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(6) Each tourist, scenic, historic, and excursion rail operator, whether operating on or off the general railroad system of transportation.

(7) Each operator of private cars, including business/office cars and circus trains, on or connected to the general railroad system of transportation.

(8) Each operator of a rail transit system that is not operating on track that is part of the general railroad system of transportation, including heavy rail transit, light rail transit, automated guideway, cable car, inclined plane, funicular, and monorail systems.

(b) The persons described in paragraph (a) of this section must allow TSA and other authorized DHS officials, at any time and in a reasonable manner, without advance notice, to enter, inspect, and test property, facilities, equipment, and operations; and to view, inspect, and copy records, as necessary to carry out TSA's security-related statutory or regulatory authorities, including its authority to—

- (1) Assess threats to transportation;
- (2) Enforce security-related regulations, directives, and requirements;
- (3) Inspect, maintain, and test the security of facilities, equipment, and systems;
- (4) Ensure the adequacy of security measures for the transportation of passengers and freight, including hazardous materials;
- (5) Oversee the implementation, and ensure the adequacy, of security measures at rail yards, stations, terminals, transportation-related areas of rail hazardous materials shipper and receiver facilities, crew management centers, dispatch centers, telecommunication centers, and other transportation facilities and infrastructure;
- (6) Review security plans; and
- (7) Carry out such other duties, and exercise such other powers, relating to transportation security, as the Assistant Secretary of Homeland Security for the TSA considers appropriate, to the extent authorized by law.

(c) TSA and DHS officials working with TSA, may enter, without advance notice, and be present within any area or within any conveyance without access media or identification media issued or approved by a railroad car-

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rier, rail transit system owner or operator, rail hazardous materials shipper, or rail hazardous materials receiver in order to inspect or test compliance, or perform other such duties as TSA may direct.

(d) TSA inspectors and DHS officials working with TSA will, on request, present their credentials for examination, but the credentials may not be photocopied or otherwise reproduced.

Subpart B—Freight Rail Including Freight Railroad Carriers, Rail Hazardous Materials Shippers, Rail Hazardous Materials Receivers, and Private Cars

§ 1580.100 Applicability.

(a) *Applicability.* The requirements of this subpart apply to:

(1) Each freight railroad carrier that operates rolling equipment on track that is part of the general railroad system of transportation.

(2) Each rail hazardous materials shipper.

(3) Each rail hazardous materials receiver located with an HTUA.

(4) Each freight railroad carrier hosting a passenger operation described in § 1580.1(a)(4) of this part.

(5) Each operator of private cars, including business/office cars and circus trains, on or connected to the general railroad system of transportation.

(b) *Rail security-sensitive materials.* The requirements of this subpart apply to:

(1) A rail car containing more than 2,268 kg (5,000 lbs) of a Division 1.1, 1.2, or 1.3 (explosive) material, as defined in 49 CFR 173.50;

(2) A tank car containing a material poisonous by inhalation as defined in 49 CFR 171.8, including anhydrous ammonia, Division 2.3 gases poisonous by inhalation as set forth in 49 CFR 173.115(c), and Division 6.1 liquids meeting the defining criteria in 49 CFR 173.132(a)(1)(iii) and assigned to hazard zone A or hazard zone B in accordance with 49 CFR 173.133(a), excluding residue quantities of these materials; and

(3) A rail car containing a highway route-controlled quantity of a Class 7

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(radioactive) material, as defined in 49 CFR 173.403.

[73 FR 72173, Nov. 26, 2008, as amended at 74 FR 23656, May 20, 2009]

§ 1580.101 Rail security coordinator.

(a) *Applicability.* This section applies to:

(1) Each freight railroad carrier that operates rolling equipment on track that is part of the general railroad system of transportation.

(2) Each rail hazardous materials shipper.

(3) Each rail hazardous materials receiver located with an HTUA.

(4) Each freight railroad carrier hosting the passenger operations described in §1580.1(a)(4) of this part.

(5) Each operator of private cars, including business/office cars and circus trains, on or connected to the general railroad system of transportation, when notified by TSA in writing, that a threat exists concerning that operation.

(b) Each person described in paragraph (a) of this section must designate and use a primary and at least one alternate Rail Security Coordinator (RSC).

(c) The RSC and alternate(s) must be appointed at the corporate level.

(d) Each freight railroad carrier, rail hazardous materials shipper, and rail hazardous materials receiver required to have an RSC must provide to TSA the names, title, phone number(s), and e-mail address(es) of the RSCs and alternate RSCs, and must notify TSA within 7 calendar days when any of this information changes.

