

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) A determination that an emergency does not exist is not subject to reconsideration under §107.123 of this part.

(g) Within 90 days following issuance of an emergency special permit, the Associate Administrator will publish, in the FEDERAL REGISTER, a notice of issuance with a statement of the basis for the finding of emergency and the scope and duration of the special permit.

[Amdt. 107-38, 61 FR 21095, May 9, 1996, as amended at 62 FR 51556, Oct. 1, 1997; 64 FR 51914, Sept. 27, 1999; 65 FR 58618, Sept. 29, 2000; 66 FR 45377, Aug. 28, 2001; 67 FR 61011, Sept. 27, 2002; 70 FR 56090, Sept. 23, 2005]

**§107.121 Modification, suspension or termination of special permit or grant of party status.**

(a) The Associate Administrator may modify an exemption, a special permit, or grant of party status on finding that:

(1) Modification is necessary so that the exemption or special permit 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 special permit or grant of party status, as appropriate, on finding that:

(1) Because of a change in circumstances, the exemption, special permit, or party status no longer is needed or no longer would be granted if applied for;

(2) The application contained inaccurate or incomplete information, and the exemption, special permit, 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, special permit or an applicable requirement of this chapter, in a manner demonstrating the holder or party is not fit to conduct the activity authorized by the exemption or special permit.

(c) Except as provided in paragraph (d) of this section, before an exemption, special permit, 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 for it, 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 that shows cause why the proposed action should not be taken within 30 days of receipt of notice of the proposed action.

(2) After considering the holder's or party's written response, or after 30 days have passed without response since receipt of the notice, the Associate Administrator notifies the holder or party in writing of the final decision with a brief statement of reasons.

(d) 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.

[Amdt. 107-38, 61 FR 21095, May 9, 1996, as amended at 70 FR 73161, Dec. 9, 2005]

**§ 107.123 Reconsideration.**

(a) An applicant for special permit, a special permit holder, or an applicant for party status to an exemption or special permit may request that the Associate Administrator reconsider a decision under §107.113(g), §107.117(e) or §107.121(c) of this part. The request must—

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

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

(3) Enclose any additional information needed to support the request to reconsider; and

(4) State in detail the modification of the final decision sought.

## § 107.125

(b) The Associate Administrator grants or denies, in whole or in part, the relief requested and informs the requesting person in writing of the decision. If necessary to avoid a risk of significant harm to persons or property, the Associate Administrator may, in the notification, declare the action immediately effective.

[Amdt. 107-38, 61 FR 21095, May 9, 1996, as amended at 70 FR 73161, Dec. 9, 2005]

### § 107.125 Appeal.

(a) A person who requested reconsideration under §107.123 and is denied the relief requested may appeal to the Administrator. 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 any alleged errors of fact and law;

(3) Enclose any additional information needed to support the appeal; 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.

(c) 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, Pipeline and Hazardous Materials Safety Administration, Office of Hazardous Materials Special Permits and Approvals, U.S. Department of Transportation, East Building, PHH-30, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001. Office hours are 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays when the office is closed. Copies of available documents may be obtained as provided in part 7 of this title. Documents numbered

## 49 CFR Ch. I (10-1-07 Edition)

11832 and above may also be viewed at the website address <http://www.regulations.gov>.

(b) Documents available for inspection do not include materials determined to be withheld from public disclosure under §105.30 and in accordance with the applicable provisions of section 552(b) of title 5, United States Code, and part 7 of this title.

[Amdt. 107-38, 61 FR 21095, May 9, 1996, as amended at 65 FR 58618, Sept. 29, 2000; 66 FR 45377, Aug. 28, 2001; 67 FR 61011, Sept. 27, 2002; 70 FR 73162, Dec. 9, 2005; 72 FR 55683, Oct. 1, 2007]

## Subpart C—Preemption

### § 107.201 Purpose and scope.

(a) This subpart prescribes procedures by which:

(1) Any person, including a State, political subdivision, or Indian tribe, directly affected by a requirement of a State, political subdivision, or Indian tribe, may apply for a determination as to whether that requirement is preempted under 49 U.S.C. 5125.

(2) A State, political subdivision, or Indian tribe may apply for a waiver of preemption with respect to any requirement that the State, political subdivision, or Indian tribe acknowledges to be preempted by 49 U.S.C. 5125, or that has been determined by a court of competent jurisdiction to be so preempted.

(b) For purposes of this subpart “political subdivision” includes a municipality; a public agency or other instrumentality of one or more States, municipalities, or other political subdivisions of a State; or a public corporation, board, or commission established under the laws of one or more States.

(c) [Reserved]

(d) An application for a preemption determination that includes an application for a waiver of preemption will be treated and processed solely as an application for a preemption determination.

[Amdt. 107-3, 41 FR 38171, Sept. 9, 1976, as amended by Amdt. 107-24, 56 FR 8622, Feb. 28, 1991; Amdt. 107-25, 57 FR 20428, May 13, 1992; Amdt. 107-32, 59 FR 49130, Sept. 26, 1994; Amdt. 107-35, 60 FR 49108, Sept. 21, 1995; Amdt. 107-38, 61 FR 21098, May 9, 1996; 68 FR 52846, Sept. 8, 2003; 71 FR 30067, May 25, 2006]