



DEPARTMENT OF TRANSPORTATION
MATERIALS TRANSPORTATION BUREAU

WASHINGTON, D.C. 20590

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[46 CFR Part 146]

HAZARDOUS MATERIALS REGULATIONS
Proposed Exemption Procedures

CROSS REFERENCE: For a document relating to hazardous materials, see Department of Transportation, Materials Transportation Bureau, 149 CFR Part 107 and 1701, 75-20264, infra

[49 CFR Parts 107, 170]

[Docket No. HM-127; Notice No. 75 7]

HAZARDOUS MATERIALS REGULATIONS
Proposed Exemption Procedures

The purpose of this notice is to propose an amendment to Title 49, Code of Federal Regulations, to establish a new Part 107 "Procedures" and place therein a new Subpart A "Exemptions". Future subparts to be included in Part 107 would cover sanctions, registration, and pre-exemption matters. The regulations now being proposed would prescribe procedures to be followed in applying for and the processing of applications for exemptions from the Materials Transportation Bureau's regulations governing the transportation of hazardous materials which, except for bulk transportation by air and certain ships' supplies, govern movement of such materials by any mode of transportation.

Section 107 of Pub. L. 93-633, enacted in January 1975, sets up certain procedural requirements for granting of administrative relief from the regulations controlling the transportation of hazardous materials to be issued under section 105 of that law. Under § 107, applicants must establish on the basis of a safety analysis to be submitted by them as part of their application that a level of safety will be achieved which will (1) be equal to or higher than that reached by following the regulations, or (2) if there is no existing level of safety, be consistent with the public interest and the policy of Pub. L. 93-633. Unless it is shown that an emergency requires otherwise, each application is to be made the subject of a Federal Register notice and made available for public inspection and comment before action is taken to grant or deny it. The maximum period for an exemption is two years. Any application for renewal must be processed in the same manner as an original application.

An exemption, as that term is used in section 107 and in the proposed regulations, includes all forms of administrative relief from the requirements of the substantive regulations. Until July 7, 1975, when the authority to issue such relief was centralized in the Materials Transportation Bureau, it was granted by one or a combination of four of the Department of Transportation's operating administrations (U.S. Coast Guard, Federal Aviation Administration, Federal Railroad Administration, or Federal Highway Administration) under various labels including waiver, exemption, deviation and

special permit. Moreover, the relief was requested, processed and granted or denied under multiple procedural schemes. (See 14 CFR 11.25, 14 CFR 103.5, 46 CFR 146.02-25 and 49 CFR 170.13.) For example, a person seeking relief from a regulation in 14 CFR Part 103 pertaining to air commerce could (1) petition the Federal Aviation Administration for an exemption under 14 CFR 11.25, (2) apply to the Federal Aviation Administrator (or in an emergency to a Flight Standards District Office) for authority for deviation, or (3) petition the Hazardous Materials Regulations Board (consisting of representatives of the four operating administrations) for a special permit for a waiver or exemption. The proposed regulations would be the exclusive body of procedures for all such future administrative relief actions.

The proposed regulations would describe in general terms, what must be included in applications for exemptions and specify that all applications are to be filed with the Bureau's Office of Hazardous Materials Operations. Except in those situations in which an applicant asserts that an existing emergency requires priority processing, applications would have to be filed at least 120 days before the proposed effective date. When an applicant asserts that an existing emergency requires priority processing, and supplies supporting facts and reasons, he would have the choice of applying in the normal fashion by written submission or he could apply by telephone with a follow-up written filing within 15 days.

Upon receipt of an application it would be reviewed for completeness and docketed if complete or returned to the applicant if incomplete. If it is asserted by the applicant that there is an existing emergency, an immediate examination of the supporting facts and reasons would be conducted and a determination made as to whether or not an emergency justifying priority processing did in fact exist. If determined that it did not exist, the applicant would be so notified and the application would be processed on a routine basis. If determined that an emergency did exist, the application would be processed on a priority basis in which case the usual public proceeding (Federal Register notice and opportunity for public comments) could be omitted.

The bases upon which determinations of existing emergencies would be made are set forth in proposed § 107.9.

Renewal applications would be submitted in the same manner as original applications and would be required to

[14 CFR Part 103]

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meet the same requirements. Under the proposed regulations the Bureau would publish a notice of each application in the FEDERAL REGISTER (probably a weekly or bi-weekly compilation in digest form) and afford an opportunity to comment. If the application is granted, notice of the grant would also be published.

No public hearing, argument or other formal proceeding would be held on an application before its disposition. Any interested person could, upon written request, appear before an appropriate official of the Bureau to discuss an application or its denial. Applications, including their related safety analyses, and public comments would be available for inspection in the Bureau's public docket room.

An exemption would be terminated upon a determination, after notice to the holder, that it was no longer consistent with the public interest; that it is no longer needed because of a change in the regulations; or that it was granted on the basis of false, fraudulent or misleading representation or information. Likewise, an exemption could be suspended upon a determination that it was not being exercised in accordance with its terms or that new information requires it to be amended to adequately protect life and property.

