

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

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Administrator within 45 days. The application filed with the Associate Administrator must include a certification that the application has complied with this paragraph and must include the names and addresses of each person to whom the application was sent.

(b) Notwithstanding the provisions of paragraph (a) of this section, if the State or political subdivision determines that compliance with paragraph (a) of this section would be impracticable, the applicant shall:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and practicable to notify; and

(2) Include with the application filed with the Associate Administrator a description of the persons or class or classes of persons to whom notice was not sent.

(c) The Associate Administrator may require the applicant to provide notice in addition to that required by paragraphs (a) and (b) of this section, or may determine that the notice required by paragraph (a) of the section is not impracticable, or that notice should be published in the FEDERAL REGISTER. Late-filed comments are considered so far as practicable.

(d) The Associate Administrator may notify any other persons who may be affected by the outcome of a determination on the application.

(e) Any 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. The person shall certify to the Associate Administrator that he has complied with the requirements of this paragraph. The Associate Administrator may notify other persons participating in the proceeding of the comments and provide an opportunity for those other persons to respond.

[Amdt. 107-3, 41 FR 38171, Sept. 9, 1976, as amended by Amdt. 107-24, 56 FR 8621, Feb. 28, 1991; Amdt. 107-25, 57 FR 20429, May 13, 1992; Amdt. 107-38, 61 FR 21099, May 9, 1996]

**§ 107.219 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 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;

(2) Upon his or her request, additional information is not submitted by the applicant; or

(3) The applicant fails to provide the notice required by § 107.217.

(c) The Associate Administrator will only consider an application for waiver of preemption determination if—

(1) The applicant State or political subdivision thereof or Indian tribe expressly acknowledges in its application that the State or political subdivision or Indian tribe requirement for which the determination is sought is inconsistent with the requirements 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.

(2) The State or political subdivision thereof or Indian tribe requirement has been determined by a court of competent jurisdiction or in a ruling issued under § 107.209 to be inconsistent with the requirements 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) When the Associate Administrator has received all substantive information it considers necessary to process an application for a waiver of