

§ 171.1 Applicability of Hazardous Materials Regulations (HMR) to persons and functions.

Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*) directs the Secretary of Transportation to establish regulations for the safe and secure transportation of hazardous materials in commerce, as the Secretary considers appropriate. The Secretary is authorized to apply these regulations to persons who transport hazardous materials in commerce. In addition, the law authorizes the Secretary to apply these regulations to persons who cause hazardous materials to be transported in commerce. The law also authorizes the Secretary to apply these regulations to persons who manufacture or maintain a packaging or a component of a packaging that is represented, marked, certified, or sold as qualified for use in the transportation of a hazardous material in commerce. Federal hazardous material transportation law also applies to anyone who indicates by marking or other means that a hazardous material being transported in commerce is present in a package or transport conveyance when it is not, and to anyone who tampers with a package or transport conveyance used to transport hazardous materials in commerce or a required marking, label, placard, or shipping description. Regulations prescribed in accordance with Federal hazardous materials transportation law shall govern safety aspects, including security, of the transportation of hazardous materials that the Secretary considers appropriate. In 49 CFR 1.53, the Secretary delegated authority to issue regulations for the safe and secure transportation of hazardous materials in commerce to the Pipeline and Hazardous Materials Safety Administrator. The Administrator issues the Hazardous Materials Regulations (HMR; 49 CFR Parts 171 through 180) under that delegated authority. This section addresses the applicability of the HMR to packagings represented as qualified for use in the transportation of hazardous materials in commerce and to pre-transportation and transportation functions.

(a) *Packagings.* Requirements in 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 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 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 a hazardous material in commerce.

(b) *Pre-transportation functions.* Requirements in the HMR apply to each person who offers a hazardous material for transportation in commerce, causes a hazardous material to be transported in commerce, or transports a hazardous material in commerce and who performs or is responsible for performing a pre-transportation function, including each person performing pre-transportation functions under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal government. Pre-transportation functions include, but are not limited to, the following:

- (1) Determining the hazard class of a hazardous material.
- (2) Selecting a hazardous materials packaging.
- (3) Filling a hazardous materials packaging, including a bulk packaging.
- (4) Securing a closure on a filled or partially filled hazardous materials package or container or on a package or container containing a residue of a hazardous material.
- (5) Marking a package to indicate that it contains a hazardous material.
- (6) Labeling a package to indicate that it contains a hazardous material.
- (7) Preparing a shipping paper.
- (8) Providing and maintaining emergency response information.
- (9) Reviewing a shipping paper to verify compliance with the HMR or international equivalents.
- (10) For each person importing a hazardous material into the United States, providing the shipper with timely and complete information as to the HMR requirements that will apply to the transportation of the material within the United States.

- (11) Certifying that a hazardous material is in proper condition for transportation in conformance with the requirements of the HMR.
- (12) Loading, blocking, and bracing a hazardous materials package in a freight container or transport vehicle.
- (13) Segregating a hazardous materials package in a freight container or transport vehicle from incompatible cargo.
- (14) 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 of a hazardous material in commerce begins when a carrier takes physical possession of the hazardous material for the purpose of transporting it and continues 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 rail car, until the car is delivered to a private track or siding. For a private motor carrier, transportation of a hazardous material 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 of a hazardous material in commerce includes the following:

(1) *Movement.* Movement of a hazardous material by rail car, aircraft, motor vehicle, or vessel (except as delegated by Department of Homeland Security Delegation No. 0170 at 2(103)).

(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 by Department of Homeland Security Delegation No. 0170 at 2(103)), including transloading.

(3) *Unloading incidental to movement of a hazardous material.* Removing a package 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 when performed by carrier personnel or in the presence of carrier personnel 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 by Department of Homeland Security Delegation No. 0170 at 2(103).) Unloading incidental to movement includes transloading.

(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 has been 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 at its destination and is no longer responsible for performing functions subject to the HMR with respect to that particular package.

(i) Storage incidental to movement includes—

(A) Storage at the destination shown on a shipping document, including storage at a transloading facility, provided the original shipping documentation identifies the shipment as a through-shipment and identifies the final destination or destinations of the hazardous material; and

(B) A rail car containing a hazardous material that is stored on track that does not meet the definition of “private track or siding” in

§171.8, even if the car has been delivered to the destination shown on the shipping document.

(ii) Storage incidental to movement does not include storage of a hazardous material at its final destination as shown on a 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) Under 49 U.S.C. 5125, a requirement of a state, political subdivision of a state, or an Indian tribe is preempted, unless otherwise authorized by another Federal statute or DOT issues a waiver of preemption, if—

(i) Complying with both the non-Federal requirement and Federal hazardous materials transportation law, the regulations issued under Federal hazardous material transportation law or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security is not possible;

(ii) The non-Federal requirement, as applied or enforced, is an obstacle to accomplishing and carrying out Federal hazardous materials transportation law, the regulations issued under Federal hazardous material transportation law, or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security;

(iii) The non-Federal requirement is not substantively the same as a provision of Federal hazardous materials transportation law, the regulations issued under Federal hazardous material transportation law, or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security with respect to—

(A) The designation, description, and classification of hazardous material;

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(D) The written notification, recording, and reporting of the unintentional release of hazardous material; or

(E) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a package or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

(iv) A non-Federal designation, limitation or requirement on highway routes over which hazardous material may or may not be transported does not comply with the regulations in subparts C and D of part 397 of this title; or

(v) A fee related to the transportation of a hazardous material is not fair or is used for a purpose that is not related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.

(2) Subject to the limitations in paragraph (f)(1) of this section, each facility at which functions regulated under the HMR are performed may be subject to applicable laws and regulations of state and local governments and Indian tribes.

(3) The procedures for DOT to make administrative determinations of preemption are set forth in subpart E of part 397 of this title with respect to non-Federal requirements on highway routing (paragraph (f)(1)(iv) of this section) and in subpart C of part 107 of this chapter with respect to all other non-Federal requirements.

(g) *Penalties for noncompliance.* Each person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued under Federal hazardous material transportation law, subchapter A of this chapter, or a special permit or approval issued under subchapter A or C of this chapter is liable for a civil penalty of not more than \$50,000 and not less than \$250 for each violation, except the maximum civil penalty is \$100,000 if the violation results in death, serious illness or severe injury to any person or substantial destruction of property, and a minimum \$450 civil penalty applies to a violation relating to training. When a violation is a continuing one and involves transporting of hazardous material or causing them to be transported, each day of the violation is a separate offense. Each person who knowingly violates §171.2(l) or willfully or recklessly violates a provision of the Federal hazardous material transportation law, an order issued under Federal hazardous material transportation law, subchapter A of this chapter, or a special permit or approval issued under subchapter A or C of this chapter, shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both, except the maximum amount of imprisonment shall be 10 years in any case in which a violation involves the release of a hazardous material which results in death or bodily injury to any person.

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