

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[FI-7-94]

RIN 1545-AS49

Arbitrage Restrictions on Tax-Exempt Bonds; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of date and location for public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the arbitrage and related restrictions applicable to tax-exempt bonds issued by State and local governments.

DATES: The public hearing will be held Thursday, October 12, 1995, beginning at 10:00 a.m. Requests to speak and outlines of oral comments must be received by Thursday, September 21, 1995.

ADDRESSES: The public hearing will be held in room 3313, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Requests to speak and outlines of oral comments should be mailed to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:DOM:CORP:R [FI-7-94], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Christina Vasquez of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-6803 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking appeared in the **Federal Register** on Tuesday, May 10, 1994 (59 FR 24094). A notice of public hearing appearing in the **Federal Register** on Thursday, August 17, 1995 (60 FR 42819) announced that the Service would hold a public hearing on proposed regulations relating to the arbitrage and related restrictions applicable to tax-exempt bonds issued by State and local governments on Monday, September 25, 1995, beginning at 10:00 a.m. in the IRS Auditorium.

The date and location of the public hearing has changed. The hearing is scheduled for Thursday, October 12, 1995, beginning at 10:00 a.m. in room 3313, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of controlled access restrictions, attendees are not admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

The Service will prepare an agenda showing the scheduling of the speakers after the outlines are received from the persons testifying and make copies available free of charge at the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

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DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Parts 107, 171, 172, 173 and 178**

[Docket No. HM-207C, Notice No. 95-9]

RIN 2137-AC63

Exemption, Approval, Registration and Reporting Procedures; Miscellaneous Provisions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: To expedite processing of applications and to promote clarity and program consistency, RSPA is proposing to revise the procedures for applying for exemptions and to establish procedures for applying for approvals, registering (other than the hazmat registration program), and reporting. In addition, the proposed rule would amend in minor ways a number of provisions, mostly procedural. The intended effect of this NPRM is to provide guidance for persons required to obtain an approval, register, or report with RSPA. By clarifying the requirements, RSPA would reduce the need to seek additional information necessary to complete the processing of applications. The proposed changes also would reduce the processing time.

DATES: *Comments.* Comments must be received by November 28, 1995.

ADDRESSES: *Comments.* Address comments to Dockets Unit (DHM-30), Hazardous Materials Safety, RSPA, U.S. Department of Transportation, Washington, DC 20590-0001.

Comments should identify the docket and notice number and be submitted, when possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street SW, Washington DC 20590-0001. Office hours are 8:30 am to

5:00 pm Monday through Friday, except on public holidays when the office is closed.

FOR FURTHER INFORMATION CONTACT: Jennifer Antonielli, Office of Hazardous Materials Standards, (800) 467-4922, or Kathleen Molinar, Office of the Chief Counsel, (202) 366-4400, RSPA, Department of Transportation, 400 Seventh Street SW, Washington DC 20590-0001.

SUPPLEMENTARY INFORMATION:**I. Background**

The Federal hazardous material transportation law (Federal hazmat law), 49 U.S.C. 5101-5127, directs the Secretary of Transportation to prescribe regulations for the safe transportation of hazardous material in commerce. 49 U.S.C. 5103. The Research and Special Programs Administration (RSPA) is the administration within the Department of Transportation primarily responsible for implementing the Federal hazmat law. 49 CFR 1.53. RSPA does so through the Hazardous Materials Regulations (HMR), 49 CFR parts 171-180. Under 49 U.S.C. 5117(a), RSPA is authorized to issue an exemption from the Federal hazmat law or the HMR if an applicant demonstrates that public safety will not be compromised. The procedures governing application for an exemption and the manner in which the application is processed are found at 49 CFR subpart B of part 107.

In addition, in numerous instances the HMR require authorization by or registration with RSPA before a person may engage in particular hazmat transportation-related activities in areas such as manufacturing and certifying hazardous material packaging, offering hazardous material for transportation, and transporting hazardous material. Elsewhere, the HMR impose reporting requirements on those engaging in certain hazmat transportation activity. A significant portion of the regulated community is subject to one or more of these types of requirements. Procedures to be followed in seeking an approval from RSPA, registering with RSPA or reporting to RSPA may be found in the HMR provision establishing the particular requirement, but in many cases these procedures are absent or incomplete. There are no general procedural rules in the HMR governing these matters.

This proposed rule would revise existing exemption procedures at 49 CFR subpart B of part 107 and create a new subpart H of part 107 to establish a similar procedural framework for approvals, registrations and reports.

RSPA processes numerous approval, registration and reporting matters, and practices have developed over time. Nevertheless, establishment of formal procedures through regulation provides desirable guidance to all those who now or in the future may be subject to HMR approval, registration or reporting requirements, and fosters the greatest possible consistency in RSPA's handling of these matters. The proposed procedures, in many respects, parallel those for exemptions, and this rule would modify them, and largely codify the approval, registration and reporting procedures that RSPA currently follows. Establishing procedures in 49 CFR part 107 for approvals, registration, and reports would minimize the need for RSPA to seek information from applicants in order to complete the processing of applications.

The procedures for approvals, registration and reporting are limited in their application in two respects. First, under the HMR, other Federal agencies, including the United States Coast Guard, the Federal Highway Administration, the Nuclear Regulatory Commission, the Departments of Defense and Energy, the Bureau of Mines, the Bureau of Alcohol, Tobacco and Firearms, and non-Federal entities such as the Association of American Railroads, issue approvals or receive registrations or reports under the HMR. For example, under § 176.415, Coast Guard approval must be obtained before loading or unloading certain explosives onto or from vessels. The procedures established in this rulemaking would apply only with respect to those matters that, under the HMR, are handled by RSPA. Those matters for which the HMR assigns responsibility to other entities will continue to be handled according to the procedures of those entities.

Second, this rule does not supersede existing procedures for approvals, registration, or reporting, such as the minimum content of the application or the RSPA office where it is to be filed. Where 49 CFR subpart H of part 107 supplements a specific HMR requirement, both will apply. In the unlikely event that subpart H conflicts with an element of the specific approval, registration, or reporting requirement, the specific requirement will govern. Comments are invited on any apparent conflicts.

