

Improved definition

US Functions that are peripheral to the transport of dangerous goods often involve actions that impact safety concerns. US DOT has released its final rule that defines exactly where the limits of the applicability of its hazmat rules lie

This past October 30, the US Department of Transportation (DOT), through its Research & Special Programs Administration (RSPA), published its eagerly awaited final rule under docket HM-223, defining the applicability of the Hazardous Materials Regulations (HMR) to loading, unloading and storage.

This may seem an arcane subject but, since the notice of proposed rulemaking (NPRM) was issued in June 2001 (HCB August 2001, page 12), RSPA received more than 120 comments, suggesting great interest on the part of the hazardous materials industry. While most of these comments supported the move to clarify the definitions, many expressed disagreement with the definitions that were proposed. The changes have become even more important since the introduction of security-related provisions, especially those that relate to background checks on personnel involved in the hazardous materials transport chain.

The root of the problem lies in the fact that HMR does not define what constitutes loading, unloading or storage that is "incidental to movement". The NPRM proposed to clarify the applicability of HMR to specific functions and activities, largely on the basis of interpretations, rulings and preemption determinations that had been issued in response to queries over the years. It is evident that the final rule differs in a number of important ways from the NPRM. However, the intent is the same, with closer definitions of activities and lists of regulated and non-regulated functions and facilities.

The new definitions are as follows.

1. Pre-transportation function means a function that is performed by any person that is required to assure the safe transportation of a hazardous material in commerce. When performed by shipper personnel, loading of packaged or containerised hazardous material onto a transport vehicle, aircraft or vessel and filling a bulk packaging with hazardous material in the absence of the carrier for the purpose of transport all constitute pre-transportation functions. Such functions must be performed in accordance with the requirements of HMR. They may include inter alia the determination of the hazard class of a material, selection of the appropriate packaging, marking and labelling, the preparation of shipping documentation, blocking and bracing shipments within a transport container, and segregating hazardous materials in a container or vehicle from incompatible cargo.

2. Transportation means the movement of prop-

erty and loading, unloading or storage incidental to that movement. Transportation in commerce begins when a carrier takes physical possession of a hazardous material for the purpose of transporting it and continues until the delivery of the package to its consignee or destination as shown by the documentation under which it is moving.

3. Movement means the physical transfer of a hazardous material from one geographic location to another by rail car, aircraft, motor vehicle or vessel.

4. Loading incidental to movement means the loading by or in the presence of carrier personnel of packaged or containerised hazardous material onto a transport vehicle, aircraft or vessel for the purpose of transporting it. For bulk packagings, it refers to the filling of the packaging with hazardous material by or in the presence of carrier personnel. Loading incidental to movement is regulated under HMR and some aspects also come under the jurisdiction of the Occupational Safety and Health Administration (OSHA).

5. Unloading incidental to movement means the removal of a packaged or containerised hazardous material from a transport vehicle, aircraft or vessel or the emptying of a hazardous material from a bulk packaging after a hazardous material has been delivered to a consignee and prior to the delivering carrier's departure from the consignee's facility or premises. Unloading incidental to movement is regulated under HMR and some aspects are also subject to OSHA regulation. Unloading by a consignee after the delivering carrier has departed the facility is not classed as unloading incidental to movement and therefore is not regulated under HMR.

6. Storage incidental to movement means storage by any person of a transport vehicle, freight container or package containing a hazardous

material between the time that a carrier takes physical possession of the hazardous material for transport and the time that the shipment is delivered to the destination indicated on the shipping document. In the case of railroad shipments, even if a shipment has been delivered to the destination shown on the shipping document, if the track is under the control of a railroad carrier or is used for purposes other than moving cars shipped to or from the lessee, storage on the track qualifies as 'storage incidental to movement'. The definition of 'private track or private siding' is amended to make this clear. Storage at a shipper's facility prior to a carrier taking possession or at a consignee's facility after delivery does not count as 'storage incidental to movement'.

Section 171.1 of HMR is being amended to specifically list regulated and non-regulated functions. Regulated functions are:

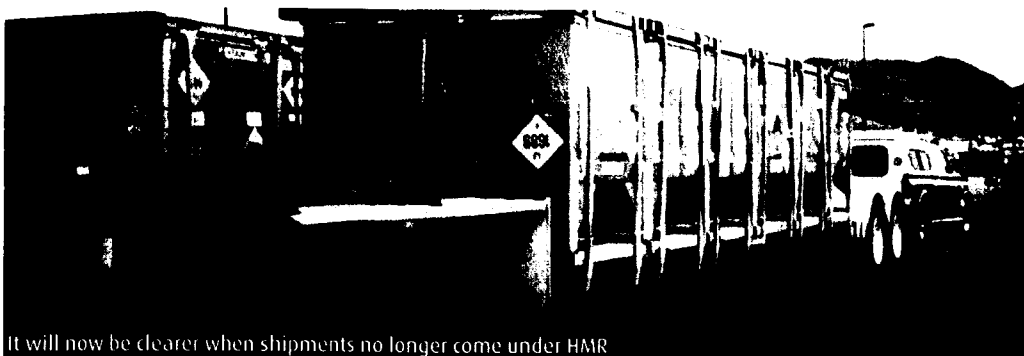
- (a) activities related to the design, manufacture and qualification of packaging represented as qualified for use in the transportation of hazardous materials;
- (b) pre-transportation functions; and
- (c) transportation functions (movement of a hazardous material and loading, unloading and storage incidental to movement).

Non-regulated functions include:

- (a) rail and motor vehicle movements of a hazardous material solely within a contiguous facility where public access is restricted;
- (b) transportation of a hazardous material in a transport vehicle or conveyance operated by a Federal, state or local government employee solely for government purposes;
- (c) transportation of a hazardous material by an individual for non-commercial purposes in a private motor vehicle; and
- (d) any matter subject to US postal laws and regulations.

The same section is also being revised to indicate those facilities where provisions other than those of HMR may apply. These may include requirements imposed by OSHA, the US Environmental Protection Agency (EPA), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) or state or local agencies.

The final rule takes effect on October 1, 2004.



It will now be clearer when shipments no longer come under HMR