

(12) Certifying that a hazardous material is in proper condition for transportation in conformance with the requirements of the HMR.

(13) Loading, blocking, and bracing a hazardous materials package in a freight container or transport vehicle.

(14) Segregating a hazardous materials package in a freight container or transport vehicle from incompatible cargo.

(15) Selecting, providing, or affixing placards for a freight container or transport vehicle to indicate that it contains a hazardous material.

(c) *Transportation functions.*

Requirements in the HMR apply to transportation of a hazardous material in commerce and to each person who transports a hazardous material in commerce, including each person under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal government who transports a hazardous material in commerce.

Transportation in commerce begins when a carrier takes possession of a hazardous material for the purpose of transporting it and continues until the package containing the hazardous material arrives at the destination indicated on a shipping document, package marking, or other medium, or, in the case of a rail car, until the car arrives at a private track or siding. For a private motor carrier, transportation in commerce begins when a motor vehicle driver takes possession of a hazardous material for the purpose of transporting it and continues until the driver relinquishes possession of the package containing the hazardous material at its destination and is no longer responsible for performing functions subject to the HMR with respect to that particular package. Transportation in commerce includes the following:

(1) *Movement.* Movement of a hazardous material by rail car, aircraft, motor vehicle, or vessel (except as delegated at § 1.46(t) of this title).

(2) *Loading incidental to movement of a hazardous material.* Loading of packaged or containerized hazardous material onto a transport vehicle, aircraft, or vessel for the purpose of transporting it, including blocking and bracing a hazardous materials package in a freight container or transport vehicle, and segregating a hazardous materials package in a freight container or transport vehicle from incompatible cargo, when performed by carrier personnel or in the presence of carrier personnel. For a bulk packaging, loading incidental to movement is filling the packaging with a hazardous material for the purpose of transporting it when

performed by carrier personnel or in the presence of carrier personnel (except as delegated at § 1.46(t) of this title), including transloading.

(3) *Unloading incidental to movement of a hazardous material.* Removing a packaged or containerized hazardous material from a transport vehicle, aircraft, or vessel, or, for a bulk packaging, emptying a hazardous material from the bulk packaging after the hazardous material has been delivered to the consignee and prior to the delivering carrier's departure from the consignee's facility or premises or, in the case of a private motor carrier, while the driver of the motor vehicle from which the hazardous material is being unloaded immediately after movement is completed is present during the unloading operation. (Emptying a hazardous material from a bulk packaging while the packaging is on board a vessel is subject to separate regulations as delegated at § 1.46(t) of this title.)

(4) *Storage incidental to movement of a hazardous material.* Storage of a transport vehicle, freight container, or package containing a hazardous material by any person between the time that a carrier takes physical possession of the hazardous material for the purpose of transporting it until the package containing the hazardous material is delivered to the destination indicated on a shipping document, package marking, or other medium, or, in the case of a private motor carrier, between the time that a motor vehicle driver takes physical possession of the hazardous material for the purpose of transporting it until the driver relinquishes possession of the package containing the hazardous material at its destination and is no longer responsible for performing functions subject to the HMR with respect to that particular package. Storage incidental to movement includes rail cars containing hazardous materials that are stored on track that does not meet the definition of "private track or siding" in § 171.8 of this subchapter, even if those cars have been delivered to the destination shown on the shipping document.

(d) *Functions not subject to the requirements of the HMR.* The following are examples of activities to which the HMR do not apply:

(1) Storage of a freight container, transport vehicle, or package containing a hazardous material at an offeror facility prior to a carrier taking possession of the hazardous material for movement in transportation in commerce or, for a private motor carrier, prior to a motor vehicle driver taking physical possession of the hazardous

material for movement in transportation in commerce.

(2) Unloading of a hazardous material from a transport vehicle or a bulk packaging performed by a person employed by or working under contract to the consignee following delivery of the hazardous material by the carrier to its destination and departure from the consignee's premises of the carrier's personnel or, in the case of a private carrier, departure of the driver from the unloading area.

(3) Storage of a freight container, transport vehicle, or package containing a hazardous material after its delivery by a carrier to the destination indicated on a shipping document, package marking, or other medium, or, in the case of a rail car, storage of a rail car on private track.

(4) Rail and motor vehicle movements of a hazardous material exclusively within a contiguous facility boundary where public access is restricted, except to the extent that the movement is on or crosses a public road or is on track that is part of the general railroad system of transportation, unless access to the public road is restricted by signals, lights, gates, or similar controls.

(5) Transportation of a hazardous material in a motor vehicle, aircraft, or vessel operated by a Federal, state, or local government employee solely for noncommercial Federal, state, or local government purposes.

(6) Transportation of a hazardous material by an individual for non-commercial purposes in a private motor vehicle, including a leased or rented motor vehicle.

(7) Any matter subject to the postal laws and regulations of the United States.

(e) *Requirements of other Federal agencies.* Each facility at which pre-transportation or transportation functions are performed in accordance with the HMR may be subject to applicable standards and regulations of other Federal agencies.

(f) *Requirements of state and local government agencies.* (1) Each facility at which pre-transportation or transportation functions are performed in accordance with the HMR may be subject to applicable laws and regulations of state and local governments and Indian tribes, except to the extent that such laws and regulations are preempted under 49 U.S.C. 5125.

(2) Under § 5125, a non-Federal law or regulation may be preempted, unless otherwise authorized by another Federal statute, if—

(i) Complying with both the non-Federal law or regulation and a