Proposed amendment of selected provisions in 49 CFR part 107 would clarify and, in some cases, slightly modify RSPA procedures with respect to rulemaking, preemption determinations and enforcement. Certain provisions of 49 CFR part 171

would be amended for clarity. Sections 172.302 and 173.22a would be amended to incorporate requirements currently in Appendix B to subpart B of part 107. A new § 178.3(d) would permit only those persons authorized under an exemption or their agents to certify a packaging to the exemption.

II. Regulatory Reinvention Initiative

In a March 4, 1995 memorandum, the President directed Federal agencies to review all agency regulations and eliminate or revise those that are outdated or in need of reform. RSPA issued a notice on April 4, 1995, (Docket HM-222; 60 FR 17049) requesting comments on regulatory reform and announced seven public meetings nationwide to identify obsolete and burdensome regulations which can be eliminated from the HMR and techniques to improve its customer services. Some of the commenters responding to the notice under Docket HM-222 identified the exemption and approval procedures contained in the HMR as areas in need of clarification and reform. Today's notice is consistent with the goals of the President to clarify and revise Federal agency regulations to relieve unnecessary regulatory burdens.

III. Request for Comments

Comments are invited with respect to all of the proposed changes. In particular, RSPA is interested in whether commenters believe the changes would make the process of applying for an exemption or approval simpler or more efficient, and whether paperwork burdens would be eased; whether the proposed provisions are clear; and how the rule would affect small businesses and other entities.

IV. Summary of Proposed Amendments

A. Exemptions

The exemption procedures at 49 CFR subpart B of part 107 would be reorganized to provide a framework that is more logically arranged than at present. The proposed rule sets forth application requirements for exemptions, exemption modifications, procedures for seeking party status to an exemption and renewing an exemption or a grant of party status. The proposed rule would establish three processing categories—routine, priority, and emergency; the standards to qualify for priority or emergency processing; and the procedures and review criteria to be applied in each category. Next, the notice would set forth the powers of the Associate Administrator for Hazardous Materials Safety (Associate Administrator) to modify, suspend, or

terminate an exemption or grant of party status; the standards to do so, and the procedures to be followed. Finally, this NPRM proposes procedures for reconsideration of an exemption decision by the Associate Administrator and appeal of that decision to the RSPA Administrator.

Substantively, the current regulations would be revised in several respects. Summaries of the more significant proposed revisions follow.

In this notice, timely filing requirements under the subpart would be clarified by standardizing the "filing" date as the date a submission is received at the specified RSPA office. Also, the required contents of an application would be expanded in several respects. The applicant would need to list HMR exemptions, approvals, and other authorizations previously or currently held that are related to the subject of the application and known to the applicant; this information would facilitate prompt processing of the application by expediting review of other relevant information. In addition, the applicant would be required to identify each manufacturing facility that would be operating under the requested exemption; this information would facilitate later RSPA inspections. A foreign applicant, after designating a domestic agent for service, would be required to consent in writing to personal jurisdiction with respect to all matters under the Federal hazmat law related to the exemption. The proposed rule also provides that an applicant's failure to respond to a request by RSPA for additional information within 30 days would result automatically in application denial. Paperwork burdens would be reduced by requiring only duplicate, rather than triplicate, application submissions.

In the proposal, the Associate Administrator explicitly would be authorized to consider evidence of an applicant's capability and integrity in deciding on an application. A pending or completed enforcement action for HMR violations could be considered, to the extent the Associate Administrator found it to be relevant. If an enforcement action were only pending, and a final finding of violation had not been made, that would be considered in assessing the weight the enforcement action should be given in deciding on an application.

The standards for routine and emergency application processing would be clarified, and a third category, that of priority processing, would be created. The rule would formalize, but not modify, the way in which exemption applications now are

routinely processed. When an application is determined to be complete, it is published in the **Federal Register** and public comment is solicited. The application then is considered under prescribed standards, including demonstration of an equivalent level of safety and whether the applicant has the capability and integrity necessary to operate under the exemption.

Similarly, the proposed rule would not change how an emergency exemption application is processed, but would clarify and slightly modify the standards for qualifying for emergency processing. The standard would be expanded to include likelihood of significant injury to persons, rather than only loss of life. Also, the proposed rule would clarify that a likelihood of significant economic harm, standing alone, does not entitle an applicant to emergency processing; whether the prospect of significant economic loss constitutes an emergency would be a matter for the Associate Administrator's judgment. For example, the Associate Administrator may find that a carrier's loss of transportation revenue or failure to gain new revenue, or a shipper's failure immediately to gain a new market, would not justify emergency processing.

Specifically, the rule would add a provision that the Associate Administrator may determine a risk of economic loss to the applicant, or to another person engaged in the hazmat activity in cooperation with the applicant, not to be the basis for a finding of emergency if the applicant or another person could have filed for routine application processing in a timely manner. If an application qualifies for emergency processing, it is not published in the **Federal Register**, subject to public comment, or held strictly to the submission requirements for routine processing. Further, recognizing that urgency may not permit the fullest deliberation, the standard for granting the exemption is simply whether doing so is in the public interest, in light of the standards that apply to an application processed routinely. Through the proposed provision, RSPA seeks to ensure that emergency processing, which affords less public review and a risk of reduced agency deliberation, is used only in the case of a risk of significant economic loss where urgency is required to avert the loss and the need for urgency could not have been avoided.

The NPRM would create a third processing category, priority processing, for applications that do not qualify for emergency processing, but merit more

expeditious consideration than that routinely accorded. An application that qualifies for priority processing, unlike one processed on an emergency basis, would be subject to public comment and the full degree of deliberation given to applications processed routinely. The priority designation merely would authorize RSPA to deviate from its "first in, first out" policy and consider the application ahead of those received earlier. Applications qualifying for priority processing would be those of governmental bodies when deemed by the Associate Administrator to be in the public interest, and those in which expeditious processing would be necessary to avoid significant economic loss. As in the case of emergency processing, if the significant economic loss were that of the applicant or another person engaged with the applicant in the hazmat activity, the need for the exemption may not have been foreseeable at a time when an application could have been processed routinely. Otherwise, the Associate Administrator would have the discretion to find that the application does not qualify for priority processing.