(e) Each freight railroad carrier, rail hazardous materials shipper, and rail hazardous materials receiver required to have an RSC must ensure that at least one RSC:

(1) Serves as the primary contact for intelligence information and security-related activities and communications with TSA. Any individual designated as an RSC may perform other duties in addition to those described in this section;

(2) Is available to TSA on a 24-hours a day, 7 days a week basis; and

(3) Coordinates security practices and procedures with appropriate law en-

forcement and emergency response agencies.

[73 FR 72173, Nov. 26, 2008, as amended at 74 FR 23656, May 20, 2009]

§ 1580.103 Location and shipping information for certain rail cars.

(a) *Applicability.* This section applies to:

(1) Each freight railroad carrier transporting one or more of the categories and quantities of rail security-sensitive materials.

(2) Each rail hazardous materials shipper.

(3) Each rail hazardous materials receiver located with an HTUA.

(b) *General requirement.* Each person described in paragraph (a) of this section must have procedures in place to determine the location and shipping information for each rail car under its physical custody and control that contains one or more of the categories and quantities of rail security-sensitive materials.

(c) *Required information.* The location and shipping information required in paragraph (b) of this section must include the following:

(1) The rail car's current location by city, county, and state, including, for freight railroad carriers, the railroad milepost, track designation, and the time that the rail car's location was determined.

(2) The rail car's routing, if a freight railroad carrier.

(3) A list of the total number of rail cars containing the materials listed in §1580.100(b) of this part, broken down by:

(i) The shipping name prescribed for the material in column 2 of the table in 49 CFR 172.101;

(ii) The hazard class or division number prescribed for the material in column 3 of the table in 49 CFR 172.101; and

(iii) The identification number prescribed for the material in column 4 of the table in 49 CFR 172.101.

(4) Each rail car's initial and number.

(5) Whether the rail car is in a train, rail yard, siding, rail spur, or rail hazardous materials shipper or receiver facility, including the name of the rail yard or siding designation.

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(d) *Timing-class I freight railroad carriers.* Upon request by TSA, each Class I freight railroad carrier described in paragraph (a) of this section must provide the location and shipping information to TSA no later than:

- (1) Five minutes if the request concerns only one rail car; and
- (2) Thirty minutes if the request concerns two or more rail cars.

(e) *Timing-other than class I freight railroad carriers.* Upon request by TSA, all persons described in paragraph (a) of this section, other than Class I freight railroad carriers, must provide the location and shipping information to TSA no later than 30 minutes, regardless of the number of cars covered by the request.

(f) *Method.* All persons described in paragraph (a) of this section must provide the requested location and shipping information to TSA by one of the following methods:

- (1) Electronic data transmission in spreadsheet format.
- (2) Electronic data transmission in Hyper Text Markup Language (HTML) format.
- (3) Electronic data transmission in Extensible Markup Language (XML).
- (4) Facsimile transmission of a hard copy spreadsheet in tabular format.
- (5) Posting the information to a secure website address approved by TSA.
- (6) Another format approved by TSA.

(g) *Telephone number.* Each person described in paragraph (a) of this section must provide a telephone number for use by TSA to request the information required in paragraph (c) of this section.

(1) The telephone number must be monitored at all times.

(2) A telephone number that requires a call back (such as an answering service, answering machine, or beeper device) does not meet the requirements of this paragraph.

(h) *Definition.* As used in this section, *Class I* has the meaning assigned by regulations of the Surface Transportation Board (STB) (49 CFR part 1201; General Instructions 1–1).

[73 FR 72173, Nov. 26, 2008, as amended at 74 FR 23657, May 20, 2009]

§ 1580.105 Reporting significant security concerns.

(a) *Applicability.* This section applies to:

(1) Each freight railroad carrier that operates rolling equipment on track that is part of the general railroad system of transportation.

(2) Each rail hazardous materials shipper.

(3) Each rail hazardous materials receiver located with an HTUA.

(4) Each freight railroad carrier hosting a passenger operation described in §1580.1(a)(4) of this part.

(5) Each operator of private cars, including business/office cars and circus, on or connected to the general railroad system of transportation.

(b) Each person described in paragraph (a) of this section must immediately report potential threats and significant security concerns to DHS by telephoning the Freedom Center at 1-866-615-5150.

(c) Potential threats or significant security concerns encompass incidents, suspicious activities, and threat information including, but not limited to, the following:

- (1) Interference with the train crew.
- (2) Bomb threats, specific and non-specific.
- (3) Reports or discovery of suspicious items that result in the disruption of railroad operations.

(4) Suspicious activity occurring on-board a train or inside the facility of a freight railroad carrier, rail hazardous materials shipper, or rail hazardous materials receiver that results in a disruption of operations.

(5) Suspicious activity observed at or around rail cars, facilities, or infrastructure used in the operation of the railroad, rail hazardous materials shipper, or rail hazardous materials receiver.

(6) Discharge, discovery, or seizure of a firearm or other deadly weapon on a train, in a station, terminal, facility, or storage yard, or other location used in the operation of the railroad, rail hazardous materials shipper, or rail hazardous materials receiver.

(7) Indications of tampering with rail cars.

(8) Information relating to the possible surveillance of a train or facility,

storage yard, or other location used in the operation of the railroad, rail hazardous materials shipper, or rail hazardous materials receiver.

(9) Correspondence received by the freight railroad carrier, rail hazardous materials shipper, or rail hazardous materials receiver indicating a potential threat. Other incidents involving breaches of the security of the freight railroad carrier, rail hazardous materials shipper, or rail hazardous materials receiver's operations or facilities.

(d) Information reported should include, as available and applicable:

(1) The name of the reporting freight railroad carrier, rail hazardous materials shipper, or rail hazardous materials receiver and contact information, including a telephone number or e-mail address.

(2) The affected train, station, terminal, rail hazardous materials facility, or other rail facility or infrastructure.

(3) Identifying information on the affected train, train line, and route.

(4) Origination and termination locations for the affected train, including departure and destination city and the rail line and route, as applicable.

(5) Current location of the affected train.

(6) Description of the threat, incident, or activity.

(7) The names and other available biographical data of individuals involved in the threat, incident, or activity.

(8) The source of any threat information.

[73 FR 72173, Nov. 26, 2008, as amended at 74 FR 23657, May 20, 2009]

§ 1580.107 Chain of custody and control requirements.

(a) *Within or outside of an HTUA, rail hazardous materials shipper transferring to carrier.* Except as provided in paragraph (g) of this section, at each location within or outside of an HTUA, a rail hazardous materials shipper transferring custody of a rail car containing one or more of the categories and quantities of rail security-sensitive materials to a freight railroad carrier must:

(1) Physically inspect the rail car before loading for signs of tampering, including closures and seals; other signs that the security of the car may have

been compromised; suspicious items or items that do not belong, including the presence of an improvised explosive device.

(2) Keep the rail car in a rail secure area from the time the security inspection required by paragraph (a)(1) of this section or by 49 CFR 173.31(d), whichever occurs first, until the freight railroad carrier takes physical custody of the rail car.

(3) Document the transfer of custody to the railroad carrier in writing or electronically.

(b) *Within or outside of an HTUA, carrier receiving from a rail hazardous materials shipper.* At each location within or outside of an HTUA where a freight railroad carrier receives from a rail hazardous materials shipper custody of a rail car containing one or more of the categories and quantities of rail security-sensitive materials, the freight railroad carrier must document the transfer in writing or electronically and perform the required security inspection in accordance with 49 CFR 174.9.

(c) *Within an HTUA, carrier transferring to carrier.* Within an HTUA, whenever a freight railroad carrier transfers a rail car containing one or more of the categories and quantities of rail security-sensitive materials to another freight railroad carrier, each freight railroad carrier must adopt and carry out procedures to ensure that the rail car is not left unattended at any time during the physical transfer of custody. These procedures must include the receiving freight railroad carrier performing the required security inspection in accordance with 49 CFR 174.9. Both the transferring and the receiving railroad carrier must document the transfer of custody in writing or electronically.

(d) *Outside of an HTUA, carrier transferring to carrier.* Outside an HTUA, whenever a freight railroad carrier transfers a rail car containing one or more of the categories and quantities of rail security-sensitive materials to another freight railroad carrier, and the rail car containing this hazardous material may subsequently enter an HTUA, each freight railroad carrier must adopt and carry out procedures to

ensure that the rail car is not left unattended at any time during the physical transfer of custody. These procedures must include the receiving railroad carrier performing the required security inspection in accordance with 49 CFR 174.9. Both the transferring and the receiving railroad carrier must document the transfer of custody in writing or electronically.

(e) *Within an HTUA, carrier transferring to rail hazardous materials receiver.* A freight railroad carrier delivering a rail car containing one or more of the categories and quantities of rail security-sensitive materials to a rail hazardous materials receiver located within an HTUA must not leave the rail car unattended in a non-secure area until the rail hazardous materials receiver accepts custody of the rail car. Both the railroad carrier and the rail hazardous materials receiver must document the transfer of custody in writing or electronically.

(f) *Within an HTUA, rail hazardous materials receiver receiving from carrier.* Except as provided in paragraph (j) of this section, a rail hazardous materials receiver located within an HTUA that receives a rail car containing one or more of the categories and quantities of rail security-sensitive materials from a freight railroad carrier must:

(1) Ensure that the rail hazardous materials receiver or railroad carrier maintains positive control of the rail car during the physical transfer of custody of the rail car.

(2) Keep the rail car in a rail secure area until the car is unloaded.

(3) Document the transfer of custody from the railroad carrier in writing or electronically.

