

facility] appears as the consignee on the waybill only for the purpose of communicating to the carrier (the railroad) that the rail tank car is to arrive at one of our terminals.” (ACCU Chem Conversion, Inc.) Another commenter states that the NPRM proposals “could spell the death knell for intermodal facilities where hazardous materials are transferred in bulk because states and localities would be free to impose unreasonable requirements making the operation of transfer facilities impractical.” (Association of American Railroads) These commenters suggest that intermodal transfer operations should be considered transportation functions and, thus, urge us to retain the rail tank car unloading requirements currently in § 174.67 of the HMR.

We agree that a transloading operation at an intermodal transfer facility—that is, the act of directly transferring hazardous materials from one bulk packaging to another—is a function that should be regulated under the HMR. Transloading is a pre-transportation function in that it involves selection, preparation, and closing of packagings for the transportation of hazardous materials. The transfer of hazardous materials from one bulk packaging into another is a filling, or loading, operation as defined in this final rule. During transloading, the filling, or loading, of one bulk packaging occurs simultaneously with the emptying, or unloading, of a second bulk packaging. Further, a transloading operation at an intermodal transfer facility is a continuation of the movement of a hazardous material begun when a carrier takes possession of the hazardous material for the purpose of transporting it. Therefore, in this final rule, we are revising the definitions proposed in the NPRM for “pre-transportation functions” and “loading incidental to movement” and “unloading incidental to movement” to include transloading operations. We are also defining a new term—“transloading”—to mean the transfer of a hazardous material from one HMR-authorized bulk packaging to another for purposes of continuing the movement of the hazardous material in commerce.

Further, we agree that the rail tank car unloading regulations currently in § 174.67 of the HMR should be retained and applied to transloading of a hazardous material from a rail tank car to a cargo tank or other bulk hazardous materials packaging. Under Docket HM-212, we had proposed to revise the rail tank car unloading requirements to clarify and update them and account for technological advances. On March 27, 2000, we published a notice

withdrawing the HM-212 NPRM. We withdrew the proposals in the HM-212 NPRM related to cargo tank unloading because we addressed cargo tank unloading in a final rule issued under Docket HM-225A (64 FR 28030). We announced that we would address the issues raised in the HM-212 NPRM concerning the proposed rewrite of rail tank car unloading requirements in the HM-223 rulemaking. Indeed, a number of commenters to the HM-212 NPRM suggested that it should be broadened to address issues related to the definition of the term “in transportation” and clarification of the respective roles of OSHA and RSPA with respect to the transfer of hazardous materials. In this final rule, we are incorporating revisions proposed in HM-212. See the discussion below for specific revisions to this section.

Note that, for purposes of the HMR, “transloading” does not include operations that involve the transfer of a hazardous material from one packaging to another for purposes of mixing, blending, or otherwise altering the hazardous materials. Further, “transloading” does not include movement of product to or from a bulk storage tank. For purposes of the HMR, “transloading” is a pure transfer from one bulk packaging to another at an intermodal transfer facility; operations conducted at a shipper facility before a hazardous material is offered for transportation or at a consignee facility after transportation is complete are not “transloading” and are not subject to regulation under the HMR. Note also that, while the HMR apply to transloading operations at fixed facilities, regulations of other Federal or non-Federal entities may also apply to such facilities (see discussion below).

*Storage incidental to movement.* In the NPRM, we proposed to define “storage incidental to movement” to mean temporary storage 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 to transport it in commerce until the package containing the hazardous material is delivered to its destination, as indicated on shipping documentation. As proposed in the NPRM, storage incidental to movement would include temporary storage at a carrier facility where the package containing the hazardous material is to be transferred from one transport vehicle to another or from one transportation mode to another. Storage incidental to movement would also include the period during which a transport vehicle carrying hazardous

materials is parked temporarily at an en route point such as a safe haven, rail yard, marine terminal, or at a truck stop, motel, restaurant, rest area, or similar location. As proposed in the NPRM and consistent with current policy, neither storage of a hazardous material at an offeror facility prior to its acceptance by a carrier nor storage of a hazardous material at a consignee facility after it has been delivered by a carrier would be subject to the HMR.

Some commenters support the NPRM proposal for defining storage incidental to movement. “Storage of a hazardous material at an offeror facility prior to its acceptance by a carrier or storage of a hazardous material at a consignee facility after a carrier has delivered it should not be subject to the HMR. These areas should be under the jurisdiction of other agencies, such as OSHA and the local fire and building authorities.” (Monsanto) Similarly, some commenters agree that “when a hazardous material is transported to and held at a storage facility at the request of the consignee, as indicated on the shipping papers, transportation ends when the carrier delivers it to the storage facility and the storage facility signs for the material.” (International Warehouse Logistics Association)

Other commenters, however, oppose the NPRM proposals applicable to storage incidental to movement. As discussed above, a number of commenters suggest that the HMR should apply from the time that a hazardous material is packaged until the time that the package is delivered to the consignee; for bulk packagings, these commenters suggest that the HMR should apply until the bulk package is emptied at the consignee facility. These commenters assert that broad application of the HMR to storage at both consignee and consignor facilities assures uniform, national regulation of hazardous materials in commerce. Some commenters also assert that the NPRM proposals applicable to storage of hazardous materials represent an effort by RSPA to “relinquish” its authority to regulate “post-transportation” activities involving hazardous materials.

We disagree. As we stated in the NPRM, the proposals applicable to storage of hazardous materials during transportation are generally consistent with previous administrative determinations and letters of interpretation concerning the applicability of the HMR to hazardous materials stored incidental to movement (66 FR 32434–32435). The proposals do not represent an effort on our part to relinquish previously exercised regulatory authority. Rather, the