

## § 107.111

pounds must certify that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

(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.

[Amdt. 107-38, 61 FR 21095, May 9, 1996, as amended at 65 FR 50457, Aug. 18, 2000; 67 FR 61011, Sept. 27, 2002; 68 FR 23842, May 5, 2003; 69 FR 6198, Feb. 10, 2004]

### § 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An application may be withdrawn at any time before a decision to grant or deny it is made.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. Applications that are eligible for confidential treatment under § 105.30 will remain confidential after the application is withdrawn. The duration of this confidential treatment for trade secrets and commercial or financial information is indefinite, unless the party requesting the confidential treatment of the materials notifies the Associate Administrator that the confidential treatment is no longer required.

### § 107.113 **Application processing and evaluation.**

(a) The Associate Administrator reviews an application for exemption, modification of exemption, party to exemption, or renewal of an exemption to determine if it is complete and conforms with the requirements of this subpart. This determination will be made within 30 days of receipt of the application for exemption, modification of exemption, or party to 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, party to, 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

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public comment is provided. All comments received during the comment period are considered before final action is taken on the application.

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

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

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

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

(1) The application complies with this subpart;

(2) The application demonstrates that the proposed alternative will achieve a level of safety that:

(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 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 is fit to conduct the activity authorized by the exemption. This assessment may be based on information in the application, prior compliance history of the applicant, and other information available to the Associate Administrator.

(g) An 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 expires.

(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 grants, denials, and modifications and all exemption applications withdrawn under this section.

[Amdt. 107-38, 61 FR 21095, May 9, 1996, as amended at 67 FR 61011, Sept. 27, 2002]

#### § 107.117 Emergency processing.

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

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

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

(b) Where the significant economic loss is to the applicant, or to a party in a contractual relationship to the appli-

cant with respect to the activity to be undertaken, the Associate Administrator may deny emergency processing if timely application could have been made.

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

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

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

(2) *Noncertificate-Holding Aircraft (Those Which Operate Under 14 CFR Part 91)*: The Federal Aviation Administration Civil Aviation Security Office that serves the place where the flight will originate. The nearest Civil Aviation Security Office may be located by calling the FAA Duty Officer, 202-267-3333 (any hour).

(3) *Motor Vehicle Transportation*: Chief, Hazardous Materials Division, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, Washington, DC 20590-0001, 202-366-6121 (day); 1-800-424-8802 (night).

(4) *Rail Transportation*: Staff Director, Hazardous Materials Division, Office of Safety Assurance and Compliance, Federal Railroad Administration, U.S. Department of Transportation, Washington, DC 20590-0001, 202-493-6248 or 202-493-6244 (day); 1-800-424-8802 (night).

(5) *Water Transportation*: Chief, Hazardous Materials Standards Division, Office of Operating and Environmental Standards, United States Coast Guard, U.S. Department of Transportation, Washington, DC 20593-0001, 202-267-1577 (day); 1-800-424-8802 (night).