

2. Paragraph (a)(3) incorporates provisions, currently required under exemptions, relevant to securing access to the track where unloading operations are conducted. This paragraph requires facilities to use derails, lined and blocked switches, portable bumper blocks, or other equipment to prevent access by other rail equipment, including motorized service vehicles.

3. Paragraph (a)(4) modifies the provisions in current paragraph (a)(3) to permit operators some flexibility in the wording used on caution signs.

4. Paragraph (a)(5) incorporates provisions, currently required under exemptions, relevant to written safety procedures. This paragraph requires operators to maintain written safety procedures, such as those that meet the requirements of OSHA regulations in 29 CFR 1910.119 and 120, that are immediately available in the event of an emergency. However, this provision is not intended to preempt the process safety management, hazardous waste operations and emergency response, or any other OSHA standards.

5. Paragraph (j) incorporates provisions currently permitted by interpretation relevant to monitoring of unloading operations. To eliminate confusion in wording noted by commenters, paragraph (i) is modified in this final rule to clarify that the attendance requirement may be met either by physical on-site attendance providing an unobstructed view of the tank car unloading operation as currently authorized under the HMR or by a signaling system, including video systems, sensors, or mechanical equipment, that provides a level of observation equivalent to on-site attendance.

6. Paragraph (j) is revised to specify that attendance is not required when piping is attached to a top discharge outlet of a tank car equipped with a protective housing specified in § 179.100–12 provided that all valves on the tank car are tightly closed, the piping is not connected to a hose or other unloading equipment, and the piping extends no more than 15.24 centimeters (6 inches) from the outer edge of the protective housing within which the discharge outlet is enclosed. This provision eliminates the need for an operator to disconnect piping when the unloading operation is interrupted or temporarily discontinued, thereby reducing wear on the unloading service equipment.

7. Current paragraph (k) is redesignated paragraph (l). New paragraph (k) incorporates provisions, currently required under exemptions, relevant to tank cars left standing with

unloading connections attached while no product is being transferred. Paragraph (k) requires the facility operator to designate an employee responsible for on-site monitoring of the transfer facility who is familiar with the properties of the products contained in the tank cars and procedures to be followed in the event of an emergency. The designated employee must have the ability and the authority to take responsible actions in the event of an emergency.

V. Section-by-Section Review

General

In § 171.8, we define a new term, “movement,” to mean “the physical transfer of a hazardous material from one geographic location to another by rail car, aircraft, motor vehicle, or vessel.” Accordingly, we are replacing the term “movement” when it appears in the HMR in a context where the new definition would be inappropriate. These changes are in §§ 173.3(c)(2); 173.6(b)(1) and (b)(3); 173.24a(a)(3); 173.62(c) in the table under Packing Instruction 131 each time it appears; 173.166(e)(4)(iii); 173.171 (d); 173.181(a)(2); 173.185(e)(7), (g)(1), and (g)(2); 173.189(b) and (d)(4)(i); 173.219(b)(3); 173.308(a)(4); 173.335(c); 173.416(f); 174.110; 174.112(b) and (c)(3); 174.115(a) and (b)(3); 175.81(a); 176.69(d); 176.76(a)(2) each time it appears; 176.78(f)(8); 176.93(a)(1); 176.116(d); 176.132(c); 176.168(g); 176.200(b) and (c) each time it appears; 177.834(a); 177.840(b)(3); 177.870(e); 178.601(g)(1)(i)(D), (g)(1)(ii), and (g)(4)(v); and 178.704(d)(3).

Part 171

Section 171.1. In this final rule, we are retitling this section “Applicability of HMR to persons and functions.” We are adding introductory text to this section to explain the authority provided to the Secretary of Transportation under Federal hazmat law to establish regulations for the safe transportation of hazardous materials in commerce; the Secretary’s delegation of this authority to RSPA; and the applicability of this section to packagings represented as qualified for use in the transportation of hazardous materials in commerce and to pre-transportation and transportation functions.

In paragraph (a) of this section, we specify that the HMR apply to each person who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a packaging or a component of a packaging that is represented, marked, certified, or sold as qualified for use in

the transportation of hazardous materials in commerce, including each person who performs these activities under contract to an agency or branch of the Federal government. Paragraph (a) restates requirements in current paragraphs (a)(3) and (b) of § 171.1.

Paragraph (b) of this section specifies that the HMR apply to pre-transportation functions performed by persons who offer hazardous materials for transportation in commerce or cause hazardous materials to be transported in commerce, including persons who perform pre-transportation functions under contract to an agency or branch of the Federal government. Paragraph (b) includes a non-exhaustive list of pre-transportation functions to which the HMR apply.

Paragraph (c) of this section states that the HMR apply to transportation of hazardous materials in commerce and to persons who transport hazardous materials in commerce, including persons who transport hazardous materials in commerce under contract to an agency or branch of the Federal government. Paragraph (c) also defines the points at which transportation in commerce begins and ends and lists transportation functions included in the term “transportation in commerce”—movement of a hazardous material in commerce, loading incidental to movement of a hazardous material in commerce, unloading incidental to movement of a hazardous material in commerce, and storage incidental to movement of a hazardous material in commerce. In this final rule, the definitions have been revised from those proposed in the NPRM to reflect commenters’ concerns and suggestions.

Paragraph (d) lists specific functions that are not subject to the HMR.

Paragraph (e) states that facilities at which pre-transportation or transportation functions are performed in accordance with the HMR may also be subject to applicable standards and regulations of other Federal agencies.

Paragraph (f) states that facilities at which pre-transportation or transportation functions are performed in accordance with the HMR may also be subject to applicable laws and regulations of state and local governments, except to the extent that such laws and regulations are preempted by Federal hazmat law. Paragraph (f) also sets forth the criteria established in Federal hazmat law for making preemption determinations and notes that preemption procedures are in Subpart C of 49 CFR Part 107.

Paragraph (g) restates the penalties for noncompliance with the HMR that are currently in paragraph (c) of § 171.1.