

it is rarely for the exclusive use of the shipper's or consignee's cars, and, even if so restricted, the track is not ordinarily in any practical sense controlled by the distant shipper or consignee. Further, the risks associated with rail transportation of hazardous materials exist whenever a rail car loaded with hazardous materials is on the general railroad system. However, where cars are stored on private track—that is, on track the use of which by actual practice is restricted to movements of the lessee's cars and over which the railroad exerts no control and has no responsibility for the cars on that trackage—custody and control of the rail cars shifts to the lessee, and the storage is not subject to the HMR.

FRA's discussion of plant railroad trackage in Appendix A to 49 CFR part 209 is in accord with the definition in § 171.8 of the HMR of "private track or private siding" as modified in this final rule. In this final rule, we are also modifying the definitions proposed in the NPRM to clarify that storage of rail cars containing hazardous materials is storage incidental to movement and subject to regulation under the HMR, except for storage of rail cars on private track. Note that rail cars containing hazardous materials that are stored temporarily on railroad track that does not meet the definition of "private track or siding" are subject to all applicable HMR requirements during such storage. For example, rail cars must at all times be accompanied by appropriate shipping documentation, including emergency response information and an emergency response telephone number in accordance with Subparts C and G of Part 172. Further, placards required by Subpart F of Part 172 must remain on the rail cars throughout the time they are stored on public track. In addition, tank cars stored on railroad track that does not meet the revised definition of "private track or siding" are subject to the requirements for security plans in Subpart I of Part 172. The security plan must include an assessment of possible transportation security risks and appropriate measures to address the assessed risks. Specific measures put into place by the plan may vary commensurate with the level of threat at a particular time. At a minimum, a security plan must include elements related to personnel security, unauthorized access, and en route security.

As we noted in the NPRM, continuing the current policy that rail cars stored on railroad track are stored incidental to movement may necessitate separate rulemaking to address related safety and emergency response issues. For

example, we are considering whether the § 174.14 requirements concerning expedited movement should apply to such incidental storage. Further, we are considering how to assure that emergency response information relevant to the specific hazardous materials stored in rail cars on leased track is available as needed to assist local officials to plan for and respond to incidents involving such rail cars.

Several commenters asked us to clarify the applicability of the HMR to the storage of hazardous wastes subject to Resource Conservation and Recovery Act (RCRA) requirements. "Under the Resource Conservation and Recovery Act (RCRA), EPA storage requirements do not kick in for up to ten days if hazardous waste is packaged according to the HMR. In adopting the so-called 'ten-day' rule, 'EPA believe[d] that transporters who hold hazardous waste for a short period of time in the course of transportation should not be considered to be storing hazardous wastes and should not be required to obtain an RCRA permit or [to] comply[] with the substantive requirements for storage for the holding of wastes which is incidental to normal transportation practices.'" (Institute of Makers of Explosives) Commenters are concerned as to "how the proposed rule will apply to RCRA 10-day transfer facilities where hazardous wastes are temporarily stored en route to their destination. EPA allows transporters to store hazardous wastes for up to 10 days at transfer facilities without the need to obtain RCRA permits. These hazardous wastes are considered to be in transit from a customer to a [treatment, storage, or disposal (TSD)] facility. We assume that DOT's basic interpretation that a hazardous material is in transportation until it is 'delivered to its destination as indicated on the shipping paper' means that hazardous wastes held at a 10-day transfer facility are in 'storage incidental to transportation,' provided the shipping paper indicates that a TSD facility is the wastes' destination." (Environmental Technology Council) Commenters are also concerned that the proposed definition for "storage incidental to movement" in the NPRM is inconsistent with current policy and practice. In accordance with EPA regulations, the ten-day storage provision applies to facilities at which hazardous wastes may be repackaged during the ten-day storage period. The NPRM discussion of issues related to "storage incidental to movement" indicated that storage of a hazardous material at a carrier facility where a hazardous material is repackaged prior

to reshipment is not storage incidental to transportation as we proposed to define it.

The EPA regulations addressing the transportation of hazardous wastes include a provision addressing storage at hazardous waste "transfer facilities." See 40 CFR 263.12. EPA regulations define a "transfer facility" to mean a "transportation related facility \* \* \* where shipments of hazardous waste are held during the normal course of transportation." See 40 CFR 260.10. These facilities normally conduct transfers of waste containers between transport vehicles and/or modes of transportation, and the transfer activities conducted there may include activities which today's rule describes as consolidation of packages, intermodal container transfers, through shipments, or repackaging. These are activities that are common to hazardous waste transfer facilities, and thus there is considerable similarity or overlap between the activities that occur at RCRA transfer facilities and the activities discussed in today's rule as storage incidental to movement.

The substantive EPA regulation addressing hazardous waste transfer facilities states that a transporter may store hazardous wastes at a transfer facility without a RCRA storage permit for up to 10 days, provided that the waste is stored in DOT approved packages. 40 CFR 263.12. This provision is intended only to provide transporters who store hazardous wastes in the normal course of transportation at transfer facilities with an exemption from the requirement to obtain a RCRA storage permit for their temporary storage activities, and to exempt them from the various substantive requirements that would otherwise apply to RCRA-permitted treatment, storage, or disposal facilities under 40 CFR part 264 or 265.

A transfer facility under RCRA regulations is strictly an intermediate, temporary storage facility operated by a transporter. Under EPA policies, a RCRA transfer facility cannot be the destination facility named on the manifest for the receipt and management of the waste. Rather, the transfer facility storage and transfer activities occur while the hazardous waste shipment is considered to be under the custody and control of one of the hazardous waste transporters identified on the manifest. The manifest shows any changes of custody among transporter companies, but it does not record waste receipts and transfers at transfer facilities. As long as the transportation-related facility meets the criteria established by EPA regulation