



**Railroad  
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# Defining Railroad Transportation

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## Introduction

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

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# Is it in transportation?



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## 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).





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# 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.



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# 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...

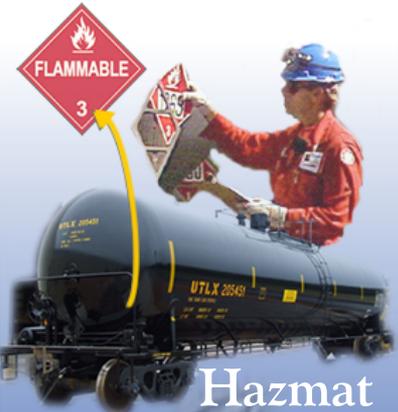
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# “Transportation” as applied to HMT rail cars

- 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.

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# 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.



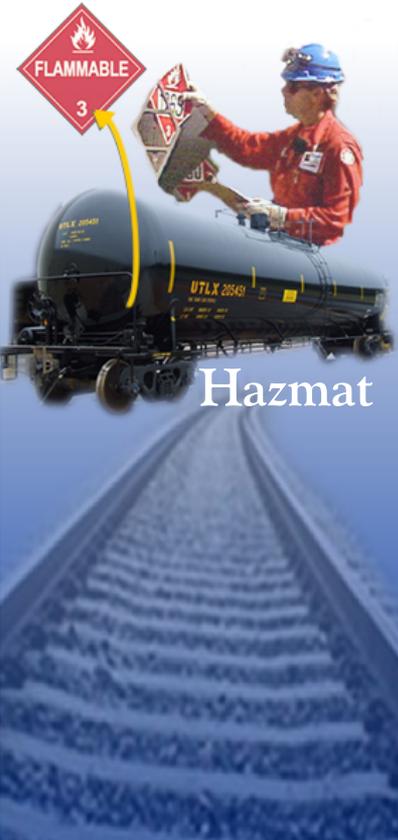
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## What's “private track”? (cont'd)

- 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.

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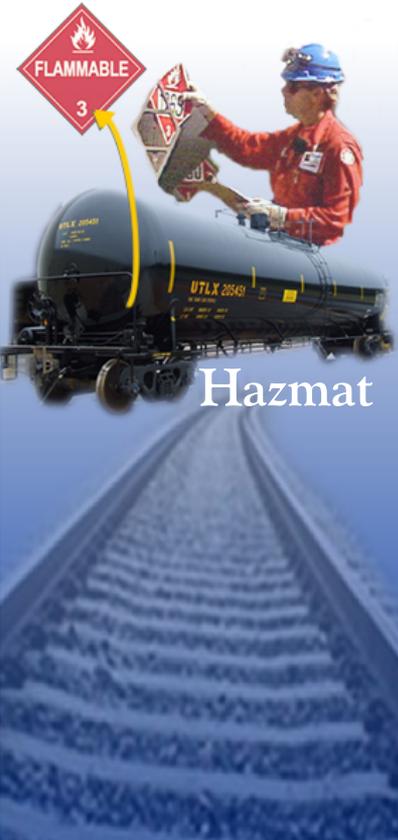
# So, can HMT cars be stored on railroad property?

- 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.



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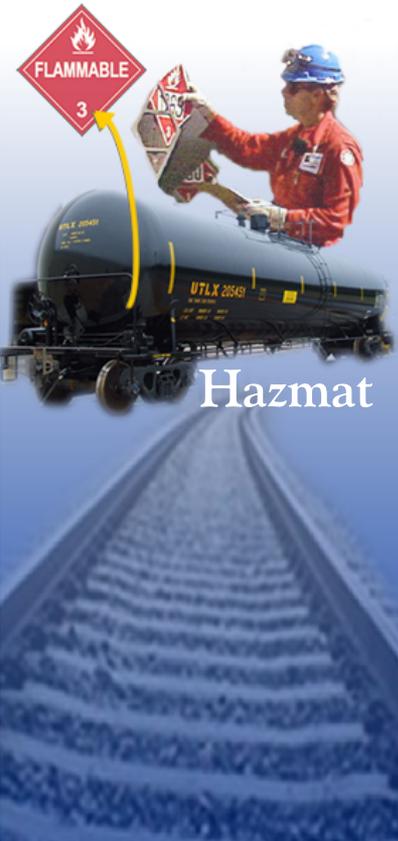


# What is “storage incidental to movement”?

- A “transportation function” regulated by the HMR.
- Storage of a HMT package (incl. 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)).



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# “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.



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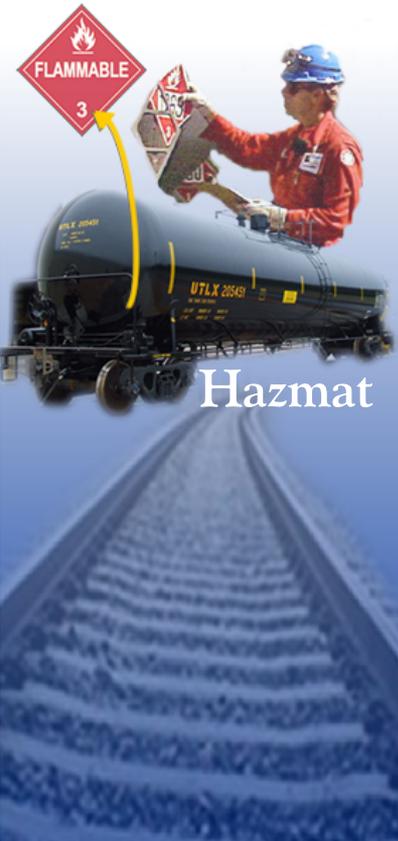


# Requirements to Expedite HMT Shipments & Limits on Railroad Storage of Rail Cars

- 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).*



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# 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).



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

HMR do not specify, but  
arguably “designation”  
must be in writing.



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# 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.

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# 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.



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# Commodity Specific Limitations on Rail Tank Car Transportation (cont'd)

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



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# Thank You



## Still have Question?

- Contact me at 202.493.6229
- Visit FRA's web page at [www.fra.dot.gov](http://www.fra.dot.gov)
- Visit PHMSA's web page at <http://hazmat.dot.gov>
- E-mail me at [william.schoonover@dot.gov](mailto:william.schoonover@dot.gov)
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