

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 material transportation law or the regulations issued thereunder, 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 for Hazardous Materials Safety, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001. Attention: Hazardous Materials Preemption Docket;

(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 the Federal hazardous material transportation law or the regulations issued thereunder, unless it has been so deter-

mined by a court of competent jurisdiction or in a determination issued under §107.209;

(5) Specify each requirement of the Federal hazardous material transportation law or the regulations issued thereunder 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]

**§ 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 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