The proposed rule would clarify the standards for exemption modification, suspension, and termination and give the Associate Administrator more flexibility as to which of the three remedies is appropriate in a given situation. Presently, the Associate Administrator may modify or suspend an exemption if its provisions are violated, or if new information suggests that the activity under the exemption creates a risk to life or property. The Associate Administrator may terminate an exemption if it is no longer consistent with the public interest, is no longer necessary due to a change in the regulations, or was granted on the basis of false or misleading information. The "public interest" criterion encompasses all grounds on which the Associate Administrator may find it justified to terminate an exemption, but is vague. Further, the sharp distinction the existing regulation draws between those conditions that justify modifying or suspending an exemption, and those that justify terminating it, handicap the Associate Administrator in taking the action that a particular circumstance recommends—for example, requiring the termination of an exemption when modification might suffice.

The proposed rule would authorize modification whenever necessary to conform an exemption to changed statute or regulation, or other circumstances. It would authorize modification, suspension, or termination: (1) Whenever, because of a

change in circumstances, the exemption no longer would be granted if applied for; (2) if it was granted on the basis of inaccurate or incomplete information; or (3) if the holder violates the exemption in a way that demonstrates insufficient competence or integrity to act under the exemption. In addition, any exemption granted on the basis of an application that the Associate Administrator finds was deliberately inaccurate or incomplete would be subject to modification, suspension, or termination, even where the exemption would have been granted absent the inaccuracy or incompleteness.

Finally, the proposed rule would formalize procedures for requesting reconsideration of an exemption decision by the Associate Administrator and appealing the Associate Administrator's decision to the RSPA Administrator. During the pendency of a request for reconsideration or an appeal, the Associate Administrator or the Administrator, respectively, on a finding of risk to persons or property, could deem the modification, suspension, or termination effective for a period of up to 90 days. Otherwise the exemption, if current, would remain in effect until the decision.

B. Approvals, Registrations, Reports

The proposed rule establishes a framework for processing approval requests similar to that for exemption applications. It also describes procedures for filing registrations and reports with RSPA.

The proposed rule specifies minimum contents of an application for approval to be filed with RSPA, identifies the RSPA office to which the filing would be directed, and sets forth procedures by which an application for approval would be processed.

Next, the proposed rule sets forth standards and procedures for modifying, suspending and terminating approvals. The proposed standards are similar to the procedures for modifying, suspending and terminating exemptions. Modification would be authorized broadly to conform an approval to changed law or circumstances. Modification, suspension and termination all would be available if new information indicates that the approval would not be granted if now applied for; if the holder has demonstrated insufficient capability or integrity to perform the authorized activity; or if the application contained deliberately inaccurate or incomplete information. The holder would be allowed an opportunity to respond to the proposed action before it becomes final; however, where necessary to avert

a risk of harm to persons or property, the Associate Administrator could declare the modification, suspension or termination effective pending the holder's response and any subsequent reconsideration, for up to 90 days.

Finally, the proposed rule would provide for reconsideration of the Associate Administrator's decision on granting, modifying, suspending or terminating an approval, and for appeal of that decision to the Administrator.

C. Miscellaneous Amendments

The proposed rule would amend a number of procedural provisions of 49 CFR parts 107, 171, 172, 173, and 178. Amendments would be made for clarity in §§ 107.202, 107.203, 107.205, 107.211, 107.213 (new section), 107.217, 107.223, 107.227, 107.331, 171.1, 171.2, 171.8, 172.302, 173.22a, and 178.3. Requirements for exemption holders now found at Appendix B to subpart B of part 107, would be moved to §§ 172.302(c) and 173.22a(c).

Several provisions governing preemption determinations would be revised. The NPRM would modify § 107.205(a) to delete the requirement that the applicant notify the affected State, local, or tribal government that it has 45 days in which to comment on the application for preemption. Because the date on which the government body receives the applicant's notice is not fixed to the date on which the application is published in the **Federal Register**, this specification is somewhat arbitrary. The State, local, or tribal government would continue to have, ordinarily, 45 days in which to comment, but this time frame would simply be specified in the **Federal Register** notice setting forth the application.

Section 107.209(b) would be deleted. The Associate Administrator's authority to issue a preemption determination on his or her own initiative was eliminated by the Hazardous Materials Transportation Uniform Safety Act, Public Law 101-615, § 13 (Nov. 16, 1990).

Sections 107.209(d) and 107.221(d) would be amended to specify more concretely who would be given personal notice of a preemption or waiver of preemption determination. Presently, the Associate Administrator notifies each person "readily identifiable * * * as one who is affected by the determination." Appeal rights of parties depend on timely receipt of the Associate Administrator's preemption decision. The present standard is vague and could prompt a challenge by a person who did not receive notice of a decision. The proposed rule limits

personal notice of the decision to a specified group of persons: those who commented substantially on the matter (this would exclude, for instance, those who merely submitted form letters favoring or opposing preemption) and those who requested notice.

Section 107.305(b) would be clarified in two regards. Additional language would clarify the right of a regulated party to examine an inspector's credentials, but prohibit that party from reproducing them. In addition, it would make explicit the inspector's authority to employ reasonable means of information gathering and documentation in performing an inspection. These means include, but are not limited to, interviewing and taking statements from representatives of the inspected person, photocopying, photographing, and taking audio and video recordings.

An added provision of § 107.305(b) would authorize the Director, Office of Hazardous Materials Enforcement (OHME), or his delegated representative, to issue a subpoena for the production of documentary or other tangible evidence. This authority is vested in the Administrator by § 107.13(a) and would be delegated by the proposed rule from the Administrator to the OHME Director. A person on whom a subpoena is served would have the opportunity to apply to the RSPA Chief Counsel within 10 days of service to modify or quash the subpoena.

