The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E8–9860 Filed 5–5–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2005–27954]

Pipeline Safety: Meeting of the Technical Pipeline Safety Standards Committee

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT).

ACTION: Notice of advisory committee meeting.

SUMMARY: This notice announces a public meeting of PHMSA's Technical Pipeline Safety Standards Committee (TPSSC). The committee will meet to vote on two proposed rules; (1) Standards for Increasing the Maximum Allowable Operating Pressure for Gas Transmission Pipelines and, (2) Pipeline Safety: Polyamide-11 (PA–11) Plastic Pipe Design Pressures.

DATES: The meeting will be held on Tuesday, June 10, 2008, from 1 p.m. to 5 p.m. EDT.

ADDRESSES: The Committee members will participate by telephone conference call. Members of the public may attend the meeting at the U.S. Department of Transportation, 1200 New Jersey Avenue, SE., East Building, 2nd Floor, Room E27 302, in Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For additional information regarding this meeting, please contact Kay McIver at 202 366–0113, or by e-mail at *kay.mciver@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Meeting Details

Members of the public may attend and make a statement during the meeting. If you plan to make a statement during the advisory committee meeting, please notify the names contact under **FOR FURTHER INFORMATION CONTACT** by May 30, 2008. Please note that the meeting's presiding officer may deny a nonscheduled request to make a statement and may also limit the time of any speaker.

Privacy Act Statement: Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, please contact Kay McIver at 202 366–0113 by May 30, 2008.

II. Committee Background

The TPSSC is a statutorily mandated advisory committee that advises PHMSA on proposed safety standards, risks assessments, and safety policies for natural gas pipelines. The TPSSC was established under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1) and the pipeline safety law (49 U.S.C. Chap. 601). The committee consists of 15 members—with membership evenly divided among the Federal and State government, the regulated industry, and the general public. The TPSSC advises on technical feasibility, practicability, and cost-effectiveness of each proposed pipeline safety standard.

III. Agenda

The agenda for the meeting will include discussions and votes on two notices of proposed rulemaking.

1: Standards for Increasing the Maximum Allowable Operating Pressure for Gas Transmission Pipelines. (73 FR 13167: Mar 12, 2008).

2: Pipeline Safety: Polyamide–11 (PA–11) Plastic Pipe Design Pressures. (73 FR 1307: Jan 8, 2008).

Authority: 49 U.S.C. 60102, 60115; 60118.

Issued in Washington, DC on April 30, 2008.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. E8–9930 Filed 5–5–08; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2007–28444 (PDA–32(R)]

Maine Department of Environmental Protection Requirements on Transportation of Cathode Ray Tubes

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: Interested parties are invited to comment on an application by the Electronic Industries Alliance for an administrative determination as to whether Federal hazardous material transportation law preempts requirements of the Maine Department of Environmental Protection on the transportation of cathode ray tubes and glass removed from cathode ray tubes.

DATES: Comments received on or before June 20, 2008, and rebuttal comments received on or before August 4, 2008, will be considered before an administrative determination is issued by PHMSA's Chief Counsel. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and all comments received may be reviewed in the Docket Operations Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The application and all comments are available on the U.S. Government Regulations.gov Web site: *http://www.regulations.gov.*

Comments must refer to Docket No. PHMSA–2007–28444 and may be submitted to the docket in writing or electronically. Mail or hand deliver three copies of each written comment to the above address. If you wish to receive confirmation of receipt of your comments, include a self-addressed, stamped postcard. To submit comments electronically, log onto the U.S. Government Regulations.gov Web site: *http://www.regulations.gov.* Use the Documents section of the home page and follow the instructions for submitting comments.

A copy of each comment must also be sent to (1) Aaron H. Goldberg, Esq., Beveridge & Diamond, 1350 I Street, NW., Suite 700, Washington, DC 20005–3311, counsel for the Electronic Industries Alliance, and (2) Ms. Stacy Ladner, Maine Department of

Environmental Protection, 17 State House Station, Augusta, ME 04333–0017. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: ''I certify that copies of this comment have been sent to Mr. Goldberg and Ms. Ladner at the addresses specified in the **Federal Register**.'')

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (70 FR 19477–78), or you may visit *http://www.dot.gov.*

A list and subject matter index of hazardous materials preemption cases, including all inconsistency rulings and preemption determinations, are available through the home page of PHMSA's Office of Chief Counsel, at *http://phmsa-atty.dot.gov.* A paper copy of this list and index will be provided at no cost upon request to Mr. Hilder, at the address and telephone number set forth in **FOR FURTHER INFORMATION CONTACT** below.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Zone E26 (PHC–10), 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone No. 202–366–4400; facsimile No. 202–366–7041.

SUPPLEMENTARY INFORMATION:

I. Application for a Preemption Determination

The Electronic Industries Alliance (''Alliance'') has applied for a determination that Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, preempts certain requirements of the Maine Department of Environmental Protection (''MDEP'') on the transportation of cathode ray tubes (''CRTs'') and glass removed from CRTs (''CRT glass'') destined for reuse, repair, or recycling. The Alliance states that, under regulations of the Environmental Protection Agency (EPA), these CRTs and CRT glass are not considered ''solid wastes'' and, because a Uniform Hazardous Waste Manifest is not required, are not classified as ''hazardous wastes'' under the HMR. *See* 49 CFR 171.8 (definition of ''hazardous waste'' for purposes of the HMR).

In its application, the Alliance refers to EPA's recent rulemaking on ''Modification of the Hazardous Waste Program; Cathode Ray Tubes,'' in which EPA explained that CRTs are ''vacuum tubes, made primarily of glass, which constitute the video display components of televisions and computer monitors'' as well as other ''medical, automotive [and] oscilloscope'' appliances. Notice of Proposed Rulemaking, 67 FR 40508, 40509 (June 12, 2002). ''CRTs are built of a specialized glass that often contains lead.'' *Id.* EPA explained that, in general, black and white monitors (or ''monochrome CRTs'') do not have sufficient lead to meet the toxicity characteristic for a hazardous waste under EPA's regulations, but the more ''significant quantities of lead [used] to make color cathode ray tubes'' exceed the ''toxicity characteristic regulatory level of 5 milligrams per liter that is used to classify lead-containing wastes as hazardous (40 CFR 261.24(b)).'' 67 FR at 40510.

EPA's July 28, 2006 final rule, which became effective on January 29, 2007, did not affect the existing exemptions from Federal hazardous waste management requirements for ''CRTs from households'' (*see* 40 CFR 261.4(b)(1)) and ''[n]on-residential generators of less than 100 kilograms (about 220 pounds) of hazardous waste in a calendar month'' who meet the conditions in 40 CFR 261.5. 71 FR 42928, 42929. EPA also stated that the rule did not affect ''persons who send unused CRTs for recycling [who] are not subject to RCRA regulations'' because ''EPA does not regulate unused commercial chemical products that are reclaimed.'' *Id. See also* the discussion at 67 FR at 40511. EPA has provided that, unless used CRTs or CRT glass are being disposed or speculatively accumulated (as defined in 40 CFR 261.1(c)(8)), none of the following are solid or hazardous wastes:

—Used, intact CRTs sent for recycling within the United States. 40 CFR 261.4(a)(22)(i). If exported for recycling, the exporter must notify the receiving country through EPA; the receiving country must consent to the intended export; and an Acknowledgement of Consent to Export CRTs must accompany the shipment. 40 CFR 261.4(a)(22)(ii), 261.40.

—Used, broken CRTs sent for recycling within the United States which are transported in a container (including a vehicle) constructed, filled, and closed to minimize releases of CRT glass to the environment. The container must be labeled ''Do not mix with other glass materials'' and one of the following: ''Used cathode ray tube(s)-contains leaded glass'' or ''Leaded glass from televisions or computers.'' 40 CFR 261.4(a)(22)(iii), 261.39(a)(1)–(4). If these materials are exported for recycling, the exporter must notify the receiving country through EPA; the receiving country must consent to the intended export; and an Acknowledgement of Consent to Export CRTs must accompany the shipment. 40 CFR 261.39(a)(5).

—CRT glass destined for recycling at a CRT glass manufacturer or a lead smelter after processing. 40 CFR 261.4(a)(22)(iv), 261.39(c).

EPA also stated in the preamble to its July 28, 2006 final rule that states which are authorized under ''section 3006 of RCRA [42 U.S.C. 6926] * * * to administer and enforce a hazardous waste program within the state in lieu of the federal program * * * are not required to adopt federal regulations * * * that are considered less stringent than previous federal regulations.'' 71 FR at 41943. Accordingly, ''States currently regulating CRTs as hazardous waste, including under the universal waste rule, would not have to amend their programs, since their programs are more stringent than the federal requirements.'' *Id.* at 41944. EPA discussed scenarios ''when used CRTs or processed CRT glass [are] transported to and from states with different regulations governing these wastes.'' *Id.* It stated that:

—If a CRT or CRT glass is outside the ''definition of solid waste in the state where it is generated'' but being transported to a state which regulates these materials as hazardous waste, a manifest is not required and the transporter need not have an EPA identification number

for the portion of the trip through the originating state, and any other states where the waste is excluded. * * * However, for the portion of the trip through the receiving state, and any other states that do not consider the waste to be excluded, the transporter must have a manifest, except as provided by the universal waste rules, and must move the waste in compliance with 40 CFR Part 263.

Id.

—Conversely, if a CRT or CRT glass is regulated as hazardous waste in the generator's state and shipped to a state where it is excluded from the definition of solid waste,

the material must be moved by a hazardous waste transporter, while the material is in the generator's state or any other states where it is not excluded, except as provided by the universal waste rules. The initiating facility would complete a manifest and give copies to the transporter as required under 40 CFR 262.23(a). Transportation within the receiving state and any other states that exclude the material would not require a manifest and need not be transported by a hazardous waste transporter. However, it is the initiating facility's responsibility to ensure that the manifest is forwarded to the

receiving facility by the transporter and sent back to the initiating facility by the receiving facility (see 40 CFR 262.23 and 262.41).

Id.

On October 25, 2006, the Alliance (which previously submitted comments in EPA's rulemaking proceeding) petitioned the United States Court of Appeals for the District of Columbia for review of EPA's July 28, 2006 final rule. *Electronic Industries Alliance* v. *U.S. Environmental Protection Agency,* Case No. 06–1359. In its Preliminary and Non-Binding Statement of Issues, the Alliance stated that the issues to be raised in this case include ''[w]hether EPA's determination on transport of CRTs and CRT glass within and between states was contrary to the Hazardous Materials Transportation Act ('HMTA') and its implementing regulations, which provide that federal requirements for transport of hazardous materials, including hazardous wastes, generally preempt state requirements that differ.'' On May 18, 2007, that Court granted the Alliance's motion to hold the case in abeyance pending further order of the Court and directed the parties ''to file motions to govern future proceedings in this case within 30 days of the completion of the Department of Transportation's proceedings'' on the Alliance's application for a preemption determination.

In summary, the Alliance's application challenges MDEP's requirements for (1) Classification of CRTs, under which ''whole, intact, and unbroken'' CRTs are classified as ''universal waste'' and broken CRTs and CRT glass are classified as ''hazardous wastes''; (2) a manifest or other shipping paper, (3) specific marking or labeling of shipping containers, and (4) a transporter to obtain a license to transport broken CRTs and CRT glass as ''hazardous wastes'' or meet other conditions (without needing to obtain a license) to transport intact CRTs as ''universal waste.'' Two of these conditions are discussed in the Alliance's application: the transporter must maintain liability insurance in an ''appropriate'' amount (with specified minimums), and the transporter must have a plan (kept on the vehicle) for the cleanup of any discharge.

Appendix A to this notice sets forth the text of the Alliance's application, a list of the 21 attachments to the application, and Attachment No. 1 showing in chart form the requirements the Alliance contends are preempted. The complete application including all attachments is available in the Docket Operations Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, and at the U.S. Government Regulations.gov Web site: *http://www.regulations.gov.* A copy of the Alliance's comments in the EPA rulemaking, its petition for review in the Court of Appeals, its motion to hold the case in abeyance, and the Court's May 18, 2007 Order are also in the electronic docket of this matter and available on-line.

II. Federal Preemption

Section 5125 of 49 U.S.C. contains express preemption provisions relevant to this proceeding. As amended by Section 1711(b) of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2320), 49 U.S.C. 5125(a) provides that a requirement of a state, political subdivision of a state, or Indian tribe is preempted—unless the non-Federal requirement is authorized by another Federal law or DOT grants a waiver of preemption under § 5125(e)—if

(1) Complying with a requirement of the State, political subdivision, or tribe and a requirement of this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security is not possible; or

(2) The requirement of the State, political subdivision, or tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security.

These two paragraphs set forth the ''dual compliance'' and ''obstacle'' criteria that PHMSA's predecessor agency, the Research and Special Programs Administration (RSPA), had applied in issuing inconsistency rulings (IRs) prior to 1990, under the original preemption provision in the Hazardous Materials Transportation Act (HMTA). Pub. L. 93–633 § 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz,* 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.,* 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides a non-Federal requirement concerning any of the following subjects is preempted—unless authorized by another Federal law or DOT grants a waiver of preemption—when the non-Federal requirement is not ''substantively the same as'' a provision of Federal hazardous material transportation law, a regulation prescribed under that law, or a hazardous materials security regulation or directive issued by DHS:

(A) The designation, description, and classification of hazardous material.

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) The designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material.[1]

To be ''substantively the same,'' the non-Federal requirement must conform ''in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted.'' 49 CFR 107.202(d).[2]

The 2002 amendments and 2005 reenactment of the preemption provisions in 49 U.S.C. 5125 reaffirmed Congress's long-standing view that a single body of uniform Federal regulations promotes safety (including security) in the transportation of hazardous materials. More than thirty years ago, when it was considering the HMTA, the Senate Commerce Committee ''endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.'' S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When Congress expanded the preemption provisions in 1990, it specifically found:

(3) Many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions

[1] Subparagraph (E) was editorially revised in Sec. 7122(a) of the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005, which is Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Pub. L. 109–59, 119. Stat. 1891 (Aug. 10, 2005).

[2] Additional standards apply to preemption of non-Federal requirements on highway routes over which hazardous materials may or may not be transported and fees related to transporting hazardous material. *See* 49 U.S.C. 5125(c) and (f). *See also* 49 CFR 171.1(f) which explains that a ''facility at which functions regulated under the HMR are performed may be subject to applicable laws and regulations of state and local governments and Indian tribes.''

and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) Because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) In order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Pub. L. 101–615 § 2, 104 Stat. 3244. (In 1994, Congress revised, codified and enacted the HMTA ''without substantive change,'' at 49 U.S.C. Chapter 51. Pub. L. 103–272, 108 Stat. 745 (July 5, 1994).) A United States Court of Appeals has found uniformity was the ''linchpin'' in the design of the Federal laws governing the transportation of hazardous materials. *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571, 1575 (10th Cir. 1991).

III. Preemption Determinations

Under 49 U.S.C. 5125(d)(1), any person (including a state, political subdivision of a state, or Indian tribe) directly affected by a requirement of a State, political subdivision or tribe may apply to the Secretary of Transportation for a determination whether the requirement is preempted. The Secretary of Transportation has delegated authority to PHMSA to make determinations of preemption, except for those concerning highway routing (which have been delegated to the Federal Motor Carrier Safety Administration). 49 CFR 1.53(b).

Section 5125(d)(1) requires notice of an application for a preemption determination to be published in the **Federal Register**. Following the receipt and consideration of written comments, PHMSA publishes its determination in the **Federal Register**. *See* 49 CFR 107.209(c). A short period of time is allowed for filing of petitions for reconsideration. 49 CFR 107.211. A petition for judicial review of a final preemption determination must be filed in the United States Court of Appeals for the District of Columbia or in the Court of Appeals for the United States for the circuit in which the petitioner resides or has its principal place of business, within 60 days after the determination becomes final. 49 U.S.C. 5127(a).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution, or statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law, or whether a fee is ''fair'' within the meaning of 49 U.S.C. 5125(f)(1). A state, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon,* above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), PHMSA is guided by the principles and policies set forth in Executive Order No. 13132, entitled ''Federalism.'' 64 FR 43255 (Aug. 10, 1999). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence Congress intended to preempt state law, or the exercise of state authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which PHMSA has implemented through its regulations.

IV. Public Comments

All comments should be directed to whether 49 U.S.C. 5125 preempts the MDEP requirements concerning (1) The classification of CRTs and CRT glass for transportation for reuse or recycling, (2) a manifest or other shipping document to accompany shipments of CRTs and CRT glass for reuse or recycling, (3) marking or labeling containers of CRTs or CRT glass being transported for reuse or recycling, and (4) the license a transporter must obtain to transport broken CRTs and CRT glass or the other conditions a transporter must meet (without needing to obtain a license) to transport intact CRTs. Comments should set forth in detail the manner in which these requirements are applied and enforced with respect to shipments of CRTs (both used and unused) and CRT glass to, from, through, and within Maine.

Comments should specifically address whether—and, if so, the manner in which—the preemption criteria discussed in Part II, above, apply to materials which are not regulated as hazardous materials under the HMR, and whether the Maine requirements purport to classify or regulate CRTs or CRT glass as a ''hazardous material'' regulated under the HMR. In the preamble to a final rule on ''Infectious Substances,'' 60 FR 48780, 48784 (Sept. 20, 1995), RSPA stated that:

The HMR do not, however, preempt non-Federal requirements imposed on the transportation of materials that are not hazardous materials as defined in the HMR. One exception to this general principle, however, would be where a non-Federal law or regulation requires a method of hazard communication for non-hazardous materials sufficiently similar to that prescribed by the HMR for a hazardous material that the regulation is ''tantamount to the creation of an additional class of hazardous materials with its own marking requirements.'' 59 FR 6186, 6192 (Feb. 9, 1994) (preemption determination PD–6). Short of this type of circumstance (*de facto* classification of materials as hazardous materials), however, State, local and tribal regulation of materials that are not hazardous materials is not subject to preemption by the Federal hazmat law.

Compare PD–6(R), ''Michigan Marking Requirements for Vehicles Transporting Hazardous and Liquid Industrial Wastes,'' 59 FR at 6192 (a State requirement to mark ''licensed industrial waste hauling vehicle'' on each side of the vehicle is preempted), with PD–7(R), ''Maryland Certification Requirements for Transporters of Oil or Controlled Hazardous Substances,'' 59 FR 28913, 28914 (June 3, 1994) (''Operator requirements for the transport of oils that are not hazardous materials are not subject to preemption by the HMTA.'').

The existing regulatory scheme for use of the Uniform Hazardous Waste Manifest was developed by EPA and DOT in their coordinated final rules published in the **Federal Register** on March 20, 1984, 49 FR 10490, 10507. In the preamble to its final rule, EPA stated that:

The Uniform Hazardous Waste Manifest form has been designed to allow the listing of both federally-regulated wastes and wastes regulated solely by the States. In order to distinguish between federally-regulated wastes and other wastes, as required by DOT regulations (49 CFR 172.201(a)(1)), generators can add (or States may overprint on the form) a hazardous materials (HM) column in the space for the U.S. DOT Description. When a waste shipment consists of both federally regulated-materials and State-regulated wastes, the HM column, if added, must be checked or marked for only those line entries which are regulated under federal law as hazardous wastes or hazardous materials.

49 FR at 10495. As RSPA discussed in its August 8, 2001 notice of proposed rulemaking to revise requirements in the HMR regarding use of the Uniform Hazardous Waste Manifest, ''a generator may use the uniform manifest form for wastes regulated solely by a State, but a State may not 'impose enforcement sanctions on a transporter during transportation of the shipment for failure of the form to include preprinted

information or optional State information items.' 40 CFR 217.10(h)(2).'' 66 FR 41490, 41491.

In a May 9, 1996 interpretation letter addressing certain material regulated as a waste by the State of Utah, RSPA confirmed that the Uniform Hazardous Waste Manifest form ''was specifically designed to allow the listing of both federally regulated wastes and wastes solely regulated by a State,'' but that a State waste must not be described on the manifest in a manner that indicates or implies that the material is a DOT-regulated hazardous material. RSPA also explained in that letter (a copy of this letter has been placed in the public docket of this proceeding), that ''the word 'waste' may not precede the basic description for a DOT regulated hazardous material when the material is not an EPA hazardous waste'' because ''use of the word 'waste' preceding the basic description indicates that the material is a federally regulated waste.'' RSPA stated that,

> If the material is not subject to the HMR as a hazardous material or a federally regulated hazardous waste, ''Utah Regulated Only,'' ''non-RCRA waste'' or ''Utah only waste'' may be entered in ''block 11 of the UHWM document following the name used to identify State only regulated waste. ''Utah Hazardous waste, liquid or solid, n.o.s.'' is also an acceptable shipping name for a Utah regulated waste.

Accordingly, it is important for commenters to explain and address the specific manner in which MDEP regulates the transportation of CRTs and CRT glass.

Issued in Washington, DC on April 23, 2008.

David E. Kunz,

Chief Counsel.

Appendix A

Application of the Electronic Industries Alliance for a Determination That the Requirements for Transportation of Cathode Ray Tubes Issued by the Maine Department of Environmental Protection Are Preempted By the Federal Hazardous Materials Transportation Law

May 8, 2007

The Electronic Industries Alliance (''EIA'' or ''the Alliance'') hereby applies to the Chief Counsel of the Pipeline and Hazardous Materials Safety Administration (''PHMSA'') within the U.S. Department of Transportation (''DOT'' or ''the Department'') for a determination that certain requirements imposed by the Maine Department of Environmental Protection (''MDEP'') are preempted by the Federal Hazardous Materials Transportation Law (''Federal hazmat law'') and the Hazardous Materials Regulations (''HMR'').

In particular, EIA is seeking a preemption determination with respect to the Maine Hazardous Waste Management Regulations (''Maine Regulations'') to the extent that they impose requirements on the transportation of cathode ray tubes (''CRTs'') and glass removed from CRTs (''CRT glass'') that do not qualify as hazardous wastes or hazardous materials under the HMR and therefore are not subject to federal hazardous material transportation requirements.[1] This Application is being submitted pursuant to 49 U.S.C. 5125(d)(l) and 49 CFR 107.203.

I. Introduction

The Maine Regulations impose stringent requirements on the transport of used CRTs and CRT glass, which vary depending upon whether the CRTs are broken or intact. *See generally* Section II below. Broken CRTs and CRT glass are subject to the full state requirements for transport of hazardous wastes, including hazardous waste manifesting, labeling/marking of the wastes, licensing of the transporters, and related transporter requirements (e.g., insurance and emergency response plans). Intact CRTs are subject to reduced ''universal waste'' requirements under the Maine Regulations. However, even under these requirements, intact CRTs must be transported with specific shipping papers, labels, and markings, and transporters must comply with a number of requirements (again including insurance and emergency response plan requirements).

In contrast, the HMR generally does not impose any requirements on the transport of CRTs and CRT glass (regardless of whether they are broken or intact). *See generally* Section III below. Such materials are not hazardous wastes under the HMR because they have been conditionally excluded from the definition of solid and hazardous waste by the U.S. Environmental Protection Agency (''EPA'' or the ''the Agency''), as long as they are destined for recycling. CRTs and CRT glass also do not meet any other criteria for classification as hazardous materials under the HMR and therefore generally are not subject to any requirements under the HMR.

Because the Maine Regulations impose requirements on the transport of CRTs and CRT glass that are not HMR-regulated, the state rules are subject to preemption. *See generally* Section IV below. The Federal hazmat law mandates that state requirements for shipping papers and marking/labeling be ''substantively the same'' as the HMR requirements. The Maine rules for CRTs and CRT glass do not meet this standard. The Federal hazmat law also requires that state rules for the designation and classification of hazardous materials must be ''substantively the same'' as the corresponding HMR rules. Because the Maine rules classify CRTs and CRT glass in a different way than the HMR, the state classification and all rules based on that classification are preempted. All of the Maine rules for CRTs and CRT glass are preempted in this way. They are also preempted because they cause confusion, interfere with the flow of trade, and otherwise serve as an obstacle to the purposes of the Federal hazmat law. These conclusions are not affected by the fact that EPA has ''authorized'' some of the Maine hazardous waste regulations for the purposes of another statute, because the state transport requirements for CRTs and CRT glass are not part of the authorized program and, in any event, preemption under the Federal hazmat law operates independently of any such authorization.

EIA represents a wide range of companies that are directly affected by the Maine Regulations at issue, because these companies manufacture, sell, or distribute CRTs, use CRTs, and collect/recycle used CRTs and/or CRT glass. *See generally* Section V below. Accordingly, EIA requests that DOT issue a determination that the Maine Regulations are preempted by the Federal hazmat law and the HMR to the extent that they impose requirements on the transport of CRTs and CRT glass that are not hazardous wastes or hazardous materials under the HMR. A summary of the key Maine requirements that are preempted and the reasons why such requirements are preempted is provided in Attachment 1.

II. State Requirements for Which a Preemption Determination is Requested

Under the Maine Regulations, shipments of used CRTs and CRT glass are subject to a variety of state transportation requirements. As discussed below, such materials generally qualify as hazardous wastes under the MDEP rules, and those rules impose stringent requirements on the transportation of hazardous wastes. Accordingly, broken CRTs and CRT glass must be shipped in accordance

[1] A CRT is generally defined as ''a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device,'' such as a television or computer monitor. *See,* e.g., 71 FR 42,928, 42,947 (July 28, 2006) (to be codified at 40 CFR 260.10).

with Maine's hazardous waste standards. The Maine Regulations designate intact CRTs as ''universal wastes'' which are not subject to the general rules for hazardous waste transport. However, the state regulations impose significant alternative requirements for transportation of such wastes. Each of these points is discussed separately below.

A. Used CRTs and CRT Glass Generally Qualify as Hazardous Wastes Under the Maine Regulations

The Maine Regulations define ''waste'' as ''any useless, unwanted or discarded substance or material, whether or not such substance or material has any other or future use * * * [including] materials which are used in a manner constituting disposal, burned for energy recovery, reclaimed or accumulated speculatively.'' *See* 06 096 Code Me. R. ch. 850, § 3(A)(2) (hereinafter, references to the Maine Regulations (''Me. Regs.'') will include only the chapter and section number within the title 06 096).[2] Used CRTs and CRT glass clearly can qualify as wastes under this definition. For example, if a user of CRT computer monitors decides to upgrade to flat-panel displays and ships the CRTs to a recycler for recovery of lead and/or glass, the CRTs clearly are ''unwanted'' materials sent to be ''reclaimed,'' and thus would be classified as wastes under the Maine Regulations.[3]

Used CRTs and CRT glass that qualify as wastes in Maine also generally qualify as hazardous wastes under the Maine Regulations. Under the Maine Regulations, a waste is defined as a hazardous waste if ''[i]t exhibits any of the characteristics of hazardous waste identified [by MDEP].'' *See* Me. Regs., ch. 850, § 3(A)(2)(a)(ii)c. One such characteristic is the characteristic of toxicity, which specifies that a waste is hazardous if, when tested using the Toxicity Characteristic Leaching Procedure (''TCLP''), it yields an extract that contains one or more hazardous constituents (e.g., lead) at levels above specified regulatory levels. *See* Me. Regs., ch. 850, § 3(B)(5). Color CRTs commonly exhibit the toxicity characteristic due to the fact that they contain substantial amounts of leachable lead. *See,* e.g., 71 FR at 42930 (''most color CRTs leach lead in the TCLP test at concentrations above the TC [toxicity characteristic] regulatory level'').[4] Accordingly, when such CRTs become wastes, they are also hazardous wastes. Similarly, because the leachable lead is contained primarily in the CRT glass,[5] when such glass becomes a waste, it also is subject to regulation as a hazardous waste in Maine. Monochrome CRTs generally do not exhibit the TC and thus are not hazardous wastes. *See,* e.g., 71 FR at 42931 (''black and white monitors do not generally fail the TC''). Therefore, this Application focuses on color CRTs. To avoid the need to distinguish continuously between color and monochrome CRTs, we generally use the term ''CRTs'' to refer only to CRTs that exhibit the TC (*i.e.,* color CRTs).

B. The Maine Regulations Impose Numerous Stringent Requirements on Transportation of Hazardous Wastes

Under the Maine Regulations, shipments of hazardous wastes generally are subject to a variety of stringent standards. The key requirements for hazardous waste transporters are set forth in Chapter 853, while the predominant shipping paper requirements are set forth in Chapter 857. Additional transport-related requirements for hazardous wastes are set forth in other parts of the Maine Regulations. *See, e.g.,* Me. Regs., ch. 851, §§ 7 and 8 (transportation and pretransportation requirements for hazardous waste generators). For purposes of the current discussion, we focus primarily on three sets of state hazardous waste transportation requirements: (1) The hazardous waste manifesting requirements, (2) the hazardous waste labeling/marking requirements, and (3) the licensing requirements for hazardous waste transporters.

1. Maine Hazardous Waste Manifesting Requirements

The Maine Regulations mandate that shipments of hazardous wastes must be accompanied by a Uniform Hazardous Waste Manifest (''Manifest''). *See, e.g.,* Me. Regs., ch. 857, § 8(A)(2) (''A transporter of hazardous waste shall * * * [e]nsure that [a] manifest accompanies the hazardous waste''). The state regulations include a number of Manifest-related requirements which apply to the generators of hazardous wastes, transporters, and owners and operators of hazardous waste facilities. *See generally* Me. Regs., ch. 857. Generators, for example, are required to prepare a Manifest for each shipment using the prescribed form and including specified information. *See* Me. Regs., ch. 857, §§ 5 and 7.[6] The generators also must keep a signed copy of the Manifest, send copies to the generating and receiving states, and provide the original and additional copies to the transporter. *See* Me. Regs., ch. 857, § 7(A). The transporter is required to keep the Manifest with the hazardous waste and obtain a signature from the receiving facility upon arrival. *See* Me. Regs., ch. 857, § 8(A). The transporter must keep a copy of this signed Manifest and provide the original and copies to the owner or operator of the receiving facility. *Id.* The owner/operator likewise must keep a copy of the completed Manifest and send copies to the generator, the generating state, and the destination state. *See* Me. Regs., ch. 857, § 9(A)(3). If the generator does not receive a completed Manifest from the owner/operator in a timely fashion, the generator must notify MDEP and/or take actions to resolve the situation. *See* Me. Regs., ch. 857, §§ 7(E)–(H).

[2] The full text of the relevant Maine Regulations, including all of the regulations cited by EIA in this document, is provided in Attachments 2 through 6. These and all other attachments are incorporated by reference as an integral part of this Application. The regulations are also readily available to the public online at *http://www.maine.gov/dep/rwm/rules/index.htm.*

[3] Recycling for recovery of lead and/or glass is a common method for managing used CRTs. *See,* e.g, 71 FR at 42929 (''Many CRTs that cannot be reused are sent for recycling, which consists of disassembly to recover valuable materials from the CRTs, such as lead or glass.''). CRTs recycled in this way are being ''reclaimed,'' as that term is used in the Maine definition of waste. *See* Me. Regs., ch. 850, 3(A)(2), Note (''It is intended that the term[] 'materials which are * * * reclaimed. * * *' should include all materials covered by [that term] in 40 CFR [Part] 261[ ]''); 40 CFR 26l.l(c)(4) (''A material is 'reclaimed' if it is processed to recover a usable product. * * * Examples [include] recovery of lead values from spent batteries.'').

[4] Even though the cited EPA statement regarding the characteristics of CRTs was made in the context of the federal TC, it applies with equal force under the Maine TC. The federal and state TCs use the same TCLP test. *Compare* 40 CFR 261.24 *with* Me. Reg., ch. 850, § 3(B)(5), Appendix II (incorporating the TCLP). The two TCs also use the same regulatory limits for lead and other metals. *Compare* 40 CFR 261.24, Table 1 *with* Me. Regs., ch. 850, § 3(B)(5), Table 1.

[5] *See* 71 FR at 42930 (''Manufacturers generally employ significant quantities of lead in the glass used to make color CTRs.'').

[6] The Maine Regulations specify that, at least in some cases, an MDEP-approved Manifest form must be utilized and ''all state-optional information required by the manifest form'' must be provided. *See* Me. Regs., ch. 857, § 5(C). EPA, however, has recently issued a new Manifest form which is intended to supersede all state Manifest forms, including Maine's, and does not provide for state-optional information to be included on the form. *See* 70 FR 10776, 10785 (March 4, 2005) (''all fields set out in this rule's revised form are mandatory. * * * When the revised form is in use * * * there will no longer be [state] optional fields''). MDEP has issued guidance directing generators to use the new federal Manifest form instead of the form previously approved for use in Maine. *See http://www.maine.gov/dep/rwm/hazardouswaste/guidanceuniform.htm* (copy provided in Attachment 7). However, MDEP has stated that when this form is used to ship CRTs, ''item counts of the waste must be supplied in Item 14 [of the form].'' *Id.*

2. Maine Hazardous Waste Labeling/Marking Requirements

The Maine Regulations also require that packages of hazardous wastes be labeled and marked in certain ways for transportation. *See* Me. Regs., ch. 851, § 8(A) (''Before a generator removes or allows the removal of hazardous waste from the site of its generation, he shall [comply with specified labeling and marking requirements]''); Me. Regs., ch. 853, § 8(G) (''A [transporter] shall not accept for transport or transport hazardous wastes which are unlabeled''). Some of the state labeling/marking requirements simply mandate compliance with any applicable provisions of the HMR. *See* Me. Regs., ch. 851, §§ 8(A)(2)–(3).[7] However, the MDEP rules go further and require that ''each container of 110 gallons or less used in [hazardous waste] transportation'' be marked with the words ''HAZARDOUS WASTE—Federal Law Prohibits Improper Disposal'' and related information (e.g., the name and address of the generator, the relevant Manifest number, and government contact information). *See* Me. Regs., ch. 851, § 8(A)(4).

3. Maine Hazardous Waste Transporter Licensing Requirements

Under the Maine Regulations, transporters of hazardous wastes are generally required to have a transporter license issued by MDEP. *See* Me. Regs., ch. 853, § 4(A)(l) (''No person shall * * * [f]unction as a [hazardous waste] transporter without a transporter license issued by the Department''); Me. Regs., ch. 851, § 7(A) (''A generator shall not offer hazardous waste in any quantity to a transporter who is not licensed by the State of Maine to transport hazardous waste nor shall he transport the waste himself without a transporter license.''). Hazardous waste transporters are also subject to a variety of substantive state requirements. *See generally* Me. Regs., ch. 853. For example, they must maintain liability insurance covering the licensed activity ''in an amount appropriate for [the] license activity and for the risk involved'' but in no case less than $500,000. *See* Me. Regs., ch. 853, §§ 5(B)(9) and 8(B). In addition, hazardous waste transporters must have ''a plan for the cleanup of discharges of [the] hazardous wastes which [they] transport[ ]'' and must keep a copy of the plan on each conveyance (e.g. truck). *See* Me. Regs., ch. 853, § 8(F).

[7] As discussed in Section III below, however, CRTs and CRT glass generally are not subject to any requirements of the HMR.

C. Broken CRTs and CRT Glass Must Be Shipped in Accordance With the Maine Hazardous Waste Regulations

Because used CRTs and CRT glass qualify as hazardous wastes in Maine, they generally must be shipped in accordance with the stringent hazardous waste transportation requirements described above. The Maine Regulations allow intact CRTs to be shipped under special ''universal waste'' provisions described in the following section, but such provisions do not apply to broken CRTs and CRT glass. The Maine Regulations specify that ''[u]niversal waste shipping requirements require that the waste be * * * [w]hole, intact, and unbroken.'' *See* Me. Regs., ch. 850, § 3(A)(13)(e)(xvii)a. Thus, broken CRTs are not eligible for shipment as universal wastes. Instead, they must be shipped in accordance with the general state requirements for hazardous wastes (e.g., with a Manifest). *See* Section II.B above. The same is true for CRT glass resulting from CRT breakage.

While there may be a narrow exception for small quantities of broken CRTs or CRT glass that result from accidental breakage,[8] it is clear that intentionally broken CRTs and large quantities of accidentally broken CRTs are not. Instead, assuming such CRTs are hazardous, they must be managed in accordance with the ordinary state requirements for hazardous wastes. *See* Me. Regs., ch. 850, § 3(A)(13)(viii). As discussed in Section II.B above, such requirements include manifesting, labeling/marking, and transporter licensing requirements.[9]

[8] The Maine Regulations state that ''waste and residues from incidental breakage [of universal wastes] may still be managed as a universal waste.'' *See* Me. Regs., ch. 850, § 3(A)(13)(e)(vii). Guidance issued by MDEP similarly states that ''[i]ncidental breakage often (10) or fewer * * * CRTs may still be handled as universal waste.'' *See* MDEP, ''Universal Waste Handbook'' (March 2007) (''Handbook'') at 8, provided in Attachment 8 (also available at *http://www.maine.gov/dep/rwm/hazardouswaste/pdf/uwhandbookmarch2007.pdf*). However, the use of the word ''handled'' in the guidance arguably suggests that accidentally broken CRTs cannot be transported as universal wastes, given that the regulations appear to defme handling to include only treatment, storage, and disposal. See Me. Regs., ch. 850, § 3(A)(2) (''the phrase 'treat, store, and/or dispose'' shall mean 'handle'''). Moreover, the MDEP guidance paraphrases the regulation by saying that ''[t]he total amount of broken * * * CRTs in storage may exceed ten (10) items provided no breakage event exceeds the incidental limits.'' *See* Handbook at 8 (emphasis added). On the other hand, the same guidance recognizes that incidental breakage may occur during transport. *Id.* (''If frequent breakage is occurring, the generator, facility *and transporter* should review their handling procedures and packing materials to ensure that they are adequate for the job'' (emphasis added)).

[9] Because small quantities of accidentally broken CRTs and CRT glass from such breakage may be regulated the same way as intact CRTs under the Maine Regulations (i.e., as universal wastes), see note 8 above, we intend all references to ''broken CRTs'' (in the context of the Maine Regulations) throughout the remainder of this Application to denote broken CRTs other than those (if any) that might be eligible for transport as universal wastes under the state rules. We intend all references to ''intact CRTs'' (in the context of the Maine Regulations) to denote intact CRTs and any broken CRTs that might be eligible for transport as universal wastes.

D. The Maine Regulations Do Not Require Intact CRTs To Be Shipped as Hazardous Wastes, But Impose Alternative Transportation Requirements for Such Wastes

The Maine Regulations classify intact CRTs as ''universal wastes.'' *See* Me. Regs., ch. 850, § 3(A)(13)(b)(i) (defining universal wastes to include CRTs); Section II.C above (noting that broken CRTs and CRT glass are generally not eligible for transportation as universal wastes). As such, intact CRTs are subject to somewhat less stringent state transportation requirements than other hazardous wastes.[10] Nonetheless, the transportation requirements for intact CRTs remain significant. We focus here on the same types of requirements discussed above for ''ordinary'' hazardous wastes: (1) Shipping paper requirements, (2) labeling/marking requirements, and (3) the requirements for transporters).[11]

1. Maine Universal Waste Shipping Paper Requirements

Under the Maine Regulations, intact CRTs are allowed to be shipped without a Manifest, but only if other specified shipping documents are utilized. *See* Me. Regs., ch. 857, § 6(B). The two sanctioned alternatives are Recyclable Hazardous Material Uniform Bills of

[10] The Handbook referenced in note 8 above provides a general guide to the Maine universal waste rule, including key excerpts of the rule. *See* Attachment 8.

[11] As discussed in Section III.A below, the federal rules do not classify' CRTs or CRT glass as universal wastes, but instead conditionally exclude such materials from the federal definition of solid and hazardous waste. Nevertheless, it is worth noting that the Maine universal waste requirements are considerably more onerous than the federal universal waste requirements (which apply to other materials, such as batteries, mercury-containing equipment, and light bulbs). *See generally* 40 CFR Part 273. For example, even though the Maine requirements for universal wastes dictate the use of specific shipping documents (as discussed below), the federal universal waste rule provides for much greater flexibility. In particular, under the federal regulations, some universal waste shipments do not require tracking, while others may be tracked without a shipping document (e.g., using logs or other records that do not accompany the shipments). *See* 40 CFR 273.19 (''A small quantity handler of universal waste is not required to keep records of shipments of universal waste.''), 273.39 (large quantity handlers of universal wastes must track their shipments, but can do so in several ways other than by use of shipping papers).

Lading (''UBOLs'') and log sheets. *Id.*[12] MDEP also can approve use of another form, on a case-by-case basis. Each option is discussed briefly below).[13]

The primary alternative shipping document is the UBOL, which is similar to a Manifest inasmuch as it requires similar information, requires use of a specific format, and is implemented in much the same manner as a Manifest. *See* Me. Regs., ch. 857, § 4 (incorporating by reference into the Maine Regulations the UBOL form approved by the Maine Board of Environmental Protection); Me. Regs., ch. 857, § 6(B) (stating that UBOLs are subject to the same administrative requirements as Manifests, including the requirements discussed above for generators, transporters, and owners and operators of hazardous waste facilities). A copy of the approved UBOL form is provided in Attachment 8 (Handbook) at Appendix H.

Another option, which is available only for central accumulation facilities sending universal wastes to an instate consolidation facility, is for a log sheet containing specified information to accompany the waste shipment. *See* Me. Regs., ch. 857, § 13(B).[14] The Maine Regulations do not require use of a specific log form, although certain data elements are mandatory (e.g., the name, address, and phone number of the generator (unless the generator of the waste was a household, in which case a notation of this fact is sufficient), the type and quantity of universal waste delivered, and the date of delivery). *See* Me. Regs., ch. 857, § 13(B)(4).[15] The consolidation facility receiving the wastes is required to ensure that the log sheets are accurately completed and to submit a quarterly waste tracking document in a format specified by MDEP. *See* Me. Regs., ch. 857, § 13(C)(2).[16]

The final option available is the use of an MDEP-approved alternative form. *See* Me. Regs., ch. 857, § 6(B) (''A person may transport universal wastes [using] an alternative form approved by the Department''); Handbook at 11 (''The Department on a case by case basis may approve alternative shipping documents for use''). As far as we are aware, no alternative forms for CRTs have been approved by MDEP.

2. Maine Universal Waste Labeling/Marking Requirements

Under the Maine Regulations, containers of intact CRTs must be marked during transportation with the words ''Waste Cathode Ray Tube.'' *See* Me. Regs., ch. 850, § 3(A)(13)(e)(xxii)e (marking requirement for intact CRTs); Me. Regs., ch. 853, § 11(L) (''[a] transporter shall not accept for transport or transport universal wastes which are unlabeled''). The containers also must be marked or labeled in accordance with any applicable requirements of the HMR. *See* Me. Regs., ch. 853, § 11(Q).

3. Maine Universal Waste Transporter Requirements

Under the Maine Regulations, transporters of universal wastes do not require transporter licenses, as long as they comply with certain state-imposed requirements. *See* Me. Regs., ch. 853, §§ 10(A) and 11. Many of the requirements for universal waste transporters are the same or similar to the requirements for hazardous waste transporters, as discussed in Section II.B.3 above. For example, universal waste transporters must maintain liability insurance coverage in an amount ''appropriate for the transporting of universal waste and the risk involved, but in no case less than $1,000,000 annual aggregate coverage.'' *See* Me. Regs., ch. 853, § 11(H). In addition, they must have a plan ''for the clean up of discharges of universal waste'' and must keep a copy of the plan on each conveyance. *See* Me. Regs., ch. 853, § 11(K).

III. Federal Requirements Against Which the State Requirements Should Be Compared

Under the HMR, CRTs and CRT glass generally do not have to be shipped as hazardous wastes or, indeed, as hazardous materials. As discussed below, CRTs and CRT glass generally do not qualify as hazardous wastes under the HMR and therefore do not have to be transported in accordance with the HMR requirements applicable to hazardous wastes (*e.g.*, the Manifest requirements). Moreover, CRTs and CRT glass generally are not hazardous materials, and thus are not subject to other HMR requirements.

A. CRTs and CRT Glass Generally Are Not Hazardous Wastes Under the HMR

Under the HMR, a ''hazardous waste'' is defined as ''any material that is subject to the Hazardous Waste Manifest Requirements of the U.S. Environmental Protection Agency specified in 40 CFR part 262.'' *See* 49 CFR 171.8. The referenced EPA requirements, in turn, require generators of hazardous wastes—as defined in the federal regulations at 40 CFR Part 261—to prepare and use a Manifest for all shipments of such wastes (with certain exceptions that are not relevant here). *See*, e.g., 40 CFR 262.20(a) (requiring a Manifest for shipments of hazardous wastes); 261.1(a) (''This part [Part 261] identifies those [materials] which are subject to regulation as hazardous wastes under part[ ] 262''). Thus, only materials that are hazardous wastes under Part 261 can qualify as hazardous wastes under the HMR.

CRTs and CRT glass generally are not hazardous wastes under Part 261. Hazardous wastes are defined under Part 261 as a subset of solid wastes. *See* 40 CFR 261.3. For the reasons set forth below, CRTs and CRT glass generally do not qualify as solid wastes:

• CRTs Destined for Use, Reuse, or Repair. EPA has stated that for purposes

[12] *See* also Me. Regs., ch. 850, § 3(A)(13)(e)(iii) (requiring generators to track universal wastes with a Manifest or UBOL, with certain limited exceptions which are discussed below); § 3(A)(13)(e)(xvii) (universal waste shipments must be ''[a]ccompanied by a [UBOL] or manifest (if applicable)''); § 3(A)(13)(e)(xviii) (generators of universal wastes must ''[c]omply with the [UBOL], manifest, or log requirements''); § 3(A)(13)(e)(xxi) a (log requirements for small universal waste generators); § 3(A)(13)(f)(i) (central accumulation facilities must track universal wastes ''via a manifest * * * via a [UBOL], or by a shipping log'').

[13] The universal waste shipping paper requirements discussed in this section and the other universal waste transport requirements discussed in Sections II.D.2 and II.D.3 below apply not only to used CRTs and CRT glass generated by institutions (e.g., business and government organizations) but also to CRTs and CRT glass generated by households. *See* Me. Regs., ch. 415, § 3(B)(1) (household electronic wastes, including CRTs, managed under the Maine collection and recycling program for such wastes must be transported in accordance with the Maine universal waste requirements), and ch. 850, § 3(A)(13)(d) (mixtures of household wastes and universal wastes must be managed as universal wastes).

[14] The Maine Regulations define a central accumulation facility to include ''(1) [a facility where] a generator consolidates its own universal wastes from the generator's multiple facilities; or (2) a licensed solid waste transfer station or recycling center where universal waste generators may take their universal wastes; or (3) a facility where less than 200 universal waste items are collected from generators that are serviced by the facility.'' *See* Me. Regs., ch. 850, § 3(A)(13)(a)(iii). A consolidation facility is defined as ''a facility where universal waste is consolidated and temporarily stored while awaiting shipment to a recycling, treatment or disposal facility.'' *See* Me. Regs., ch. 850, § 3(A)(13)(a)(v).

[15] Even though the Maine Regulations do not mandate the use of a particular form for logs, MDEP has issued guidance stating that central accumulation facilities ''must'' use particular forms developed for this purpose. *See* Handbook at 11, Paragraph (b)(ii); id. at 25–28 (the prescribed log forms).

[16] A log sheet also can be used to track shipments from a small universal waste generator to an instate central accumulation facility or an instate consolidation facility. *See* Me. Regs., ch. 857, § 13(A)(2). In these cases, however, the log sheet does not have to accompany the shipments. *Id.* (log sheets for these shipments can be completed ''upon the generator's arrival at the facility''). For these purposes, a small universal waste generator is defined as ''a person or entity that generates or accumulates on site no more than 200 universal waste items * * * at a time or in any given month. * * *'' *See* Me. Regs., ch. 850, § 3(A)(13)(a)(xiii).

of Part 261, CRTs destined for use, reuse, evaluation for potential reuse, or repair are generally ''considered to be products in use rather than solid wastes.'' *See* 71 FR at 42929. For example, ''repairs do not constitute waste management.'' *Id.*

• Unused CRTs Destined for Reclamation. According to EPA, ''unused CRTs [are] unused commercial chemical products [which] are not solid wastes when sent for reclamation.'' 67 FR 40508, 40,511 (June 12, 2002); see also 40 CFR § 261.2(c)(3) (listed commercial chemical products are not solid wastes when reclaimed); 50 FR 14216, 14219 (April 11, 1985) (un-listed commercial chemical products are likewise not solid wastes when reclaimed).

