result EPA will promulgate the modification to the SNURs as in the proposed rule. For P-84-393 EPA is eliminating notification requirements for respiratory protection, a material safety data sheet (MSDS) and labeling language concerning respiratory protection, and a specified production volume limit. For P-87-723 EPA is eliminating notification requirements for a specified production volume limit and a limit on the amount of the substance released to water.

III. Objectives and Rationale of Modification of the Rules

During review of the PMNs submitted for the chemical substances that are the subject of this modification, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health or environmental effects of the substances, and EPA identified the tests considered necessary to evaluate the risks of the substances. The basis for such findings is referenced in the preamble of the proposed modification. Based on these findings, section 5(e) consent orders were negotiated with the PMN submitters and SNURs were promulgated.

EPA reviewed the toxicity testing conducted by the PMN submitters for the substances and determined that the section 5(e) consent orders negotiated with the PMN submitters should be modified in light of the new data. The proposed modification of SNUR provisions for these substances designated herein is consistent with the modifications of the section 5(e) orders.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: February 4, 1992.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR Part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for Part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. In § 721.224 by revising paragraph (a)(2)(i), (a)(2)(ii), (a)(2)(iii), and (b)(1) to read as follows:

§ 721.224 2-Chloro-N-methyl-N-substituted acetamide.

(a) * * *

(2) * * *

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iv), (g)(2)(i), and (g)(2)(v). The provisions of § 721.72(d) requiring employees to be provided with information on the location and availability of a written hazard communication program and MSDSs do not apply when the written program and MSDSs are not required under § 721.72(a) and (c), respectively. The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS is not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified § 721.80(g).

(b) * * *

(1) *Recordkeeping.* The recordkeeping requirements as specified in § 721.125(a) through (g) and (i) are applicable to manufacturers, importers, and processors of this substance.

* * * * *

3. In § 721.1272 by revising paragraphs (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(2)(iv), and (b)(1) to read as follows and by deleting (b)(3):

§ 721.1272 Mixed alkylphenol formaldehyde polymer, metal salt.

(a) * * *

(2) * * *

(i) *Hazard communication program.* Requirements as specified in § 721.72 (b)(1)(i)(C), (b)(1)(ii), (b)(1)(iii), (b)(1)(iv), (b)(2), (c)(1), (f), (g)(3)(ii), (g)(4)(i), and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (industrial coating material).

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(3), (b)(1), (b)(3), (c)(1), and (c)(3).

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(3), (b)(3), and (c)(3).

(b) * * *

(1) *Recordkeeping.* The recordkeeping requirements as specified in § 721.125(a) through (k) are applicable to manufacturers, importers, and processors of this substance.

* * * * *

[FR Doc. 92-11235 Filed 5-12-92; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Docket HM-207A; Amdt. No. 107-25]

RIN 2137-AC06

Amendments to the Hazardous Materials Program Procedures

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: The Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), enacted November 16, 1990, amended the Hazardous Material Transportation Act (HMTA) to establish a new preemption standard for State, political subdivision, and Indian tribe requirements that concern certain covered subjects. RSPA is amending its regulations to define the preemption standard. RSPA is also streamlining its preemption determination and waiver of preemption processes. The intended effect of these changes is to clarify the regulations and shorten the process for obtaining determinations.

EFFECTIVE DATE: May 13, 1992.

FOR FURTHER INFORMATION CONTACT: Mary M. Crouter, Special Counsel, Office of the Chief Counsel (DCC-3), Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590 (Tel. 202-366-4400).

SUPPLEMENTARY INFORMATION:

I. Background

The Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA; Pub. L. 101-615) was enacted on November 16, 1990. The HMTUSA amended the Hazardous Materials Transportation Act (HMTA; 49 App. U.S.C. 1801 *et seq.*) in many significant respects. Section 4 of the HMTUSA amended section 105 of the HMTA by adding new subsections (a)(4)(A) and (B) to preempt any requirement of a State, political subdivision, or Indian tribe concerning the following subjects if the non-Federal requirement is not substantively the same as any provision of the HMTA or any Federal regulation issued under the HMTA:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the

number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

49 App. U.S.C. 1804(a)(4) (A) and (B).

RSPA issued a final rule, published on February 28, 1991 (56 FR 8616; Correction Notice published April 17, 1991, 56 FR 15510), to conform its regulations with certain provisions of the HMTUSA amendments. In its February 28, 1991 final rule, RSPA added this new preemption standard to 49 CFR 107.202 to mirror the statute, but did not define the term "substantively the same."

