

If you would like to have the committee consider a written statement, please call or write: Ms. Page Richardson, Executive Secretariat, C:ES, room 3308, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Page Richardson, Program Analyst, (202) 622-3074 (6440) [Not toll-free].

Margaret Milner Richardson,
Commissioner.

[FR Doc. 93-13732 Filed 6-7-93; 2:51 pm]

BILLING CODE 4830-01-U

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice for the Federal Register.

The United States Advisory Commission on Public Diplomacy will meet in room 600, 301 4th Street, SW., on June 9, 1993, from 10:30 a.m. to 12 p.m.

The meeting will be closed to the public from 10:30 a.m.-11:15 a.m. because it will involve discussion of

classified information relating to U.S. international broadcasting policies and plans. (5 U.S.C. 552b(c)(1))

From 11:15 a.m. to 12 p.m., the Commission will meet in open session with Mr. Kent Obee, Director of USIA's Office of North African, Near East and South Asian Affairs to discuss public diplomacy programs in the Middle East and South Asia.

Please call Gloria Kalamet, (202) 619-4468, for further information.

Dated: June 3, 1993.

Joseph Duffey,
Director.

[FR Doc. 93-13588 Filed 6-8-93; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register

Vol. 58, No. 109

Wednesday, June 9, 1993

This section of the **FEDERAL REGISTER** contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 9:30 a.m., Tuesday, June 15, 1993.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, N.W., Washington, D.C. 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Request from State for Exemption under Section 701.21(h), NCUA's Rules and Regulations. Closed pursuant to exemptions (9)(A)(ii) and (9)(B).
3. Request from Credit Union to make Reserve Transfers under Section 704.11(k), NCUA's Rules and Regulations. Closed pursuant to exemptions (8) and (9)(A)(ii).
4. Delegations of Authority. Closed pursuant to exemption (2).
5. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
6. Midsession Budget Review. Closed pursuant to exemptions (2) and (9)(B).
7. Personnel Action. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,
Secretary of the Board.

[FR Doc. 93-13696 Filed 6-7-93; 12:21 pm]

BILLING CODE 7535-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 4:00 p.m., Thursday, June 17, 1993.

PLACE: Sheraton New Orleans Hotel, 500 Canal Street, New Orleans, Louisiana 70130, (504) 525-2500.

STATUS: Open.

BOARD BRIEFINGS:

1. Central Liquidity Facility Report and Report on CLF Lending Rate.
2. Insurance Fund Report.
3. Legislative Update.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Final Rule: Amendment to Part 703, NCUA's Rules and Regulations, Investment and Deposit Activities.
3. Final Rule: Amendment to Part 710, NCUA's Rules and Regulations, Voluntary Liquidation.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,
Secretary of the Board.

[FR Doc. 93-13697 Filed 6-7-93; 12:21 pm]

BILLING CODE 7535-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of June 7, 1993.

A closed meeting will be held on Tuesday, June 8, 1993, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, June 8, 1993, at 2:30 p.m., will be:

- Settlement of injunctive actions.
- Institution of administrative proceedings of an enforcement nature.
- Settlement of administrative proceedings of an enforcement nature.
- Institution of injunctive actions.
- Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Rosenblum at (202) 272-2300.

Dated: June 4, 1993.

Jonathan G. Katz,
Secretary.

[FR Doc. 93-13704 Filed 6-7-93; 1:00 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register

Vol. 58, No. 109

Wednesday, June 9, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

48 CFR Parts 201, 206, 207, 209, 215, 217, 219, 222, 223, 225, 227, 228, 231, 233, 235, 237, 239, 252, and 253

[Defense Acquisition Circular (DAC) 91-5]

Defense Federal Acquisition Regulation Supplement; Miscellaneous Amendments

Correction

In rule document 93-10967 beginning on page 28458 in the issue of Thursday, May 13, 1993, make the following corrections:

1. On page 28460, in the first column, under the heading **Item XIII—Small Business Subcontracting Plan**, in the second line, "section 902" should read "section 802".

