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state, local, or Indian tribe requirement on the transportation of hazardous materials by rail may be preempted under either 49 U.S.C. 5125 or 20106, or both.

(a) Section 171.1(f) of this subchapter describes the circumstances under which 49 U.S.C. 5125 preempts a requirement of a state, political subdivision of a state, or Indian tribe.

(b) Under the Federal Railroad Safety Act (49 U.S.C. 20106), administered by the Federal Railroad Administration (*see* 49 CFR parts 200 through 244), laws, regulations and orders related to railroad safety, including security, shall be nationally uniform to the extent practicable. A state may adopt, or continue in force, a law, regulation, or order covering the same subject matter as a DOT regulation or order applicable to railroad safety and security (including the requirements in this subpart) only when an additional or more stringent state law, regulation, or order is necessary to eliminate or reduce an essentially local safety or security hazard; is not incompatible with a law, regulation, or order of the United States Government; and does not unreasonably burden interstate commerce.

[74 FR 1801, Jan. 13, 2009]

§ 174.3 Unacceptable hazardous materials shipments.

No person may accept for transportation or transport by rail any shipment of hazardous material that is not in conformance with the requirements of this subchapter.

[Amdt. 174–83, 61 FR 28677, June 5, 1996]

§ 174.5 Carrier's materials and supplies.

This subchapter applies to the transportation of a carrier's materials and supplies moving by rail, except that the shipper's certification is not required when these materials and supplies are being transported by the carrier who owns them. The requirements of this subchapter do not apply to railway torpedoes or fusees when carried in engines or rail cars. Railway torpedoes must be in closed metal boxes when not in use.

[Amdt. 174–26B, 41 FR 57071, Dec. 30, 1976]

§ 174.9 Safety and security inspection and acceptance.

(a) At each location where a hazardous material is accepted for transportation or placed in a train, the carrier must inspect each rail car containing the hazardous material, at ground level, for required markings, labels, placards, securement of closures, and leakage. These inspections may be performed in conjunction with inspections required under parts 215 and 232 of this title.

(b) For each rail car containing an amount of hazardous material requiring placarding in accordance with § 172.504 of this subchapter, the carrier must visually inspect the rail car at ground level for signs of tampering, including closures and seals, for suspicious items or items that do not belong, and for other signs that the security of the car may have been compromised, including the presence of an improvised explosive device. As used in this section, an improvised explosive device is a device fabricated in an improvised manner incorporating explosives or destructive, lethal, noxious, pyrotechnic, or incendiary chemicals in its design, and generally includes a power supply, a switch or timer, and a detonator or initiator. The carrier should be particularly attentive to signs that security may have been compromised on rail cars transporting materials covered by § 172.820 of this subchapter, rail carload quantities of ammonium nitrate or ammonium nitrate mixtures in solid form, or hazardous materials of interest based on current threat information.

(c) If a rail car does not conform to the safety and security requirements of this subchapter, the carrier may not forward or transport the rail car until the deficiencies are corrected or the car is approved for movement in accordance with § 174.50.

(d) Where an indication of tampering or suspicious item is found, a carrier must take appropriate action to ensure the security of the rail car and its contents have not been compromised before accepting the rail car for further movement. If the carrier determines that the security of the rail car has been compromised, the carrier must take action, in conformance with its

existing security plan (see subpart I of part 172 of this subchapter) to address the security issues before forwarding the rail car for further movement.

[73 FR 20773, April 16, 2008]

§ 174.14 Movements to be expedited.

(a) A carrier must forward each shipment of hazardous materials promptly and within 48 hours (Saturdays, Sundays, and holidays excluded), after acceptance at the originating point or receipt at any yard, transfer station, or interchange point, except that where biweekly or weekly service only is performed, a shipment of hazardous materials must be forwarded on the first available train.

(b) A tank car loaded with any Division 2.1 (flammable gas), Division 2.3 (poisonous gas) or Class 3 (flammable liquid) material, may not be received and held at any point, subject to forwarding orders, so as to defeat the purpose of this section or of §174.204 of this subchapter.

[Amdt. 174–26, 41 FR 16092, Apr. 15, 1976, as amended by Amdt. 174–68, 55 FR 52677, Dec. 21, 1990]

§ 174.16 Removal and disposition of hazardous materials at destination.

(a) *Delivery at non-agency stations.* A shipment of Class 1 (explosive) materials may not be unloaded at non-agency stations unless the consignee is there to receive it or unless properly locked and secure storage facilities are provided at that point for its protection. If delivery cannot be so made, the shipment must be taken to next or nearest agency station for delivery.

(b) *Delivery at agency stations.* A carrier shall require the consignee of each shipment of hazardous materials to remove the shipment from carrier's property within 48 hours (exclusive of Saturdays, Sundays, and holidays) after notice of arrival has been sent or given. If not so removed, the carrier shall immediately dispose of the shipments as follows:

(1) *Division 1.1 or 1.2 (explosive) materials:* If safe storage is available, by storage at the owner's expense; if safe storage is not available, by return to the shipper, sale, or destruction under supervision of a competent person; or if safety requires, by destruction under supervision of a competent person.

(2) *Hazardous materials, except Division 1.1 or 1.2 (explosive) materials, in carload shipments:* By storage on the carrier's property; by storage on other than the carrier's property, if safe storage on the carrier's property is not available; or by sale at expiration of 15 calendar days after notice of arrival has been sent or given to the consignee, provided the consignor has been notified of the non-delivery at the expiration of a 48-hour period and orders for disposition have not been received.

(3) *Hazardous materials, except Division 1.1 or 1.2 (Class A explosive) materials, in less-than-carload shipments:* By return to the shipper if notice of non-delivery was requested and given the consignor as prescribed by the carrier's tariff, and orders for return to shipper have been received; by storage on the carrier's property; by storage on other than the carrier's property, if safe storage on carrier's property is not available; or by sale at expiration of 15 calendar days after notice of arrival has been sent or given to the consignee, provided the consignor has been notified of non-delivery at expiration of a 48–hour period and orders for disposition have not been received.

[Amdt. 174–26, 41 FR 16092, Apr. 15, 1976, as amended by Amdt. 174–68, 55 FR 52677, Dec. 21, 1990; 66 FR 45383, Aug. 28, 2001]

§ 174.20 Local or carrier restrictions.

(a) When local conditions make the acceptance, transportation, or delivery of hazardous materials unusually hazardous, local restrictions may be imposed by the carrier.

(b) Each carrier must report to the Bureau of Explosives for publication the full information as to any restrictions which it imposes against the acceptance, delivery, or transportation of hazardous materials, over any portion of its lines under this section.

[Amdt. 174–26, 41 FR 16092, Apr. 15, 1976]

Subpart B—General Operating Requirements

§ 174.24 Shipping papers.

(a) A person may not accept a hazardous material for transportation or