

HMT Rail Car Storage

WILLIAM ELLINGS
SEPTEMBER, 2013



Introduction

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



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

- HMR apply when HMT shipment is “in transportation.”
- HMR do NOT apply when HMT shipment is not “in transportation” (except security plan requirements may apply).







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 HMT for the purpose of transporting it and it continues until the HMT is delivered to the destination indicated on the shipping paper. 49 CFR 171.1(c).
 - One exception - HMT rail cars...

“Transportation” as applied to HMT rail cars

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

What's "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's "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.

Hypothetical Question 1

- In a document titled “Private Track Agreement,” a railroad leases a track in its 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?

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 have the track has an authority or control over it.

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?

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 HMT 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.

So, can HMT 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 HMT package (inc. rail car) by any person between the time that a carrier takes physical possession of the HMT 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)).

“Storage incidental to movement” includes...

- Storage at destination on shipping document, if that destination is not the HMT’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.

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

- For safety & security reasons, HMR generally encourage expedited movement of HMTs 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 HMT 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 HMT 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”.

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

- HMR provide for railroad storage of certain tank car HMT shipments on track “designated” by the carrier for such storage (i.e., doesn’t have to be private track within a railroad facility).
 - See 49 CFR 173.10(c) (anhydrous ammonia, liquefied hydrocarbon & LPG) & 174.204 (certain class 2 materials, including LPG) (tank cars must have interior pipes for liquid and gas discharge valves w/check valves).

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

- HMR don't specify, but arguably "designation" must be in writing.

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

- HMT 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 HMT 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.
 - Don't forget – 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 on Rail Tank Car Transportation (cont'd)

- PHMSA has interpreted these “unloading” restrictions as not applicable to transloading facilities.

Questions?