

## RULES AND REGULATIONS

(d) Paragraphs (a) and (b) of this section notwithstanding, an application received after October 15, 1975, and before December 16, 1975, seeking the renewal of a special permit, exemption, waiver, deviation or any other similar form of administrative relief from the requirements of Subchapter C of this chapter, 14 CFR Part 103, or 46 CFR Part 64 or Part 146 issued under procedures superseded by this subpart will be processed in the manner prescribed in this subpart if that application contains all of the information that would have been required for renewal under the superseded procedure. An application received after December 15, 1975, seeking renewal of administrative relief granted under procedures superseded by this subpart, must contain the information required by paragraph (a) of this section.

#### § 107.107 Administrative review.

In the case of a written application for an exemption submitted as provided in § 107.103(b) or the renewal of an exemption submitted as provided in § 107.105, the Director, OHMO, reviews it to determine whether it is complete and conforms with the requirements of this subpart. This determination will be made within 30 days of the receipt of an exemption application and within 15 days of the receipt of a renewal application. If it is not returned to the applicant by the end of that period, it will be processed as provided in § 107.109. If an application is returned, the applicant will be informed in what respects the application is incomplete.

#### § 107.109 Processing of application.

(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 processing is held directly on an application filed under this subpart 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) If the Director, OHMO, determines that the application does not contain adequate justification, he denies it and notifies the applicant in writing, together with the reasons therefor. He also publishes in the FEDERAL REGISTER a notice of the denial.

(d) If the Director, OHMO, determines that the application contains adequate justification, he grants it subject to the conditions set forth in Appendix B to this subpart and such other terms as he considers necessary, and notifies the applicant in writing. He also publishes in the FEDERAL REGISTER a notice of the grant.

(e) If the Director, OHMO, determines that an application concerns a matter of such general applicability and future ef-

fect 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 in the application.

#### § 107.111 Party to an exemption.

(a) Any person who is eligible to apply under § 107.103 for an exemption may apply to the Director, OHMO, to be made a party to an application filed under that section or to an exemption granted under § 107.109(d).

(b) Each application filed under this section must—

(1) Be submitted to: Office of Hazardous Materials Operations, U.S. Department of Transportation, Washington, D.C. 20590, Attention: Exemptions Branch;

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

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

(c) The applicant becomes a party to an exemption application or exemption if the Director, OHMO, determines that—

(1) The applicant is a person who is eligible to apply under § 107.103 for an exemption; and

(2) The exemption application or exemption to which the applicant seeks to become a party concerns a matter of a continuing nature and does not depend upon information entitled to confidential treatment.

(d) The Director, OHMO, publishes in the FEDERAL REGISTER a notice of each application received, each initial determination made and each renewal granted under this section.

(e) A person who becomes a party to an exemption under this section is subject to terms of that exemption, including the expiration date stated therein. If a party to an exemption wishes to renew his status as a party to an exemption, the procedures set forth in §§ 107.105 through 107.109 with respect to an application for renewal of an exemption apply.

#### § 107.113 Application for and processing of emergency 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 64 or Part 146 who seeks an exemption from any of those requirements on the basis of an existing emergency shall apply for that exemption through the appropriate Department of Transportation official listed in Appendix A to this subpart.

(b) An application submitted under this section must include such supporting information with respect to each of the topics specified in § 107.103 (2) through (11) as the receiving Department of Transportation official considers necessary for processing the application.

(c) Upon receipt of all of the information necessary for processing the application, the receiving Department of Transportation official shall transmit to the Director, OHMO, by the most rapid available means of communication, his

evaluation as to whether an emergency exists and his recommendations with respect to the conditions to be included in the exemption. If the Director, OHMO, determines that an emergency exists and that there is adequate justification for the exemption, he grants the exemption subject to the applicable conditions set forth in Appendix B to this subpart and such other terms as he considers necessary, and immediately notifies the applicant. If the Director, OHMO, cannot determine that an emergency exists or that there is not adequate justification for the exemption, he immediately so notifies the applicant.

#### § 107.115 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 minimizing 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.

#### § 107.117 Withdrawal.

(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) Except for documents for which confidential treatment was requested by the applicant, withdrawal of an application does not authorize the removal of any related records from the dockets or files of the OHMO.

#### § 107.119 Termination.

(a) An exemption and any renewal thereof terminates according to its terms but not later than two years after the date of issuance unless terminated sooner pursuant to paragraph (b) or (c) of this section.

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