II. Notice of Proposed Rulemaking

On August 1, 1991, RSPA published a notice of proposed rulemaking (NPRM) under Docket No. HM-207A, Notice No. 91-2 (56 FR 36992), to solicit comments on a proposal to define "substantively the same," the preemption standard for State, political subdivision, and Indian tribe requirements that concern covered subjects. RSPA also proposed to streamline its procedures for preemption determinations and waiver of preemption determinations. The comment period closed on September 3, 1991, and RSPA received 13 comments from shippers, industry associations, States, and a Federal agency.

III. Definition of Substantively the Same

In the NPRM, RSPA proposed to define "substantively the same" as "conforming in every significant respect." RSPA proposed, therefore, that any State, political subdivision, or Indian tribe law, regulation, order, ruling provision, or other requirement concerning a covered subject would be considered "substantively the same" as the Federal provision on that subject if the non-Federal requirement conforms to it in every significant respect. RSPA also offered examples of non-Federal requirements that, although not identical to the Federal requirements, would nonetheless be considered substantively the same. Such requirements would include, for example, editorial changes that do not change the meaning of a Federal provision.

Most commenters supported the proposed definition of "substantively the same," although several suggested modifications. One commenter stated that the definition should mean that the non-Federal requirement is "identical" to the Federal requirement, because the legislative history supports such a conclusion. RSPA disagrees. As noted in the preamble to the NPRM, the House Committee on Public Works and Transportation stated:

> There is some concern that this mandate may mean that the state law must mirror the Federal statute verbatim. It does not mean that. It means the state law must have the same effect as the Federal law.

H.R. Rep. No. 444; Pt. 2, 101st Cong., 2d Sess. 24 (1990).

One commenter recommended that RSPA amend the definition to insert the word "similar" before *de minimis* in the last sentence, so that the sentence would read: "Editorial and other similar *de minimis* changes are permitted." The commenter expressed concern that the words *de minimis* would invite State and local jurisdictions to adopt substantive changes that they would characterize as minor. RSPA agrees with the commenter and has adopted the suggestion.

The commenter also suggested that RSPA clarify in the preamble that Congress has preempted the field of hazardous materials regulation in each of the five covered subjects, and that a State or local government is therefore preempted from any type of regulation concerning these subjects, unless it adopts and enforces a rule that is "substantively the same" as the Federal rules. The commenter suggested that RSPA provide a comprehensive list of examples of typical types of non-Federal regulations that are in the covered subject areas. Finally, the commenter stated that RSPA should clarify that any State or local requirement in a covered area that is inconsistent with the HMTA or the regulations (i.e., conflicts with or is an obstacle to compliance with the Hazardous Materials Regulations (HMR) could not be substantively the same and is therefore preempted.

RSPA believes that section 105(a)(4) preempts the field of hazardous materials transportation in the five covered subject areas. The concept of preempting certain specified subject areas of hazardous materials regulation originated with legislative proposals that the Department of Transportation submitted to Congress to reauthorize the HMTA. The most recent proposal, included with a July 11, 1989 letter from Samuel K. Skinner, former Secretary of Transportation, to the Honorable Dan Quayle, President of the Senate, was introduced as H.R. 3229. The Department's proposal delineated these subject areas as "critical areas of hazardous materials regulation" that should be Federally preempted. The Department's proposal was principally based upon its experience in issuing advisory inconsistency rulings under the HMTA, and was intended to codify that experience.

Congress agreed that these subject areas should be Federally preempted. The HMTUSA amended section 105 of the HMTA to explicitly extend the Secretary's jurisdiction to cover all intrastate commerce to "encourage the safe transportation of hazardous materials in all areas." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 33 (1990). As the House Committee on Energy and Commerce stated:

> To achieve this primary goal, this section defines the critical areas in which Federal regulations will * * * preempt non-Federal laws or regulations on the same subject * * *. The Committee believes that there is a compelling need for standardized requirements relating to certain areas of the transportation of hazardous materials. Conflicting Federal, State, and local requirements pose potentially serious threats to the safe transportation of hazardous materials. Requiring State and local governments to conform their laws to the HMTA and regulations thereunder, with respect to the specific subjects listed in section 105(a)(4)(B), will enhance the safe and efficient transportation of hazardous materials, while better defining the appropriate roles of Federal, State, and local jurisdictions.