A new § 171.2(h) explicitly would prohibit creating or altering an exemption, approval, registration, or other official document to fraudulently indicate authority to offer or transport hazardous materials or manufacture packagings for hazardous materials. Similarly, offering a hazardous material for transportation or transporting a hazardous material in commerce, or representing, marking, certifying, or selling a packaging, under a false or altered exemption, approval, registration, or similar document would be prohibited. Currently, 18 U.S.C. 1001 prescribes a criminal sanction for knowingly or willfully making or using a false document in a matter within the jurisdiction of a Federal agency. The proposed rule would create a separate civil sanction. Liability for a civil penalty would arise only when a violation is committed knowingly within the meaning of 49 U.S.C. 5123(a)(1); that is, when the person either knew or, in the exercise of reasonable care, should have known that the document was false or altered. Accordingly, for example, a carrier would not be subject to a civil penalty for transporting a hazardous material

under authority of an exemption altered by a shipper, absent facts establishing the carrier's knowledge that the exemption was altered.

In addition, the proposed rule would amend § 178.3 by adding a new paragraph (d) to specifically prohibit anyone, other than the exemption holder, a person with party status to an exemption, or a third party tester, from certifying that a packaging meets the terms of an exemption. This provision is necessary to assure that packagings manufactured under the terms of an exemption are marked and certified only by those persons authorized to do so.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice of proposed rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. The notice is not significant according to the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

The proposed rule would not result in any additional costs to persons subject to the HMR, but would result in modest cost savings to a small number of them and to the agency. Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or regulatory evaluation is not warranted. This certification may be revised as a result of public comment.

B. Executive Order 12612

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism"). This proposed rulemaking has no substantial effects on States, local governments, or Indian tribes and does not impair their ability to impose their own procedures for obtaining an exemption or approval, or for registering and reporting. Therefore, preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

I certify that this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. This notice proposes to amend existing and add new procedural provisions to clarify existing practice. The amendments contained in this notice do not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic

impacts for small units of government, businesses, or other organizations.

D. Paperwork Reduction Act

Under 49 U.S.C. 5108, the information management requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) do not apply to this proposed rule.

VI. List of Subjects

49 CFR Part 107

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

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I would be amended as follows:

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; 49 CFR 1.45, 1.53.

2. In § 107.3, definitions would be added in alphabetical order to read as follows:

§ 107.3 Definitions.

Accident means an event resulting in the unintended and unanticipated release of hazardous material.

Acting knowingly means acting or failing to act while:

- (1) Having actual knowledge of the facts giving rise to the violation, or
- (2) Having the knowledge that a reasonable person acting in the same circumstances and exercising due care would have had.

Administrator means the Administrator, Research and Special Programs Administration.

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

Application means a request under this subpart for an exemption, a renewal or modification of an exemption, a grant of party status to an exemption, an approval, or a registration.

* * * * *

Associate Administrator means the Associate Administrator for Hazardous Materials Safety.

* * * * *

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

Holder means the person in whose name an exemption or approval has been issued.

* * * * *

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

Manufacturing exemption means an exemption from compliance with requirements that otherwise must be met before representing, marking, certifying, selling or offering a packaging or container as meeting the requirements of this subchapter or subchapter B governing its use in the transportation in commerce of a hazardous material.

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

* * * * *

Registration means a written acknowledgement from the Associate Administrator that the registrant is performing a function for which registration is required under subchapter C. For purposes of this subpart, “registration” does not include registration under subpart F or G of this part.

Report means information, other than an application, registration or part thereof, required to be submitted to the Associate Administrator pursuant to subchapter C.

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Shipper exemption means an exemption from compliance with requirements of this subchapter or

subchapter C that otherwise must be met before offering a hazardous material for transportation or transporting a hazardous material in commerce.

* * * * *

3. In § 107.5, paragraph (a) would be revised to read as follows:

§ 107.5 Request for confidential treatment.

(a) If any person filing a document with the Associate Administrator claims that some or all the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure, and if that person requests the Associate Administrator not to disclose the information, that person shall file, together with the document, a second copy of the document with the confidential information deleted. The person shall indicate each page of the original document that is confidential or contains confidential information by marking or stamping “confidential” on each page for which a claim of confidentiality is made, and may file a statement specifying the justification for the claim of confidentiality. If the person states that the information comes within the exception in 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information, that person must include a statement as to why the information is privileged or confidential. If the person filing a document does not mark or stamp a document as confidential or submit a second copy of the document with the confidential information deleted, the Associate Administrator may assume that there is no objection to public disclosure of the document in its entirety.

* * * * *

4. Subpart B of part 107 would be revised to read as follows:

Subpart B—Exemptions

§ 107.101 Purpose and scope.

This subpart prescribes procedures for the issuance, modification and termination of exemptions from requirements of this subchapter, or subchapter C of this chapter.

§ 107.105 Application for exemption.

(a) Each application for an exemption or modification of an exemption must—

- (1) Be submitted in duplicate to: Associate Administrator for Hazardous Materials Safety, U.S. Department of Transportation, Washington, DC 20590–0001. Attention: Exemptions, DHM–31;

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

(3) For a manufacturing exemption, state the name and street address of each of the applicant's or contractor's facilities where manufacturing under the exemption will occur;

(4) If the applicant is not a resident of the United States, contain a designation of agent for service in accordance with § 107.7, and a statement that the applicant consents to personal jurisdiction in the United States for purposes of the Federal hazardous material transportation law related to the exemption;

(5) Cite the regulation from which the applicant seeks relief, including the publication year of the Code of Federal Regulations volume from which the citation is taken;

(6) If known by the applicant, list identifying numbers of all exemptions, approvals and registrations previously or currently held by the applicant under this chapter that are related to the subject matter of the application;

(7) Specify the proposed mode(s) of transportation;

(8) Describe in detail the proposed exemption (e.g., alternative packaging, test, procedure or activity). Including, as appropriate, written descriptions, drawings, flow charts, plans and other supporting documents;

(9) Specify the proposed duration or schedule of events for which the exemption is sought;

(10) State why the applicant wishes to be relieved from compliance with the specified regulations and, if the exemption is requested for a fixed period, how compliance will be achieved at the end of that period;

(11) If the applicant seeks expedited processing under § 107.115 or § 107.117, set forth the supporting facts and grounds;

