

- The Emergency Planning and Community Right-to-Know Act (EPCRA; 42 U.S.C. 11011 *et seq.*) requires facilities to provide information concerning the hazardous materials they have on site to states, local planners, fire departments, and, through them, to the public. This information provides the foundation for both community emergency response plans and public-industry dialogues on risks and risk reduction. EPCRA also requires facilities to report releases of certain hazardous materials to state and local emergency responders.

- The Clean Air Act (42 U.S.C. 7401 *et seq.*) establishes a general duty for facility owners or operators to identify hazards that may result from accidental releases of extremely hazardous substances, design and maintain a safe facility as needed to prevent such releases, and minimize the consequences of releases that do occur. EPA has promulgated a list of substances that, in the event of an accidental release, are known to cause or may be reasonably expected to cause death, injury, or serious adverse effects to human health or the environment. EPA also has established a threshold quantity for each listed chemical. Stationary sources that have more than a threshold quantity of a regulated substance in a process are subject to the accident prevention regulations promulgated by EPA, including the requirement to develop risk management plans.

- The Resource Conservation and Recovery Act (RCRA; 42 U.S.C. 321 *et seq.*) gave EPA the authority to control hazardous waste from "cradle to grave." This includes the generation, transportation, treatment, storage, and disposal of hazardous waste. RCRA requires hazardous waste transportation regulations to be consistent with transportation regulations issued under Federal hazmat law.

- The Clean Water Act (33 U.S.C. 1251 *et seq.*) establishes authority for the Spill Prevention, Control, and Countermeasure (SPCC) program for non-transportation-related facilities. The SPCC regulations are designed to prevent the discharge of oil from non-transportation-related onshore and offshore facilities into or onto the navigable waters of the United States or adjoining shorelines.

EPA is also authorized to regulate hazardous materials, and its statutes do not expressly preclude EPA from regulating hazardous materials activities regulated by RSPA, although EPCRA does exempt "transportation, including the storage incident to such transportation" from many of its

requirements. While most of EPA's programs focus on fixed facilities, EPA also regulates transportation of hazardous wastes under RCRA, as noted above. Moreover, loading, unloading, and storage of hazardous materials generally occur at fixed facilities. Recognizing the potential for regulatory overlap, EPA has taken into account RSPA regulation of hazardous materials in deciding whether and how to regulate. Consequently, the decisions RSPA makes in this rulemaking may affect some EPA programs. The nature and extent of that effect will depend on EPA's interpretation and implementation of its statutes and regulations, some of which we describe further below.

ATF. Congress enacted Title XI of the Organized Crime Control Act of 1970 to protect interstate and foreign commerce against interference and interruption by reducing the hazard to persons and property arising from misuse and unsafe or insecure storage of explosive materials. Chapter 40 of the 1970 Act is entitled Importation, Manufacture, Distribution and Storage of Explosive Materials. ATF has been delegated the authority to enforce Chapter 40. ATF has promulgated regulations contained in 27 CFR part 555 to implement its provisions.

For example, § 555.30 contains requirements for licensees, permittees, carriers of explosives materials, and other persons to report the theft or loss of explosive materials within 24 hours of discovery. ATF regulations also contain detailed provisions governing the storage of explosive materials. These storage regulations address numerous issues including: (1) A requirement to inspect storage facilities at least every seven days (section 555.204); (2) where magazines may be located (section 555.206); (3) construction requirements of magazines, including locking mechanisms (sections 555.207–211); and (4) quantity restrictions and restrictions on the items that may be stored together (section 555.213).

Relationship of Federal hazmat law to other statutes and regulations. Federal hazmat law does not preempt other Federal statutes nor does it preempt regulations issued by other Federal agencies to implement statutorily authorized programs. The provisions of this final rule are intended only 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 applicable OSHA standards 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 must also comply with applicable state and local regulations for hazardous materials handling and storage operations and with state and local regulations that address environmental protection.

Facilities at which pre-transportation or transportation functions are performed may be subject to EPA regulations and additional OSHA standards applicable to hazardous materials at fixed facilities. For example, facilities that store hazardous materials may be subject to EPA's risk management; community right-to-know; hazardous waste tracking and disposal; and spill prevention, control and countermeasure program requirements, and OSHA's process safety management and emergency preparedness requirements. Further, facilities at which pre-transportation or transportation functions are performed may also be subject to ATF regulations applicable to licensing and permitting and safe handling, including storage, of explosives. Questions as to the applicability of EPA or ATF regulations or standards to particular facilities or operations should be directed to the appropriate EPA, OSHA, or ATF office.

OSHA Programs and Standards. The OSH Act vests OSHA with primary responsibility for promulgating and enforcing workplace safety and health standards. Under the OSH Act, every employer has a general duty to provide its employees with a workplace free from recognized hazards that are likely to cause death or serious physical harm and to comply with occupational safety and health standards. Occupational Safety and Health Act of 1970 (OSH Act) (84 Stat. 1590, as amended, 29 U.S.C. 653(b)(1)).

To avoid duplicative regulation, section 4(b)(1) of the OSH Act provides:

Nothing in this Act shall apply to working conditions of employees with respect to which other Federal agencies * * * exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health. (Emphasis added.)

However, when enacting and codifying the Federal hazmat law and several other Federal statutes, Congress recognized that OSHA is the most appropriate agency for addressing certain workplace hazards and, therefore, included explicit language that preserves OSHA's regulatory