H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 33-34 (1990).

As reported by the House Committee on Public Works and Transportation, H.R. 3520 contained a provision (section 105(b)(3)), entitled "State Authority to Regulate in Nonfederally Regulated Areas." This provision would have allowed State regulation in a covered subject area "only where the Federal government does not address a specific aspect of the covered areas and the Federal government permits it." H.R. Rep. No. 444, Pt. 2, 101st Cong., 2d Sess. 24 (1990). This provision did not survive in S. 2936, which was the compromise bill enacted as Pub. L. 101-615. Although the omission of this provision from the HMTUSA is not, by itself, dispositive, RSPA believes that it is an indication that Congress intended to preempt the entire field of hazardous materials transportation in the five covered subject areas.

RSPA believes that in the five covered subject areas, national uniformity is critical. Therefore, in those areas, the Department of Transportation has determined what requirements are necessary for the safe transportation of hazardous materials. Any additional requirements, in excess of the Federal requirements, would not be

"substantively the same," and would be preempted.

In a recent decision by the United States Court of Appeals for the Tenth Circuit, the Court discussed the "substantively the same" standard. The Court noted that although the term had not yet been defined, it clearly mandates a higher preemption standard than the dual compliance/obstacle standard defined in 49 App. U.S.C. 1811(a). *Colorado Public Utilities Commission* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991). The Court stated that "the term itself denotes that state regulations must contain the same substance as the federal regulations," and it, therefore, preempted a state regulation because it imposes "different requirements than the federal regulation." *Id.*, at 1576.

One commenter stated that the language of the proposed definition should be amended to consider not only the text of the non-Federal requirement, but how it is intended to be or actually is enforced. RSPA believes that the preemption standard in section 105(a)(4) requires a comparison of the non-Federal requirement with the Federal requirement on that covered subject. Such a comparison would necessarily involve a determination of whether the non-Federal requirement would have the same effect as the Federal requirement, particularly where the language of the two requirements is not identical. However, where the non-Federal requirement is determined to be substantively the same, it would be appropriate to consider actual or hypothetical situations where the non-Federal requirement might be enforced differently than the Federal requirement. If a non-Federal requirement is determined to be "substantively the same" as a Federal requirement, and therefore not preempted under section 105(a)(4), it may nevertheless be subject to the separate preemption provisions of section 112(a)(2). Section 112(a)(2) provides that a non-Federal requirement is preempted if, as applied or enforced, it creates an obstacle to the accomplishment and execution of the HMTA or the HMR.

One commenter suggested that the definition did not provide enough information concerning the nature of the preemption standard. The commenter asked whether a State which had no provision on a covered subject would be required to adopt one; whether State exceptions from the HMR (such as for intrastate transportation) would be preempted; and whether a State which experiences significant delay in adopting new Federal regulations would have its existing State-adopted HMR preempted.

As discussed above, RSPA believes that State requirements that differ from or exceed the Federal requirements are not "substantively the same" and are therefore preempted. States are encouraged to adopt the HMR in their entirety, but are not required by the HMTA to do so. As a general rule, a State which has no provision on a particular covered subject would not be required to adopt one. However, if the absence of a provision changes the effect of State regulations in a covered area, the State regulations may be preempted. RSPA does not anticipate that reasonable delays in adopting new Federal requirements will result in preemption of current State-adopted HMR's. In its inconsistency rulings (IRs), RSPA determined that State and local requirements that incorporate by reference specific superseded Federal regulations are inconsistent. IR-8, IR-18, (All of RSPA's Inconsistency Rulings have been published in the Federal Register and are available for review in the RSPA Dockets Unit.) However, State and local governments may incorporate by reference specific volumes of the Code of Federal Regulations which include the HMR for a reasonable time (up to two years) after their publication, although a later-published HMR rule would control over an inconsistent State or local requirement. IR-19. As required by the HMTA, RSPA will be proposing to extend its jurisdiction to regulate intrastate carriers. Issues concerning State exceptions for intrastate carriers will be addressed during that rulemaking.