(12) Identify and describe the hazardous materials planned for transportation under the exemption. Provide the chemical name, common name, hazard class, identification number, packing group, form, quantity, properties, and characteristics of hazardous material to be offered or transported in conjunction with the exemption, including composition and percentage (specified by volume or weight) of each chemical, if a solution or mixture;

(13) List each packaging, including specification or exemption number, as

applicable, to be used in conjunction with the requested exemption;

(14) For alternative packagings, document quality assurance controls necessary to provide safe performance, including package design, manufacture, performance test criteria, in-service performance and service life limitations;

(15) Include information describing all relevant shipping and accident experience of which the applicant is aware that relates to the application;

(16) Identify any increased risk to safety or property that may result if the exemption is granted, and specify the measures that the applicant considers necessary or appropriate to address that risk;

(17) Substantiate, with applicable analyses, data or test results, that the proposed alternative will achieve a level of safety that:

(i) Is at least equal to that required by the regulation from which the exemption is sought, or

(ii) If the regulations do not establish a level of safety, is consistent with the public interest and adequately will protect against the risks to life and property inherent in the transportation of hazardous material in commerce; and

(18) For an exemption involving a hazardous material, packaging material, packaging design or technology where direct comparison cannot be made to an existing standard in subchapter C, provide an analysis that:

(i) Identifies each hazard associated with the proposed activity,

(ii) Identifies each potential failure mode and the probability of its occurrence, and

(iii) Describe how the risk associated with each hazard and failure mode is controlled for life of a packaging or duration of an activity to a level comparable to that provided by the regulation and is consistent with the public interest.

(b) Unless expedited processing under § 107.115 or § 107.117 is requested and granted, applications are processed in the order in which they are filed. For timely consideration, an application should be submitted at least 180 days before the requested effective date.

(c) To request confidential treatment for information contained in the application, the applicant must comply with § 107.5(a).

§ 107.107 Application for party status.

(a) Any person eligible to apply for an exemption may apply to be made party to an application or an existing exemption, other than a manufacture, mark, and sell exemption.

(b) Each application filed under this section must—

(1) Be submitted in duplicate to: Associate Administrator for Hazardous Materials Safety, U.S. Department of Transportation, Washington, DC 20590-0001. Attention: Exemptions, DHM-31;

(2) Identify by number the exemption application or exemption to which the applicant seeks to become a party;

(3) State the name, address and telephone number of the applicant; if the applicant is not an individual, state the name of an individual designated as the applicant's agent for all purposes related to the application; and

(4) If the applicant is not a resident of the United States, provide a designation of agent for service in accordance with § 107.7, and a statement that the applicant consents to personal jurisdiction in the United States for purposes of the Federal hazardous material transportation law related to the exemption.

(c) The Associate Administrator grants party status to an applicant on finding that—

(1) The applicant is eligible to apply for the exemption;

(2) The application or exemption to which the applicant seeks to become a party concerns a continuing matter; and

(3) Granting party status does not compromise information qualified for confidential treatment under § 107.5.

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

§ 107.109 Application for renewal.

(a) Each application for renewal of an exemption must—

(1) Be submitted in duplicate to: Associate Administrator for Hazardous Materials Safety, U.S. Department of Transportation, Washington, DC 20590-0001. Attention: Exemptions, DHM-31;

(2) Identify by number the exemption for which renewal is requested;

(3) State the name, address, and telephone number of the applicant; if the applicant is not an individual, state the name of an individual designated as an agent of the applicant for all purposes related to the application;

(4) Include either a certification by the applicant that the original application, as it may have been updated by any application for renewal, remains accurate and complete; or an amendment to the previously submitted application as is necessary to update and assure the accuracy and completeness of the application, with certification by the applicant that the application as amended is accurate and complete; and

(5) Include a statement describing all relevant shipping and accident experience of which the applicant is aware in connection with the exemption since its issuance or most recent renewal. If aware of no accidents, the applicant shall so certify. The statement must indicate the approximate number of shipments made or packages shipped, as the case may be, and the number of shipments or packages involved in any loss of contents, including loss by venting other than as authorized in subchapter C.

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

§ 107.111 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 RSPA dockets or files.

§ 107.113 Application processing.

(a) The Associate Administrator reviews an application to determine if it is complete and conforms with the requirements of this subpart. This determination usually is made within 30 days of receipt of an application for exemption or modification of exemption and within 15 days of receipt of an application for renewal of an exemption. If an application is determined to be incomplete, the applicant is informed of the reasons.

(b) An application, other than a renewal or emergency exemption application, that 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 expedited processing under § 107.115 or § 107.117 is requested and granted, applications are processed in the order in which they are filed.

(d) 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 is deemed incomplete and is denied.

(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 conditions that are appropriate to protect health, safety or property.

(f) The Associate Administrator may grant the 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:

(i) Is at least equal to that required by the regulation(s) from which the exemption is sought, or

(ii) If the regulations do not establish a level of safety, is consistent with the public interest and adequately will protect against the risks to life and property inherent in the transportation of hazardous materials in commerce;

(3) The application states all material facts, and contains no materially false or materially misleading statement;

(4) The applicant meets the qualifications required by applicable regulations; and

(5) The applicant demonstrates the level of capability and integrity required to conduct the activity authorized by the exemption. A pending or completed enforcement action may be considered evidence of insufficient competence or integrity.

(g) The applicant is notified in writing whether the application is granted or denied. A denial contains a brief statement of reasons.

(h) An exemption and any renewal thereof terminates according to its terms or, if not otherwise specified, two years after the date of issuance. A grant of party status to an exemption, unless otherwise stated, terminates on the date that the exemption terminates.

(i) The Associate Administrator, on determining that an application concerns a matter of general applicability and future effect and should be the subject of rulemaking, may initiate rulemaking under part 106 of this chapter in addition to or instead of acting on the application.

(j) The Associate Administrator publishes in the **Federal Register** a list of all exemption and party status grants, denials and modifications and all applications withdrawn under this section.

§ 107.115 Priority processing.

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

(1) If the applicant is a governmental body, priority processing is in the public interest;

(2) If the applicant is not a governmental body:

(i) Priority processing is necessary to prevent significant economic loss; and

(ii) The significant economic loss could not be prevented were the application processed routinely.