• Used, Intact CRTs Destined for Reclamation. Under Part 261, ''[u]sed, intact CRTs * * * are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated * * * by CRT collectors or glass processors.'' *See* 71 FR at 42948 (to be codified at 40 CFR 261.4(a)(22)(i)) (effective January 29, 2007). Significantly, used, intact CRTs that are speculatively accumulated by a CRT user are not solid wastes under this rule. *Id.* Moreover, even if a CRT collector or CRT glass processor accumulates such CRTs speculatively, the CRTs will ''no longer [be] in this [speculative accumulation] category once they are removed from accumulation for recycling.'' *See* 40 CFR 261.l(c)(8) (definition of speculative accumulation). Thus, used, intact CRTs generally will not be solid wastes when being transported (unless they are being transported specifically for disposal).[17]

• Used, Broken CRTs Destined for Reclamation. Under Part 261, used, broken CRTs destined for recycling are not solid wastes if they meet certain requirements for storage and labeling, and if they are not speculatively accumulated or used in a manner constituting disposal. *See* 71 FR at 42948–49 (to be codified at 40 CFR 261.4(a)(22)(iii), 261.39(a)) (effective January 29, 2007). During transportation, the key requirements are that the used, broken CRTs must be placed in a container (i.e., package or vehicle) that minimizes releases and is labeled or marked with specified phrases (e.g., ''Used cathode ray tubes—contains leaded glass'' and ''Do not mix with other glass materials''). *Id.* (to be codified at 40 CFR 261 .39(a)(3)). As noted above, the speculative accumulation provision is generally not relevant while CRTs are being transported. Thus, used, broken CRTs that are properly contained and labeled will not be solid wastes during transportation, unless they are being sent for disposal or use constituting disposal.[18]

• CRT Glass. Under Part 261, ''[g]lass from used CRTs that is destined for recycling at a CR1 glass manufacturer or a lead smelter after processing is not a solid waste unless it is speculatively accumulated.'' *See* 71 FR at 42948–49 (to be codified at 40 CFR 261.4(a)(22)(iv), 261.39(c)) (effective January 29, 2007). As noted above, the speculative accumulation provision is generally not relevant while materials are being transported. Thus, processed CRT glass destined for the specified types of recycling will not be solid wastes during transportation. CRT glass sent for other types of recycling likewise will generally not be solid wastes if they are ''legitimately used or reused without reclamation as an effective substitute for a commercial product, or as an ingredient in an industrial process to make a product pursuant to 40 CFR 261.2(e)(1)(i) or (ii).'' Id. at 42936 (noting further that the regulatory exclusions for these materials do not apply if the CRT glass is speculatively accumulated or used in a manner constituting disposal).

For these reasons, CRTs and CRT glass generally will not be solid or hazardous wastes during transport under 40 CFR Part 261 and will not be subject to the manifest requirements of Part 262. Because the HMR defines hazardous wastes as materials that are subject to Part 262 manifest requirements, see 49 CFR 171.8, CRTs and CRT glass also generally will not be hazardous wastes for purposes of the HMR.[19]

B. CRTs and CRT Glass That Are Not Hazardous Wastes Under the HMR Are Not Subject to Federal Manifesting or Other Requirements for Transport of Hazardous Wastes

Under the HMR, Manifests are required only for shipments of hazardous wastes. *See* 49 CFR 172.205. Accordingly, to the extent that CRTs and CRT glass do not qualify as hazardous wastes under the HMR, as discussed above, they do not have to be shipped with Manifests. *See*, e.g., Letter from Charles E. Bells, Senior Transportation Specialist. Office of Hazardous Materials Standards, DOT, to Phil Stewart, The Dow Chemical Company (April 21, 2006) (where ''EPA does not require preparation of [a] manifest [for a material] * * * [the] material does not meet the definition of a hazardous waste in § 171.8, and the Department of Transportation does not require a manifest to be created''), provided in Attachment 9.

CRTs and CRT glass likewise are not subject to other HMR requirements that apply only to hazardous wastes. *See*, e.g., 49 CFR 171.16(a) (a detailed incident report is required when ''any quantity of hazardous waste has been discharged during transportation''); 172.101(b)(9) (''the proper shipping name for a hazardous waste * * * shall include the word 'Waste'''); 172.201(e) (''For a hazardous waste, the shipping paper copy must be retained for three years''); 172.301(a)(2) (non-bulk packagings of hazardous waste must be marked with the word ''waste'' and/or EPA-specified language (e.g., ''HAZARDOUS WASTE—Federal Law Prohibits Improper Disposal'')).

C. CRTs and CRT Glass That Are Not Hazardous Wastes Under the HMR Generally Are Not Hazardous Materials for Any Other Reason

For purposes of the HMR, hazardous materials are defined to include not only hazardous wastes, but also ''hazardous substances, ... marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table * * * and materials that meet the defining criteria for [any] hazard classes and divisions.'' *See* 49 CFR 171.8. As discussed below, CRTs and CRT glass do not fall within any of these other categories of hazardous materials. Thus, to the extent that CRTs and CRT glass do not qualify as hazardous wastes under the HMR, they also are not hazardous materials.

[17] If the used, intact CRTs are exported for reclamation, they must not only not be speculatively accumulated, but also must meet certain notice and consent requirements in order to be excluded from the federal definitions of solid and hazardous wastes. *See* 71 FR at 42948–49 (to be codified at 40 CFR 261.4(a)(22)(ii), 261.40) (effective January 29, 2007). For example, the exporter must notify EPA of the intended export and refrain from initiating the export unless and until the Agency sends back an acknowledgement that the receiving country has consented to the export. *Id.* (to be codified at 40 CFR 261.39(a)(5)). Copies of the acknowledgement must accompany the shipment and must be retained by the exporter. *Id* (to be codified at 40 CFR 261.39(a)(5)(vii), (ix)).

[18] If the used, broken CRTs are exported for reclamation, they must also comply with the notice and consent requirements discussed in note 17 above. *See* 71 FR at 42948–49 (to be codified at 40 CFR 261.39(a)(5)) (effective January 29, 2007).

[19] CRTs and CRT glass may be hazardous wastes to the extent that they are destined for disposal or destined for recycling without meeting the requirements of the EPA exclusions discussed above (*e.g.*, if they are used, intact CRTs destined for reclamation, but are not properly contained and labeled). This Application, however, is focused on CRTs and CRT glass that have been excluded from the federal definition of hazardous waste.

During the development of EPA's current regulatory exclusions for CRTs and CRT glass, as discussed above, the Agency consulted with a senior DOT official about the HMR status of these materials, and was informed that the only way they may be hazardous materials is if they are hazardous wastes. According to EPA:

> John Gale, DOT [currently Chief of Standards Development in the DOT Office of Hazardous Materials Standards], confirmed that the [CRT] materials we are discussing are not individually listed as DOT hazardous materials and thus currently are hazardous materials only if they are hazardous waste, which for DOT's hazardous materials purposes is defined as anything requiring a manifest. Thus, if [as is now the case] the streamlined system [of EPA exclusions] does not require a manifest, these materials will not be hazardous materials and will not be subject to the DOT hazardous material regulations.

See EPA, ''Notes from 4/24/98 CRT Project Team Conference Call on Transportation/Packaging Issue'' (April 28, 1998) (''CRT Project Team Notes'') at 1, provided in Attachment 10.

DOT's conclusions are clearly supported by the Department's regulations. CRTs and CRT glass are not specifically listed as hazardous materials in the Hazardous Materials Table. *See* 49 CFR 172.101, Table. Although that Table does include listings for some specific lead compounds (e.g, lead azide, lead cyanide, and lead nitrate) and a generic listing for ''Lead compounds, soluble, n.o.s.,'' to our knowledge the lead in the CRTs and CRT glass is not in the form of any of the listed compounds and is not ''soluble'' in water. *See* Letter from Delmer F. Billings, Chief, Regulations Development, Office of Hazardous Materials Standards, DOT, to Ursula Judenhofer, BARLOCHER GmbH (August 8, 1997) (''DOT Lead Letter'') (''the term 'soluble' as used in the HMR means soluble in water''), provided in Attachment 11. Moreover, the generic ''n.o.s.'' listing does not apply because CRTs and CRT glass do not meet the definition of Division 6.1 (poisonous) materials. *See* Letter from John A. Gale, Chief, Standards Development, Office of Hazardous Materials Standards, DOT, to James Bandstra, Environmental Manager, Hammond Group, Inc. (July 13, 2004) (''The shipping name 'Lead compounds, soluble, n.o.s.' may not be used for a material that does not meet the criteria for a Division 6.1 material as specified in § 173.132 of the HMR''), provided in Attachment 12. Indeed, the materials do not appear to meet the definition of any of the HMR hazard classes or divisions. *See* 49 CFR Part 173, Subparts C, D, and I.

CRTs and CRT glass are not marine pollutants for much the same reason. *See* 49 CFR 172.101, Appendix B (List of Marine Pollutants) (listing several specific lead compounds and ''Lead compounds, soluble, n.o.s.''). In addition, these materials are not elevated temperature materials, because they are transported at ambient temperatures. *See* 49 CFR 171.8 (elevated temperature materials are materials that are intentionally heated for transport and/or shipped at temperatures greater than 100 °C (212 °F)).

The only remaining category of hazardous materials is ''hazardous substances,'' which are defined to include ''a[ny] material, including its mixtures and solutions that * * * [i]s listed in the appendix A to § 172.101 [and] [i]s in a quantity, in one package, which equals or exceeds the reportable quantity (RQ) listed.'' *See* 49 CFR 171.8. The referenced appendix includes several specific lead compounds, none of which appear to be relevant. *See* 49 CFR 172.101, Appendix A, Table 1. It also includes a generic listing for ''lead,'' but states that ''[t]he RQ * * * is limited to those pieces of the metal having a diameter smaller than 100 micrometers (0.004 inches).'' *Id.*, note c. Because the lead in the CRTs and CRT glass is not generally present as ''pieces of metal,'' much less pieces with such small diameters, the RQ for lead does not apply. Cf . DOT Lead Letter (applying only the RQs for specific lead compounds—not the RQ for lead—to a mixture of listed and unlisted lead compounds). Accordingly, the CRTs and CRT glass are not hazardous substances and are not hazardous materials (except in any instances where they might be hazardous wastes, as discussed above).

D. CRTs and CRT Glass That Are Not Hazardous Materials Are Not Subject to HMR Requirements

The requirements of the HMR apply only to hazardous materials. *See* 49 CFR 171.1(a) (stating that the ''[p]urpose and scope'' of the HMR is to prescribe requirements for transport of hazardous materials). Accordingly, to the extent that CRTs and CRT glass are not hazardous materials, as discussed above, they are not subject to the HMR.

For example, such CRTs and CRT glass are not subject to shipping paper requirements under the HMR. *See* 49 CFR Part 172, Subpart C; Letter from John A. Gale, Transportation Regulations Specialist, Office of Hazardous Materials Standards, DOT, to Hobart Huson (January 23, 2003) (''the shipping paper requirements in Part 172, Subpart C do not apply to a non-hazardous material. However, a shipping paper that describes both hazardous materials and non-hazardous materials must comply with § 172.201(a)(1)''), provided in Attachment 13.[20] In addition, CRTs and CRT glass are not subject to the labeling and marking requirements of the HMR. *See* 49 CFR Part 172, Subparts D and E. These materials also are not subject to the hazardous material release response requirements of the HMR. *See*, *e.g.*, 49 CFR 171.15, 171.16; 49 CFR Part 172, Subpart G.

IV. Explanation of Why the State Regulations Are Preempted

The reasons why the Maine rules for transport of CRTs and CRT glass are preempted vary somewhat from requirement to requirement. We first discuss two specific state requirements that are preempted because they are not ''substantively the same'' as the corresponding HMR requirements: (1) The requirements for Manifests or other specific shipping documents, and (2) the requirements for labeling and marking. We then explain more generally that the MDEP rules as a whole are preempted because they are based on a system of designating, describing, and classifying hazardous materials that is not substantively the same as the corresponding HMR system, and because they are an ''obstacle'' to the goals of the Federal hazmat law. Finally, we explain why the conclusion that the MDEP requirements are preempted is not in any way affected by the fact that certain portions of the Maine hazardous waste program have been ''authorized'' by EPA under another statute (*i.e.*, RCRA).

At the outset, it is worth noting that a senior DOT official, John A. Gale (currently the Chief of Standards Development in the DOT Office of Hazardous Materials Standards), previously considered the extent to which the federal rules for transport of CRTs and CRT glass preempt state requirements that differ. He concluded that ''[Federal hazmat law] preemption would apply in cases where a state has

[20] Even if CRTs and CRT glass could somehow be deemed hazardous materials for some reason other than by qualifying as hazardous wastes, they would not have to be accompanied by a shipping paper with any particular format, as long as the requirements of Part 172, Subpart Care satisfied. *See* Letter from Thomas G. Allan, Senior Transportation Regulations Specialist, Office of Hazardous Materials Standards, DOT, to Eugene J. Secor, EHS/Transportation Specialist, H.B. Fuller Automotive Company (August 14, 1998) (''The HMR do not specify a particular format for shipping papers''), provided in Attachment 14.

not picked up the streamlined [federal] CRT system [i.e., the EPA exclusions for CRTs and CRT glass].'' *See* CRT Project Team Notes at 3 (EPA summary of Mr. Gale's comments). For example, ''state laws requiring [a] manifest[] are not consistent with and would be preempted by DOT's federal rules not requiring * * * a manifest.'' *Id.* The discussion below is consistent with this earlier DOT assessment.[21]

A. The MDEP Shipping Paper Requirements Are Preempted Because They Are Not Substantively the Same as the HMR Requirements

The Federal hazmat law provides that state requirements regarding shipping documents are preempted if they are not ''substantively the same'' as the corresponding requirements of the HMR. *See* 49 U.S.C. 5125(b)(1)(C). DOT has clarified that, under this standard, state shipping document requirements must ''conform[] in every significant respect to the Federal requirement.'' *See* 49 CFR 107.202(d). As the Department has noted, ''the shipping paper requirements of the HMR are exclusive and * * * any additional [state] shipping paper requirements are inconsistent under the [Federal hazmat law].'' *See* 47 FR 51,991, 51,994 (November 18, 1982), quoted in 67 FR 2948, 2950 (January 22, 2002).[22]

The MDEP requirements for manifesting broken CRTs and CRT glass (see Sections II.B.1 and II.C above) clearly are not ''substantively the same'' as the HMR requirements. As discussed above, the HMR does not require Manifests for these materials (assuming they are handled consistent with the requirements of EPA's conditional exclusions). *See* Sections III.A and III.B above. DOT has previously determined that where (as here) a state ''has extended the requirement to use a hazardous waste manifest * * * to materials that are not hazardous wastes,'' the state requirements are preempted. *See* 66 FR 37,260, 37,265 (July 17, 2001) (DOT determination that local requirements mandating Manifests for medical wastes are preempted). In reaching this conclusion, the Department reasoned as follows:

> Because the HMR does not require the use of any specific form for shipments of * * * materials that are not hazardous wastes[ ], the requirement * * * that a uniform hazardous waste manifest be carried on any truck transporting [such materials] is not substantively the same as requirements in the HMR [and thus] is preempted.

Id. Applying the same reasoning in the present case, it is clear that the Maine Regulations are preempted to the extent that they require Manifests for broken CRTs and CRT glass that are excluded from the federal Manifest requirement.

The MDEP manifest requirements for broken CRTs and CRT glass are also preempted because such materials are not hazardous materials and thus are not subject to any shipping paper requirements under the HMR. *See* 49 CFR Part 172, Subpart C; Sections III.C and III.D above. Furthermore, even if the general HMR shipping paper requirements did somehow apply, they would not require the inclusion of many of the data elements that are included on the Manifest form which is required by MDEP (e.g., the name and address of the waste generator; the name of the transporter(s); waste codes and waste management codes; signatures of the transporter(s) and designated receiving facility; discrepancy indications; and generator's certifications regarding exports and waste minimization). *Compare* 40 CFR Part 262, Appendix (Manifest form) with 49 CFR Part 172, Subpart C (HMR shipping paper requirements). As discussed in note 6 above, MDEP has also directed that persons using the Manifest form include ''item counts of the [CRT] waste * * * in Item 14 [of the Manifest].'' To the extent that this direction is meant to apply to shipments of broken CRTs or CRT glass, it would constitute yet another extra data element that would be preempted. *Cf.* 58 FR 11,796, 11,182 (February 23, 1993) (DOT determination that certain Illinois requirements are preempted because they ''instruct the preparer of the * * * Manifest to enter the total quantity of each hazardous waste * * * in a different manner than the HMR'').

The Maine rules requiring specific shipping documents (i.e., Manifests, UBOLs, or other MDEP-approved forms) for intact CRTs (see Section II.D. 1 above) likewise are not substantively the same as the HMR requirements. As noted above, intact CRTs that meet the requirements of EPA's conditional exclusions are not hazardous materials and thus are not subject to any shipping paper requirements under the HMR. *See* Sections III.C and III.D above. Moreover, even if the intact CRTs were somehow deemed to be hazardous materials, ''the HMR does not require the use of any specific form for shipments of * * * hazardous materials that are not hazardous wastes[ ].'' *See* 66 FR at 37,265. Instead, the HMR simply identifies certain data elements that must be included on a shipping paper, without mandating a particular format. *See generally* 49 CFR Part 172, Subpart C. Because the Maine Regulations require intact CRTs to be transported with shipping papers and dictate shipping papers with a specific format, they are not substantively the same as the HMR and are preempted.

Moreover, the UBOL form and instructions that are incorporated by reference into the Maine Regulations include a number of data elements that are not required in HMR shipping papers (e.g., the name, address, and phone number of the generator, carrier, and designated facility; waste codes; a count of the individual waste CRT items; signatures of the carrier and designated receiving facility; and a generator's certification that ''all parts of the hazardous materials [being shipped] including the * * * lead will be recycled''). *See* Me. Regs., ch. 857, § 4 (incorporating the UBOL form and instructions by reference); Handbook, Appendix H (UBOL form); 49 CFR Part 172, Subpart C (HMR shipping paper requirements). Because the Maine Regulations include extra data elements that are not required under the HMR, the state rules are preempted. *See*, e.g. 69 FR 34,715, 34,719 (June 22, 2004) (DOT determination that Massachusetts rules are preempted to the extent they require additional data elements on shipping papers for regulated medical wastes).

When intact CRTs are shipped from a central accumulation facility to an instate consolidation facility, the Maine Regulations do allow more flexibility in the shipping papers. As noted in Section IID. 1 above, such shipments do not require Manifests, UBOLs, or other MDEP-approved documents, as long as they are accompanied by a log that contains certain specified data elements. *See*, e.g., Me. Regs., ch. 857, § 13(B). However, these logs qualify as shipping papers and are being required by MDEP, even though no shipping papers are required under the HMR. *See* Me. Regs.,

[21] Some of the preemption issues addressed in this section of the Application are related to issues that EIA has indicated it may raise in a case that it filed in the U.S. Court of Appeals for the District of Columbia Circuit (''D.C. Circuit''). *See Electronic Industries Alliance* v. *EPA,* No. 06–1359 (D.C. Cir. filed October 25, 2006) (challenging statements by EPA in its July 28, 2006 CR1 rule that CRTs meeting the conditions for exclusion from the federal definition of hazardous wastes must nevertheless be shipped as hazardous wastes to the extent that they are shipped from, to, or through states that have not adopted the conditional exclusion or similar provisions). In light of the filing of this Application, EIA is planning to ask the D.C. Circuit to place the litigation in abeyance.

[22] For these purposes, the term ''shipping documents'' is interpreted broadly to include any ''shipping order, bill of lading, manifest or other shipping document serving a similar purpose * * *.'' *See* 49 CFR 171.8 (definition of ''shipping paper''); *Colorado Public Utilities Commission* v. *Harmon*, 951 F.2d 1571, 1577 (10th Cir. 1991l) (''the terms 'shipping document' and 'shipping paper' are used interchangeably'').

ch. 857, § 13(B)(3) (''the log sheet [must] accompan[y] the universal waste to the instate consolidation facility'' (emphasis added)).

Additionally, the data elements that must be included in a log go beyond what is required for a shipping paper under the HMR (e.g., the name, address and phone number of the CRT waste generator (or, if the CRT waste was generated by a household, a notation to that effect), and the date on which the waste was delivered to the facility). Compare Me. Regs., ch. 857, § 13(B)(4) (required data elements) with 49 CFR Part 172, Subpart C. Because the Maine Regulations require shipments of intact CRTs from a central accumulation facility to an instate consolidation facility to be accompanied with shipping papers (i.e., logs) and require such shipping papers to include data elements that are not required under the HMR, they are preempted under the HMR. *See*, e.g, 69 FR at 34,719 (DOT determination that Massachusetts rules are preempted to the extent they require additional data elements on shipping papers for regulated medical wastes).[23]

B. The MDEP Labeling and Marking Requirements Are Preempted Because They Are Not Substantively the Same as the HMR Requirements

The Federal hazmat law provides that state requirements regarding labeling and marking of hazardous materials are preempted if they are not ''substantively the same'' as the corresponding requirements of the HMR. *See* 49 U.S.C. § 5125(b)(1)(B). DOT has clarified that, under this standard, state labeling and marking requirements must ''conform[] in every significant respect to the Federal requirement.'' *See* 49 CFR § 107.202(d).

The MDEP requirements for labeling and marking of broken CRTs and CRT glass clearly are not ''substantively the same'' as the HMR requirements. As discussed in Sections II.B.2 and II.C above, the Maine Regulations require non-bulk containers of these materials to be marked with the words ''HAZARDOUS WASTE—Federal Law Prohibits Improper Disposal'' and related information (e.g., the name and address of the generator, the relevant Manifest number, and government contact information). *See* Me. Regs., ch. 851, § 8(A)(4). However, the HMR does not require labeling/marking of these materials (assuming they are handled consistent with the requirements of EPA's conditional exclusions). *See* Section III.A and III.B above.

The Maine rules for labeling and marking of intact CRTs likewise are not substantively the same as the HMR requirements. Under the state's universal waste rule, these CRTs must be marked during transportation with the words ''Waste Cathode Ray Tube.'' *See* Me. Regs., ch. 850, § 3(A)(13)(e)(xxii)e; Section II.D.2 above. However, no such marking is required under the HMR. *See* Section III.C and III.D above. Indeed, the HMR does not impose any labeling/marking requirements on intact CRTs. *Id.*

Because the MDEP rules for labeling/marking of broken CRTs, intact CRTs, and CRT glass differ from the HMR requirements, the state rules are preempted under the Federal hazmat law. *See* 69 FR at 34,718–19 (DOT determination that Massachusetts requirements for marking of ''sharps'' and other medical wastes were preempted because they were not substantively the same as the HMR requirements); 58 FR 48,936–37 (DOT determination that California requirements for marking certain containers of flammable or combustible liquids ''go[] beyond—and [are] not substantively the same as—the HMR [and therefore are] preempted by the [Federal hazmat law]'').

C. The MBEP Requirements in General Are Preempted Inasmuch As They Are Based on a System for Designating, Describing, and Classifying Hazardous Materials That Is Not Substantively the Same as the HMR System

Under the Federal hazmat law, state requirements concerning ''the designation, description, and classification of hazardous material[s]'' are preempted if they are not ''substantively the same'' as the corresponding HMR requirements. *See* 49 U.S.C. 5125(b)(1)(A). DOT has clarified that, under this standard, state definitions must ''conform[ ] in every significant respect to the Federal requirement.'' *See* 49 CFR 107.202(d). According to the Department, ''non-Federal definitions and classifications that result in regulating the transportation * * * of more, fewer or different hazardous materials than the HMR * * * are preempted.'' *See* 65 FR 81,950, 81,953–54 (December 27, 2000) (DOT determination that definitions established by Broward County, Florida are preempted). Moreover, ''regulations that apply [a preempted] definition are preempted * * * to the extent that they relate to transportation.'' *See* 67 FR 35,193, 35,195 (May 17, 2002) (DOT decision on petition for reconsideration of the Broward County preemption determination).

In the present case, the MDEP rules clearly employ different definitions than the HMR, which result in regulating the transportation of CRTs and CRT glass that are not regulated under the HMR. For example, the Maine definition of ''hazardous waste'' includes broken CRTs and CRT glass (*see* Section II.A above), even though such materials do not meet the HMR definition of ''hazardous waste'' because they are not ''subject to the Hazardous Waste Manifest Requirements of the U.S. Environmental Protection Agency specified in 40 CFR part 262.'' *See* 49 CFR 171.8; Section III.A above. The broken CRTs and CRT glass also are not hazardous materials for any other reasons under the HMR. *See* Section III.C above. However, because the broken CRTs and CRT glass are classified as ''hazardous wastes'' under the Maine Regulations, they are subject to a wide range of state transportation requirements. *See* Sections II.B and II.C above.

DOT has previously stated that where ''[a non-federal] definition of 'hazardous waste' includes not only those materials regulated under the HMR but also other materials not regulated under the HMR * * * [the] definition is inconsistent with the HMR, and, therefore, preempted.'' *See* 55 FR 36,736, 36,743 (September 6, 1990). Thus, the Maine definition of ''hazardous waste'' is preempted. In addition, the state regulations that impose transportation requirements on broken CRTs and CRT glass based on the preempted definition are also preempted. The preempted requirements include, but are not limited to, those relating to manifesting, labeling/marking, emergency response plans, insurance, and transporter licensing. *See* Section II.B above (describing these and other Maine requirements for transport of broken CRTs and CRT glass).