2. On the same page, in the second column, in the seventh line, "sections 831" should read "section 831".

3. On page 28461, in the first column, under the heading **Item XXVIII—Anti-friction Bearings**, in the ninth line, "approval" should read "Approval".

4. On page 28462, in the third column, in the first and second lines, "252.15-7004" should read "252.215-7004".

5. On the same page, in the same column, in the first full paragraph, in the seventh line, insert "directly" after "handled".

219.702 [Corrected]

6. On page 28465, in the third column, section 219.702 (a)(c)(1)(A) should be designated as section 219.702 (a)(i)(A)(1).

225.7019-3 [Corrected]

7. On page 28468, in the 2d column, in section 225.7019-3 (a)(2), in the 14th line, insert "bearing" after "domestic"

235.006 [Corrected]

8. On page 28471, in the first column, section 235.006 (b)(i)(c)(1)(iii) should be designated as section 235.006 (b)(i)(C)(1)(iii).

239.7501-2 [Corrected]

9. On the same page, in the second column, in amendatory instruction 59., in the first line, "Section 239.70501-2" should read "Section 239.7501-2".

252.219-7007 [Corrected]

10. On page 28472, in the second column, in section 252.219-7007, under the heading **Alternate B (Apr 1993)**, in subparagraph (7), in the ninth line, "acknowledgement" should read "acknowledgements".

11. On the same page, in the third column, in section 252.219-7007, under the heading **Alternate C (Apr 1993)**, in subparagraph (b)(2)(i), in the first line, "payment" should read "payments".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-030-03-4210-04: GP-3-184]

Realty Action; Exchange of Public Lands; Malheur County, Oregon

Correction

In notice document 93-10326 beginning on page 26342 in the issue of Monday, May 3, 1993 make the following correction:

1. On page 26343, in the first column, in land description T. 31 S., R. 42 E., in Sec. 10, "NW 1/4 NE 1/2, S 1/2 NE 1/4, and S 1/2;" should read "NW 1/4 NE 1/4, S 1/2 NE 1/4, NW 1/4, and S 1/2;"

2. On the same page, in the same column, in land description T. 31 S., R. 42 E., in Sec. 19, in the fifth line, "N 00° 55' W" should read "N 00° 37' 55' W".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-942-03-4730-02]

Arizona; Notice of Filing of Plats of Survey

Correction

In notice document 93-10019 beginning on page 26001 in the issue of Thursday, April 29, 1993, make the following correction:

On page 26002, in the first column, in the tenth full paragraph, in the fifth line "Range 20" should read "Range 19".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 164

[CGD 84-068]

RIN 2115-AB70

Personal Flotation Device (PFD) Components

Correction

In rule document 93-11860 beginning on page 29488 in the issue of Thursday, May 20, 1993, make the following corrections:

§ 164.019-7 [Corrected]

1. On page 29495, in the third column, in § 164.019-7, paragraph (e) introductory text should read:

* * * * *

(e) *Alternate requirements.* A component that does not meet the requirements of this subchapter is eligible for acceptance if it —

* * * * *

§ 164.019-13 [Corrected]

2. On page 29496, in the first column, in § 164.019-13(b), in the second line, "on" should read "of".

BILLING CODE 1505-01-D

Register

Wednesday
June 9, 1993

Part II

Department of Transportation

Research and Special Programs
Administration

Petitions by Massachusetts and
Pennsylvania for Reconsideration of
Determination; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. PDA-1(R); Preemption Determination No. PD-1]

Petitions by Massachusetts and Pennsylvania for Reconsideration of Determination That State Bonding Requirements for Vehicles Carrying Hazardous Wastes Are Preempted by Hazardous Materials Transportation Act; Decision on Petitions for Reconsideration

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

ACTION: Decision on petitions for reconsideration of RSPA's administration determination that Maryland, Massachusetts and Pennsylvania bonding requirements for vehicles carrying hazardous wastes are preempted by the Hazardous Materials Transportation Act.

