

§ 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

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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 waiver of preemption with respect to any requirement that the State or political subdivision thereof or an Indian tribe acknowledges to be preempted under the Federal hazardous materials transportation law, or that has been determined by a court of competent jurisdiction to be so preempted. The Associate Administrator may waive preemption with respect to such requirement upon a determination that such requirement—

(1) Affords an equal or greater level of protection to the public than is afforded by the requirements of the Federal hazardous material transportation law or the regulations issued thereunder, and

(2) Does not unreasonably burden commerce.

(b) Each application filed under this section for a waiver of preemption 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

(iii) Electronically to the Associate Administrator for Hazardous Materials Safety (Attn: Hazardous Materials Preemption Docket), at *aahms-preemption@rspa.dot.gov*.

(2) Set forth the text of the State or political subdivision requirement for

which the determination is being sought;

(3) Include a copy of any court order and any ruling issued under §107.209 having a bearing on the application;

(4) Contain an express acknowledgment by the applicant that the State, political subdivision, or Indian tribe requirement is preempted under Federal hazardous materials transportation law, unless it has been so determined by a court of competent jurisdiction or in a determination issued under §107.209;

(5) Specify each requirement of the Federal hazardous materials transportation law that preempts the State, political subdivision, or Indian tribe requirement;

(6) State why the applicant believes the State, political subdivision or Indian tribe requirements affords an equal or greater level of protection to the public than is afforded by the requirements of the Federal hazardous material transportation law or the regulations issued thereunder;

(7) State why the applicant believes the State, political subdivision or Indian tribe requirement does not unreasonably burden commerce; and

(8) Specify what steps the State, political subdivision or Indian tribe is taking to administer and enforce effectively its inconsistent requirement.

[Amdt. 107-3, 41 FR 38171, Sept. 9, 1976, as amended by Amdt. 107-22, 55 FR 39978, Oct. 1, 1990; Amdt. 107-24, 56 FR 8621, 8623, Feb. 28, 1991; 56 FR 15510, Apr. 17, 1991; Amdt. 107-23, 56 FR 66156, Dec. 20, 1991; Amdt. 107-25, 57 FR 20428, May 13, 1992; Amdt. 107-32, 59 FR 49131, Sept. 26, 1994; Amdt. 107-38, 61 FR 21099, May 9, 1996; 68 FR 52847, Sept. 8, 2003]

§ 107.217 Notice.

(a) The applicant shall mail a copy of the application and any subsequent amendments or other documents relating to the application to each person who is reasonably ascertainable by the applicant as a person who will be affected by the determination sought. The copy of the application must be accompanied by a statement that the person may submit comments regarding the application to the Associate