

§ 107.203

49 CFR Ch. I (10–1–02 Edition)

Federal hazardous material transportation law or regulations issued thereunder; or

(3) It is preempted under 49 U.S.C. 5125 (c).

(c) A State, political subdivision, or Indian tribe may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose related to transporting hazardous material, including enforcement and planning, developing and maintaining a capability for emergency response.

(d) For purposes of this section, “substantively the same” means that the non-Federal requirement conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted.

[Amdt. 107–24, 56 FR 8622, Feb. 28, 1991, as amended by Amdt. 107–25, 57 FR 20428, May 13, 1992; Amdt. 107–29, 58 FR 51527, Oct. 1, 1993; Amdt. 107–32, 59 FR 49130, Sept. 26, 1994; Amdt. 107–38, 61 FR 21098, May 9, 1996; Amdt. 107–39, 61 FR 51337, Oct. 1, 1996]

PREEMPTION DETERMINATIONS

§ 107.203 Application.

(a) With the exception of highway routing matters covered under 49 U.S.C. 5125(c), any person, including a State or political subdivision thereof or an Indian tribe, directly affected by any requirement of a State or political subdivision thereof or an Indian tribe, may apply to the Associate Administrator for a determination of whether that requirement is preempted by § 107.202 (a) or (b).

(b) Each application filed under this section for a determination must:

(1) Be submitted to Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Attention: Hazardous Materials Preemption Docket;

(2) Set forth the text of the State or political subdivision or Indian tribe requirement for which the determination is sought;

(3) Specify each requirement of the Federal hazardous material transportation law or the regulations issued thereunder with which the applicant

seeks the State or political subdivision or Indian tribe requirement to be compared;

(4) Explain why the applicant believes the State or political subdivision or Indian tribe requirement should or should not be preempted under the standards of § 107.202; and

(5) State how the applicant is affected by the State or political subdivision or Indian tribe requirement.

(c) The filing of an application for a determination under this section does not constitute grounds for noncompliance with any requirement of the Federal hazardous material transportation law or the regulations issued thereunder.

(d) Once the Associate Administrator has published notice in the FEDERAL REGISTER of an application received under paragraph (a) of this section, no applicant for such determination may seek relief with respect to the same or substantially the same issue in any court until final action has been taken on the application or until 180 days after filing of the application, whichever occurs first. Nothing in § 107.203(a) prohibits a State or political subdivision or Indian tribe, or any other person directly affected by any requirement of a State or political subdivision thereof or Indian tribe, from seeking a determination of preemption in any court of competent jurisdiction in lieu of applying to the Associate Administrator under paragraph (a) of this section.

[Amdt. 107–24, 56 FR 8622, Feb. 28, 1991, as amended by Amdt. 107–25, 57 FR 20428, May 13, 1992; Amdt. 107–32, 59 FR 49131, Sept. 26, 1994; Amdt. 107–38, 61 FR 21098, May 9, 1996]

§ 107.205 Notice.

(a) If the applicant is other than a State, political subdivision, or Indian tribe, the applicant shall mail a copy of the application to the State, political subdivision, or Indian tribe concerned accompanied by a statement that the State, political subdivision, or Indian tribe may submit comments regarding the application to the Associate Administrator. The application filed with the Associate Administrator must include a certification that the applicant has complied with this paragraph and must include the names and addresses