This commenter also suggested that RSPA address specific hypothetical requirements, such as whether a State requirement for an inspection sticker to certify an annual inspection of a bulk packaging or vehicle would be preempted as conflicting with the Federal marking or labeling requirements.

Any such non-Federal requirement will require analysis on a case-by-case basis to determine if the requirement is in a covered area, and then if the requirement is substantively the same. The IRs that RSPA has issued offer numerous examples of the types of requirements that fall within a covered subject area and that RSPA determined were preempted under the dual compliance/obstacle tests.

Courts have also addressed State and local requirements that fall within a covered subject area. For example, State and local hazard class and hazardous materials definitions and classifications differing from those in the HMR and used to regulate hazardous materials transportation are inconsistent because the Federal role is exclusive. IR-18, IR-19, IR-20, IR-21, IR-26, IR-28, IR-29, IR-30, IR-31, IR-32, and *Missouri Pacific R.R. Co.* v. *Railroad Commission of Texas*, 671 F. Supp. 466 (W.D. Tex. 1987), *aff'd on other grounds*, 850 F.2d 264 (5th Cir. 1988), *cert. denied*, 109 S. Ct. 794 (1989). Placarding and other hazard warning requirements are inconsistent if they are in addition to or different from Federal placarding requirements. IR-2, IR-3, IR-24, IR-30. In *Colorado Public Utilities Commission* v. *Harmon, supra*, the Court found that a requirement to carry the State Patrol telephone number with the shipping papers is not "substantively the same" and is preempted. Although these examples are not exhaustive, they are indicative of the types of requirements that RSPA believes fall within the covered subject areas, and which would be preempted if they are not substantively the same.

IV. Preemption Determination and Waiver of Preemption Processes

In the NPRM, RSPA stated that it would exercise the authority to issue preemption and waiver of preemption determinations under the HMTA, with the exception of matters concerning highway routing of hazardous materials. The NPRM stated that matters concerning highway routing, including radioactive materials routing, would now be the responsibility of the Federal Highway Administration (FHWA).

Several commenters opposed splitting preemption determinations between two agencies of the Department of Transportation. Commenters were concerned that with two different agencies issuing preemption determinations, the possibility for different preemption standards exists. Commenters stated that to require an applicant to file two different applications would be burdensome. One commenter stated that the term "highway routing" is unclear, and several commenters stated that highway routing cannot be cleanly separated from other issues, such as time-of-day restrictions, permits, inspections, fees, shipment bans, prenotification, and related issues.

Because of the modal-specific nature of highway routing, the Secretary of Transportation has determined that FHWA should have the responsibility for matters concerning highway routing under the HMTA. FHWA will be conducting further rulemaking on the issue of highway routing standards. Section 105(b)(2) of the HMTA speaks

broadly to the issuance of Federal standards for States and Indian tribes to use in establishing, maintaining, and enforcing specific highway routes over which hazardous materials may and may not be transported by motor vehicles, and "limitations and requirements with respect to highway routing." Definition of what constitutes highway routing matters is an issue in FHWA's rulemaking on this topic. RSPA and FHWA are working together to address this issue and to coordinate on matters where there may be overlapping concerns.

RSPA proposed to shorten the preemption determination and waiver of preemption processes by eliminating the right to appeal the decision of the Associate Administrator for Hazardous Materials Safety to the Administrator of RSPA. Congress was well aware of RSPA's inconsistency ruling process, and the process was extensively discussed during the development of the HMTUSA. Congress elevated RSPA's advisory process to the statute by providing for preemption determinations that are subject to judicial review, but was clearly concerned about the timeliness of the process. Section 112(c)(1) of the HMTA provides that no applicant for a preemption determination may seek relief with respect to the same issue in any court until the Secretary has taken final action on the application or until 180 days after filing the application, whichever occurs first. For this reason, RSPA proposed to shorten both the preemption determination and waiver of preemption processes.

Although some commenters supported streamlining the two processes, several commenters objected to complete elimination of the administrative appeal process. These commenters suggested various alternatives, including a discretionary process that would be more a reconsideration rather than a full-blown appeal process. These commenters noted that now that RSPA's preemption determinations will be binding and subject to judicial review, it is even more critical to have an administrative review of the initial decision. The commenters stated that there should be some opportunity for RSPA to correct an error of fact or law or consider new information that was not available to the initial decisionmaker. Several of these commenters suggested that RSPA establish a specific time period for reconsideration, and if the Administrator fails to act within that time, the petition for reconsideration would be deemed denied.

Several of the commenters critical of splitting the preemption determination process between RSPA and FHWA suggested that some type of appeal be retained, either in the Office of General Counsel or in the Office of the Secretary.

RSPA agrees with those commenters who suggested that there should be some opportunity for RSPA to review its decisions prior to judicial review. Accordingly, RSPA is adopting a streamlined administrative review procedure for both preemption determinations and waiver of preemption determinations that will allow for a petition for reconsideration to be filed with the Associate Administrator for Hazardous Materials Safety. As suggested by the commenters, RSPA will require that a petition for reconsideration of a decision of the Associate Administrator include a statement alleging the specific factual or legal error in the Associate Administrator's determination, or the new information sought to be introduced, with an explanation of why it was not raised in the earlier proceeding.

The procedure will provide that any petition for reconsideration must be received no later than 20 days after service of the Associate Administrator's determination. The petitioner will be required to mail a copy of the petition to each person who participated in the earlier proceeding, with a statement that the person may file comments on the petition within 20 days. The petitioner must include with the petition a certification that the petitioner has complied with the requirement to notify other persons and include the names and addresses of all persons to whom a copy of the petition was sent. The Associate Administrator's decision on the petition shall constitute final agency action and shall be considered an exhaustion of administrative remedies.

With respect to both RSPA and FHWA making preemption determinations, as discussed above, the Secretary has determined that because of the modal-specific nature of highway routing, FHWA should be responsible for those matters, including preemption determinations. Therefore, there will be two different forums for preemption determinations. However, commenters may wish to express their views directly to the FHWA when it conducts its rulemaking on highway routing, including its proposed preemption determination process, as to where the line should be drawn regarding highway routing matters. Although having two different forums will, in some instances, require the submission of two applications, RSPA does not believe this requirement will be unduly burdensome for applicants. An applicant would not be required to submit the same information twice. Instead, an applicant seeking a determination with respect to both highway routing and other matters would have to divide the application and supporting information into two parts. As indicated above, RSPA and FHWA are working together to minimize any burden on applicants.

V. Editorial Corrections

This final rule also makes editorial corrections to §§ 107.205 and 107.217 to ensure that all references to non-Federal governmental entities include Indian tribes wherever appropriate.

Rulemaking Analyses and Notices

Executive Order 12291 and DOT Regulatory Policies and Procedures

RSPA has determined that this rule is not major under Executive Order 12291 and is not significant under DOT's regulatory policies and procedures. (44 FR 11034; Feb. 26, 1979.) This rule will not have any direct or indirect economic impact because it does not alter any existing substantive regulations in such a way as to impose additional burdens. The cost of complying with existing substantive regulations is not being increased. Therefore, preparation of a regulatory evaluation is not warranted.

Administrative Procedure Act

RSPA finds that there is good cause for not publishing this rule at least 30 days before its effective date as is ordinarily required by the Administrative Procedure Act, 5 U.S.C. 553(d). This rule is being made effective today in order to ensure the right of all parties to any pending preemption matter to seek immediate judicial review, in Federal court, of a decision without the need to appeal the decision to the Administrator.

Executive Order 12612

The HMTA provides that State, political subdivision, or Indian tribe requirements concerning certain covered subjects are preempted. This notice merely proposes to implement the specific statutory mandate at the minimum level necessary to achieve the objectives of the statute. Therefore, preparation of a Federalism assessment is not warranted.

Regulatory Flexibility Act

RSPA certifies that this rule will not have a significant economic impact on a substantial number of small entities. There are no direct or indirect economic

impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

There are no new information collection requirements contained in this rule.

National Environmental Policy Act

RSPA has concluded that this rule will have no significant impact on the environment and does not require the preparation of an environmental impact statement under the National Environmental Policy Act.

List of Subjects in 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

In consideration of the foregoing, part 107 of title 49, Code of Federal Regulations, is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 is revised to read as follows:

Authority: 49 App. U.S.C. 1421(c); 49 App. U.S.C. 1802, 1804, 1806, 1808–1811; App. A of part 1 Public Law, 89–670, 80 Stat. 933 (49 App. U.S.C. 1653(d), 1655); 49 CFR 1.45 and 1.53.

Subpart C—Preemption

2. In § 107.201, paragraphs (a) and (c) are revised to read as follows:

§ 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 any requirement of a State, political subdivision, or Indian tribe, may apply for a determination as to whether that requirement is preempted under section 105(a)(4) or section 112 (a)(1) or (a)(2) of the Act (49 App. U.S.C. 1804 and 1811), or regulations issued thereunder; and

(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 section 105(a)(4) or section 112 (a)(1) or (a)(2) of the Act, or regulations issued thereunder, or that has been determined by a court of competent jurisdiction to be so preempted.

* * * * *

(c) For purposes of this subpart, "regulations issued under the Act" means the regulations contained in this subchapter and subchapter C of this chapter.

* * * * *

3. Section 107.202 is amended by adding a new paragraph (d) to read as follows:

§ 107.202 Standards for determining preemption.

* * * *

(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.

4. In § 107.203, paragraph (a) is revised to read as follows:

§ 107.203 Application.

(a) With the exception of highway routing matters covered under section 105(b) of the Act (49 App. U.S.C. 1804(b)), any person, including a State, political subdivision, or Indian tribe, directly affected by any requirement of a State, political subdivision, or Indian tribe, may apply to the Associate Administrator for Hazardous Materials Safety for a determination of whether that requirement is preempted by 49 CFR 107.202(a) or (b).

* * * * *

5. In § 107.205, paragraph (a) is revised to read as follows:

§ 107.205 Notice.

(a) If the applicant is other than a State, political subdivision, or Indian tribe, the applicant shall mail a copy of the application to the State, political subdivision, or Indian tribe concerned accompanied by a statement that the State, political subdivision, or Indian tribe may submit comments regarding the application to the Associate Administrator for Hazardous Materials Safety within 45 days. The application filed with the Associate Administrator for Hazardous Materials Safety must include a certification that the applicant has complied with this paragraph and must include the names and addresses of each State, political subdivision, or Indian tribe official to whom a copy of the application was sent.

* * * * *

6. In § 107.209, paragraph (c) is revised to read as follows:

§ 107.209 Determination.

* * * * *

(c) 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 for Hazardous Materials Safety.

* * * * *

7. Section 107.211 is revised to read as follows:

§ 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 for Hazardous Materials Safety. The petition must be filed within 20 days of service of the determination.

(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.

(d) The Associate Administrator's decision constitutes final agency action.

8. In § 107.215, paragraph (a) introductory text is revised to read as follows:

§ 107.215 Application.

(a) With the exception of requirements preempted under section 105(b) of the Act (49 App. U.S.C. 1804(b)), any State, political subdivision, or Indian tribe may apply to the Associate Administrator for Hazardous Materials Safety for a waiver of preemption with respect to any requirement that the State, political subdivision, or Indian tribe acknowledges to be preempted under the Act or the regulations issued under the Act, 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—

* * * * *

9. In § 107.217, paragraphs (a) and (c) are revised to read as follows:

§ 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 for Hazardous Materials Safety within 45 days. The application filed with the Associate Administrator for Hazardous Materials Safety 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.

* * * * *

(c) The Associate Administrator for Hazardous Materials Safety 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**.

* * * * *

10. In § 107.221, paragraph (c) is revised to read as follows:

§ 107.221 Determination and order.

* * * * *

(c) The order includes a written statement setting forth the relevant facts and the legal basis for the determination. The order provides that any person aggrieved by the order may file a petition for reconsideration with the Associate Administrator for Hazardous Materials Safety.

* * * * *

§ 107.223 [Removed]

11. Section 107.223 is removed.

12. Section 107.225 is redesignated as new § 107.223 and revised to read as follows:

§ 107.223 Petition for reconsideration.

(a) Any person aggrieved by an order issued under § 107.221 may file a petition for reconsideration with the Associate Administrator for Hazardous Materials Safety. The petition must be filed within 20 days of service of the order.

(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 waiver of preemption 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.

(d) The Associate Administrator's decision constitutes final agency action.

Issued in Washington, DC, on May 4, 1992, under authority delegated in 49 CFR 1.53.

Douglas B. Ham,

Deputy Administrator.

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