

determinations can be found in Part 107.

The preemption provisions of Federal hazmat law effectively preclude state, local, and tribal governments from regulating pre-transportation functions, as defined in this final rule, in a manner that differs from the Federal requirements if the non-Federal requirement is not authorized under another Federal law and the non-Federal requirement fails the dual compliance, obstacle, or covered subject test. Examples of such pre-transportation functions include: (1) Determining the hazard class of a hazardous material; (2) selecting a hazardous materials packaging; (3) filling a hazardous materials packaging; (4) transloading a hazardous material at an intermodal transfer facility from one HMR-authorized bulk packaging to another HMR-authorized bulk packaging for the purpose of continuing the movement of the hazardous material in commerce; (5) securing a closure on a filled hazardous materials package or container or on one containing a residue of a hazardous material; (6) marking a package to indicate that it contains a hazardous material; (7) labeling a package to indicate that it contains a hazardous material; (8) preparing a shipping paper; (9) providing and maintaining emergency response information; (10) reviewing a shipping paper to verify compliance with the HMR or international equivalents; (11) for persons importing a hazardous material in to the United States, providing the shipper with information as to the requirements of the HMR that apply to the shipment of the material while in the United States; (12) certifying that a hazardous material is in proper condition for transportation in conformance with the requirements of the HMR; (13) blocking and bracing a hazardous materials package in a freight container or transport vehicle; (14) segregating a hazardous materials package in a freight container or transport vehicle from incompatible cargo; and (15) selecting or providing placards for a transport vehicle to indicate that it is carrying hazardous materials. We have not attempted, in this final rule, to identify every function that is a pre-transportation function—that is, a function performed in advance of transportation in commerce to prepare a shipment for transportation in commerce or that affects the safety of the shipment in transportation in commerce. State, local, or Indian tribe regulation of pre-transportation functions not specifically identified in

this final rule may also be preempted under Federal hazmat law.

Unless the Secretary waives preemption, the preemption provisions of Federal hazmat law effectively preclude state, local, and tribal governments from regulating transportation functions, as defined in this final rule, in a manner that differs from the Federal requirements if the non-Federal requirement is not authorized by another Federal law and the non-Federal requirement fails the dual compliance, obstacle, or covered subject test. Examples of such transportation functions include: (1) Movements of hazardous materials in commerce—that is, the physical transfer of a hazardous material from one geographic location to another by rail car, aircraft, motor vehicle, or vessel; (2) loading of a hazardous material onto a transport vehicle, aircraft, or vessel or into a bulk packaging; (3) unloading of a hazardous material from a transport vehicle, aircraft, or vessel or from a bulk packaging when carrier personnel are present; and (4) storage of a hazardous material between the time that a carrier takes possession of the material until it is delivered to its destination as indicated on shipping documentation.

State, local, and tribal governments may impose regulations on hazardous materials-related functions that are not covered by the HMR or Federal hazmat law, except where RSPA has specifically determined that regulation of a hazardous materials-related function is not necessary. For example, hazardous materials that are not being transported in commerce as defined in this final rule are subject to applicable non-Federal community right-to-know, fire protection, worker protection, environmental protection, building code, and zoning requirements. Moreover, although the HMR apply to pre-transportation functions as defined in this final rule, the facilities within which pre-transportation functions are performed could be subject to non-Federal regulations that do not affect the performance of the pre-transportation function—again, fire protection, worker protection, environmental protection, building code, and zoning requirements may apply. Thus, state and local regulations applicable to hazardous materials stored at a consignee's facility or at a manufacturing facility awaiting use in a manufacturing process would not be preempted (PD-9(R), 60 FR 8787, February 15, 1995). Similarly, the HMR do not apply to regulation of consignee storage tanks; therefore, state or local requirements as to the types of storage tanks into which a hazardous material may be unloaded from a tank car are not

preempted (PD-9(R), 60 FR 8788, February 15, 1995). Further, local fire code requirements that do not apply to the transportation of hazardous materials in commerce are not preempted (PD-14(R), 63 FR 67506, December 7, 1998).

The above discussion is intended as general guidance only. We will continue to make preemption determinations applicable to specific non-Federal requirements on a case-by-case basis, using the obstacle, dual compliance, and covered subjects tests provided in Federal hazmat law.

#### *F. OSHA, EPA, and ATF Programs and Regulations*

*OSHA.* On December 29, 1970, Congress enacted the Occupational Safety and Health Act of 1970 (OSH Act) for the purpose of assuring safe and healthy workplaces. Under the OSH Act, every employer engaged in a business affecting commerce has a general duty to furnish each of its employees a workplace free from recognized hazards causing, or likely to cause, death or serious physical harm. In addition, employers are required to comply with all safety and health standards issued under the OSH Act that are applicable to working conditions involved in their businesses.

OSHA has promulgated a number of standards that address the handling of hazardous materials at fixed facilities. These include standards governing process safety management of highly hazardous chemicals and requirements for handling and storage of specific hazardous materials, such as compressed gases, flammable and combustible liquids, explosives and blasting agents, liquefied petroleum gases, and anhydrous ammonia. OSHA standards also address hazard communication requirements at fixed facilities, including container labeling, retention of transportation placards, and other forms of warning, material safety data sheets, and employee training. (29 CFR 1910.1200) In addition, facilities that handle and store hazardous materials must comply with OSHA standards that address more general types of workplace hazards, such as walking and working surfaces, means of egress, noise, air quality, environmental control, personal protective equipment, and fire protection.

*EPA.* EPA's mission is to protect human health and the natural environment from pollution. More than a dozen major statutes or laws form the legal basis for EPA's programs. Several of these statutes establish programs covering facilities that handle hazardous materials. They include: