



U.S. Department  
of Transportation  
**Research and  
Special Programs  
Administration**

400 Seventh St., S.W.  
Washington, D.C. 20590

OCT 18 2001

Ladislao Garcia  
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Tooele, UT 84074

Ref. No. 01-0188

Dear Mr. Garcia:

This responds to your July 20, 2001 letter concerning the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to the following scenario:

A tank car containing Class 7 (radioactive) mixed waste water is manifested and shipped from point A to point C. The destination facility at point C does not have rail capability, therefore this Class 7 (radioactive) material mixed waste water needs to be transferred into a cargo tank at point B and delivered to destination facility C. The transferring activity is to be completed within two to three days from the time the rail tanker arrives at the transfer facility.

Your questions are paraphrased and answered as follows:

- Q1. In the above scenario, is the transferring activity considered part of transportation?
- A1. The HMR govern the safe transportation of hazardous materials in commerce. Federal hazardous materials transportation law (Federal hazmat law) defines "transportation" as "the movement of property and loading, unloading, and storage incidental to the movement." 49 U.S.C. 5101(12). A hazardous material is "in transportation" and, therefore, subject to applicable requirements of the HMR from the time it is offered for transportation until the time that it reaches its final destination, provided the hazardous material is not repackaged. At an intermodal transfer facility, rail tank car unloading operations are subject to the unloading requirements in § 174.67 of the HMR. Once the rail tank car is unloaded, transportation is ended. The cargo tanks into which the hazardous material has been loaded are subject to all applicable HMR requirements, including selection of the packaging, filling and closing the packaging, shipping papers, emergency response information, marking, and placarding. Transportation in commerce begins when the cargo tanks are offered and accepted for transportation.



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Q2. In the above scenario, do local governments have any jurisdiction?

A2. The answer is yes. State and local governments may regulate hazardous materials operations at fixed facilities; however, under Federal hazmat law, the HMR may preempt state and local laws and regulations concerning hazardous materials transportation under the provisions of 49 U.S.C. 5125.

Q3. In the above scenario is the US DOT the only governing authority for the operation from point A to point C?

The answer is no. Entities involved with handling and transporting hazardous materials should be aware that a number of requirements administered by the U.S. Environmental Protection Agency (EPA) may apply to their operations. Examples include community right-to-know; risk management and emergency response planning; and spill prevention, control, and countermeasures. In addition, the Occupational Safety and Health Administration (OSHA) regulates to protect worker health and safety. State and local government requirements may also apply.

Q4. In a transfer facility, what activities would be considered outside of US DOT jurisdiction?

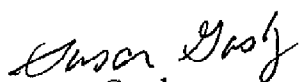
Non-transportation activities and activities that do not affect the safe transportation of hazardous material in commerce are not subject to requirements of Federal hazmat law or the HMR. For example, EPA regulations apply to certain storage activities that are not incidental to transportation. OSHA regulations cover worker health and safety for facility personnel.

On June 14, 2001, we published a notice of proposed rulemaking (NPRM) on the applicability of the HMR to loading, unloading, and storage of hazardous materials (66 FR 32420; HM-223). We are proposing to clarify the applicability of the HMR to specific functions and activities, including hazardous materials loading and unloading operations and storage of hazardous materials during transportation. The HM-223 rulemaking has four overall goals. First, we want to maintain nationally uniform standards applicable to functions performed in advance of transportation to prepare hazardous materials for transportation. Second, we want to maintain nationally uniform standards applicable to transportation functions. Third, we want to distinguish functions that are subject to the HMR from functions that are not subject to the HMR. Finally, we want to clarify that facilities within which HMR-regulated functions are performed may also be subject to federal, state, or local regulations governing occupational safety and health or environmental protection.

I encourage you to submit written comments on the NPRM. You can review the NPRM and submit and review comments on-line at the DOT Dockets Management System web site at "<http://dms.dot.gov/>." The comment period closes November 30, 2001; we will consider late-filed comments to the extent possible as we develop a final rule.

I hope this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,



Susan Gorsky  
Senior Transportation Regulations Specialist  
Office of Hazardous Materials Standards

# GREENFIELD LOGISTICS

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July 20, 2001

Edward T. Mazzullo  
Director for The Office of  
Hazardous Materials Standards  
US DOT / RSPA (DHM10)  
400 7<sup>th</sup> Street Southwest  
Washington, D. C. 20590-0001

Subject: US DOT interpretation of the regulations for the transportation of Class 7  
Radioactive Mixed Waste Water utilizing transfer/transload facilities.

Mr. Mazzullo:

Greenfield Logistics, LLC (Greenfield) would like to have a written interpretation from the US DOT/RSPA Office of the regulations for the transportation of class 7 radioactive mixed waste water utilizing transfer/transload facilities. Specifically for the following scenario:

- A rail tanker car containing class 7 radioactive mixed waste water is manifested and shipped from point A to point C, and the destination facility point C does not have rail capability, therefore this class 7 radioactive mixed waste water needs to be transloaded into over the road tanker trucks at point B and delivered to destination facility point C. The transloading activity is to be completed within two to three days from the time the rail tanker arrives at the transloading facility.

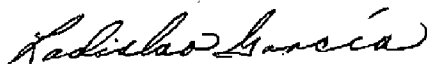
Questions:

- 1) In the above scenario, is the transloading activity considered part of transportation.
- 2) In the above scenario do local governments have any jurisdiction.
- 3) In the above scenario is the US DOT along with the FRA the only governing authority for the operation from point A to point C.

- 4) In a transfer/transload facility what activities would be considered outside of the US DOT and FRA jurisdiction.

Should you have any questions in regards to this topic, please do not hesitate to give me a call at (801) 508-1382 or fax it to (801) 252-7501. I appreciate your help and support.

Respectfully:

  
Ladislao Garcia