

the Federal hazardous material transportation law, or hazardous material transportation security regulations or directives issued by the Secretary of Homeland Security 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 materials transportation law, regulations issued under the Federal hazardous material transportation law, or hazardous material transportation security regulations or directives issued by the Secretary of Homeland Security.

(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; 68 FR 52847, Sept. 8, 2003]

#### § 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 of each State, political subdivision, or Indian tribe official to whom a copy of the application was sent.

(b) The Associate Administrator will publish notice of, including an opportunity to comment on, an application in the FEDERAL REGISTER and may notify in writing any person readily identifiable as affected by the outcome of the determination.

(c) Each person submitting written comments to the Associate Administrator with respect to an application filed under this section shall send a copy of the comments to the applicant and certify to the Associate Administrator that he or she has complied with this requirement. The Associate Administrator may notify other persons participating in the proceeding of the comments and provide an opportunity for those other persons to respond. Late-filed comments are considered so far as practicable.

[Amdt. 107-38, 61 FR 21098, May 9, 1996]

#### § 107.207 Processing.

(a) The Associate Administrator may initiate an investigation of any statement in an application and utilize in his or her evaluation any relevant facts obtained by that investigation. The Associate Administrator may solicit and accept submissions from third persons relevant to an application and will provide the applicant an opportunity to respond to all third person submissions. In evaluating an application, the Associate Administrator may consider any other source of information. The Associate Administrator on his or her own initiative may convene a hearing or conference, if he or she considers that a hearing or conference will advance his or her evaluation of the application.

(b) The Associate Administrator may dismiss the application without prejudice if: