

than 120 days prior to the date of filing the petition), specifying the—

(i) Number of such cars transporting class A explosives and poison gases; and

(ii) Number of DOT Specification 112A and 114A tank cars transporting flammable gas subject to FRA emergency order No. 5;

(8) A statement certified by a corporate officer of the carrier possessing authority over the subject matter explaining any plans of that carrier for utilization of existing trackage, or for the construction of new trackage, which may impact on the location of switching or humping operations within one-half mile of the proposed site (if there are no plans, the carrier official must so certify); and

(9) Any further information which is necessary for evaluation of the site.

(d) A petition filed under this section must contain a statement that the petition has been served on the recognized representatives of the railroad employees who will be utilizing the proposed sleeping quarters, together with a list of the employee representatives served.

[43 FR 31012, July 19, 1978, as amended at 74 FR 25173, May 27, 2009]

§ 228.105 Additional requirements; construction within one-third mile (1,760 feet) (536 meters) of certain switching.

(a) In addition to providing the information specified by § 228.103, a carrier seeking approval of a site located within one-third mile (1,760 feet) (536 meters) of any area where railroad switching or humping operations are performed involving any cars required to be placarded “EXPLOSIVES A” or “POISON GAS” or any DOT Specification 112A or 114A tank cars transporting flammable gas subject to FRA emergency order No. 5 shall establish by a supplementary statement certified by a corporate officer possessing authority over the subject matter that—

(1) No feasible alternate site located at or beyond one-third mile from switching or humping operations is either presently available to the railroad or is obtainable within 3 miles (15,840 feet) (4,827 meters) of the reporting

point for the employees who are to be housed in the sleeping quarters;

(2) Natural or other barriers exist or will be created prior to occupancy of the proposed facility between the proposed site and any areas in which switching or humping operations are performed which will be adequate to shield the facility from the direct and severe effects of a hazardous materials accident/incident arising in an area of switching or humping operations;

(3) The topography of the property is such as most likely to cause any hazardous materials unintentionally released during switching or humping to flow away from the proposed site; and

(4) Precautions for ensuring employee safety from toxic gases or explosions such as employee training and evacuation plans, availability of appropriate respiratory protection, and measures for fire protection, have been considered.

(b) In the absence of reliable records concerning traffic handled on trackage within the one-third mile area, it shall be presumed that the types of cars enumerated in paragraph (a) of this section are switched on that trackage; and the additional requirements of this section shall be met by the petitioning carrier, unless the carrier establishes that the switching of the enumerated cars will be effectively barred from the trackage if the petition is approved.

§ 228.107 Action on petition.

(a) Each petition for approval filed under § 228.103 is referred to the Railroad Safety Board for action in accordance with the provisions of part 211, title 49, CFR, concerning the processing of requests for special approvals.

(b) In considering a petition for approval filed under this subpart, the Railroad Safety Board evaluates the material factors bearing on—

(1) The safety of employees utilizing the proposed facility in the event of a hazardous materials accident/incident and in light of other relevant safety factors; and

(2) Interior noise levels in the facility.

(c) The Railroad Safety Board will not approve an application submitted under this subpart if it appears from

the available information that the proposed sleeping quarters will be so situated and constructed as to permit interior noise levels due to noise under the control of the railroad to exceed an $L_{eq}(8)$ value of 55dB(A). If individual air conditioning and heating systems are to be utilized, projections may relate to noise levels with such units turned off.

(d) Approval of a petition filed under this subpart may be withdrawn or modified at any time if it is ascertained, after opportunity for a hearing, that any representation of fact or intent made by a carrier in materials submitted in support of a petition was not accurate or truthful at the time such representation was made.

Subpart D—Electronic Recordkeeping

SOURCE: 74 FR 25350, May 27, 2009, unless otherwise noted.

§ 228.201 Electronic recordkeeping; general.

For purposes of compliance with the recordkeeping requirements of subpart B, a railroad, or a contractor or a subcontractor to a railroad may create and maintain any of the records required by subpart B through electronic transmission, storage, and retrieval provided that all of the following conditions are met:

- (1) The system used to generate the electronic record meets all requirements of this subpart;
- (2) The electronically generated record contains the information required by § 228.11;
- (3) The railroad, or contractor or subcontractor to the railroad, monitors its electronic database of employee hours of duty records through sufficient number of monitoring indicators to ensure a high degree of accuracy of these records; and
- (4) The railroad, or contractor or subcontractor to the railroad, trains its employees on the proper use of the electronic recordkeeping system to enter the information necessary to create their hours of service record, as required by § 228.207.

(5) The railroad, or contractor or subcontractor to the railroad, maintains an information technology security program adequate to ensure the integrity of the system, including the prevention of unauthorized access to the program logic or individual records.

(6) FRA's Associate Administrator for Railroad Safety/Chief Safety Officer may prohibit or revoke the authority to use an electronic system if FRA finds the system is not properly secure, is inaccessible to FRA, or fails to record and store the information adequately and accurately. FRA will record such a determination in writing, including the basis for such action, and will provide a copy of its determination to the affected railroad, or contractor or subcontractor to a railroad.

§ 228.203 Program components.

(a) *System security.* The integrity of the program and database must be protected by a security system that utilizes an employee identification number and password, or a comparable method, to establish appropriate levels of program access meeting all of the following standards:

- (1) Data input is restricted to the employee or train crew or signal gang whose time is being recorded, with the following exceptions:
 - (i) A railroad, or a contractor or subcontractor to a railroad, may allow its recordkeeping system to pre-populate fields of the hours of service record provided that—
 - (A) The recordkeeping system pre-populates fields of the hours of service record with information known to the railroad, or contractor or subcontractor to the railroad, to be factually accurate for a specific employee.
 - (B) The recordkeeping system may also provide the ability for employees to copy data from one field of a record into another field, where applicable.
 - (C) Estimated, historical, or arbitrary data are not used to pre-populate any field of an hours of service record.
 - (D) A railroad, or a contractor or a subcontractor to a railroad, is not in violation of this paragraph if it makes a good faith judgment as to the factual accuracy of the data for a specific employee but nevertheless errs in pre-populating a data field.