

§ 107.202

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) For purposes of this subpart, “regulations issued under the Federal hazardous material transportation law” means the regulations contained in this subchapter and subchapter C of this chapter.

(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]

§ 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 material transportation law, this subchapter or subchapter C 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, recon-

49 CFR Ch. I (10-1-01 Edition)

ditioning, 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) Complying with a requirement of the State, political subdivision, or Indian tribe and a requirement under the Federal hazardous material transportation law or regulations issued thereunder is not possible;

(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 or regulations issued thereunder; or

(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]

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