PETITIONERS: Massachusetts Department of Environmental Protection (Mass-DEP) and Pennsylvania Department of Environmental Resources (Pa-DER).

STATE LAWS AFFECTED: Annotated Code of Maryland (Md. Code Ann.) Environment § 7-252(a) and Code of Maryland Regulations (COMAR) 26.13.04.04; 310 Code of Massachusetts Regulations (CMR) 30.411; 35 Pennsylvania Statutes Annotated (Pa. Stat. Ann.) § 6018.505(e) and 25 Pennsylvania Code § 263.32.

APPLICABLE FEDERAL REQUIREMENTS: Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR parts 171-180.

MODE AFFECTED: Highway.

SUMMARY: RSPA's Associate Administrator for Hazardous Materials Safety is denying the Mass-DEP and Pa-DER petitions for reconsideration of the determination that the HMTA preempts the following State statutes and regulations which require the posting of a monetary bond as a condition for the issuance of a State permit to transport hazardous wastes:

Maryland: Md. Code Ann., Environment § 7-252(a), COMAR 26.13.04.04;
Massachusetts: 310 CMR 30.411; and
Pennsylvania: 35 Pa. Stat. Ann. § 6018.505(e), 25 Pa. Code § 263.32.

This decision constitutes RSPA's final action on the July 17, 1991 application for a preemption determination submitted by the National Solid Wastes Management Association, on behalf of

its Chemical Waste Transportation Institute (collectively "CWTI").

Any party who submitted comments in Docket No. PDA-1(R) (including the applicant) may seek judicial review in Federal district court within 60 days of this decision.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590-0001, telephone number (202) 366-4400.

I. Background

On December 11, 1992, RSPA published in the *Federal Register* the determination that the bonding requirements of Maryland, Massachusetts, and Pennsylvania, applicable to transporters of hazardous waste picked up or delivered in those States, are preempted by the HMTA. RSPA found that these requirements "create an obstacle to the accomplishment and execution of the HMTA and the HMR, and they are not 'otherwise authorized by Federal law.'" PD-1, Maryland, Massachusetts, and Pennsylvania Bonding Requirements for Vehicles Carrying Hazardous Wastes, 57 FR 58848, 58853. Part II of that decision set forth the standards for making determinations of preemption under the HMTA and the specific statutory provisions under which non-Federal requirements governing the transportation of hazardous materials are preempted. 57 FR at 58849-51. That discussion is not repeated here.

Within the 20-day time period provided in 49 CFR 107.211(a), Mass-DEP and Pa-DER filed petitions for reconsideration of the decision in PD-1. They certified that they had mailed copies of those petitions to CWTI and all others who had submitted comments, in accordance with 49 CFR 107.211(c).

The third State whose bonding requirement was considered in PD-1, Maryland, has not sought reconsideration, nor has it commented on the two petitions filed, notwithstanding the statement by Pa-DER that "Maryland's bond is intended to cover environmental remediation costs * * * and thus 'is fundamentally different from the bonding requirements of Pennsylvania and Massachusetts, * * *'."

II. Petitions for Reconsideration

The main thrust of Pa-DER's petition is that "the Pennsylvania and Massachusetts bonds are compliance bonds that may be forfeited by the State for non-compliance with law, regardless

of the presence of environmental damage" or other injury typically covered by insurance. Pa-DER argues that the bond required for transporters picking up or delivering hazardous wastes within Pennsylvania, "bears no relation to the Federal financial assurances required under 49 CFR part 387." Rather, this is an "enforcement tool selected by the Pennsylvania Legislature to encourage compliance with [Pennsylvania's] Solid Waste Management Act."

