



U.S. Department
of Transportation

1200 New Jersey Avenue SE
Washington, DC 20590

**Pipeline and Hazardous
Materials Safety
Administration**

MAR 04 2015

Daniel Stoehr
Daniels Training Services
PO Box 1232
Freeport, IL 61032

Ref. No.: 14-0191

Dear Mr. Stoehr:

This responds to your October 8, 2014 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to storage incidental to movement of hazardous material at a "transfer facility" as defined by the Environmental Protection Agency (EPA). Your questions are paraphrased and answered below.

- Q1. Does the HMR identify a "transfer facility" in a fashion similar to how it is defined in 40 CFR § 260.10?
- A1. The HMR does not specifically define a "transfer facility," neither in a fashion similar to the definition found in 40 CFR § 260.10 or otherwise.
- Q2. Does the HMR permit storage incidental to movement of a hazardous waste at a "transfer facility" as it is defined in 40 CFR § 260.10 in the same manner as allowed in 40 CFR § 263.12?
- A2. The HMR permits storage incidental to movement of a hazardous material, including a hazardous waste, as provided under 49 CFR 171.1, notwithstanding the definition of a "transfer facility," nor the manner of storage specified in the regulations of the EPA.

The HMR governs the safe transportation of hazardous materials in commerce. The Federal Hazardous Materials Transportation Law (Federal Hazmat Law) defines "transportation" in 49 U.S.C. 5101(12) as "the movement of property and loading, unloading, and storage incidental to movement." 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. It should be noted that as provided in § 171.7(e) of the HMR, 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 (e.g. EPA requirements).

- Q3. Does the HMR permit the storage incidental to movement of a hazardous material, other than a hazardous waste, at a "transfer facility" provided it is in compliance with all of the applicable requirements of the HMR?
- A3. See A2.
- Q4. How many days may a hazardous material remain in storage incidental to movement at a "transfer facility"?
- A4. The HMR does not limit the amount of time a hazardous material may remain in storage incidental to movement. However, under § 174.14 for shipments made by rail a carrier must forward each shipment of hazardous materials promptly and within 48 hours (Saturdays, Sundays, and holidays excluded), after acceptance at the originating point or receipt at any yard, transfer station, or interchange point, except that where biweekly or weekly service only is performed, a shipment of hazardous materials must be forwarded on the first available train.
- Q5. How many times may a hazardous material remain in storage incidental to movement at a "transfer facility"?
- A5. The HMR does not limit the number of times a hazardous material may be placed in storage incidental to movement.

I trust this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,



T. Glenn Foster
Chief, Regulatory Review and Reinvention Branch
Standards and Rulemaking Division

Andrews
171.1(c)
Applicability

Dodd, Alice (PHMSA)

14-0191

From: Ciccarone, Michael CTR (PHMSA)
Sent: Wednesday, October 08, 2014 2:46 PM
To: Hazmat Interps
Subject: FW: Storage Incidental to Movement for Hazardous Materials and the 10-Day Transfer Facility for Hazardous Waste

Shante and Alice,

Please submit this for a formal letter of interpretation. Mr. Stoehr spoke with Jordan Rivera and Adam Lucas in the HMIC.

Mr. Stoehr's address is:

PO Box 1232
Freeport, IL 61032

Thanks,

Mike

From: Daniel Stoehr [mailto:info@danielstraining.com]
Sent: Wednesday, October 08, 2014 2:37 PM
To: PHMSA HM InfoCenter
Subject: Storage Incidental to Movement for Hazardous Materials and the 10-Day Transfer Facility for Hazardous Waste

49 CFR 171.1(c) identifies the transportation in commerce of a hazardous material as being subject to the Hazardous Material Regulations of the PHMSA, **"Requirements in the HMR apply to transportation of a hazardous material in commerce..."**. 171.1(c) proceeds to include the following as transportation in commerce.

- "Movement."
- "Loading incidental to movement of a hazardous material."
- "Unloading incidental to movement of a hazardous material."
- "Storage incidental to movement of a hazardous material."

Storage incidental to movement of a hazardous material is explained at §171.1(c)(4) and defined exactly the same at §171.8 (the definition at §171.8 is below):

"Storage incidental to movement means 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 in commerce until the package containing the hazardous material is physically 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 in commerce 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.

(1) Storage incidental to movement includes—

- (i) Storage at the destination shown on a shipping document, including storage at a transloading facility, provided the shipping documentation identifies the shipment as a through-shipment and identifies the final destination or destinations of the hazardous material; and*
- (ii) Rail cars containing hazardous materials that are stored on track that does not meet the definition of "private track or siding" in §171.8, even if those cars have been delivered to the destination shown on the shipping document.*
- (2) Storage incidental to movement does not include storage of a hazardous material at its final destination as shown on a shipping document."*

While §171.8 and §171.1(c)(4) specifically identify two circumstances included as storage incidental to movement: a transloading facility - with conditions - and certain locations on train tracks, it does not limit the scope of the term to just these two.

It therefore appears that the HMR allows for the storage of a hazardous material while it is in transportation at a location other than the Offeror (ie. Shipper) or the destination facility. It does not define the parameters of what this location might be. Nor does it identify who will be responsible for the hazardous material while it is in storage incidental to transportation (eg. "...any person..."). Further, it does not identify any additional requirements for the person responsible for a hazardous material in storage incidental to movement; this includes any limit on the amount of time the hazardous material may remain in storage incidental to movement. Of course, since a hazardous material in storage incidental to movement remains subject to the HMR, all of the applicable requirements for a hazardous material remain while it is in storage incidental to movement.

Seemingly, the only regulation that might preclude the indefinite storage of a hazardous material while it is in storage incidental to movement can be found at §177.800(d):

"No unnecessary delay in movement of shipments. All shipments of hazardous materials must be transported without unnecessary delay, from and including the time of commencement of the loading of the hazardous material until its final unloading at destination." As a limitation on the amount of time a hazardous material may spend in storage incidental to movement this regulation is impossible to quantify.

Conversely, the USEPA regulations at 40 CFR 263.12 clearly define the term, requirements, and exclusions for a Transfer Facility for hazardous waste:

"A transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of §262.30 at a transfer facility for a period of ten days or less is not subject to regulation under parts 270, 264, 265, 267, and 268 of this chapter with respect to the storage of those wastes."

USEPA regulations also define what exactly is meant by a Transfer Facility at 40 CFR 260.10:

"Transfer facility means any transportation-related facility, including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste or hazardous secondary materials are held during the normal course of transportation."

My Questions:

1. Does the HMR identify or define a "Transfer Facility" in a similar fashion to how it is defined at 40 CFR 260.10?
2. Does the HMR permit the storage incidental to movement of a hazardous waste at a "transfer facility" - as it is defined at 40 CFR 260.10 - in the same manner as it is allowed by the USEPA at 40 CFR 263.12?
3. Does the HMR permit the storage incidental to movement of a hazardous material - other than a hazardous waste - at a "Transfer Facility" as long as it is in compliance with all applicable requirements of the HMR?

4. If "yes" to #2, for how long (ie. how many days) may a hazardous material remain in storage incidental to movement at a Transfer Facility"?
5. And while we're at it: If "yes" to #2, how many separate times may a hazardous material in transportation be placed in storage incidental to movement at a "Transfer Facility(ies)"?

Thank you for your time. I look forward to your response. Please don't hesitate to contact me with any questions.

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Daniel Stoehr
Daniels Training Services
815.821.1550
Info@DanielsTraining.com
www.DanielsTraining.com