

§ 397.203

Self-Determination and Education Act, 25 U.S.C. 450b.

Person means an individual, firm, co-partnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, or government, Indian tribe, or agency or instrumentality of any government or Indian tribe when it offers hazardous materials for transportation in commerce or transports hazardous materials in furtherance of a commercial enterprise, but such term does not include the United States Postal Service.

Political subdivision includes a municipality; a public agency or other instrumentality of one or more States, or a public corporation, board, or commission established under the laws of one or more States.

Routing agency means the State highway agency or other State agency designated by the Governor of a State, or an agency designated by an Indian tribe, to supervise, coordinate, and approve the highway routing designations for that State or Indian tribe. Any highway routing designation made by a political subdivision of a State shall be considered a designation made by that State.

Routing designation includes any regulation, limitation, restriction, curfew, time of travel restriction, lane restriction, routing ban, port-of-entry designation, or route weight restriction applicable to the highway transportation of hazardous materials over a specific highway route or portion of a route.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, or any other territory or possession of the United States designated by the Secretary.

[57 FR 44132, Sept. 24, 1992, as amended at 59 FR 51834, Oct. 12, 1994]

§ 397.203 Standards for determining preemption.

(a) Any highway routing designation established, maintained, or enforced by a State, political subdivision thereof, or Indian tribe is preempted if—

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(1) Compliance with both the highway routing designation and any requirement under the Act or of a regulation issued under the Act is not possible;

(2) The highway routing designation as applied or enforced creates an obstacle to the accomplishment and execution of the Act or the regulations issued under the Act; or

(3) The highway routing designation is preempted pursuant to § 397.69(b) of this part.

(b) [Reserved]

[57 FR 44132, Sept. 24, 1992, as amended at 59 FR 51834, Oct. 12, 1994]

§ 397.205 Preemption application.

(a) Any person, including a State, political subdivision thereof, or Indian tribe directly affected by any highway routing designation of another State, political subdivision, or Indian tribe, may apply to the Administrator for a determination of whether that highway routing designation is preempted by the Act or § 397.203 of this subpart. The Administrator shall publish notice of the application in the FEDERAL REGISTER.

(b) Each application filed under this section for a determination must:

(1) Be submitted to the Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001. Attention: Office of the Chief Counsel, Enforcement and Litigation Division (MC-CCE);

(2) Set forth a detailed description of the highway routing designation of the State, political subdivision thereof, or Indian tribe for which the determination is sought;

(3) If applicable, specify the provisions of the Act or the regulations issued under the Act under which the applicant seeks preemption of the highway routing designation of the State, political subdivision thereof, or Indian tribe;

(4) Explain why the applicant believes the highway routing designation of the State, political subdivision thereof, or Indian tribe should or should not be preempted under the standards of § 397.203; and