

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:

(1) He or she determines that there is insufficient information upon which to base a determination; or

(2) He or she requests additional information from the applicant and it is not submitted.

[Amdt. 107-3, 41 FR 38171, Sept. 9, 1976, as amended by Amdt. 107-24, 56 FR 8621, 8622, Feb. 28, 1991; Amdt. 107-38, 61 FR 21098, May 9, 1996]

§ 107.209 Determination.

(a) Upon consideration of the application and other relevant information received, the Associate Administrator issues a determination.

(b) The determination includes a written statement setting forth the relevant facts and the legal basis for the determination, and provides that any person aggrieved thereby may file a petition for reconsideration with the Associate Administrator.

(c) The Associate Administrator provides a copy of the determination to the applicant and to any other person who substantially participated in the proceeding or requested in comments to the docket to be notified of the determination. A copy of each determination is placed on file in the public docket. The Associate Administrator will publish the determination or notice of the determination in the FEDERAL REGISTER.

(d) A determination issued under this section constitutes an administrative determination as to whether a particular requirement of a State or political subdivision or Indian tribe is preempted under the Federal hazardous materials transportation law. The fact that a determination has not been issued under this section with respect to a particular requirement of a State or political subdivision or Indian tribe carries no implication as to whether the requirement is preempted under the Federal hazardous materials transportation law.

[Amdt. 107-24, 56 FR 8623, 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]

§ 107.211 Petition for reconsideration.

(a) Any person aggrieved by a determination issued under § 107.209 may file

a petition for reconsideration with the Associate Administrator. The petition must be filed within 20 days of publication of the determination in the FEDERAL REGISTER.

(b) The petition must contain a concise statement of the basis for seeking review, including any specific factual or legal error alleged. If the petition requests consideration of information that was not previously made available to the Associate Administrator, the petition must include the reasons why such information was not previously made available.

(c) The petitioner shall mail a copy of the petition to each person who participated, either as an applicant or commenter, in the preemption determination proceeding, accompanied by a statement that the person may submit comments concerning the petition to the Associate Administrator within 20 days. The petition filed with the Associate Administrator must contain a certification that the petitioner has complied with this paragraph and include the names and addresses of all persons to whom a copy of the petition was sent. Late-filed comments are considered so far as practicable.

(d) The Associate Administrator's decision constitutes final agency action.

[Amdt. 107-25, 57 FR 20428, May 13, 1992, as amended by Amdt. 107-38, 61 FR 21099, May 9, 1996]

§ 107.213 Judicial review.

A party to a proceeding under § 107.203(a) may seek review by the appropriate district court of the United States of a decision of the Associate Administrator by filing a petition with the court within 60 days after the Associate Administrator's determination becomes final. The determination becomes final when it is published in the FEDERAL REGISTER.

[Amdt. 107-38, 61 FR 21099, May 9, 1996]

WAIVER OF PREEMPTION
DETERMINATIONS

§ 107.215 Application.

(a) With the exception of requirements preempted under 49 U.S.C. 5125(c), any State or political subdivision thereof, or Indian tribe may apply to the Associate Administrator for a