

## § 107.202

## 49 CFR Ch. I (10–1–04 Edition)

### § 107.202 Standards for determining preemption.

(a) Except as provided in § 107.221 and unless otherwise authorized by Federal law, any requirement of a State or political subdivision thereof or an Indian tribe that concerns one of the following subjects and that is not substantively the same as any provision of the Federal hazardous materials transportation law, a regulation issued under the Federal hazardous material transportation law, or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security that concerns that subject, is preempted:

(1) The designation, description, and classification of hazardous material.

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(3) The preparation, execution, and use of shipping documents pertaining to hazardous material and requirements related to the number, content, and placement of those documents.

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(5) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

(b) Except as provided in § 107.221 and unless otherwise authorized by Federal law, any requirement of a State or political subdivision or Indian tribe is preempted if—

(1) It is not possible to comply with a requirement of the State, political subdivision, or Indian tribe and a requirement under the Federal hazardous material transportation law, a regulation issued under the Federal hazardous material transportation law, or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security;

(2) The requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to accomplishing and carrying out the Federal hazardous material transportation law, a regulation issued under

the Federal hazardous material transportation law, or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security.

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

### 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 the Associate Administrator:

(i) By mail addressed to the Associate Administrator for Hazardous Materials Safety (Attn: Hazardous Materials Preemption Docket), Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001;

(ii) By fax to the Associate Administrator for Hazardous Materials Safety (Attn: Hazardous Materials Preemption Docket), at 202-366-5713; or