

hazardous waste operations cease at transfer facilities. (These are just a few examples of state-imposed controls and standards which RCRA authorized states and EPA have identified to us; we do not mean to suggest that this is an exhaustive listing.)

As is the case with OSHA-regulated worker safety requirements, the fact that pre-transportation or transportation functions subject to the HMR are performed at a hazardous waste facility, including a RCRA transfer facility, does not preclude EPA, RCRA authorized state agencies, or local government bodies from also imposing regulatory requirements at that facility. In particular, RCRA authorized state hazardous waste programs may impose facility requirements that exceed the regulatory requirements enacted by EPA, when these additional requirements are aimed at addressing the hazardous waste management aspects of the facility, and are aimed at accomplishing environmental protection objectives such as preventing releases of hazardous wastes to the environment or protecting the environment in the event of a release. Such state environmental regulations are permissible as long as they are not aimed at regulating the transportation or pre-transportation functions that are covered by the HMR, and do not affect the performance of HMR-regulated transportation or pre-transportation functions.

Should a state hazardous waste regulation be found to affect the performance of HMR-regulated functions, it will be evaluated on a case-by-case basis under the preemption criteria of 49 U.S.C. 5125. That is, state law requirements in RCRA authorized programs that differ from federal transportation or pre-transportation requirements will be evaluated to determine if they fail the dual compliance, obstacle, or covered subject tests discussed previously in this preamble section. Thus, for example, RCRA authorized state agencies may not impose packaging standards differing from those included in the HMR; they may not impose manifesting requirements differing from those adopted by EPA and DOT; and they may not prohibit facilities from handling (e.g., consolidating or repackaging) hazardous wastes at transfer facilities or other facilities that are subject to regulation under both RCRA and the HMR. There are, of course, other state law requirements beyond these few examples that could affect the performance of transportation or pre-transportation functions in ways that

would be inconsistent with hazardous materials law and the HMR.

Otherwise, facilities that perform both hazardous waste management functions and transportation/pre-transportation functions must ensure that the functions subject to the HMR are performed in accordance with the HMR, and must also assure compliance with applicable EPA or State law requirements addressing the environmental concerns associated with the hazardous waste management functions at the facilities. Thus, in the example of a RCRA transfer facility, preparation of hazardous waste packages for shipment must be performed in accordance with the HMR. The facility must also comply with the RCRA authorized states' environmental regulations addressing the facility's hazardous waste storage functions, such as berm and floor design requirements, secondary containment requirements, aisle space and container inspection requirements, personnel training requirements, and the like. There is a broad scope to the possible environmental protection requirements that might be imposed under state law and not pose any significant jurisdictional issue under the hazardous materials laws and the HMR.

*Spill Prevention, Control, and Countermeasure (SPCC) Program.* 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. A 1971 Memorandum of Understanding (MOU) between EPA and DOT establishes definitions of transportation-related and non-transportation-related facilities for purposes of the FWPCA. Under the MOU, SPCC regulations apply to the following non-transportation-related facilities: (1) Oil storage facilities, including all related equipment and appurtenances and bulk plant storage; (2) terminal oil storage; (3) pumps and drainage systems used in the storage of oil, except for in-line or breakout tanks needed for the continuous operation of a pipeline system; and (4) any terminal facility, unit, or process integrally associated with the transfer of oil in bulk to or from a vessel. Loading racks, transfer hoses, loading arms, and other equipment that is appurtenant to a non-transportation-related facility or terminal and that is used to transfer oil in bulk to or from highway vehicles or rail cars are also subject to regulation

under the SPCC program. The SPCC regulations include several requirements for facility rail tank car and cargo tank motor vehicle loading and unloading racks, such as a secondary containment system and lights or barriers to prevent the vehicle from departing the facility prior to disconnecting transfer lines.

*ATF Programs and Regulations.* As explained above, ATF regulations at 27 CFR part 555 address the import, manufacture, distribution, and storage of explosives. The regulations are promulgated under Chapter 40 of Title XI of the Organized Crime Control Act of 1970. Section 845(a) of Chapter 40 states that most provisions of Chapter 40 shall not apply to:

any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the United States Department of Transportation and agencies thereof, and which pertain to safety.

Accordingly, when explosives fall within this exception, they are not governed by the ATF regulatory requirements set forth above. Thus, explosives that are stored incidental to movement, as that term is defined in this final rule, are not subject to ATF requirements, but instead are subject to HMR requirements applicable to such storage. However, § 845(a) does not apply in situations where facility personnel perform pre-transportation functions with respect to preparing explosives for transportation. Thus, as is the case with certain OSHA and EPA regulations, a facility at which pre-transportation functions are performed may also be subject to ATF regulations applicable to operations at that facility.

The HMR do not contain storage and theft/loss reporting requirements that directly correspond to the ATF regulations. The HMR require hazardous materials stored incidental to movement to meet all the applicable shipping paper, emergency response information, hazard communication, packaging, and operational requirements that apply when shipments are actually moving in transportation. In addition, the Federal Motor Carrier Safety Regulations impose requirements on motor vehicles that include requirements for storage incidental to movement. For example, a motor vehicle that contains Division 1.1, 1.2, or 1.3 explosives must be attended at all times, including during incidental storage, unless the motor vehicle is located on the motor carrier's property, the shipper or consignee's property, or at a safe haven. In addition, a motor vehicle containing a Division 1.1, 1.2, or 1.3 explosive may not be parked on or within 5 feet of the traveled portion of