

## § 107.107

for a fixed period, a description of how compliance will be achieved at the end of that period;

(6) If the applicant seeks emergency processing specified in §107.117, a statement of supporting facts and reasons;

(7) Identification and description of the hazardous materials planned for transportation under the exemption;

(8) Description of each packaging, including specification or exemption number, as applicable, to be used in conjunction with the requested exemption;

(9) For alternative packagings, documentation of quality assurance controls, package design, manufacture, performance test criteria, in-service performance and service-life limitations.

(10) When a Class 1 material is forbidden for transportation by aircraft except under an exemption (see Columns 9A and 9B in the table in 49 CFR 172.101), an applicant for an exemption to transport such Class 1 material on passenger-carrying or cargo-only aircraft with a maximum certificated takeoff weight of less than 12,500 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.

(d) *Justification of exemption proposal.* The application must demonstrate that an exemption achieves a level of safety at least equal to that required by regulation, or if a required safety level does not exist, is consistent with the public interest. At a minimum, the application must provide the following:

(1) Information describing all relevant shipping and incident experience of which the applicant is aware that relates to the application;

(2) A statement identifying any increased risk to safety or property that may result if the exemption is granted, and a description of the measures to be taken to address that risk; and

(3) Either—

(i) Substantiation, 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 from which the exemption is sought; or

(ii) If the regulations do not establish a level of safety, an analysis that iden-

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tifies each hazard, potential failure mode and the probability of its occurrence, and how the risks associated with each hazard and failure mode are controlled for the duration of an activity or life-cycle of a packaging.

[Amdt. 107-38, 61 FR 21095, May 9, 1996, as amended at 62 FR 51556, Oct. 1, 1997; 65 FR 50457, Aug. 18, 2000; 65 FR 58618, Sept. 29, 2000; 67 FR 61010, 61011, Sept. 27, 2002; 68 FR 23841, May 5, 2003; 69 FR 6198, Feb. 10, 2004; 70 FR 56089, Sept. 23, 2005]

### § 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 manufacturing exemption.

(b) Each application filed under this section must—

(1) Be submitted in duplicate to: Associate Administrator for Hazardous Materials Safety (Attention: Exemptions, PHH-31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590-0001. Alternatively, you may send the application with any attached supporting documentation in an appropriate format by facsimile (fax) to: (202) 366-3753 or (202) 366-3308 or by electronic mail (e-mail) to: [Exemptions@dot.gov](mailto:Exemptions@dot.gov);

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

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

(4) If the applicant is not a resident of the United States, provide a designation of agent for service in accordance with §105.40 of this subchapter; and

(5) For a Class 1 material that is forbidden for transportation by aircraft except under an exemption (see Columns 9A and 9B in the table in 49 CFR 172.101), an applicant for party status to an exemption to transport such Class 1 material on passenger-carrying or cargo-only aircraft with a maximum

certificated takeoff weight of less than 12,500 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.

(c) The Associate Administrator grants or denies an application for party status in the manner specified in § 107.113(e) and (f) of this subpart.

(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.

[Amdt. 107-38, 61 FR 21095, May 9, 1996, as amended at 65 FR 50457, Aug. 18, 2000; 67 FR 61010, 61011, Sept. 27, 2002; 69 FR 6198, Feb. 10, 2004; 70 FR 56090, Sept. 23, 2005]

#### § 107.109 Application for renewal.

(a) Each application for renewal of an exemption or party status to an exemption must—

(1) Be submitted in duplicate to: Associate Administrator for Hazardous Materials Safety (Attention: Exemptions, PHH-31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590-0001. Alternatively, you may send the application, with any attached supporting documentation submitted in an appropriate format by facsimile (fax) to: (202) 366-3753 or (202) 366-3308 or by electronic mail (e-mail) to: *Exemptions@dot.gov*;

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

(3) State the name, street and mailing addresses, e-mail address optional, and telephone number of the applicant; if the applicant is not an individual, state the name, street and mailing addresses, e-mail address optional, and telephone number 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 include 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 incident experience of which the applicant is aware in connection with the exemption since its issuance or most recent renewal. If the applicant is aware of no incidents, the applicant shall so certify. When known to the applicant, the statement should indicate the approximate number of shipments made or packages shipped, as the case may be, and number of shipments or packages involved in any loss of contents, including loss by venting other than as authorized in subchapter C.

(6) When a Class 1 material is forbidden for transportation by aircraft except under an exemption (see Columns 9A and 9B in the table in 49 CFR 172.101), an applicant to renew an exemption to transport such Class 1 material on passenger-carrying or cargo-only aircraft with a maximum certificated takeoff weight of less than 12,500 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; 70 FR 56090, Sept. 23, 2005]

#### § 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 PHMSA 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