(b) Where the risk of 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 priority processing if timely application could have been made.

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

(d) An application given priority processing receives the same level of substantive review as one processed routinely.

(e) A decision to deny priority processing may not be the subject of a request for reconsideration under § 107.123.

§ 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 or priority basis; or

(2) Emergency processing is necessary to prevent significant economic loss that could not be prevented if the application were processed on a routine or priority 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 comply with § 107.105(a)(17) and include such supporting information specified in § 107.105(a)(2) through (a)(16) as the receiving Department of Transportation official deems necessary to process the application. An application on an

emergency basis must be submitted through the appropriate Department of Transportation official, as follows:

(1) *Certificate Holding Aircraft Operators*: The Federal Aviation Administration Civil Aviation Security Office that serves the place where the flight(s) will originate or that is responsible for the operators' overall aviation security program.

(2) *Noncertificate Holding Aircraft Operators (Operators Operating Under 14 CFR Part 91)*: The Federal Aviation Administration Civil Aviation Security Office that serves the place where the flight(s) will originate. The nearest Civil Aviation Security Office may be located by calling the FAA Duty Officer, 202-863-5100 (any hour).

(3) *Motor Carriers*: Chief, Hazardous Materials Division, Office of Motor Carrier Field Operations, Federal Highway Administration, Department of Transportation, Washington, DC 20590-0001, 202-366-4415 (day); 202-267-2100 (night).

(4) *Rail Carriers*: Associate Administrator for Safety, Federal Railroad Administration, Department of Transportation, Washington, DC 20590-0001, 202-366-9178 or 366-0488 (day); 202-267-2100 (night).

(5) *Water Carriers*: Chief, Hazardous Materials Standards Branch, Operating and Environmental Standards Division, United States Coast Guard, Washington, DC 20593-0001, 202-267-1577 (day); 202-267-2100 (night).

(e) On receipt of all information necessary to process the application, the receiving Department of Transportation official transmits to the Associate Administrator, by the most rapid available means of communication, an evaluation as to whether an emergency exists under § 107.117(a) and, if appropriate, recommendations as to the conditions to be included in the exemption. If the Associate Administrator determines that an emergency exists under § 107.117(a) and that, with reference to the criteria of § 107.113(f), granting of the application is in the public interest, the Associate Administrator grants the application subject to such terms as necessary and immediately notifies the applicant. If the Associate Administrator determines that an emergency does not exist or that granting of the application is not in the public interest, the applicant immediately is so notified.

(f) An emergency exemption is to be limited in scope and duration to that which is necessary to address the circumstances which constitute the emergency.

(g) A determination that an emergency does not exist may not be the subject of

a request for reconsideration under § 107.123.

(h) Within 90 days following issuance of an emergency exemption, a notice of issuance, with a statement of the basis for the finding of emergency and the scope and duration of the exemption, is published in the **Federal Register**.

§ 107.121 Modification, suspension or termination of exemption or grant of party status.

(a) The Associate Administrator may modify an exemption or grant of party status on finding that—

(1) Modification is necessary so that an exemption 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 an exemption or grant of party status, as appropriate, on finding that—

(1) Because of changed circumstances, the exemption or party status would not be granted if application were made now;

(2) The application contained inaccurate or incomplete information, and the exemption 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 exemption or an applicable requirement of this chapter, in a manner demonstrating insufficient capability or integrity to conduct the activity authorized by the exemption.

(c) Before an exemption or grant of party status is modified, suspended or terminated, the Associate Administrator notifies the holder or party in writing of the proposed action and the reasons therefor, and provides an opportunity to show cause why the proposed action should not be taken.

(1) The holder or party 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 to the notice, 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. Modification, suspension or termination shall be accompanied by a brief statement of grounds.

§ 107.123 Reconsideration.

(a) An applicant, a holder or a party may request that the Associate

Administrator reconsider a decision under § 107.113(g), § 107.117(e) or § 107.121(c). The request must—

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

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

(3) Enclose all documentation in support of the request to reconsider, with a justification for failure to provide the documentation previously; 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 proposed action immediately effective, for a maximum of 90 days from the date of the holder's or party's receipt of the notice.

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

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

§ 107.125 Appeal.

(a) A person who requested reconsideration under § 107.123 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 all alleged errors of fact and law;

(3) Enclose all documentation in support of the appeal, with a justification for failure to provide the documentation previously; 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 immediately effective pending a decision on appeal, for a maximum of 90 days from the date of the holder's or party's receipt of the decision.

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

(d) The Administrator grants or denies, in whole or in part, the relief requested and informs the appellant in writing 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, Dockets Unit (DHM-30), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590 0001. Copies of available documents may be obtained as provided in part 7 of this title.

(b) Documents available for inspection do not include materials determined to be withheld from public disclosure under § 107.5 and in accordance with the applicable provisions of section 552(b) of title 5, United States Code, and part 7 of this title.

5. In § 107.202, paragraph (a), introductory text, would be revised to read as follows:

§ 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 material transportation law, this subchapter or subchapter C that concerns that subject, is preempted:

* * * * *

§ 107.202 [Amended]

6. In § 107.202(b)(3), the wording "49 U.S.C. 5125(b) or(c)" would be revised to read "49 U.S.C. 5125(c)."

§ 107.205 [Amended]

7. In § 107.205, in paragraph (a), at the end of the first sentence, the wording "within 45 days" would be removed.

8. In addition, in § 107.205, paragraph (b) would be revised to read as follows:

§ 107.205 Notice.

* * * * *

(b) The Associate Administrator may publish notice of an application in the Federal Register and may notify in writing any person readily identifiable as affected by the ruling.

* * * * *

9. In § 107.209, paragraph (b) would be removed, paragraphs (c), (d) and (e) would be redesignated as paragraphs (b), (c) and (d), respectively, and newly designated paragraph (c) would be revised to read as follows:

§ 107.209 Determination.

* * * * *

(c) The Associate Administrator 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 Associate Administrator may publish the determination or notice of the determination in the Federal Register.

* * * * *

10. In § 107.211, in paragraph (a), the second sentence would be revised to read as follows:

§ 107.211 Petition for reconsideration.