The Maine Regulations also classify intact CRTs as ''hazardous wastes,'' albeit a special subset of hazardous wastes eligible for management under reduced regulatory requirements (i.e., ''universal wastes''). *See* Section II.D above; Me. Regs., ch. 850,

[23] As discussed above, even though the Maine Regulations do not require use of a specific log form, MDEP has issued guidance stating that central accumulation facilities ''must'' use particular forms developed for this purpose. *See* note 15 above. To the extent that these forms are, in fact, intended to be mandatory, the requirement to use a specific form is once again preempted under the Federal hazmat law (as in the case of the UBOLs discussed above). Moreover, the log forms include still more data elements that are not required for HMR shipping papers and therefore are preempted under the Federal hazmat law (e.g., the name, location, and mailing address of the central accumulation facility, the job title of the contact person, a waste type code, a count of the individual CRT items, and an indication as to whether the CRTs are from computers or televisions). *See* Handbook at 25–28.

§ 3(A)(13)(e)(ii), Note (indicating that hazardous wastes are subject to the full hazardous waste management rules, unless they qualify as universal wastes). Because intact CRTs are generally not federal hazardous wastes or hazardous materials, see Sections III.A and III.C above, the Maine definition of hazardous waste is once again preempted. In addition, the state transport rules for intact CRTs are preempted, including those for shipping papers, labeling/marking, emergency response plans, and insurance. *See* Section II.D above (describing these and other Maine requirements for transport of intact CRTs).

Moreover, the Maine ''universal waste'' category itself is preempted under the Federal hazmat law. The MDEP regulations use this term, at least in part, to define the applicability of the state requirements for transportation (e.g., the state shipping paper requirements). *See* Section II.D above. Under the state rules, universal wastes include intact CRTs that are not HMR hazardous materials. *See* id. (intact CRTs are Maine universal wastes); Section III.C above (intact CRTs are generally not HMR hazardous materials). In this way, the Maine ''universal waste'' definition results in regulating the transportation of more materials than the HMR. Under such circumstances, the definition is preempted, as are all of the state transportation requirements for intact CRTs that are based on this definition. *See,* eg, 65 FR at 81,953–54.

D. The MDEP Requirements in General Are Preempted Inasmuch as They Are an Obstacle to the Goals of the Federal Hazmat Law

The Federal hazmat law provides that state requirements are preempted if they are ''an obstacle to accomplishing and carrying out [the Federal hazmat law or] a regulation prescribed under [the HMR].'' *See* 49 U.S.C. 5125(a)(2). The key goals of the statute were to promote the flow of commerce, to minimize confusion, and to ensure transportation safety. *See generally* Colorado Pub. Util. Comm 'n, 951 F.2d at 1580–81. Congress determined that ''a high degree of uniformity of Federal, State, and local laws is required in order to promote safety and to encourage the free flow of commerce.'' *See* H.R. Rep. No. 444 (Part 1), 101st Cong., 2d Sess., at 22 (1990). Thus, it made ''uniformity * * * the linchpin in the design of the statute.'' *See* 951 F.2d at 1575.

In the present case, the Maine Regulations for transport of CRTs and CRT glass are clearly an obstacle to the goals of the Federal hazmat law. As an initial matter, as discussed above, the state requirements are substantively different from the HMR requirements with respect to at least three areas where uniformity is specifically mandated: (1) Shipping papers, (2) labeling/marking, and (3) the designation, description, and classification of hazardous materials. DOT has previously recognized that, in these areas, ''any substantive difference creates an 'obstacle.' '' *See* 67 FR at 2,949; see also id. at 2,950 n.2 (discussing an earlier DOT inconsistency ruling that found that ''differing hazard class definitions and additional shipping paper requirements are preempted because they 'are an obstacle to the accomplishment of the [Federal hazmat law] and its regulations' '').

Accordingly, the MDEP rules at issue are an ''obstacle'' and are preempted.

One way that the Maine Regulations serve as an obstacle is by creating substantial regulatory confusion. As Congress stressed when it expanded the Federal hazmat law preemption provisions in 1990, the existence of state regulations which vary from the federal regulations ''confound[s] shippers and carriers which attempt to comply with multiple and conflicting * * * regulatory requirements.'' *See* Hazardous Materials Transportation Uniform Safety Act of 1990, Pub. L. 101–615 § 2, 104 Stat. 3244. In the present case, shippers and carriers will undoubtedly be confused when broken CRTs and CRT glass are classified and regulated during transportation as ''hazardous wastes'' by MDEP, but are not similarly classified or regulated by DOT.

For example, although broken CRTs and CRT glass are not federal hazardous wastes or hazardous materials under the HMR, the Maine Regulations dictate that they be shipped with a ''Uniform Hazardous Waste Manifest,'' which refers to various federal hazardous waste rules and terms (e.g., ''Hazardous Waste Report Management Methods Codes,'' EPA Identification Numbers, and the hazardous waste minimization requirements of ''40 CFR 262.27(a)''), and requires ''Certification of receipt of hazardous materials.'' *See* Me. Regs., ch. 857 (state manifest requirements for ''hazardous wastes'' as defined by the Maine Regulations); 40 CFR Part 262, Appendix (Manifest form) (Item Nos. 1, 5, 7, 8, 15, 19, and 20 (emphases added)). The Maine rules also require broken CRTs and CRT glass to be marked during transportation with the words ''HAZARDOUS WASTE'' and a reference to federal law. *See* Me. Regs., ch. 851, § 8(A)(4). In addition, the rules prohibit generators from offering the materials to a transporter who is not licensed as a hazardous waste transporter. *See* Me. Regs., ch. 851, § 7(A). A shipper need not undertake any of these activities to ship these materials under the HMR.

Shippers and carriers also will be confused when intact CRTs are classified and regulated during transportation as ''universal wastes'' by MDEP, even though there is no similar DOT classification and no applicable requirements for the materials under the HMR. The MDEP rules for universal wastes are a particular source of confusion, given that they equate ''universal wastes'' to ''hazardous materials'' (i.e., the same term used to define the scope of the HMR). *See,* e.g., Me. Regs., ch. 850, § 3(A)(13)(e)(iii) (requiring universal wastes to be shipped with a ''Recyclable Hazardous Material Uniform Bill of Lading'' if they are not shipped with a Manifest); Me. Regs., ch. 857, § 4 (incorporating the UBOL form by reference); Handbook, Appendix H (UBOL form), Title (''Maine Recyclable Hazardous Material''), Item 14 (''I certify that all parts of the hazardous materials referenced * * * will be recycled''); Item 18 (''Certification of receipt of hazardous materials'') (emphases added).

The confusion will inevitably lead to regulatory non-compliance and increased risks to transportation safety. The problems will be magnified even further to the extent that other states might adopt their own independent regulatory requirements for CRTs and CRT glass. Moreover, these problems will go beyond the state shipping paper and labeling/marking requirements for CRTs and CRT glass. As noted above, all of the state requirements for CRTs and CRT glass are based on a system for designating, describing, and classifying hazardous materials that is substantively different from the DOT system and thus will confuse the regulated community. DOT has previously determined that many of the specific types of requirements imposed by MDEP create obstacles to the goals of the Federal hazmat law. For example, the Maine regulations require transporters of CRTs and CRT glass to have special insurance coverage and emergency response plans. *See* Sections II.B.3 and II.D.3 above. DOT has determined that these types of requirements create obstacles and therefore are preempted. *See,* e.g., Colorado Pub. Util. Comm 'n, 951 F.2d at 1581–82 (upholding DOT's determination that Colorado's insurance and clean-up plan requirements for radioactive materials are preempted, because ''additional documentation and

information requirements in one jurisdiction create 'unreasonable hazards in other jurisdictions' and could confound 'shippers and carriers which attempt to comply with multiple and conflicting regulations' ").

Finally, the Maine Regulations serve as an obstacle to the goals of the Federal hazmat law, inasmuch as they inhibit the free flow of commerce in CRTs for recycling. *See* H.R. Rep. No. 444 (Part 1), 101st Cong., 2d Sess., at 22 (1990) (discussing the need for uniformity "in order to * * * encourage the free flow of commerce"). For example, at least one EIA member company that provides recycling services for used CRTs from businesses throughout the rest of the country has decided not to provide similar services for used CRTs generated in Maine, based in part on the added burdens imposed by the Maine regulations. Although some EIA members have extended their recycling programs for business-generated CRTs to the State of Maine, in doing so they must either charge more for the recycling services to cover the costs of complying with the Maine rules or they must bear the increased transportation costs themselves. In either event, the higher costs interfere with the free flow of commerce and are likely to discourage the environmentally beneficial recycling of CRTs and CRT glass.

E. Preemption of the MDEP Requirements Is Not Affected By EPA's "Authorization" of Portions of the Maine Regulations Under RCRA

For all of the reasons discussed above, the MDEP rules for transport of CRTs and CRT glass are preempted under the Federal hazmat law. This conclusion is not in any way affected by the fact that some of the Maine Regulations have been "authorized" by EPA under RCRA. As discussed below, the specified Maine rules are not part of the state's authorized hazardous waste program. Moreover, even if the rules could somehow be deemed part of the EPA-authorized program, such authorization would not shield the rules from preemption under the Federal hazmat law.

1. The MDEP Rules for Transport of CRTs and CRT Glass Are Not Part of the State Hazardous Waste Program That Has Been Authorized by EPA

Under RCRA, EPA can authorize individual states to implement portions of their hazardous waste programs in lieu of the corresponding parts of the federal RCRA program. *See* RCRA 3006(b), 42 U.S.C. 6926(b). Maine, like virtually all other states, has been authorized for a substantial part of its hazardous waste program. *See,* e.g., 69 FR 64,861, 64,862 (November 9, 2004) (discussing the history of the authorized Maine program). However, the state rules for transport of CRTs and CRT glass are not part of the authorized program.

The federal EPA regulations specify that "[w]here an approved State program has a greater scope of coverage than required by Federal law, the additional coverage is not part of the Federally approved program." *See* 40 CFR 271.l(i)(2). In the present case, the Maine Regulations are broader in scope than the federal RCRA regulations. *See* 69 FR at 64,864 ("There * * * are aspects of the Maine program which are broader in scope than the Federal program. The State requirements which are broader in scope are not considered to be part of the Federally enforceable RCRA program"). As discussed above, Maine generally regulates CRTs and CRT glass as hazardous wastes (either "ordinary" hazardous wastes or "universal" hazardous wastes), while the federal regulations generally exclude CRTs and CRT glass from the definition of solid waste (and, therefore, from the definition of hazardous waste). *See* Sections II.A and III.A above. Because the state rules regulate CRTs and CRT glass that are not regulated at the federal level, the state rules for such materials—including the transport requirements for CRTs and CRT glass—are not part of the authorized state program.[24]

2. The MDEP Rules Would Not Be Shielded From Preemption Under the Federal Hazmat Law, Even If They Were Deemed To Be Authorized Under RCRA

Even if the Maine requirements for transport of CRTs and CRT glass could somehow be considered part of the state's authorized hazardous waste program, they would not be shielded from preemption under the Federal hazmat law. As DOT has long noted, "[t]here is no basis for the position * * * that any State can avoid preemption of its hazardous waste transporter requirements simply by obtaining authorization under RCRA." *See* 60 FR 62,527, 62,534 (December 6, 1995). On the contrary, "EPA-authorized State requirements governing hazardous waste transporters that are more stringent than EPA's own regulations are preempted when those fail to meet the [preemption] standards of 49 U.S.C. 5125." *Id;* see also 66 FR 37,260, 37,263 (July 17, 2001) ("RCRA and EPA's regulations do not authorize a State * * * to impose requirements on the transportation of hazardous waste that fail to satisfy the preemption criteria in 49 U.S.C. 5125).[25] As discussed above, the MDEP rules for transport of CRTs and CRT glass do not meet the referenced Federal hazmat law standards. Therefore, the Maine rules are preempted.

V. Interest of the Applicant

EIA is a non-profit trade association consisting of both associations and individual companies in the electronics and "high technology" industries, including nearly 1,300 corporate members that provide products and services ranging from microscopic electronic components to state-of-the art defense, space and industrial systems, as well as the full range of information technology, telecommunications and consumer electronic products. EIA's mission includes "addressing issues that are important to the [electronics] industry [and] mobilizing the industry on critical issues." EIA Bylaw I, provided in Attachment 18. The EIA Environmental Issues Council is specifically designed to address the electronics industry's environmental

[24] *See* Memorandum from Lee M. Thomas, EPA Assistant Administrator for Solid Waste and Emergency Response, to EPA Program Implementation Guidance Addressees (May 21, 1984), provided in Attachment 15 ("To determine whether a particular requirement or provision of a State program is 'broader in scope' (and therefore not a part of the authorized program) * * * the [key] question[ ] [is:] Does imposition of the State requirement increase the size of the regulated community beyond that of the Federal program? * * * Examples of requirements that are broader in scope include: * * * a lesser amount of waste exempted from regulation"); *In re. Hardin County, Ohio,* 5 E.A.D. 189, 202, RCRA (3008) Appeal No. 93–1 (April 12, 1994), provided in Attachment 16 (dismissing an EPA enforcement action based on an Ohio rule that was found not to be part of the state's authorized RCRA program because "the size of the regulated community under the Ohio * * * rule [was] larger than the size of the regulated community under * * * the federal hazardous waste program").

