of military chemical warfare agents, certain wastes generated in the production of phthalate esters, and certain other organic chemical industry wastes not regulated under RCRA. It notes that this fact may simply correct the record, and may not affect the preemption determination.

MDĒ asks that RSPA reverse its preemption determination or at least reconsider the decision with respect to the examination and certification requirements by examining whether those requirements, as applied and enforced, in fact are obstacles to achieving the goals of the HMR.

III. Discussion

The examination requirements, specification of training subjects, and instructor experience criterion under COMAR 26.01.10.16.D and 26.13.04.01.F, as well as the certification requirements themselves, are training requirements within the meaning of 49 CFR 172.700(b). Under that section, "training" is defined as:

[A] systematic program that ensures a hazmat employee has familiarity with the general provisions of [the HMR], is able to recognize and identify hazardous materials, has knowledge of specific requirements of [the HMR] applicable to functions performed by the employee, and has knowledge of emergency response information, selfprotection measures and accident prevention methods and procedures.

The term "training," then, particularly as it extends to "ensuring" hazmat employee knowledge in the specified areas, encompasses more than the subject matter that hazmat employees are required to learn. It also includes the means by which hazmat employees are instructed and by which the enforcing governmental body may determine that instruction has been successful. Accordingly, "training requirements" include not only provisions that specify the subject matter of training, but also those that, for instance, prescribe how instruction is to be conducted and documented.

That the term should be read broadly is evidenced by 49 CFR 172.701, which states: "This subpart * * * prescribe[s] minimum training requirements for the transportation of hazardous materials' (emphasis added). Thus, under section 172.701, the requirements of the subpart, 49 CFR 172.700-.704, including examination requirements, 49 CFR 172.702(d), and training documentation requirements, 49 CFR 172.704(d), all are "training requirements." As to the Maryland certification requirements, the sole criterion for issuance of the operator certificate under COMAR 26.01.10.17

and 26.13.04.01.F is satisfactory completion of prescribed training (an applicant under COMAR 26.13.04.01.F also must submit a \$20 fee, presumably for processing). The certificate, therefore, is no more and no less than a documentation of training, and the certification requirement is a training requirement.

This reading is consistent with the basis of 49 CFR 172.701. As discussed in the determination, this section, which permits a State to apply motor vehicle operator training requirements more strict than the HMR only to those domiciled in the State, balances competing interests. On the one hand, it "recognizes the traditional regulation by States of their own resident drivers." 59 FR 28919 (quoting 57 FR 20944, 20947 (May 15, 1992)). On the other, it recognizes that:

Were States permitted to impose stricter requirements on non-resident operators, operators potentially would be subject to numerous sets of training requirements, with resulting confusion, cost and paperwork burdens.

59 FR 28919.

Confusion, cost and paperwork burdens would result not only from States specifying different subject matters in which non-domiciled vehicle operators must be instructed, but just as much from disparate examination, documentation and certification requirements. In Inconsistency Ruling (IR-) 26, 54 FR 16314 (Apr. 21, 1989), California required non-resident motor vehicle operators to have a Non-Resident Special Certificate or an employer's certification on a Stateapproved form before entering the State. RSPA found this to be a training requirement preempted by the HMR. 54 FR at 16323–24. We found that "documentary prerequisites for the transportation of hazardous materials" imposed on non-domiciled operators would cause unnecessary delays in the transportation of hazardous materials in commerce. 54 FR 16323. Section 172.701 closely adopts the rationale of IR-26. See 57 FR 20947.

Furthermore, MDE states in its petition, again, that its examination and certification requirements are "to demonstrate that the training received by the drivers is adequate to insure the safe transportation and transfer of hazardous materials in Maryland." As thus characterized, these are training requirements within the § 172.700(b) definition. More directly, MDE asserted in its June 23, 1993 comments on the CWTI/NTTC application:

Subpart H (49 CFR 172.700(b)) defines training to mean "a systematic program that

ensures a hazmat employee * * * is able to recognize and identify hazardous materials * * * and has knowledge of emergency response information, self protection measures and accident prevention methods and procedures.'' These are exactly the issues addressed by the State's training requirements.

MDE's characterization at that time is diametrically opposed to the position it now takes. For the reasons discussed, RSPA agreed with MDE's earlier characterization, and is not now persuaded to the contrary.

Whether the specific requirement to obtain a certificate of training from the State fails the obstacle test was not explicitly addressed in the determination. As MDE directly raises the issue in its petition, this decision will address it. Because the certification requirements are training requirements, to determine whether they are an "obstacle to accomplishing and carrying out" Federal hazmat law, 49 U.S.C. 5125(a)(2), it is necessary only to determine whether they violate 49 CFR 172.701. A training requirement that violates 49 CFR 172.701 is an obstacle as a matter of law. See 59 FR 28919. The HMR do not require an operator to obtain a certificate of training from a governmental body; therefore, the MDE requirement to do so is more strict than the HMR, and is preempted as an obstacle. See IR-26, 54 FR at 16323 (discussed above).

MDE is correct that if the requirements in issue were not training requirements, then 49 CFR 172.701 would not apply. If 49 CFR 172.701 did not apply, RSPA could not find that merely because the requirements as applied to non-domiciled operators are stricter than the HMR, they violate the obstacle test. Rather, RSPA would need to analyze whether these particular requirements *in fact* create an obstacle.

MDE supposes wrongly, however, that if the certification requirements are training requirements, it is not necessary to examine them "as applied or enforced." 49 U.S.C. 5125(a)(2). Section 172.701 simply establishes, as a matter of law, when non-Federal motor vehicle operator training requirements are an obstacle to accomplishing the goals of the HMR. Under the obstacle test, however, the non-Federal requirements to be considered are those that are applied or enforced. For one, this ensures that RSPA does not expend resources considering hypothetical preemption issues.

Absent contrary evidence in the record, RSPA presumes that a State rule is applied and enforced by its clear terms. In this case, MDE does not dispute that the operator of an oil cargo