

Tank Car Storage

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Introduction

- ▶ FRA has a concern with large amounts of LPG and Flammable Liquids in tank cars stored on railroad property
 - Tank car release of LPG in Utah resulting in evacuation
 - Unclear understanding of responsibilities
 - Lease Agreement Language Inadequate
 - Was the tank car in storage?
 - Or was the tank car still in transportation?
 - Contingency Planning – Who is responsible for:
 - Security Plan
 - Local, state, and other federal requirements
 - CRTK, CalARP, EPCRA, and RMP

Discussion for Today

- ▶ When storage is within FRA's jurisdiction & when it isn't
 - Define "transportation" & why it's important
 - Private track v. carrier track
- ▶ When railroads can store HM rail cars
 - "Storage incidental to movement"
 - Regulatory & compliance issues

What is transportation?

- ▶ HMR define “transportation” as:
“[t]he movement of property and loading, unloading, or storage incidental to that movement.” 49 CFR 171.8.

What's “in transportation” & what isn't?

- ▶ Transportation in commerce begins when a carrier takes physical possession of a HM for the purpose of transporting it and it continues until the package containing the HM is delivered to the destination indicated on the shipping paper. 49 CFR 171.1(c).
 - One exception – HM Rail cars...

“Transportation” as applied to HM Rail Cars

- ▶ As applied to HM, 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 car containing HM is not on private track, it’s irrelevant what the shipping paper says – it’s in transportation.

Why does it matter what is & what isn't in transportation?

- ▶ HMR apply when HM shipment is “in transportation.”
- ▶ HMR do NOT apply when HM shipment is not “in transportation”

What is “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 (1) the lease provides for, *AND* (2) actual practice entails, exclusive use of that track by the lessee &/or a railroad for sole purpose of serving the lessee.

What is “private track”? (cont’d)

- ▶ 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.
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So, can HM rail cars be stored on railroad property?

- ▶ If stored on track meeting definition of “private track” – YES.
 - Cars would be out of transportation.
 - HMR don’t apply (except lessee’s responsibility to comply with security plan requirements, if applicable).
- ▶ If stored on track NOT meeting definition of private track, considered “storage incidental to movement” and can only be done in certain circumstances.
 - Cars considered to be “in transportation.”
 - HMR apply.

What is “storage incidental to movement”?

- ▶ A “transportation function” regulated by the HMR.
 - ▶ Storage of a HM package (inc. rail car) by any person between the time that a carrier takes physical possession of the HM for purposes of transporting it until the package has been delivered to its end destination indicated on the shipping document. (49 CFR 171.1(c)(4)).
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“Storage incidental to movement” includes...

- ▶ Storage at destination on shipping document, if that destination is not the HM’s end destination (e.g., storage at transloading facility).
 - ▶ Storage of a rail car on track not meeting definition of “private track” EVEN IF car has been delivered to destination shown on shipping document.
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Requirements to Expedite HM Shipments & Limits on Railroad Storage of Rail Cars

- ▶ For safety & security reasons, HMR generally encourage expedited movement of HM's from origin to destination.
 - 48-hour rule (49 CFR 174.14) requires rail carriers to forward shipments “promptly” & 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 (arguably, a residue car is not a “shipment” or a revenue move – thus, 48-hour rule doesn't apply).

Requirements to Expedite HM Shipments & Limits on Railroad Storage of Rail Cars

- Same regulation (49 CFR 174.14) 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 & that these materials cannot be stored by a railroad awaiting a final destination).

Apparent Exceptions to Requirement to Expedite HM Shipments

- ▶ 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 CP status

Apparent Exceptions to Requirement to Expedite HM Shipments (cont'd)

- ▶ HM 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 any other HM car being transported.

And a side issue...Commodity Specific Limitations on Rail Tank Car Transportation

- ▶ 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 CFR 173.10 and 174.204.
 - ▶ Railroads prohibited from transporting class 3 materials unless the materials are consigned to private track or railroad facility that meets certain conditions for unloading. See 49 CFR 174.304.
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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 lease is titled a “Private Track Agreement” & says track is for Shipper B’s “exclusive use,” the railroad occasionally uses the track for it’s own purposes. So track doesn’t meet 2nd prong of private track definition – actual practice doesn’t entail lessee having sole authority over track.

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?
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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 an 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 & 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?
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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.

Track Lease Sample

Track Lease: This Agreement covers the lease and use of Railroad trackage on Railroad's [REDACTED] California, for the purpose of storage of Lessees Railcars and for no other purpose. Railroad agrees to lease to Lessee up to 4500 feet (up to 75 railcars) of Railroad trackage on said [REDACTED], the specific location to be determined by the Railroad from time to time in accordance with the Railroad's requirements and needs. The lease fee for this trackage shall be in 1500 foot blocks each capable of holding up to 25 railcars. Monthly billing will be based on the maximum number of cars stored on such leased track each month. Charges for lease of track shall be \$2000.00 per month per 1500-foot block.

Summary

- Railroads can store railcars under certain conditions
 - Private Track with valid lease agreement
 - Constructive placement
 - Stored for compliance or regulatory issue
- When released from storage...
 - All applicable HMR apply as if initial offering
- Ensure the track lease addresses...
 - Elements of Exclusive Use
 - Track maintenance
 - Security plan if applicable
 - Other agency requirements
 - Local, state, federal

The End