



U.S. Department  
of Transportation

1200 New Jersey Avenue, SE  
Washington, DC 20590

**Pipeline and Hazardous  
Materials Safety  
Administration**

March 26, 2021

Michael Barron  
Fletcher & Sippel LLC  
29 N Upper Wacker Dr. #800  
Chicago, IL 60606

Reference No. 21-0006

Dear Mr. Barron:

This letter is in response to your January 26, 2021, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the meaning of private track or private siding as defined in § 171.8. You describe a hypothetical scenario between a railroad (i.e., a rail carrier) and a private company, involving leased property and interchange tracks. In your scenario, the private company receives hazardous materials from the railroad by way of the interchange tracks, which are owned by the private company but on property (and inside a rail yard) owned by the railroad and leased to the private company. The interchange tracks connect the private company tracks and the railroad tracks. Further, you state that the lease is “on a non-exclusive basis”; however, you add that this is so that the railroad can deliver and pull cars on the interchange tracks. Therefore, in this arrangement, the railroad only uses the interchange tracks to exchange cars with the private company; and the hazardous materials are subsequently unloaded on the private company’s own tracks by the private company. You ask whether the interchange tracks meet the definition of a “private track” or “private siding.”

The answer is yes only if the interchange tracks are used solely by the railroad and the private company for the purpose of moving cars shipped to or by the private company. The definition of “private track” or “private siding” includes a track that is 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. Use of the interchange tracks by the railroad for the purpose of delivery and exchanging cars does not preclude the interchange tracks from the exclusive use criteria. However, if this interchange track has users other than these two entities, the interchange tracks would no longer be considered “private track” or “private siding” for purposes of the HMR.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

Dirk Der Kinderen  
Chief, Standards Development Branch  
Standards and Rulemaking Division

**From:** [Dodd, Alice \(PHMSA\)](#)  
**To:** [Hillman, Kenetha CTR \(PHMSA\)](#)  
**Subject:** FW: Interpretation of a rule  
**Date:** Wednesday, January 27, 2021 3:14:18 PM  
**Attachments:** [image004.png](#)  
**Importance:** High

Casey

21-0006

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I was going to assign this to Eugenio but after Dirk said he was out so I was going to skip him for now.

The one I'm closing out is complicated so I will send you the next one.

Thanks,

Alice

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**From:** DerKinderen, Dirk (PHMSA)  
**Sent:** Wednesday, January 27, 2021 11:42 AM  
**To:** Hazmat Interps <[hazmatinterps@dot.gov](mailto:hazmatinterps@dot.gov)>  
**Cc:** Horsley, Adam (PHMSA) <[adam.horsley@dot.gov](mailto:adam.horsley@dot.gov)>  
**Subject:** FW: Interpretation of a rule  
**Importance:** High

Alice,

Please process the below request for assignment to staff.

I believe Safiya (from counsel) had worked on some private track/siding issue in the recent past so you may want to include a note for the specialist who is assigned this interp request that it is recommended to work with Safiya on the substance of the response.

Thanks,

Dirk Der Kinderen  
Chief, Standards Development Branch  
PHMSA  
202-366-4460

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**From:** Horsley, Adam (PHMSA)  
**Sent:** Wednesday, January 27, 2021 11:34 AM  
**To:** DerKinderen, Dirk (PHMSA) <[Dirk.DerKinderen@dot.gov](mailto:Dirk.DerKinderen@dot.gov)>  
**Cc:** Tackett, Christina (PHMSA) <[christina.tackett@dot.gov](mailto:christina.tackett@dot.gov)>; Kelley, Shane (PHMSA) <[shane.kelley@dot.gov](mailto:shane.kelley@dot.gov)>  
**Subject:** FW: Interpretation of a rule  
**Importance:** High

Hi Dirk,

When you have time, we have received a request for interpretation on private track. Please let us know if you have any questions.

Best,

- Adam

**Adam Horsley**

Deputy Assistant Chief Counsel, Office of Chief Counsel

US Department of Transportation

**Pipeline and Hazardous Materials Safety Administration**

1200 New Jersey Avenue, S.E., Washington, D.C. 20590

Office: 202.366.8000 ◊ Facsimile: 202.366.7041

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**From:** Michael J. Barron [<mailto:MBarron@fletcher-sippel.com>]

**Sent:** Tuesday, January 26, 2021 4:05 PM

**To:** Chief Counsel, PHMSA (PHMSA) <[phmsachiefcounsel@dot.gov](mailto:phmsachiefcounsel@dot.gov)>

**Subject:** Interpretation of a rule

**CAUTION:** This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon. I am an attorney in private practice in the City of Chicago with the firm of Fletcher & Sippel.

This is a request for an interpretation of a rule.

Under 49 CFR 171.78, Private track or Private siding means:

(i) 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

(ii) 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.

The following hypothetical will provide the basis for the question:

Customer receives hazardous materials via a common carrier railroad to unload. The unloading is done on the customer's own tracks and land and the customer has exclusive use of those tracks. Only customer moves cars on and off these tracks.

Connecting to the customer's tracks are the "interchange" tracks. The customer's tracks are connected to one end of the "interchange" tracks and the railroad connection is on the other end. The "interchange" tracks are used to exchange cars between the railroad and the customer.

The "interchange" tracks are owned by the customer.

The "interchange" tracks are located inside a yard owned by the railroad. The railroad is leasing the property under the "interchange tracks" to the customer.

The lease is on a non-exclusive basis. This is so railroad can deliver and pull cars on the "interchange" tracks. Otherwise, railroad cannot be on the tracks so exchange of cars would be impossible. Railroad has no other reason to be on these tracks.

Question:

Are these customer "interchange" tracks considered a "Private track or Private siding"?

Michael Barron  
312-252-1511