According to Pa-DER, RSPA misconstrued the "goals and purposes" of Congress, because "Congress intended that the States would administer hazardous waste transportation programs under the Resource Conservation and Recovery Act [RCRA], 42 U.S.C.A. § 6923." The Solid Waste Management Act constitutes Pennsylvania's "EPA-authorized RCRA program[]," * * * and "[n]either Congress nor EPA under RCRA attempts to limit the States' sovereign authority to determine how the State will design and implement an enforcement program." Pa-DER contends that "the ruling [in PD-1] cripples the State enforcement programs," and "[a]n unenforced program, or a poorly enforced program, would clearly defeat the Congressional goals and purposes of RCRA and HMTA, regardless of perfect consistency of State standards with Federal law." Pa-DER further asserts that RSPA lacked authority to even consider whether a "State enforcement mechanism" was preempted:

RSPA's preemption determination, however, exceeds the authority of Congress under the Commerce Clause and the authority delegated to DOT by Congress to the extent that it imposes a Federal dictate on the means that a State chooses to employ to administer a valid program to protect the public health and safety under State law. By this determination, RSPA is attempting to regulate the State itself rather than commerce among the States.

Mass-DEP similarly argues at the very end of its petition that its "bond requirement serves as a performance bond for compliance with state law, * * * the state law regarding transportation of hazardous waste picked up or delivered in Massachusetts," including the "payment of hazardous waste transportation related fees." It reasons that, because a "private entity" could require the posting of "a performance bond in connection with transportation of hazardous waste, it is unreasonable to preempt a state from requiring a performance bond for compliance with state law." Mass-DEP refers to

Congress's specific permission for a State to implement its own hazardous waste program, when authorized by EPA, as support for its contention that "a performance bond is not intended to be preempted under the HMTA obstacle test."

Both Pa-DER and Mass-DEP argue that RSPA has incorrectly interpreted the "obstacle" test in 49 App. U.S.C. 1811(a) to prohibit "any state regulation which is different than Federal agency requirements" (Mass-DEP), or "any and all differences between State and Federal standards" (Pa-DER). Supposedly RSPA has applied a "stricter" standard, such as that in the Federal Railway Safety Act, 42 U.S.C. 434, according to Mass-DEP; or the "substantively the same" provisions in 49 App. U.S.C. 1904(a)(4)(A), according to Pa-DER, which contends that RSPA has made the "term 'obstacle' essentially * * * synonymous with 'inconvenience.'"

Additional arguments advanced only by Mass-DEP are that RSPA:

(1) Disregarded the "procedural requirement" in 49 CFR 107.203(b) that an applicant for a preemption determination "must * * * specify each requirement of the [HMTA] or the [HMR] * * * with which the petitioner seeks the state requirement to be compared";

(2) Improperly looked to the "goals and purposes of HMTA," rather than the specific language of that statute and the HMR; and

(3) Failed to make a "fact-based analysis and decision" purportedly required by the obstacle test and the Administrative Procedure Act, or any "finding of fact, with regard to any safety problem posed by the Massachusetts bond requirement," but rather relied "unreasonably" on RSPA's prior inconsistency rulings discussed at 57 FR 58853-54.

III. Comments Responding to the Petitions for Reconsideration

Two parties submitted comments opposing the arguments of Pa-DER and Mass-DEP: The applicant, CWTI, and another party who submitted comments on the application, the Hazardous Materials Advisory Council (HMAC).

CWTI asserts that Pa-DER has injected a completely new issue into this proceeding, the nature of the bonding requirement as one to secure compliance or performance rather than financial responsibility. However, CWTI does not object to RSPA considering this issue. It cites Mass-DEP's original comment to characterize the Massachusetts requirement "as a 'cost of doing business,'" and states that "it is

immaterial what a state calls a bonding requirement, if in the end the result is the same." CWTI continues:

Many non-federal regulations arguably are for enforcement purposes. The "obstacle" test would be meaningless if states were permitted to avoid preemption simply by claiming that any particular requirement was necessary for enforcement.

