

107.221 Determination.

(a) After considering the application and other relevant information received or obtained during the proceeding, the Chief Counsel issues a determination.

(b) The Chief Counsel may issue a waiver of preemption only on finding that the requirement of the State or political subdivision thereof or Indian tribe affords the public a level of safety at least equal to that afforded by the requirements of the Federal hazardous material transportation law or the regulations issued thereunder and does not unreasonably burden commerce. In determining if the requirement of the State or political subdivision thereof or Indian tribe unreasonably burdens commerce, the Chief Counsel considers:

(1) The extent to which increased costs and impairment of efficiency result from the requirement of the State or political subdivision thereof or Indian tribe.

(2) Whether the requirement of the State or political subdivision thereof or Indian tribe has a rational basis.

(3) Whether the requirement of the State or political subdivision thereof or Indian tribe achieves its stated purpose.

(4) Whether there is need for uniformity with regard to the subject concerned and if so, whether the requirement of the State or political subdivision thereof or Indian tribe competes or conflicts with those of other States or political subdivisions thereof or Indian tribes.

(c) The determination includes a written statement setting forth relevant facts and legal bases and providing that any person aggrieved by the determination may file a petition for reconsideration with the Chief Counsel.

(d) The Chief Counsel provides a copy of the determination to the applicant and to any other person who substantially participated in the proceeding or requested in comments to the docket to be notified of the determination. A copy of the determination is placed on file in the public docket. The Chief Counsel will publish the determination or notice of the determination in the Federal Register, at which time the determination becomes a final agency action.

(e) A determination under this section constitutes an administrative finding of whether a particular requirement of a State or political subdivision thereof or Indian tribe is preempted under the Federal hazardous materials transportation law, or whether preemption is waived.

[Amdt. 107-38, 61 FR 21099, May 9, 1996, as amended at 68 FR 52848, Sept. 8, 2003; 71 FR 30068, May 25, 2006]