The proposed effective date is October 16, 1975.

Interested persons are invited to submit views and comments on the proposal. A public hearing will be held for that purpose at 9:30 a.m. on August 28, 1975, in the third floor auditorium of Federal Office Building 16A (commonly referred to as the FAA Building) located at 800 Independence Avenue SW, Washington, D.C. Interested persons not desiring to present oral presentations are invited to submit their comments in writing. Comments should refer to the docket number and be submitted to: Docket Section, Materials Transportation Bureau, U.S. Department of Transportation, Trans Point Building, Washington, D.C. 20590. All comments received before the close of business on September 12, 1975, will be considered, and will be available in the docket for examination both before and after the closing date. Comments received after the closing date and too late for consideration will be treated as suggestions for future rule making.

In consideration of the foregoing it is proposed to amend the Code of Federal Regulations as follows:

1. In Title 14, Code of Federal Regulations, revoke § 103.5.

2. In Title 16, Code of Federal Regulations, amend § 142.02 (b) by (1) adding

the words "Except as provided in paragraph (f) of this section," at the beginning of paragraph (a), and (2) adding a new paragraph (f) to read as follows:

(f) Petitions for exemptions or any other form of administrative relief from any requirement of this Part 146 shall be prepared and submitted to the Director, Office of Hazardous Materials Operations in accordance with 49 CFR Part 107.

§§ 170.13 and 170.15 [Revoked]

3. In Title 49, Code of Federal Regulations, revoke §§ 170.13 and 170.15.

4. In Subchapter B of Chapter I of Subtitle B of Title 49, Code of Federal Regulations, establish a new Part 107 and establish therein a new Subpart A as set forth below.

PART 107—PROCEDURES

Subpart A—Exemptions

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Authority: Sec. 107, Pub. L. 93-633, 88 Stat. 2158-49 U.S.C. 1806; 18 U.S.C. 831-835; E.S. 4472(11) (46 U.S.C. 170(11)); sec. 601 (c), Pub. L. 85-726, 72 Stat. 775 (49 U.S.C. 1421(c)), (49 CFR 1.64 (f)-(h)).

Subpart A—Exemptions

§ 107.1 Scope.

This part prescribes procedures governing exemptions from regulations governing the transportation of hazardous materials.

§ 107.3 Purpose.

The purpose of this part is to provide a means by which persons who are subject to the requirements of this subchapter, Subchapter C of this chapter, 14 CFR Part 103, or 46 CFR Part 64 or Part 146 may obtain administrative relief therefrom on the basis of equivalent levels of safety or levels of safety consistent with the public interest and the policy of the Hazardous Materials Transportation Act.

§ 107.5 Applications for exemption.

(a) Any person who is subject to the requirements of this subchapter, Subchapter C of this chapter, 14 CFR Part 103, or 46 CFR Part 146 may apply to the Director, Office of Hazardous Materials Operations (OHMO), for an exemption from those requirements.

(b) Except as provided in paragraph (d) of this section, each application filed under this section for an exemption or the renewal of an exemption must—

(1) Be submitted in triplicate to the Office of Hazardous Materials Operations, U.S. Department of Transportation, Washington, D.C. 20590;

(2) Set forth the text or substance of the regulation from which the exemption is sought;

(3) State the name, address, and telephone number of the applicant;

(4) Include a detailed description of the proposal, including when appropriate,

drawings, plans, calculations, procedures, test results, previous exemptions, approvals or permits, a list of specification containers, if any, to be used, a list of modified specification containers, if any, to be used, and a description of the modifications, and any other supporting information;

(5) State the chemical name, common name, hazard classification, form, quantity, properties, and characteristics of the material covered by the proposal, including composition and percentage (specified by volume or weight) of each chemical, if a solution or mixture;

(6) Describe all relevant shipping or accident experience;

(7) Specify the proposed mode of transportation, and any special transportation controls which the applicant considers necessary or appropriate to compensate for any increased risks that are likely to result if the exemption is granted;

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

(9) State why the applicant believes the proposal will achieve a level of safety which—

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

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

(10) Specify any part of the information and data submitted which the applicant requests be withheld from public disclosure and the reason for the request; and

(11) If the applicant wants the application to be given priority treatment on the basis of an existing emergency, set forth the supporting facts and reasons.

(c) To permit timely consideration, an application which does not seek priority treatment on the basis of an existing emergency, must be submitted at least 120 days before the requested effective date.

(d) An application which seeks priority treatment on the basis of an existing emergency may be initiated by telephone. However, it must include all of the supporting information otherwise required by paragraph (b)(2) through (11) of this section and must be confirmed by the submission of a written application within 15 days thereafter.

§ 107.7 Administrative review of applications.

(a) The Director, OHMO, reviews each application for an exemption or renewal of an exemption to determine whether it is complete and conforms with the requirements of this part. Except as provided in paragraph (b) of this section, this determination will be made within 30 days of the receipt of the application. If it is not returned to the applicant at the end of that period, it will be processed as provided in § 107.11. If an application is returned, the applicant will be informed in what respects the application is incomplete.

(b) If the Director, OHMO, determines that an emergency exists and that

the application is complete, it will be processed on a priority basis in case the Director may waive the provisions for notice and opportunity for public comment. If the Director, OHMO, cannot determine that an emergency exists, he notifies the applicant immediately and the application, if otherwise complete, is processed on a routine basis.

§ 107.9 Determination of existing emergency.

(a) The Director, OHMO, shall determine that an emergency exists if, on the basis of information submitted in the application and his own investigation, he finds that—

(1) Existing conditions require the hazardous material concerned to be transported in commerce for the protection of life or property (other than the hazardous material to be transported); and

(2) The protection of life or property to be provided by the hazardous material would not be possible if the application is processed on a routine basis.

(b) The Director, OHMO, may determine that an emergency exists if, on the basis of information submitted in the application, he finds that—

(1) Existing conditions require the hazardous material concerned to be transported in commerce to prevent or minimize serious economic loss; and

(2) The prevention or minimization of serious economic loss to be provided by the hazardous material would not be possible if the application is processed on a routine basis;

(c) In determining what constitutes serious economic loss under paragraph (b) of this section, the Director, OHMO, considers the nature and extent of the expected loss.

§ 107.11 Processing of applications.

(a) After an application for an exemption or renewal of an exemption is determined to be complete, the Director, OHMO, docket the application and publishes a notice in the FEDERAL REGISTER affording an opportunity for interested persons to comment. All comments received before the close of the comment period are considered before final action is taken on an application.

(b) No public hearing, argument or other formal proceeding is held directly on an application filed under this part before its disposition under this section. However, during the processing of an application the Director, OHMO, may require the applicant to supply additional information.

(c) Any interested person may, upon written request, appear informally before an appropriate official of the Office of Hazardous Materials Operations to discuss an application for exemption or the action taken in response to an application.

(d) If the Director, OHMO, determines that the application does not contain adequate justification, he notifies the applicant in writing and also publishes in the FEDERAL REGISTER a notice of the denial.

(e) If the Director, OHMO, determines that the application contains adequate justification, he grants it subject to such

as he considers necessary, and notify the applicant in writing. He also publishes in the FEDERAL REGISTER a notice of the grant.

(f) If the Director, OHMO, determines that an application concerns a matter of such general applicability and future effect as to warrant being made the subject of rule making, he may initiate rule making under Part 102 of this chapter in addition to or in lieu of granting or denying the application.

§ 107.13 Withdrawal of applications.

(a) An applicant may withdraw an application at any time prior to it being finally determined. When an application is withdrawn after publication of the notice of application in the FEDERAL REGISTER, the Director, OHMO, publishes a notice of withdrawal in the FEDERAL REGISTER.

(b) Withdrawal of an application does not authorize the removal of any related records from the docket or files of the Office of Hazardous Materials Operations.

§ 107.15 Termination of exemptions.

(a) An exemption terminates according to its terms but not later than two years after the date of issuance unless

terminated sooner pursuant to paragraph (b) of this section.

(b) The Director, OHMO, may suspend an exemption if he determines that--

(1) An activity under the exemption is not being performed in accordance with the terms of the exemption; or

(2) On the basis of information not available at the time it was granted, an amendment to the terms of the exemption is necessary to adequately protect against risks to life and property.

(c) The Director, OHMO, terminates an exemption if he determines that--

(1) The exemption is no longer consistent with the public interest;

(2) The exemption is no longer necessary because of an amendment to the regulations; or

(3) The exemption was granted on the basis of false, fraudulent, or misleading representations or information.

(d) Unless the Director, OHMO, believes that immediate suspension or termination is necessary to abate the risk of an imminent hazard, he notifies the holder in writing and provides the holder an opportunity to show why the exemption should not be suspended or terminated, before he suspends or terminates an exemption under paragraph (b) or (c) of this section.

§ 107.17 Availability for public inspection.

(a) Information relevant to an application under this part, including the application and supporting data, memoranda of informal meetings held with the applicant or any other interested person under § 107.11(c), and the grant or denial of the application, is available for public inspection, except as specified in paragraph (b) of this section, at the Office of Hazardous Materials Operations, Trans Point Building, 2100 2nd Street SW., Washington, D.C. 20590. Copies of available information may be obtained, as provided in Part 7 of this title.

(b) Information made available for inspection shall not include materials not relevant to the petition that are to be withheld from the public in accordance with section 552(b) of Title 5, United States Code.

Issued in Washington, D.C., on July 30, 1975.

ALAN I. ROBERTS,

Director, Office of

Hazardous Materials Operations.

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