[25] EPA likewise has expressly disavowed any possible implication that authorization of a state's hazardous waste program under RCRA might preclude preemption under the Federal hazmat law. According to the Agency, "EPA does not believe that it is appropriate to use the RCRA Subtitle C authorization process to make specific determinations of possible preemption under the [Federal hazmat law] * * * [T]he RCRA authorization decisions provide no basis for shielding state regulations touching upon hazardous materials transport from possible preemption challenges under the [Federal hazmat law]." *See* Letter from Michael Shapiro, Director, Office of Solid Waste, EPA, to Charles Dickhut, Chemical Waste Transportation Institute (August 17, 1994), provided in Attachment 17; see also *New York Department of Environmental Conservation* v. *DOT,* 37 F. Supp. 2d. 152, 158 (N.D.N.Y. 1999) ("EPA clearly does not decide whether a preemption problem exists under the [Federal hazmat law] when considering an application for state authorization under RCRA. * * * In fact, * * * EPA refuses to consider any possible preemption under the [Federal hazmat law]").

and related regulatory concerns and to actively work to reduce the environmental impacts of the electronics industry's products throughout their entire life cycle, from design, through use, to end of life.

The business of EIA member companies includes manufacturing, sale, and distribution of CRTs, use of CRTs, and collection and recycling of used CRTs and CRT glass. During the course of these operations, many EIA member companies transport used CRTs or CRT glass, offer such materials for transportation, and/or pay for such transportation by others. Such shipments frequently travel from, to, through, or within the State of Maine.

Indeed, Maine law requires all manufacturers of computer monitors and televisions—most of which are EIA members—to have and implement a plan for the collection and recycling or reuse of the products that they manufactured and that have been generated as wastes by households within the state. *See* Me. Rev. Stat. Ann., tit. 38, § 1610(6)(A) (Attachment 19); *see also* MDEP, ''Brands for which Manufacturers have Notified (listed by Brand)'' (April 13, 2007) (Attachment 20) (identifying manufacturers that have notified under the Maine law and the corresponding brand names). Manufacturers also are responsible for the ''costs associated with the handling, transportation and recycling of household-generated waste computer monitors and televisions that are or were produced by [them] and a pro rata share of orphan waste computer monitors and orphan waste televisions.'' *See* Me. Regs., ch. 415, § 2(C) (emphasis added) (Attachment 6); Me. Rev. Stat. Ann., tit. 38, § 1610(5)(D) (Attachment 19); *see also* MDEP, ''Manufacturer 2007 Pro Rata Share Responsibility for Orphan Waste for Maine Household Televisions [and] Computer Monitor Recycling Program'' (November 2006) (Attachment 21) (identifying the orphan waste shares for the affected manufacturers). Some EIA members also offer collection and recycling services for CRTs that are generated as wastes by businesses and/or other institutions in the state. In all cases, because there are no ultimate recycling facilities for CRTs in Maine, the CRTs must be transported to recycling facilities in other states.

Under the MDEP requirements that are the subject of this Application, some or all of these shipments are subject to transport requirements that do not apply under the HMR. For example, MDEP requires such shipments to be accompanied by a Manifest, UBOL, or other MDEP-approved document, even though such documents generally are not required under the HMR. Similarly, MDEP requires specific labels and/or markings on the packages which are not required under the HMR. *See* Section II above (describing the Maine requirements for transport of CRTs and CRT glass); *see also* Me. Regs., ch. 415, § 3(B)(l) (requiring all transport of household CRTs to be performed in accordance with the Maine universal waste requirements).

The additional Maine requirements for transport of CRTs and CRT glass place unlawful and unnecessary burdens on those EIA members that transport (or offer for transport) such materials from, to, or through the State of Maine, or that pay for such services performed by others (as discussed above). To the extent that these EIA members are transporting the CRTs or CRT glass, or are offering such materials for transport, they will have the burden of complying with additional regulatory requirements in Maine. To the extent that these companies are paying for transportation-related services offered by others (as in the case of the manufacturers covered by the Maine law for collection and recycling of household CRTs), they will have to pay more for those services than would otherwise be required if the services could be provided in accordance with HMR requirements only.

In at least one case, an EIA member that provides recycling services for used CRTs from businesses throughout the rest of the country has decided not to provide similar services for used CRTs generated in Maine, based in part on the added burdens imposed by the Maine regulations. In this way, the Maine regulations affect this company's efforts to build customer loyalty and increase customer satisfaction by offering nationwide recycling services. Moreover, the Maine rules are environmentally counterproductive, inasmuch as they discourage this company and others from providing CRT recycling services.

A determination by DOT that the Maine requirements are preempted by the HMR would alleviate the burdens on EIA members and facilitate the environmentally sound recycling of CRTs. In addition, it would further the Federal hazmat law goals of promoting uniform requirements for a safe and efficient transportation system.

Because EIA members are directly affected by the Maine Regulations addressed in this Application, and one of the Alliance's main purposes is to represent its members with respect to these types of issues, EIA has standing to submit this Application for a preemption determination. *See* 49 U.S.C. 5125(d); 58 FR at 11,181 (''The [Federal hazmat law] standing test is that a person be 'directly affected' in order to apply for a preemption determination. * * * [DOT] interprets 'directly affected' persons broadly because 'important preemption issues [are raised] under the [Federal hazmat law], and all parties engaged in hazardous materials transportation or the regulation of that transportation will be served by [DOT's] addressing [preemption] issues.' ''); 60 FR at 62,532 (''[the 'directly affected'] standard is a simple one; 'being affected' means only that the [state] requirement applies to the applicant'').

VI. Conclusion

For the reasons discussed above, EIA hereby requests that DOT issue a determination pursuant to 49 U.S.C. 5125(d)(1) and 49 CFR 107.203 that the Maine Regulations codified at 06 096 Code Me. R. chs. 850–857 and 415 are preempted by the Federal hazmat law and the HMR to the extent that they impose requirements on the transportation of CRTs and CRT glass that are not ''hazardous wastes'' under the HMR because they have been excluded from federal manifesting requirements by EPA. The specific Maine requirements that are covered by this request include, but are not limited to, the state requirements for Manifests and/or other shipping papers, labeling/marking, emergency response plans, insurance, and transporter licensing.

VII. Certificate of Service and Notification of Opportunity To Submit Comments

I hereby certify, pursuant to 49 CFR § 107.205(a), that copies of the foregoing application for a preemption determination were sent this 8th day of May 2007 by certified mail, return receipt requested, to the following, together with a statement that comments regarding the application may be submitted to the Chief Counsel of the Pipeline and Hazardous Materials Safety Administration within the U.S. Department of Transportation:

Gov. John E. Baldacci, Office of the Governor, 1 State House Station, Augusta, ME 04333–0001.

David P. Littell, Commissioner Maine Department of Environmental Protection, 17 State House Station, Augusta, ME 04333–0017.

Steven Rowe, Attorney General, 6 State House Station, Augusta, ME 04333–0006.

Jeffrey Pidot, Office of the Attorney General, Chief, Natural Resources Division, 6 State House Station, Augusta, ME 04333–0006.

Aaron H. Goldberg, Beveridge & Diamond, P.C., Counsel to Applicant, Electronic Industries Alliance.

Table of Attachments

1. Summary of Key Maine Requirements That Are Preempted and the Basis for Preemption.

2. Me. Regs., ch. 850 (Identification of Hazardous Wastes).

3. Me. Regs., ch. 851 (Standards for Generators of Hazardous Waste)

4. Me. Regs., ch. 853 (Licensing of Transporters of Hazardous Waste)

5. Me. Regs., ch. 857 (Hazardous Waste Manifest Requirements)

6. Me. Regs., ch. 415 (Reasonable Costs for Handling and Recycling of Electronic Wastes).

7. MDEP, ''Guidance for the New Uniform Hazardous Waste Manifest.''

8. MDEP, ''Universal Waste Handbook'' (March 2007).

9. Letter from Charles E. Betts, Senior Transportation Specialist, Office of Hazardous Materials Standards, DOT, to Phil Stewart, The Dow Chemical Company (April 21, 2006).

10. EPA, ''Notes from 4/24/98 CRT Project Team Conference Call on Transportation Packaging Issue'' (April 28, 1998).

11. Letter from Delmer F. Billings, Chief, Regulations Development, Office of Hazardous Materials Standards, DOT, to Ursula Judenhofer, BARLOCHER GmbH (August 8, 1997).

12. Letter from John A. Gale, Chief, Standards Development, Office of Hazardous Materials Standards, DOT, to James Bandstra, Environmental Manager, Hammond Group, Inc. (July 13, 2004).

13. John A. Gale, Transportation Regulations Specialist, Office of Hazardous Materials Standards, DOT, to Hobart Huson (January 23, 2003).

14. Letter from Thomas O. Allan, Senior Transportation Regulations Specialist, Office of Hazardous Materials Standards, DOT, to Eugene J. Secor, EHS/Transportation Specialist, H.B. Fuller Automotive Company (August 14, 1998).

15. Memorandum from Lee M. Thomas, EPA Assistant Administrator for Solid Waste and Emergency Response, to EPA Program Implementation Guidance Addressees (May 21, 1984).

16. In re: Hardin County, Ohio, 5 E.A.D. 189, 202, RCRA (3008) Appeal No. 93–1 (April 12, 1994).

17. Letter from Michael Shapiro, Director, Office of Solid Waste, EPA, to Charles Dickhut, Chemical Waste Transportation Institute (August 17, 1994).

18. Electronic Industries Alliance, Bylaw I.

19. Me. Rev. Stat. Ann., tit. 38, § 1610.

20. MDEP, ''Brands for which Manufacturers have Notified (listed by Brand)'' (April 13, 2007).

21. MDEP, ''Manufacturer 2007 Pro Rata Share Responsibility for Orphan Waste for Maine Household Televisions [and] Computer Monitor Recycling Program'' (November 2006).

SUMMARY OF KEY MAINE REQUIREMENTS THAT ARE PREEMPTED AND THE BASIS FOR PREEMPTION

	Broken CRTs/CRT glass	Intact CRTs	Basis for preemption
Shipping Papers	Manifest required. (Me. Regs., ch. 857).	Manifest, Uniform Bill of Lading, or Log accompanying the waste. (Me. Regs., ch. 857, § 6(B)).	• Not substantively the same as the HMR. • Based on classification that is not the same as in the HMR. • Obstacle to goals to Federal hazmat law.
Labeling/Marking	''Hazardous Waste'' and other information. (Me. Regs., ch. 851, § 8(A)(4)).	''Waste Cathode Ray Tube'' (Me. Regs., ch. 850, § 3(A)(13)(e)(xxii)e).	• Not substantively the same as the HMR. • Based on classification that is not the same as in the HMR.
Classification	Hazardous waste (Me. Regs., ch. 850, § 3(A)).	''Universal'' hazardous waste. (Me. Regs., ch. 850, § 3(AX13Xb)(i)).	• Not substantively the same as the HMR. • Obstacle to goals of Federal hazmat law.
Insurance	At least $500,000 in coverage. (Me. Regs., ch. 853, §§ 5(B)(9) and 8(B)).	At least $1,000,000 in coverage. (Me. Regs., ch. 853, § 11(H)).	• Based on classification that is not the same as in the HMR. • Obstacle to goals of Federal hazmat law.
Emergency Response Plan	Must have plan and keep copy on each truck. (Me. Regs., ch. 853, § 8(F)).	Must have plan and keep copy on each truck. (Me. Regs., ch. 853, § 11(K)).	• Based on classification that is not the same as in the HMR. • Obstacle to goals of Federal hazmat law.
Transporter Licensing	License required. (Me. Regs., ch. 853, § 4(A)(1)).	N/A	• Based on classification that is not the same as in the HMR. • Obstacle to goals of Federal hazmat law.
Other Transporter Requirements.	(Me. Regs., ch. 853)	(Me. Regs., ch. 853, § 10–11)	• Based on classification that is not the same as in the HMR. • Obstacle to goals of Federal hazmat law.

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