



U.S. Department  
of Transportation  
**Federal Railroad  
Administration**



# HAZMAT TANK CAR STORAGE

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# HMR APPLICABILITY

- 49 C.F.R. § 171.1(c)
  - “Requirements in the HMR apply to transportation of a hazardous material in commerce and to each person 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.”



# TRANSPORTATION IN COMMERCE

- The HMR further defines “transportation” and “commerce” at 49 C.F.R. § 171.8
  - *“Transportation or transport means the movement of property and loading, unloading, or storage incidental to that movement.”*
  - *“Commerce means trade or transportation in the jurisdiction of the United States within a single state; between a place in a state and a place outside of the state; that affects trade or transportation between a place in a state and place outside of the state; or on a United States-registered aircraft.”*



# STORAGE INCIDENTAL TO MOVEMENT

- 49 C.F.R. § 171.1(c)(4) “Storage incidental to movement of a hazardous material –
  - 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 until the package containing the hazardous material has been delivered to the destination indicated on a shipping document, package marking, or other medium.”
- 49 C.F.R. § 171.1(c)(4)(i) “Storage incidental to movement includes—
  - A rail car containing a hazardous material that is stored on track that does not meet the definition of ‘private track or siding’ in §171.8, even if the car has been delivered to the destination shown on the shipping document.”





# PRIVATE TRACK

- 49 C.F.R. § 171.8 *“Private track or Private siding means:*
  - Track located outside of a carrier's right-of-way, yard, or terminals where the carrier does not own the rails, ties, roadbed, or right-of-way, or
  - Track leased by a railroad to a lessee, where the lease provides for, and actual practice entails, exclusive use of that trackage by the lessee and/or a general system railroad for purpose of moving only cars shipped to or by the lessee, and where the lessor otherwise exercises no control over or responsibility for the trackage or the cars on the trackage.”



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# HMR APPLICABILITY

- The HMR apply when a hazmat shipment is in transportation
- The HMR do not apply when HM shipment is not in transportation (except security plan requirements may apply)



# TRANSPORTATION IN COMMERCE

- Going back to our definitions, transportation in commerce begins “when a carrier takes physical possession of the hazardous material for the purpose of transporting it”
- Transportation continues “until the package containing the hazardous material is delivered to the destination indicated on a shipping document, package marking, or other medium”
- One exception, hazmat rail cars:
  - “in the case of a rail car, until the car is delivered to a private track or siding.”



# WHEN DOES TRANSPORTATION END?

- As applied to hazmat rail cars, transportation continues until the car is delivered to “private track,” even if it is delivered to its final destination indicated on its shipping paper.
- In other words, if a rail car containing hazmat is not on private track, it’s irrelevant what the shipping paper says – it’s still in transportation.





# PRIVATE TRACK

- Two types of private track
  - Track located outside a carrier's right-of-way, yard, etc., which carrier does not own, or
  - Track leased by a railroad to a lessee, where the lease provides for, and actual practice entails, exclusive use of that trackage by the lessee and/or railroad for the sole purpose of serving the lessee
    - Private track only if railroad has no control over or responsibility for the trackage or the cars on the trackage.
    - If railroad has any control, responsibility, or authority over a track or specific cars on a track, it's not private track.



# HYPOTHETICAL QUESTION 1

- In a document titled “Private Track Agreement,” a railroad leases a track in it’s yard to Shipper B for Shipper B’s “exclusive use.” The railroad, on occasion, also uses part of the leased track to store cars ready for delivery to another entity. Is this track private track?



# ANSWER TO 1

- No
  - Even though the lease is titled “Private Track Agreement” and it says that the track is for Shipper B’s “exclusive use,” the railroad occasionally uses the track for its own purposes.
  - Actual practice must be for exclusive use as well



# HYPOTHETICAL QUESTION 2

- In a document titled “Private Track Agreement” a railroad leases to a Shipper “storage space for 50 cars on tracks X, Y, and Z” in its yard. Currently, only that Shipper’s cars are located on tracks X, Y, and Z. Is this private track?



## ANSWER TO 2

- No
  - The lease does not specify that only Shipper B has authority to use tracks X, Y, Z. Actual practice may be that only that shipper uses the tracks, but lease agreement needs to specify that the tracks are for the exclusive use of the lessee and the owner of the track has authority or control over it.





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# HYPOTHETICAL QUESTION 3

- In an untitled document, a railroad leases track A in its yard to Shipper B for its “exclusive use.” The railroad never accesses that track or uses that track unless it is moving cars for Shipper B. Is this private track?



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# ANSWER TO 3

- Yes
  - It meets both prongs of the definition – lease provides for lessee’s exclusive use and that’s what actual practice entails.



## HYPOTHETICAL QUESTION 4

- Sam, the president of a short line railroad, verbally agrees to “lease” to a shipper a portion of track in his railroad yard for storage of the shipper’s HM tank cars. Sam agrees that he will not let anyone else use that particular track and that his railroad will not access that track in any circumstances. In fact, the railroad never accesses that track unless moving cars to or from the shipper. Is this private track?



# ANSWER TO 4

- No
  - The lease must be in writing. Otherwise, a railroad owning the track would presumably still have some claim of authority or control over the track.



# CAN HAZMAT TANK CARS BE STORED ON RAILROAD PROPERTY?

- Yes, if stored on track meeting definition of “private track”
  - Cars would be out of transportation
  - The HMR don’t apply (except lessee’s responsibility to comply with security plan requirements, if applicable)
- No, if not stored on track meeting definition of “private track”
  - Considered “storage incidental to movement” and can only be done in certain circumstances
  - Cars considered to be in transportation
  - The HMR apply





# STORAGE INCIDENTAL TO MOVEMENT

- A “transportation function” regulated by the HMR
- Storage of a hazmat package (including rail cars) by any person between the time that a carrier takes physical possession of the hazmat for purposes of transporting it until the package has been delivered to its end destination indicated on the shipping document.



# STORAGE INCIDENTAL TO MOVEMENT

- Storage at destination on shipping document, if that destination is not the HM's end destination (e.g., storage at a transloading facility)
- Even if car has been delivered to destination shown on shipping document, if the car is not on "private track" then it's still storage incidental to movement



# 48-HOUR RULE

- 49 C.F.R. § 174.14 “Movements to be expedited.
  - 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.
  - A tank car loaded with any Division 2.1 (flammable gas), Division 2.3 (poisonous gas) or Class 3 (flammable liquid) material, may not be received and held at any point, subject to forwarding orders, so as to defeat the purpose of this section or of §174.204 of this subchapter.”



# 48-HOUR RULE

- For safety and security reasons, the HMR generally encourage expedited movement of hazmat from origin to destination
- 48-hour rule requires rail carriers to forward shipments “promptly” and within 48 hours after acceptance at origination or receipt at any yard
  - Exception for limited service – must be forwarded on “first available train” that services the location
  - Applies to loads only (a residue car is not a shipment or a revenue move – thus, 48-hour rule does not apply)



# 48-HOUR RULE

- Same regulation specifies that tank cars loaded with Division 2.1 (flammable gas), 2.3 (poisonous gas), and Class 3 (flammable liquid) may not be held at any point subject to “forwarding orders” (an undefined term, but implies that a destination is a must for these materials and that these materials cannot be stored by a railroad awaiting a final destination)





# APPARENT EXCEPTIONS

- **Constructive placement**
  - Car is essentially at destination, but for whatever reason it cannot be actually delivered (e.g., only needs to be switched/spotted into consignee facility, but facility has no room for it)
    - Railroad will hold on to car, considering it constructively placed
    - Does not have to be on private track when in constructive placement



# APPARENT EXCEPTIONS

- HMR provide for railroad storage of certain tank car hazmat shipments on track “designated” by the carrier for such storage (i.e., doesn’t have to be private track within a railroad facility).
- Designation should be in writing



# APPARENT EXCEPTIONS

- 49 C.F.R. § 173.10(c)
  - “tank car ... containing anhydrous ammonia, liquefied hydrocarbon or liquefied petroleum gas ... may also be consigned for storage ... on a carrier track when designated by the carrier for such storage.”
- 49 C.F.R. § 174.204
  - “The following tank cars ... may be stored on ... carrier tracks designated by the carrier for such storage:
    - A tank car containing Division 2.1 (flammable gas) material that is a cryogenic liquid; or
    - A tank car ... containing anhydrous ammonia; hydrogen chloride, refrigerated liquid; hydrocarbon gas, liquefied; or liquefied petroleum gas”



# APPARENT EXCEPTIONS

- Hazmat tank cars stored by a railroad on carrier track (including cars constructively placed), are still in transportation & considered being “stored incidental to movement.”
- HMR apply (inc. security plan requirement, placarding, marking, securement, emergency response info., etc.).
- Storing railroad is responsible for compliance, the same as for any other hazmat car being transported.



# APPARENT EXCEPTIONS

- The offering and unloading of class 2 materials is prohibited unless the materials are destined for private track or railroad facilities meeting certain conditions. See 49 C.F.R. § 173.10 and § 174.204
  - Railroads can store these materials
  - Railroads prohibited from transporting class 3 materials unless the materials are consigned to private track or railroad facility that meets certain conditions for unloading.





# COMMODITY SPECIFIC LIMITATIONS

- 49 C.F.R. § 174.304
  - “A tank car containing a Class 3 (flammable liquid) material, other than liquid road asphalt or tar, may not be transported by rail unless it is originally consigned or subsequently reconsigned to a party having a private track on which it is to be delivered and unloaded (see §171.8 of this subchapter) or to a party using railroad siding facilities which are equipped for piping the liquid from the tank car to permanent storage tanks of sufficient capacity to receive the entire contents of the car.”



# COMMODITY SPECIFIC LIMITATIONS

- PHMSA has interpreted these “unloading” restrictions as not applicable to transloading facilities.
- “We stated that the conditions on delivery of a tank car containing a Class 3 (flammable liquid) material set forth in § 174.304 do not apply to the operation of a transloading facility on the property of a rail carrier where the lading is transferred directly from the rail tank car to other packaging, such as a cargo tank motor vehicle, for further transportation to its final destination.”
- “This history makes clear that the conditions presently set forth in § 174.304 were intended to apply to the delivery of flammable liquids transported in rail tank cars, and not to modern day transloading of these materials at a rail carrier's facility.”
- PHMSA LOI Ref. Nos. 08-0232, 08-0288



# SUMMARY

- Railroads can store hazmat railcars under certain conditions
  - Private track with valid lease agreement
  - Constructive placement
  - Stored for compliance or regulatory issue
- When released from storage all applicable regulations of the HMR apply as if initial offering
- Ensure the track lease addresses:
  - Establishes exclusive use
  - Track maintenance
  - Security plan if applicable
  - Other local, state, or federal requirements



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# QUESTIONS?