 106.120 What information must I put in my appeal?

(a) *Appeal of a regulation.* If you appeal RSPA's issuance of a regulation, your appeal must include the following:

(1) The docket number of the rulemaking you are concerned about, clearly set out at the beginning of your appeal.

(2) A brief statement of your concern about the regulation at issue.

(3) An explanation of why compliance with the regulation is not practical, reasonable, or in the public interest.

(4) If you want RSPA to consider more facts, the reason why you did not present those facts within the time given during the rulemaking process for public comment.

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

(1) The contested aspects of the decision.

(2) Any new arguments or information.

§ 106.125 What is the deadline for filing my appeal?

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

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

§ 106.130 Where do I file my appeal?

Send your appeal to:

Appeal
Attn: DHM-333
RSPA/USDOT
Washington, DC 20590-0001.

§ 106.135 Will the filing of my appeal keep a final rule from becoming effective?

No, unless RSPA provides otherwise.

§ 106.140 How will RSPA handle my appeal?

(a) *Appeal of a regulation.*

(1) We may consolidate your appeal with other appeals of the same rule.

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

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

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

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

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 would continue to read as follows:

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

§§ 107.1, 107.5, 107.7, 107.9, 107.11, 107.13, 107.14 [Removed]

§ 107.3 [Redesignated as § 107.1]

2. Part 107, subpart A, would be amended by revising the subpart heading; by removing §§ 107.1, 107.5, 107.7, 107.9, 107.11, 107.13, 107.14; and by redesignating § 107.3 as § 107.1, to read as follows:

Subpart A—Definitions

Issued at Washington, DC on November 18, 1998, under authority delegated in 49 CFR part 106.

Judith S. Kaleta,
Chief Counsel.

[FR Doc. 98-31506; Filed 12-10-98; 8:45 am]

BILLING CODE 4910-60-F