(a) * * * The petition must be filed within 20 days of publication of the determination in the Federal Register.

* * * * *

11. A new § 107.213 would be added to read as follows:

§ 107.213 Judicial review.

A party to a proceeding under § 107.203(a) may seek review by the appropriate district court of the United States of a decision of the Administrator by filing a petition with the court within 60 days after the Administrator's decision becomes final.

12. In § 107.217, paragraph (d) would be revised to read as follows:

§ 107.217 Notice.

* * * * *

(d) The Associate Administrator may notify any other persons who may be affected by the ruling.

* * * * *

13. In Section 107.221, paragraph (a), (b), introductory text, (c) through (e) would be revised to read as follows:

§ 107.221 Determination.

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

(b) The Associate Administrator may issue a waiver of preemption only on finding that the State or political subdivision or Indian tribe requirement 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 State or political subdivision or Indian tribe requirement unreasonably burdens commerce, the Associate Administrator considers:

* * * * *

(c) The determination includes a written statement setting forth relevant facts and legal bases and providing that any person aggrieved by the determination may file a petition for reconsideration with the Associate Administrator.

(d) The Associate Administrator 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 the determination is placed on file in the public docket. The Associate Administrator may publish the determination or notice of the determination in the Federal Register.

(e) A determination under this section constitutes an administrative finding of whether a particular requirement of a State or political subdivision or Indian tribe is preempted under the Federal hazardous material transportation law or any regulation issued thereunder, or whether preemption is waived.

14. In § 107.223, paragraph (a) would be revised to read as follows:

§ 107.223 Petition for reconsideration.

(a) Any person aggrieved by a determination under § 107.221 may file a petition for reconsideration with the Associate Administrator. The petition must be filed within 20 days of publication of the order in the Federal Register.

* * * * *

§ 107.227 [Amended]

15. In § 107.227, the wording "§ 107.203(a) or" would be removed.

§ 107.299 [Removed]

16. Section 107.299 would be removed.

17. In § 107.305, paragraph (b) would be revised to read as follows:

§ 107.305 Investigations.

* * * * *

(b) Investigators. Investigations under 49 U.S.C. 5121(a) are conducted by Hazardous Materials Safety 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 whom the Associate Administrator has designated for that purpose.

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

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

Administrator for Hazardous Materials Safety. An inspector may gather information by reasonable means including, but not limited to, interviews, statements, photocopying, photography, and video- and audiorecording.

(3) On concurrence of the Director, Office of Hazardous Materials Enforcement, an inspector may issue a subpoena for the production of documentary or other tangible evidence if, on the basis of information available to the inspector, the documents and evidence materially will advance a determination of compliance with this subchapter or subchapter C. Service of a subpoena shall be in accordance with § 107.13(c) and (d). A person to whom a subpoena is directed may seek review of the subpoena by applying to the Chief Counsel in accordance with § 107.13(h). A subpoena issued under this paragraph may be enforced in accordance with § 107.13(i).

* * * * *

18. In § 107.331, the introductory paragraph and paragraph (d) would be revised to read as follows:

§ 107.331 Assessment considerations.

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

* * * * *

(d) The respondent's prior violations;

* * * * *

19. A new subpart H of part 107 would be added to read as follows:

Subpart H—Approvals, Registrations and Submissions

§ 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 requirements of this subpart are in addition to any requirements in this chapter applicable to a specific approval, registration or report. If compliance with both a specific requirement and a requirement 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 provisions of this subpart.

§ 107.705 Registration and reporting.

(a) Each registration or report under this section must be filed with the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400

Seventh Street SW, Washington, DC 20590-0001, Attention: Approvals, DHM-32, and contain, in order—

(1) A citation to the section and, if applicable, subsection of the chapter under which the registration or report is made;

(2) If the report is required by an approval, a registration or an exemption, a citation to the approval, registration or exemption number;

(3) The name, address, and telephone number of the person on whose behalf the registration or report is made and, if different, the person making the registration or report;

(4) If the person on whose behalf the registration or report is made is not a resident of the United States, a designation of agent for service in accordance with § 107.7; and

(5) A description of the activity for which the registration or report is required.

(b) If the Associate Administrator determines that the registration or report does not comply with applicable requirements, the registration or reporting party shall make further submissions as the Associate Administrator deems necessary for compliance.

(c) To request confidential treatment for information contained in the registration or report, the applicant must comply with § 107.5(a).

§ 107.707 Applications.

(a) Each application under this section must be filed with the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590-0001, Attention: Approvals, DHM-32 and contain the following, in order—

(1) A citation to the section and, if applicable, subsection of the chapter under which the approval is sought;

(2) If an application for renewal or modification, a citation to the existing approval;

(3) The name, address, and telephone number of—

(i) The applicant;

(ii) If different, the person filing the application; and

(iii) For an applicant that is not an individual, an individual designated as an agent of the applicant for all purposes related to the application;

(4) If the applicant is not a resident of the United States, a designation of agent for service in accordance with § 107.7, and a statement that the applicant consents to personal jurisdiction in the United States for all purposes under the Federal hazardous material

transportation law related to the activity for which the approval is required;

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

(6) A copy of each document from an entity other than the Office of Hazardous Materials Safety required under the section cited at § 107.707(a)(1) as a prerequisite to the approval.

(b) Each application under this section must contain the following, in order:

(1) The proposed duration of the approval;

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

(3) A full explanation, including all relevant information and documentation, as to why the applicant qualifies for the approval under applicable criteria, and why the approval otherwise is in accordance with law;

(4) All relevant shipping and accident experience;

(5) Identify any increased risk to safety or property that may result if the approval is granted, and specify the measures that the applicant considers necessary or appropriate to address that risk; and

(6) Substantiate, with applicable analyses, data or test results, that the proposed alternative will achieve a level of safety that is at least equal to that required by the regulation.

(c) For those approvals with an expiration date, each application for renewal or modification shall 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 applicant, on written request, shall be issued one or more written extensions 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 must comply with § 107.5(a).

§ 107.709 Application processing.

(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 will be deemed incomplete and denied.

