

emergency planning groups to develop chemical emergency response plans for each community. EPCRA also requires facilities to provide information regarding the hazardous materials they have on site to states, local planners, fire departments and, through them, the public. In addition, EPCRA requires notification of releases of certain hazardous substances. This information forms the foundation of both the community emergency response plans and the public-industry dialogue on risks and risk reduction contemplated by EPCRA. EPCRA emphasizes prevention, preparedness, and response as key factors in reducing the hazards associated with chemical releases.

Pursuant to EPCRA requirements, EPA has issued a list of extremely hazardous substances and threshold planning quantities for each substance. A facility is subject to a one-time emergency planning notification if a substance on the list is present at the facility in an amount in excess of the threshold planning quantity established for the substance. 42 U.S.C. 11002(b)(1).

Among other requirements, facilities where hazardous chemicals, as defined by OSHA, are present must prepare and submit an emergency and hazardous chemical inventory form to the appropriate local emergency planning committee (LEPC), state emergency response commission (SERC), and fire department with jurisdiction over the facility. 42 U.S.C. 11022(a)(1). EPCRA also specifically requires the owner or operator of a facility to promptly provide to an LEPC, on request, information that the LEPC believes is necessary for developing and implementing an emergency plan. 42 U.S.C. 11003(d)(3). Thus, certain hazardous materials that are on site at a facility, in above-threshold quantities, awaiting consumption in the manufacturing process, are regulated under EPCRA.

Except for the release reporting requirements under EPCRA 304, EPCRA does not apply to the transportation in commerce, including storage incidental to that transportation, of any substance or chemical subject to EPCRA. 42 U.S.C. 11047. In its regulations implementing EPCRA, EPA states that a substance is stored "incident to transportation" in commerce if the stored substance is moving under active shipping papers and has not reached the ultimate consignee. 40 CFR 355.40(b)(4)(ii). Consequently, hazardous materials that are stored incident to transportation in commerce, as defined by EPA, are not subject to the requirements of EPCRA. On the other hand, regulated materials that have been delivered to the ultimate

consignee's facility are not stored "incident to transportation" in commerce and are subject to EPCRA requirements.

Although its terminology differs, EPA's definition of "storage incident to transportation" in commerce for purposes of EPCRA is generally the same as the definition we are adopting in this final rule for "storage incidental to movement" of a hazardous material in commerce. For both definitions, a hazardous materials package, freight container, or transport vehicle is stored incident to movement in commerce if it is en route to, but has not yet reached, its consignee. For these situations, most of the EPCRA requirements do not apply. Similarly, EPA agrees with RSPA's longstanding policy, as defined in this final rule, that regulated materials that have been delivered to their consignee are not in transportation in commerce and, thus, are subject to EPCRA requirements.

Based on the definitions in this final rule, hazardous materials in the following non-transportation situations are subject to applicable EPCRA requirements:

(1) Hazardous materials stored at an offeror's facility prior to a carrier taking possession of the hazardous material for movement in transportation in commerce.

(2) Hazardous materials being unloading from a transport vehicle or bulk packaging by a person employed by or under contract to the consignee following delivery, including unloading into a manufacturing process.

(3) Hazardous materials stored at a consignee facility after delivery.

*Clean Air Act, § 112(r) (Risk Management Program).* Although EPCRA governs emergency response planning, it does not mandate that facilities establish accident prevention programs. The CAA Amendments of 1990, Pub. L. 101-549, 104 Stat. 2399, amended § 112 of the Clean Air Act, 42 U.S.C. 7412, by adding, among other things, a new subsection (r), which includes requirements related to chemical accident prevention. The goal of § 112(r) is to prevent accidental releases of extremely hazardous substances from "stationary sources" and to minimize the consequences of any accidental releases that do occur.

Section 112(r) establishes a general duty for facility owners or operators of stationary sources to identify hazards that may result from accidental releases, design and maintain a safe facility, and minimize the consequences of releases when they occur. Pursuant to § 112(r)(3), 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 and 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 are subject to the accident prevention regulations promulgated by EPA under CAA § 112(r), including the requirement to develop risk management plans.

EPA in its regulations defines "stationary source" as follows:

Stationary source means any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur. *The term stationary source does not apply to transportation, including storage incident to transportation, of any regulated substance or any other extremely hazardous substance under the provisions of this part. A stationary source includes transportation containers used for storage not incident to transportation and transportation containers connected to equipment at a stationary source for loading or unloading.* \* \* \*

40 CFR 68.3. (Emphasis added).

In 1999, EPA clarified its definition of stationary source by stating,

Because a transportation container may at times function as a storage container or a process at a stationary source, or may function as part of operations at a stationary source, EPA is specifically directed by statute to address these activities (CAA section 112(r)(7)(B)(i)) ("The regulations shall cover storage, as well as operations"). To the extent that DOT is also authorized under Federal Hazmat Law to regulate activities that are at a stationary source, nothing in the CAA prohibits both agencies from exercising concurrent jurisdiction over these activities. As EPA has said in the context of the RMP Rule, compliance with Federal Hazmat Law and HMR requirements may satisfy parallel requirements of part 68. This approach to implementation reflects the coordination between the agencies that is called for under CAA section 112(r)(7)(D). The exercise of concurrent jurisdiction preserves the applicability of the Federal Hazmat Law and HMR and does not supersede or limit DOT's jurisdiction.

(64 FR 28696, at 28698; May 26, 1999).

Consistent with prior RSPA interpretations and administrative determinations (as cited previously in this preamble and in the preamble to the NPRM), the provisions in this final rule clarify that, from DOT's perspective, the following situations are neither transportation in commerce nor storage incidental to transportation in commerce: