

workers, such as airline, railroad, maritime, and motor carrier employees. Protection of the public generally and employees in particular is necessarily an integrated undertaking. Thus, the HMR include requirements aimed at protecting both the general public and employees of hazardous materials carriers who perform transportation functions. For example, the HMR include a variety of requirements for communication of the hazards associated with a specific hazardous materials shipment, such as shipping papers, package marks and labels, and placards. The HMR also require a shipping paper to include a telephone number for information about responding to an emergency involving the shipment. A shipper must also include emergency response information about the specific hazardous material being shipped with the documentation that accompanies the shipment. These hazard communication requirements are intended to assist emergency responders to handle hazardous materials transportation incidents. The HMR also require hazmat employees (employees who perform functions that affect the safe transportation of a hazardous material) to receive safety training concerning emergency response information for the materials handled, protective measures, and methods and procedures for avoiding accidents. The HMR specify that training provided in accordance with OSHA requirements may be used to satisfy the HMR safety training requirements.

OSHA standards include requirements for emergency action and fire prevention plans at facilities. The OSHA standard for process safety management includes requirements for emergency response to hazardous materials incidents at a facility. OSHA also has promulgated a standard for emergency response to hazardous materials incidents at fixed facilities. The OSHA Hazardous Waste Operations and Emergency Response Standard, 29 CFR 1910.120, includes requirements to protect workers in this environment and to help them handle hazardous wastes safely and effectively. The OSHA standard includes specific response procedures, including requirements for protective equipment and training for emergency response personnel.

In carrying out the mandate to prescribe regulations for the safe transportation of hazardous materials, the Secretary of Transportation, through the DOT operating administrations, has developed a special expertise that makes the Department uniquely qualified to play the primary Federal

regulatory role in the protection of workers who operate motor vehicles, trains, aircraft, and vessels used to transport hazardous materials. Further, the preemption provisions in Federal hazmat law provide the agency with the statutory authority to promulgate nationally uniform regulations, thereby assuring that carriers are not forced to comply with a number of different and perhaps inconsistent regulatory requirements applicable to the safety of their employees who transport hazardous materials by air, highway, water, or rail in different state or local jurisdictions. Thus, we believe that the proper role for RSPA in the area of occupational safety is to focus our resources on carrier operations, an area in which we have specialized competence and for which uniform national standards are key to safe and efficient transportation.

Where the functions performed by hazmat employees are intrinsic to the operations of carriers that transport hazardous materials in commerce, the Secretary of Transportation, as well as OSHA, exercises regulatory authority under Federal hazmat law for occupational safety and health issues related to those hazmat employees. One commenter asks for clarification of how OSHA and RSPA will exercise their shared authority concerning worker safety protections for transportation workers. "A driver loading or unloading a cargo tank is subject to the exact same health risks as a warehouse employee performing the same task. It should go without saying that both employees are entitled to the same worker safety protections, and OSHA is the agency to provide those protections. *** [T]he HMR is primarily geared towards the important task of preventing a release of hazardous materials during transportation. *** OSHA, on the other hand, is better able to focus its resources on the safety of workers who, despite the DOT regulations, may nevertheless be exposed to hazardous materials during loading, unloading, and storage. In this respect, OSHA regulates aspects of the work environment that DOT admittedly does not have the resources to regulate itself, including matters such as personal protective equipment, permissible exposure limits, ventilation, hazard communications, and medical surveillance. Employers should not be able to avoid responsibility for protecting their employees through compliance with these and other OSHA requirements, simply because DOT regulates other aspects of hazardous materials transportation." (International Brotherhood of Teamsters)

We agree. As the Mallard Bay decision makes clear, allowing complete preemption of OSHA regulations where another agency has exercised only limited authority over certain working conditions would result in large gaps in worker safety regulations that would be inconsistent with the purpose of the OSH Act. While, as we stated in the NPRM, DOT is uniquely qualified to play the primary Federal regulatory role in the protection of transportation workers, we recognize that OSHA also has a role in the protection of such workers. Therefore, in this final rule, we are modifying the regulatory language proposed in the NPRM to clarify that each facility at which pre-transportation or transportation functions are performed is subject to applicable standards and regulations of other Federal agencies.

As discussed elsewhere in this preamble, OSHA and DOT will continue to share regulatory authority for certain transportation functions. Thus, for loading or unloading operations, the HMR apply to the packaging, including valving, piping, and hoses that are included as part of a DOT specification packaging standard, to filling and closure requirements for a packaging, and to specified operational procedures when loading or unloading is performed by or in the presence of carrier personnel. The OSHA regulations apply to facility equipment, including hoses, piping, and valves that are part of and maintained by the facility, and to operational procedures for a facility at which loading or unloading operations are performed. Persons loading or unloading hazardous materials at a facility may be subject to both HMR and OSHA requirements.

EPA Programs and Regulations. The concurrent applicability of EPA's regulations and the HMR to loading, unloading, and storage of hazardous materials has caused significant confusion. The clarifications we are making in this final rule concern the applicability of the HMR to specific functions and activities. Entities involved with handling and transporting hazardous materials should be aware that a number of EPA requirements might also apply to their operations. Following are descriptions of some EPA programs that apply to facilities that handle and store hazardous materials.

EPCRA (SARA Title II). The Emergency Planning and Community Right-to-Know Act, enacted by Congress in 1986 as Title III of the Superfund Amendments and Reauthorization Act (SARA; 42 U.S.C. 11011 *et seq.*) requires states to establish state and local