Citing statistics purporting to show Pa-DER enforcement of bond forfeitures, plus figures on roadside inspections of trucks transporting hazardous materials and reports of hazardous materials incidents, CWTI argues that (1) bonds are not necessary to obtain compliance with substantive State hazardous waste requirements, (2) compliance with State laws is not really the issue, because these State hazardous waste programs cover through-traffic, but the bonding requirements apply only to transporters picking up or delivering hazardous wastes within the State, and (3) States have adequate enforcement mechanisms in civil and criminal penalties. CWTI contends that any State-perceived inadequacy in the Federal civil and criminal penalties under the HMTA does to justify the bonding requirements applied uniquely to transporters of hazardous wastes.

CWTI further argues that costs of doing business imposed by States can be obstacles to the accomplishment and execution of the HMTA and the HMR when those costs "frustrate the transportation of hazardous materials, [to the extent that] efficiency and safety are undermined." CWTI asserts that it had, in fact, alleged "substantial safety concerns," pointing to the statement in its application concerning the potential that "'other states will surely adopt similar provisions'" which will hinder the "'accomplishment of the (safety) objectives of the HMTA.'" Thus, it argues that potential obstacles are "sufficient to justify preemption."

CWTI notes that Mass-DEP had failed to address the earlier comments submitted by CWTI as to whether the Massachusetts bonding requirement satisfied the requirements in 49 App. U.S.C. 1811(b). That section requires that any fee imposed in connection with the transportation of hazardous materials must be "equitable" and only "used for purposes related to the transportation of hazardous materials." CWTI comments that both Mass-DEP and Pa-DER appeared to have abandoned any claim that their bonding requirements were authorized by RCRA. It also attached a copy of an October 29, 1992 letter from the EPA which it characterized as "clarifying and reaffirming the position * * * that

preemption issues arising from state hazardous waste management programs are appropriately resolved pursuant to the HMTA." CWTI contends that Mass-DEP should have raised any concerns about RSPA's procedures in the rulemaking process, rather than in its petition for reconsideration of this decision.

In its comments, HMAC asserts that the decision in PD-1 appropriately relied on the "reasoning" in earlier inconsistency rulings, and not just the "result." It considers that reliance proper on the ground that both the "obstacle" and "dual compliance" tests use in these rulings were statutorily adopted in the 1990 amendments to the HMTA. HMAC also states it found no requirement in the HMTA "to apply formal Administrative Procedure Act (APA) methodology to preemption determinations * * *." It concludes with "its belief that uniform national standards consistently applied and enforced are a key to the safe transportation of hazardous materials."

IV. Discussion

In their petitions Mass-DEP and Pa-DER question what was not previously disputed: The nature of the bonding requirements in these two States. In its initial comments on CWTI's application, Mass-DEP described its bonding regulation as "a financial assurance requirement to cover contingencies for transporters of hazardous waste who pick up or drop off such waste in Massachusetts." According to Mass-DEP, the bonds posted by these transporters "provide funds for contingencies, including events which insurance does not cover, such as willful conduct and acts of God or nature; * * *." The heading to Mass-DEP's first argument in these comments asserted that the HMTA could not preempt a RCRA-authorized State law "concerning financial assurance protection for hazardous waste transporters."

Addressing those comments, RSPA discussed: (1) The background of the Federal financial responsibility rules in 49 CFR part 387; (2) the analysis in RSPA's prior inconsistency rulings which held that States could not impose additional insurance, bonding or indemnification requirements as a precondition to the transportation of hazardous materials, and (3) Mass-DEP's attempt to distinguish these prior inconsistency rulings on the ground that they involved "vastly different facts." Nowhere did Mass-DEP argue that its bonding requirement was an entirely different kind of requirement than the Federal financial responsibility

regulations in 49 CFR part 387. Pa-DER submitted no comments on CWTI's application; its petition for reconsideration represents its first participation in this matter.