(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 conditions appropriate to protect health, safety and property.

(d) The Associate Administrator may deny the application if—

(1) The application does not comply with this subpart;

(2) The application contains inadequate justification, or otherwise does not meet the criteria set forth in the section or subsection under which the approval is sought;

(3) The application contains a materially false or materially misleading statement, or fails to state a material fact;

(4) The applicant does not demonstrate the qualifications set forth in the applicable regulations; or

(5) The applicant does not demonstrate the level of capability and integrity required to perform the activity for which the application is filed. A pending or completed enforcement action may be considered evidence of insufficient capability or integrity.

(e) Unless otherwise specified in this chapter or by the Associate Administrator, an approval does not expire.

(f) The Associate Administrator notifies the applicant in writing of the decision on the application. A denial contains a brief statement of reasons.

§ 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 RSPA dockets or files.

§ 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 changed circumstances, the approval would not be granted if application were made now;

(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 insufficient capability or integrity to conduct the activity for which the approval is required.

(c) 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) The Associate Administrator, if necessary to avoid a measurable risk of significant harm to persons or property, may in the notification declare the proposed action immediately effective, for a maximum of 90 days from the date of the holder's receipt of the notice.

(3) After considering the holder's written response to the notice, or after 30 days have passed without response from receipt of the notice, the Associate Administrator notifies the holder in writing of the final decision. Modification, suspension or termination shall be accompanied by a brief statement of grounds.

§ 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 all alleged errors of fact and law;

(3) Enclose all documentation in support of the request to reconsider, with a justification for failure to provide the documentation previously; 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 all alleged errors of fact and law;

(3) Enclose all documentation in support of the appeal, with a justification for failure to provide the documentation previously; 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, for a maximum of 90 days from the date of the holder's receipt of the decision.

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

(d) 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 Administrator's decision on appeal is the final administrative action.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

20. The authority citation for part 171 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 171.1 [Amended]

21. In § 171.1, in the introductory text of paragraph (a), the wording “in commerce” would be added immediately following the wording “materials” and preceding “by”.

22. Also in § 171.1, a new paragraph (d) would be added to read as follows:

§ 171.1 Purpose and scope.

* * * * *

(d) The use of terms and symbols prescribed in this subchapter for the stamping, marking, labeling, placarding and description of hazardous materials and packaging used in their transport.

23. In § 171.2, paragraphs (a), (b), (c) and (d) would be revised and a new paragraph (h) would be added to read as follows:

§ 171.2 General requirements.

(a) No person may offer or accept a hazardous material for transportation in commerce unless that person complies with subpart G of part 107 of this chapter, as applicable, and the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized by applicable requirements of this subchapter and of any exemption, approval or registration issued under subchapter A.

(b) No person may transport a hazardous material in commerce unless that person complies with subpart G of part 107 of this chapter, and the hazardous material is handled and transported in accordance with applicable requirements of this subchapter and of any exemption, approval or registration issued under subchapter A.

(c) No person may represent, mark, certify, sell, or offer a packaging or container as meeting the requirements of this subchapter or an exemption, approval or registration issued under subchapter A, governing its use in the transportation in commerce of a hazardous material, whether or not it is used or intended to be used for the transportation of a hazardous material, unless the packaging or container is manufactured, fabricated, marked, maintained, reconditioned, repaired and retested, as appropriate, in accordance with applicable requirements of this subchapter and of any exemption, approval or registration issued under subchapter A.

(d) The representations, markings, and certifications subject to the prohibitions of paragraph (c) of this section include:

(1) Specification identifications that include the letters "DOT" or "UN";

(2) Exemption, approval, and registration numbers that include the letters "DOT"; and

(3) Test dates associated with specification, registration, approval, retest or exemption markings indicating compliance with a test or retest requirement of this subchapter, or an exemption, an approval or a registration issued under subchapter A.

* * * * *

(h) No person shall—

(1) Falsify or alter an exemption, approval, registration or other grant of

authority issued under this subchapter or subchapter B of this chapter; or

(2) Offer a hazardous material for transportation or transport a hazardous material in commerce, or represent, mark, certify, or sell a packaging or container, under a false or altered exemption, approval, registration or other grant of authority issued under this subchapter or subchapter B of this chapter.

§ 171.3 [Amended]

24. In § 171.3, paragraph (c) and the Note would be removed, and paragraph (d) would be redesignated as paragraph (c).

25. In § 171.8, a definition of "Approval" would be added and the definition of "Person" would be revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Approval means a written authorization from the Associate Administrator for Hazardous Materials Safety to perform a function for which prior authorization by the Associate Administrator is required under Subchapter C.

* * * * *

Person means an individual, firm, copartnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof; or government, Indian tribe, or agency or instrumentality of any government or Indian tribe when it offers hazardous material for transportation in commerce or transports hazardous material to further a commercial enterprise, but such term does not include:

- (1) The United States Postal Service;
- (2) For the purposes of 49 U.S.C. 5123 and 5124, any agency or instrumentality of the Federal Government.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

26. The authority citation for Part 172 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

27. In § 172.302, paragraph (c) would be revised to read as follows:

§ 172.302 General marking requirements for bulk packagings.

* * * * *

(c) *Exemption packagings.* The outside of each bulk package used under the terms of an exemption shall be plainly and durably marked "DOT-E" followed by the exemption number assigned, in letters at least two inches high on a contrasting background.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

28. The authority citation for part 173 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

29. In § 173.22a, a new paragraph (c) would be added to read as follows:

§ 173.22a Use of packagings authorized under exemptions.

* * * * *

(c) When an exemption issued to a shipper contains special carrier requirements, the shipper shall furnish a copy of the exemption to the carrier before or at the time a shipment is tendered.

PART 178—SPECIFICATIONS FOR PACKAGINGS

30. The authority citation for Part 178 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

31. In § 178.3, a new paragraph (d) would be added to read as follows:

§ 178.3 Marking of packagings.

* * * * *

(d) No person may mark or otherwise certify a packaging or container as meeting the requirements of a manufacturing exemption unless that person is the holder of or a party to that exemption, an agent of the holder or party for the purpose of marking or certification, or a third party tester.

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Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

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