

operations at fixed facilities involving hazardous materials. The NPRM indicated that facilities at which functions regulated by the HMR occur might also be subject to applicable OSHA and/or EPA regulations. Finally, the NPRM discussed the preemption provisions of Federal hazmat law and indicated that facilities at which functions regulated by the HMR occur may also be subject to laws and regulations of state, local, or tribal governments.

II. Summary of Final Rule

This final rule amends the HMR to incorporate the following new definitions and provisions:

- We are defining a new term—"pre-transportation function"—to mean a function performed by any person that is required to assure the safe transportation of a hazardous material in commerce. When performed by shipper personnel, loading of packaged or containerized hazardous material onto a transport vehicle, aircraft, or vessel and filling a bulk packaging with hazardous material in the absence of a carrier for the purpose of transporting it is a pre-transportation function as that term is defined in this final rule. Pre-transportation functions must be performed in accordance with requirements in the HMR.

- We are defining "transportation" to mean the movement of property and loading, unloading, or storage incidental to the movement. This definition is consistent with the definition of "transportation" in Federal hazmat law. Transportation in commerce begins when a carrier takes physical possession of a hazardous material for the purpose of transporting it and continues until delivery of the package to its consignee or destination as evidenced by the shipping documentation under which the hazardous material is moving, such as shipping papers, bills of lading, freight orders, or similar documentation.

- We are defining "movement" to mean the physical transfer of a hazardous material from one geographic location to another by rail car, aircraft, motor vehicle, or vessel.

- We are defining "loading incidental to movement" to mean the loading by carrier personnel or in the presence of carrier personnel of packaged or containerized hazardous material onto a transport vehicle, aircraft, or vessel for the purpose of transporting it. For a bulk packaging, "loading incidental to movement" means the filling of the packaging with a hazardous material by carrier personnel or in the presence of carrier personnel for the purpose of transporting it. Loading incidental to

movement is regulated under the HMR. Note, however, that, as discussed elsewhere in this preamble, OSHA shares jurisdiction for certain aspects of the loading operation.

- We are defining "unloading incidental to movement" to mean the removal of a packaged or containerized hazardous material from a transport vehicle, aircraft, or vessel or the emptying of a hazardous material from a bulk packaging after a hazardous material has been delivered to a consignee and prior to the delivering carrier's departure from the consignee facility or premises. Unloading incidental to movement is subject to regulation under the HMR. Note, however, that, as discussed elsewhere in this preamble, OSHA shares jurisdiction for certain aspects of the unloading operation. Unloading by a consignee after the delivering carrier has departed the facility is not unloading incidental to movement and not regulated under the HMR.

- We are defining "storage incidental to movement" to mean storage by any person of a transport vehicle, freight container, or package containing a hazardous material between the time that a carrier takes physical possession of the hazardous material for the purpose of transporting it until the package containing the hazardous material is physically delivered to the destination indicated on a shipping document. However, in the case of railroad shipments, even if a shipment has been delivered to the destination shown on the shipping document, if the track is under the control of a railroad carrier or track is used for purposes other than moving cars shipped to or from the lessee, storage on the track is storage incidental to movement. We have revised the definition of "private track or private siding" to make this clear. Storage at a shipper facility prior to a carrier exercising control over or taking possession of the hazardous material or storage at a consignee facility after a carrier has delivered the hazardous material is not storage incidental to movement and is not regulated under the HMR.

- We are amending § 171.1 of the HMR to list regulated and non-regulated functions. Regulated functions include: (1) Activities related to the design, manufacture, and qualification of packaging represented as qualified for use in the transportation of hazardous materials; (2) pre-transportation functions; and (3) transportation functions (movement of a hazardous material and loading, unloading, and storage incidental to the movement). Non-regulated functions include: (1)

Rail and motor vehicle movements of a hazardous material solely within a contiguous facility where public access is restricted; (2) transportation of a hazardous material in a transport vehicle or conveyance operated by a Federal, state, or local government employee solely for government purposes; (3) transportation of a hazardous material by an individual for non-commercial purposes in a private motor vehicle; and (4) any matter subject to U.S. postal laws and regulations.

- We are amending § 171.1 of the HMR to indicate that facilities at which functions are performed in accordance with the HMR may be subject to applicable standards and regulations of other Federal agencies or to applicable state or local government laws and regulations (except to the extent that such non-Federal requirements may be preempted under Federal hazmat law). Federal hazmat law does not preempt other Federal statutes nor does it preempt regulations issued by other Federal agencies to implement statutorily authorized programs. This final rule is intended to clarify the applicability of the HMR to specific functions and activities. It is not appropriate for DOT to attempt to clarify the applicability of other Federal agencies' statutes or regulations to particular functions or activities. However, it is important to note that facilities at which pre-transportation or transportation functions are performed must comply with OSHA and state or local regulations applicable to physical structures—for example, noise and air quality control standards, emergency preparedness, fire codes, and local zoning requirements. Facilities may also have to comply with applicable state and local regulations for hazardous materials handling and storage operations. Facilities at which pre-transportation or transportation functions are performed may also be subject to EPA and other OSHA regulations. For example, facilities may be subject to EPA's risk management; community right-to-know; hazardous waste tracking and disposal; and spill prevention, control and countermeasure requirements, and OSHA's process safety management and emergency preparedness requirements. Similarly, facilities at which pre-transportation functions are performed may also be subject to regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) concerning the handling of explosives. Questions as to the applicability of EPA, OSHA, or ATF regulations to particular facilities or