

DOT's Jurisdiction to Regulate the Transportation of Hazardous Materials

Issue: Should DOT's jurisdiction to regulate hazardous materials loading, unloading and handling be clarified?

Background: The commercial transportation of hazardous materials is highly regulated under national uniform standards which account for a commendable safety record, despite moving millions of tons of material over 1.2 million times a day. Statistics show that of the approximately 4,400 deaths and about 2.9 million injuries to workers each year in America, on average, less than 10 deaths and 24 major injuries are attributable to hazmat transportation workers. Hazardous materials "transportation" is defined to include the loading, unloading and storage incidental to the movement of these materials. "Hazmat employees" include those that "load, unload, or handle hazardous material."

Discussion: A reformatting error, codified in Federal Hazardous Materials Transportation Law (FHMTL), grants Occupational Safety and Health Administration (OSHA) and DOT overlapping jurisdiction with respect to the handling of hazardous materials transportation. This overlap undermines the statute's goal of regulatory uniformity for hazmat transportation, and has led DOT to relinquish jurisdiction in areas related to loading, unloading, and handling. Duplicative and/or inconsistent regulation of this activity confounds industry's compliance efforts. OSHA made one attempt to rewrite rules concerning explosives transportation under this new authority, but aborted the effort. The erosion of a single-source, uniform regulatory framework is exacerbated by the fact that the Occupational Safety and Health Act allows differing State requirements. Subsequently, the National Transportation Safety Board (NTSB) and the Chemical Safety Board (CSB) both have recommended that DOT reassert its regulatory authority for loading, unloading, and handling. Most recently, after a series of rail incidents, the Rail Safety Advisory Committee (RSAC) is also recommending that DOT step in to reregulate private rail sidings and transloading facilities.

Recommendations: IME supports efforts to clarify DOT's authority by eliminating overlapping jurisdiction for handling criteria, restoring DOT's primacy to this critical area. At the same time, OSHA authority for the protection of employees responding to a release of hazardous materials should be preserved. OSHA continues to share jurisdiction with DOT for hazmat employee training, as was the original intent of Congress. Any additional expansion of OSHA's overlapping jurisdiction must be resisted because it would greatly complicate industry's ability to comply with different safety standards.