SUBCHAPTER C—HAZARDOUS MATERIALS REGULATIONS

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

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Subpart A—Applicability, General Requirements, and North American Shipments

§ 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.
material for the purpose of trans-
porting it and continues until the driv-
er relinquishes possession of the pack-
age containing the hazardous material
at its destination and is no longer re-
sponsible for performing functions sub-
ject to the HMR with respect to that
particular package. Transportation of
a hazardous material in commerce in-
cludes the following:

(1) **Movement.** Movement of a haz-
ardous material by rail car, aircraft,
motor vehicle, or vessel (except as del-
egated by Department of Homeland Se-
curity Delegation No. 0170 at 2(103)).

(2) **Loading incidental to movement of a
hazardous material.** Loading of pack-
age or containerized hazardous mate-
rial onto a transport vehicle, aircraft,
or vessel for the purpose of trans-
porting it, including blocking and brac-
ing a hazardous materials package in a
freight container or transport vehicle,
and segregating a hazardous materials
package in a freight container or trans-
port vehicle from incompatible cargo,
when performed by carrier personnel or
in the presence of carrier personnel.
For a bulk packaging, loading inci-
dental to movement is filling the pack-
aging with a hazardous material for
the purpose of transporting it when
performed by carrier personnel or in
the presence of carrier personnel (ex-
cept 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 pack-
age or containerized hazardous mate-
rial 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 con-
signee when performed by carrier per-
sonnel or in the presence of carrier per-
sonnel or, in the case of a private
motor carrier, while the driver of the
motor vehicle from which the haz-
ardous material is being unloaded im-
mediately after movement is com-
pleted is present during the unloading
operation. (Emptying a hazardous ma-
terial from a bulk packaging while the
packaging is on board a vessel is sub-
ject to separate regulations as dele-
gated by Department of Homeland Se-
curity Delegation No. 0170 at 2(103)).

(4) **Storage incidental to movement of a
hazardous material.** Storage of a trans-
port vehicle, freight container, or
package containing a hazardous mate-
rial by any person between the time
that a carrier takes physical possession
of the hazardous material for the pur-
pose of transporting it until the pack-
ge 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 relin-
quishes possession of the package at its
destination and is no longer respon-
sible for performing functions subject
to the HMR with respect to that par-
ticular package.

(i) Storage incidental to movement in-
cludes—
(A) Storage at the destination shown
on a shipping document, including
storage at a transloading facility, pro-
vided the original shipping documenta-
tion 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 “pri-
ivate track or siding” in §171.8, even if
the car has been delivered to the des-
tination shown on the shipping docu-
ment.

(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 require-
ments of the HMR.** The following are ex-
amples of activities to which the HMR
do not apply:

(1) Storage of a freight container,
transport vehicle, or package con-
taining a hazardous material at an of-
feror facility prior to a carrier taking
possession of the hazardous material
for movement in transportation in
commerce or, for a private motor car-
rier, prior to a motor vehicle driver

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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;

(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 $55,000 and not less than $250 for each violation, except the maximum civil penalty is $110,000 if the violation results in death, serious illness or severe injury to any person.

§ 171.2 General requirements.

(a) Each person who performs a function covered by this subchapter must perform that function in accordance with this subchapter.

(b) Each person who offers a hazardous material for transportation in commerce must comply with all applicable requirements of this subchapter, or an exemption or special permit, approval, or registration issued under this subchapter or subchapter A of this chapter. There may be more than one offeror of a shipment of hazardous materials. Each offeror is responsible for complying with the requirements of this subchapter, or an exemption or special permit, approval, or registration issued under this subchapter or subchapter A of this chapter. There may be more than one offeror of a shipment of hazardous materials. Each offeror is responsible for complying with the requirements of the Federal hazardous materials 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.

(c) Each person who performs a function covered by or having an effect on a specification or activity prescribed in part 178, 179, or 180 of this subchapter, an approval issued under this subchapter, or an exemption or special permit issued under subchapter A of this chapter, must perform the function in accordance with that specification, approval, an exemption or special permit, as appropriate.

(d) No person may offer or accept a hazardous material for transportation in commerce or transport a hazardous material in commerce unless that person is registered in conformance with