

§ 107.209

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

49 CFR Ch. I (10-1-04 Edition)

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