Even accepting this late characterization of the Massachusetts and Pennsylvania bonding requirements as an "enforcement tool," however, there is no basis to change RSPA's conclusion. Preemption under the HMTA comes from the effect of non-Federal requirements, not their purpose. Here, the State-mandated bond is a precondition to the transportation of hazardous materials, a substantive requirement beyond the detailed and explicit provisions of the HMR. A transporter may not pick up or deliver hazardous wastes in these States without posting this bond.

In past inconsistency rulings, RSPA has expressed clearly its conclusion that "inconsistent prior restraints on [the] transportation" of hazardous materials are preempted by the HMTA and the HMR. IR-8(A), Decision on Appeal of State of Michigan Rules and Regulations Affecting Radioactive Materials Transportation, 52 FR 13000, 13005 (April 20, 1987). See also, IR-19, Nevada Public Service Commission Regulations Governing Transportation of Hazardous Materials, 52 FR 24404, 24404 (June 30, 1987), upheld in *Southern Pac. Transp. Co. v. Public Serv. Comm'n*, 909 F.2d 352 (9th Cir. 1990). As discussed in IR-8(A):

Transportation carried out within the framework of the HMTA and the HMR is presumptively safe, and additional state or local requirements concerning matters covered by Federal law or regulation are inconsistent and thus preempted. Similarly, where the Department has examined an area otherwise within its authority to adopt regulations and has declined to regulate, state and local requirements in that area may be preempted where they have adverse effects on the Federal regulatory scheme and the transportation that occurs thereunder.

52 FR at 13005.

Throughout the years, RSPA and its predecessor agencies have examined and promulgated rules setting conditions on the transportation of hazardous materials. In PD-1, RSPA discussed at length the basis for its conclusion that bonding requirements beyond those which satisfy 49 CFR part 387 are unnecessary and an obstacle to the safe transportation of hazardous materials.

The Pa-DER and Mass-DEP petitions for reconsideration emphasize their RCRA-authorized State hazardous waste programs, but they do not address the two mandates in RCRA that (1) a State hazardous waste program must be

"equivalent to the Federal program," 42 U.S.C. 6926(b), and (2) Federal regulations applicable to transporters of hazardous waste "shall be consistent with the requirements of [the HMTA] and the regulations thereunder." 42 U.S.C. 6923. Nor do they mention that the HMTA and the HMR apply to all hazardous materials, not just hazardous wastes.

Pa-DER considers its bonding requirement to be necessary as an enforcement mechanism, and asserts that "[a]n unenforced program, or a poorly enforced program, would clearly defeat the Congressional goals and purposes of RCRA and HMTA." However, imposition of this requirement violates Congress's provision that the regulation of hazardous waste transporters under RCRA be consistent with DOT's regulation of hazardous materials transportation under the HMTA. It also disregards RSPA's specific finding that there is no need for the prior posting of a bond to enforce the HMTA and the HMR. In similar fashion, neither Congress nor the EPA has provided any bonding requirement for enforcement of RCRA. See 42 U.S.C. 6928.

There is no substance to contentions that the decision misinterpreted the "obstacle test." These bonding requirements are not preempted because they are "different" from Federal standards, but because they impose a condition which RSPA has found to be an unnecessary impediment to the safe transportation of hazardous materials. The decision in PD-1 thoroughly discussed the nature of the "obstacle test." It also addressed Mass-DEP's argument that CWTI failed to satisfy the "procedural requirement" in 49 CFR 107.203(b) to specify each requirement of the HMTA or the HMR with which the Massachusetts and Pennsylvania bonding requirement should be compared. See 57 FR at 58853.

Mass-DEP's assertion that a "private entity" could require a performance bond in a contract with its transporter, even if true, provides no support for the theory that the State may demand that all transporters of hazardous waste post a bond. The Supremacy Clause of the Constitution and the preemption provisions of the HMTA are standards against which requirements of subordinate governmental bodies are measured; they do not directly govern private contractual affairs.

