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(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

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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

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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