

that conform to regulations, standards, protocols, or guidelines issued by other Federal agencies, international organizations, or industry organizations may be used to satisfy the requirements in this subpart, provided such security plans address the requirements specified in this subpart.

**§ 172.820 Additional planning requirements for transportation by rail.**

(a) *General.* Each rail carrier transporting in commerce one or more of the following materials is subject to the additional safety and security planning requirements of this section:

(1) More than 2,268 kg (5,000 lbs) in a single carload of a Division 1.1, 1.2 or 1.3 explosive;

(2) A quantity of a material poisonous by inhalation in a single bulk packaging; or

(3) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in §173.403 of this subchapter.

(b) *Commodity data.* Not later than 90 days after the end of each calendar year, a rail carrier must compile commodity data for the previous calendar year for the materials listed in paragraph (a) of this section, except that for calendar year 2008, data may be compiled for the 6-month period beginning July 1, 2008. The following stipulations apply to data collected:

(1) Commodity data must be collected by route, a line segment or series of line segments as aggregated by the rail carrier. Within the rail carrier selected route, the commodity data must identify the geographic location of the route and the total number of shipments by UN identification number for the materials specified in paragraph (a) of this section.

(2) A carrier may compile commodity data, by UN number, for all Class 7 materials transported (instead of only highway route controlled quantities of Class 7 materials) and for all Division 6.1 materials transported (instead of only Division 6.1 poison inhalation hazard materials).

(c) *Rail transportation route analysis.* For each calendar year, a rail carrier must analyze the safety and security risks for the transportation route(s), identified in the commodity data col-

lected as required by paragraph (b) of this section. The route analysis must be in writing and include the factors contained in Appendix D to this part, as applicable.

(1) The safety and security risks present must be analyzed for the route and railroad facilities along the route. For purposes of this section, railroad facilities are railroad property including, but not limited to, classification and switching yards, storage facilities, and non-private sidings. This term does not include an offeror's facility, private track, private siding, or consignee's facility.

(2) In performing the analysis required by this paragraph, the rail carrier must seek relevant information from state, local, and tribal officials, as appropriate, regarding security risks to high-consequence targets along or in proximity to the route(s) utilized. If a rail carrier is unable to acquire relevant information from state, local, or tribal officials, then it must document that in its analysis. For purposes of this section, a high-consequence target means a property, natural resource, location, area, or other target designated by the Secretary of Homeland Security that is a viable terrorist target of national significance, the attack of which by railroad could result in catastrophic loss of life, significant damage to national security or defense capabilities, or national economic harm.

(d) *Alternative route analysis.* (1) For each calendar year, a rail carrier must identify practicable alternative routes over which it has authority to operate, if an alternative exists, as an alternative route for each of the transportation routes analyzed in accordance with paragraph (c) of this section. The carrier must perform a safety and security risk assessment of the alternative routes for comparison to the route analysis prescribed in paragraph (c) of this section. The alternative route analysis must be in writing and include the criteria in Appendix D of this part. When determining practicable alternative routes, the rail carrier must consider the use of interchange agreements with other rail carriers. The written alternative route analysis must also consider:

(i) Safety and security risks presented by use of the alternative route(s);

(ii) Comparison of the safety and security risks of the alternative(s) to the primary rail transportation route, including the risk of a catastrophic release from a shipment traveling along each route;

(iii) Any remediation or mitigation measures implemented on the primary or alternative route(s); and

(iv) Potential economic effects of using the alternative route(s), including but not limited to the economics of the commodity, route, and customer relationship.

(2) In performing the analysis required by this paragraph, the rail carrier should seek relevant information from state, local, and tribal officials, as appropriate, regarding security risks to high-consequence targets along or in proximity to the alternative routes. If a rail carrier determines that it is not appropriate to seek such relevant information, then it must explain its reasoning for that determination in its analysis.

(e) *Route Selection.* A carrier must use the analysis performed as required by paragraphs (c) and (d) of this section to select the route to be used in moving the materials covered by paragraph (a) of this section. The carrier must consider any remediation measures implemented on a route. Using this process, the carrier must at least annually review and select the practicable route posing the least overall safety and security risk. The rail carrier must retain in writing all route review and selection decision documentation and restrict the distribution, disclosure, and availability of information contained in the route analysis to covered persons with a need-to-know, as described in parts 15 and 1520 of this title. This documentation should include, but is not limited to, comparative analyses, charts, graphics or rail system maps.

(f) *Completion of route analyses.* (1) Rail carriers have the following options for completing the initial route analysis, alternative route analysis, and route selection process required under paragraphs (c), (d), and (e) of this section:

(i) A rail carrier may complete the initial process by September 1, 2009, using data for the six month period from July 1, 2008 to December 31, 2008; or

(ii) A rail carrier may complete the initial process by March 31, 2010, using data for all of 2008, provided the rail carrier notifies the FRA Associate Administrator of Safety in writing by September 1, 2009 that it has chosen this second option.

(2) Beginning in 2010, the rail transportation route analysis, alternative route analysis, and route selection process required under paragraphs (c), (d), and (e) of this section must be completed no later than the end of the calendar year following the year to which the analyses apply.

(3) The initial analysis and route selection determinations required under paragraphs (c), (d), and (e) of this section must include a comprehensive review of the entire system. Subsequent analyses and route selection determinations required under paragraphs (c), (d), and (e) of this section must include a comprehensive, system-wide review of all operational changes, infrastructure modifications, traffic adjustments, changes in the nature of high-consequence targets located along, or in proximity to, the route, and any other changes affecting the safety or security of the movements of the materials specified in paragraph (a) of this section that were implemented during the calendar year.

(4) A rail carrier need not perform a rail transportation route analysis, alternative route analysis, or route selection process for any hazardous material other than the materials specified in paragraph (a) of this section.

(g) *Rail carrier point of contact on routing issues.* Each rail carrier must identify a point of contact (including the name, title, phone number and e-mail address) on routing issues involving the movement of materials covered by this section in its security plan and provide this information to:

(1) State and/or regional Fusion Centers that have been established to coordinate with state, local and tribal officials on security issues and which are located within the area encompassed by the rail carrier's rail system; and

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(2) State, local, and tribal officials in jurisdictions that may be affected by a rail carrier’s routing decisions and who directly contact the railroad to discuss routing decisions.

(h) *Storage, delays in transit, and notification.* With respect to the materials specified in paragraph (a) of this section, each rail carrier must ensure the safety and security plan it develops and implements under this subpart includes all of the following:

(1) A procedure under which the rail carrier must consult with offerors and consignees in order to develop measures for minimizing, to the extent practicable, the duration of any storage of the material incidental to movement (see §171.8 of this subchapter).

(2) Measures to prevent unauthorized access to the materials during storage or delays in transit.

(3) Measures to mitigate risk to population centers associated with in-transit storage.

(4) Measures to be taken in the event of an escalating threat level for materials stored in transit.

(5) Procedures for notifying the consignee in the event of a significant delay during transportation; such notification must be completed within 48 hours after the carrier has identified the delay and must include a revised delivery schedule. A significant delay is one that compromises the safety or security of the hazardous material or delays the shipment beyond its normal expected or planned shipping time. Notification should be made by a method acceptable to both the rail carrier and consignee.

(i) *Recordkeeping.* (1) Each rail carrier must maintain a copy of the information specified in paragraphs (b), (c), (d), (e), and (f) of this section (or an electronic image thereof) that is accessible at, or through, its principal place of business and must make the record available upon request, at a reasonable time and location, to an authorized official of the Department of Transportation or the Department of Homeland Security. Records must be retained for a minimum of two years.

(2) Each rail carrier must restrict the distribution, disclosure, and availability of information collected or developed in accordance with paragraphs

(c), (d), (e), and (f) of this section to covered persons with a need-to-know, as described in parts 15 and 1520 of this title.

(j) *Compliance and enforcement.* If the carrier’s route selection documentation and underlying analyses are found to be deficient, the carrier may be required to revise the analyses or make changes in route selection. If DOT finds that a chosen route is not the safest and most secure practicable route available, the FRA Associate Administrator for Safety, in consultation with TSA, may require the use of an alternative route. Prior to making such a determination, FRA and TSA will consult with the Surface Transportation Board (STB) regarding whether the contemplated alternative route(s) would be economically practicable.

[73 FR 20771, April 16, 2008, as amended at 73 FR 72193, Dec. 26, 2008]

**§ 172.822 Limitation on actions by states, local governments, and Indian tribes.**

A law, order, or other directive of a state, political subdivision of a state, or an Indian tribe that designates, limits, or prohibits the use of a rail line (other than a rail line owned by a state, political subdivision of a state, or an Indian tribe) for the transportation of hazardous materials, including, but not limited to, the materials specified in §172.820(a), is preempted. 49 U.S.C. 5125, 20106.

[73 FR 20772, April 16, 2008]

APPENDIX A TO PART 172—OFFICE OF HAZARDOUS MATERIALS TRANSPORTATION COLOR TOLERANCE CHARTS AND TABLES

The following are Munsell notations and Commission Internationale de L’Eclairage (CIE) coordinates which describe the Office of Hazardous Materials Transportation Label and Placard Color Tolerance Charts in tables 1 and 2, and the CIE coordinates for the color tolerances specified in table 3. Central colors and tolerances described in table 2 approximate those described in table 1 while allowing for differences in production methods and materials used to manufacture labels and placards surfaced with printing inks. Primarily, the color charts based on table 1 are for label or placard colors applied as opaque coatings such as paint, enamel or plastic, whereas color charts based on table