(g) *Within or outside of an HTUA, rail hazardous materials receiver rejecting car.* This section does not apply to a rail hazardous materials receiver that does not routinely offer, prepare, or load for transportation by rail one or more of the categories and quantities of rail security-sensitive materials. If such a receiver rejects and returns a rail car containing one or more of the categories and quantities of rail security-sensitive materials to the originating offeror or shipper, the requirements of this section do not apply to the receiver. The requirements of this section

do apply to any railroad carrier to which the receiver transfers custody of the rail car.

(h) *Document retention.* Covered entities must maintain the documents required under this section for at least 60 calendar days and make them available to TSA upon request.

(i) *Rail secure area.* The rail hazardous materials shipper and the rail hazardous materials receiver must use physical security measures to ensure that no unauthorized person gains access to the rail secure area.

(j) *Exemption for rail hazardous materials receivers.* A rail hazardous materials receiver located within an HTUA may request from TSA an exemption from some or all of the requirements of this section if the receiver demonstrates that the potential risk from its activities is insufficient to warrant compliance with this section. TSA will consider all relevant circumstances, including—

(1) The amounts and types of all hazardous materials received.

(2) The geography of the area surrounding the receiver's facility.

(3) Proximity to entities that may be attractive targets, including other businesses, housing, schools, and hospitals.

(4) Any information regarding threats to the facility.

(5) Other circumstances that indicate the potential risk of the receiver's facility does not warrant compliance with this section.

(k) *Terms used in this section.* (1) As used in this section, a rail car is *attended* if an employee or authorized representative:

(i) Is physically located on site in reasonable proximity to the rail car;

(ii) Is capable of promptly responding to unauthorized access or activity at or near the rail car, including immediately contacting law enforcement or other authorities; and

(iii) Immediately responds to any unauthorized access or activity at or near the rail car either personally or by contacting law enforcement or other authorities.

(2) As used in this section, *maintains positive control* means that the rail hazardous materials receiver and the railroad carrier communicate and cooperate with each other to provide for the security of the rail car during the physical transfer of custody. *Attending* the rail car is a component part of maintaining positive control.

(3) As used in this section, *document the transfer* means documentation uniquely identifying that the rail car was attended during the transfer of custody, including:

- (i) Car initial and number.
- (ii) Identification of individuals who attended the transfer (names or uniquely identifying employee number).
- (iii) Location of transfer.
- (iv) Date and time the transfer was completed.

[73 FR 72173, Nov. 26, 2008, as amended at 74 FR 23657, May 20, 2009]

§ 1580.109 Preemptive effect.

Under 49 U.S.C. 20106, issuance of the regulations in this part preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local security hazard; that is not incompatible with a law, regulation, or order of the United States Government; and that does not unreasonably burden interstate commerce. For example, under 49 U.S.C. 20106, issuance of § 1580.107 of this subpart preempts any State or tribal law, rule, regulation, order or common law requirement covering the same subject matter.

§ 1580.111 Harmonization of federal regulation of nuclear facilities.

TSA will coordinate activities under this subpart with the Nuclear Regulatory Commission (NRC) and the Department of Energy (DOE) with respect to regulation of rail hazardous materials shippers and receivers that are also licensed or regulated by the NRC or DOE under the Atomic Energy Act of 1954, as amended, to maintain consistency with the requirements imposed by the NRC and DOE.

Subpart C—Passenger Rail Including Passenger Railroad Carriers, Rail Transit Systems, Tourist, Scenic, Historic and Excursion Operators, and Private Cars

§ 1580.200 Applicability.

This subpart includes requirements for:

(a) Each passenger railroad carrier, including each carrier operating light rail or heavy rail transit service on track that is part of the general railroad system of transportation, each carrier operating or providing intercity passenger train service or commuter or other short-haul railroad passenger service in a metropolitan or suburban area (as described by 49 U.S.C. 20102), and each public authority operating passenger train service.

(b) Each passenger railroad carrier hosting an operation described in paragraph (a) of this section.

(c) Each tourist, scenic, historic, and excursion rail operator, whether operating on or off the general railroad system of transportation.

(d) Each operator of private cars, including business/office cars and circus trains, on or connected to the general railroad system of transportation.

(e) Each operator of a rail transit system that is not operating on track that is part of the general railroad system of transportation, including heavy rail transit, light rail transit, automated guideway, cable car, inclined plane, funicular, and monorail systems.

§ 1580.201 Rail security coordinator.

(a) *Applicability.* This section applies to:

(1) Each passenger railroad carrier, including each carrier operating light rail or heavy rail transit service on track that is part of the general railroad system of transportation, each carrier operating or providing intercity passenger train service or commuter or other short-haul railroad passenger service in a metropolitan or suburban area (as described by 49 U.S.C. 20102), and each public authority operating passenger train service.