RSPA cannot accept the argument that the decision in PD-1 was deficient for lack of an adequate "fact-finding process or determination." The statutory test for whether a non-Federal requirement is an "obstacle" to the

accomplishment and execution of the HMTA and the HMR includes consideration of how that requirement is "applied and enforced." As set forth above, in its initial comments Mass-DEP exercised its opportunity to fully explain its bonding requirement. It did not contradict the statements of two hazardous waste transporters as to the effect on their operations of complying with multiple State bonding requirements. Mass-DEP has now provided a different interpretation of its bonding requirement, and Pa-DER has, for the first time, stated how its requirement is "applied and enforced." In the context of all these statements, RSPA has examined the potential effects of these States' requirements and has found an "obstacle."

Pursuant to 49 App. U.S.C. 1811 (c) and (e), each of these States has been afforded (1) notice and an opportunity to submit any comments it wished; (2) the opportunity to petition for reconsideration; and (3) the right to judicial review. Due process does not require more. Nor is the Administrative Procedure Act applicable here, since the HMTA does not require RSPA to make a determination of preemption "on the record after opportunity for an agency hearing." 5 U.S.C. 554(a). See *Wong Yang Sun v. McGrath*, 339 U.S. 33 (1950), and *Gardner v. United States*, 239 F.2d 234, 238 (5th Cir. 1956).

Most importantly, preemption under the HMTA does not require RSPA to find "a safety problem posed by" the non-Federal requirement, as Mass-DEP contends. There is no reason to dispute an assertion that these States promulgated their bonding requirements in an attempt "to enhance safety in the State." *Colorado Pub. Util. Comm'n v. Harmon*, 951 F.2d 1571, 1583 (10th Cir. 1991). However, "[t]he relative importance to the State of its own law is not material * * * [citations omitted]." *Id.* Rather, as the Tenth Circuit explained:

Congress enacted [the 1990 amendments to the HMTA] to enhance safety throughout the country. To accomplish this purpose, Congress concluded that uniform standards are necessary and desirable. Uniformity and safety are not at odds. We must not balance one against the other. Rather, Congress stated unequivocally that the "Federal standards for regulating the transportation of hazardous materials" were necessary "to achieve greater uniformity and to promote the public health, welfare, and safety at all levels."

Id. (citation and footnote omitted).

Should Maryland, Massachusetts or Pennsylvania believe that its bonding requirement "affords an equal or greater level of protection to the public" than the HMTA and the HMR, and "does not

reasonably burden commerce," it may apply for a waiver of preemption in accordance with 49 App. U.S.C. 1811(d).

V. Ruling

For the reasons stated above, the Mass-DEP and Pa-DER petitions for reconsideration are denied. This decision incorporates and reaffirms the determination set forth at 57 FR 58855 that:

To the extent that they impose bonding requirements on transporters of hazardous wastes regulated by the HMR, the following State laws and regulations are preempted by

the HMTA, 49 App. U.S.C. 1811(a)(2), because they create an obstacle to the accomplishment and execution of the HMTA and the HMR, and they are not "otherwise authorized by Federal law":

Maryland: Md. Code Ann., Environment § 7-252(a) and COMAR 26.13.04.04; Massachusetts: 310 CMR 30.411; and Pennsylvania: 35 Pa. Stat. Ann. § 6018.505(e) and 25 Pa. Code § 263.32.

VI. Final Agency Action

In accordance with 49 CFR 107.211(d), this decision constitutes RSPA's final agency action on CWTI's application for a determination of preemption as to the above-specified

Maryland, Massachusetts and Pennsylvania bonding requirements for transporters of hazardous wastes. Any party to this proceeding may seek review of this determination "by the appropriate district court of the United States * * * within 60 days after such decision becomes final." 49 App. U.S.C. 1811(e).

Issued in Washington, DC on June 2, 1993.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 93-13507 Filed 6-8-93; 8:45 am]

BILLING CODE 4910-60-M