

(c) The Administrator grants or denies, in whole or in part, the relief requested and informs the appellant in writing of the decision. The Administrator's decision is the final administrative action.

§ 107.127 Availability of documents for public inspection.

(a) Documents related to an application under this subpart, including the application itself, are available for public inspection, except as specified in paragraph (b) of this section, at the Office of the Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, Office of Hazardous Materials Exemptions and Approvals, U.S. Department of Transportation, 400 7th Street, SW, Washington, DC 20590-0001, Room 8100. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday, except holidays when the office is closed. Copies of available documents may be obtained as provided in part 7 of this title. Documents numbered 11832 and above may also be viewed at the internet website address <http://dms.dot.gov>.

(b) Documents available for inspection do not include materials determined to be withheld from public disclosure under § 105.30 and in accordance with the applicable provisions of section 552(b) of title 5, United States Code, and part 7 of this title.

[Amdt. 107-38, 61 FR 21095, May 9, 1996, as amended at 65 FR 58618, Sept. 29, 2000; 66 FR 45377, Aug. 28, 2001; 67 FR 61011, Sept. 27, 2002]

Subpart C—Preemption

§ 107.201 Purpose and scope.

(a) This subpart prescribes procedures by which:

(1) Any person, including a State, political subdivision, or Indian tribe, directly affected by a requirement of a State, political subdivision, or Indian tribe, may apply for a determination as to whether that requirement is preempted under 49 U.S.C. 5125.

(2) A State, political subdivision, or Indian tribe may apply for a waiver of preemption with respect to any requirement that the State, political subdivision, or Indian tribe acknowledges to be preempted by 49 U.S.C. 5125, or that has been determined by a court

of competent jurisdiction to be so preempted.

(b) For purposes of this subpart “political subdivision” includes a municipality; a public agency or other instrumentality of one or more States, municipalities, or other political subdivisions of a State; or a public corporation, board, or commission established under the laws of one or more States.

(c) [Reserved]

(d) Unless otherwise ordered by the Associate Administrator, an application for a preemption determination which includes an application for a waiver of preemption will be treated and processed solely as an application for a preemption determination.

[Amdt. 107-3, 41 FR 38171, Sept. 9, 1976, as amended by Amdt. 107-24, 56 FR 8622, Feb. 28, 1991; Amdt. 107-25, 57 FR 20428, May 13, 1992; Amdt. 107-32, 59 FR 49130, Sept. 26, 1994; Amdt. 107-35, 60 FR 49108, Sept. 21, 1995; Amdt. 107-38, 61 FR 21098, May 9, 1996; 68 FR 52846, Sept. 8, 2003]

§ 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.