49 CFR PART 172

Subpart I—Security Plans

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Subpart I—Safety and Security Plans

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§172.800 Purpose and applicability.

(a) *Purpose*. This subpart prescribes requirements for development and implementation of plans to address security risks related to the transportation of hazardous materials in commerce.

(b) *Applicability*. Each person who offers for transportation in commerce or transports in commerce one or more of the following hazardous materials must develop and adhere to a transportation security plan for hazardous materials that conforms to the requirements of this subpart. As used in this section, "large bulk quantity" refers to a quantity greater than 3,000 kg (6,614 pounds) for solids or 3,000 liters (792 gallons) for liquids and gases in a single packaging such as a cargo tank motor vehicle, portable tank, tank car, or other bulk container.

(1) Any quantity of a Division 1.1, 1.2, or 1.3 material;

(2) A quantity of a Division 1.4, 1.5, or 1.6 material requiring placarding in accordance with subpart F of this part;

(3) A large bulk quantity of Division 2.1 material;

(4) A large bulk quantity of Division 2.2 material with a subsidiary hazard of 5.1;

(5) Any quantity of a material poisonous by inhalation, as defined in §171.8 of this subchapter;

(6) A large bulk quantity of a Class 3 material meeting the criteria for Packing Group I or II;

(7) A quantity of desensitized explosives meeting the definition of Division 4.1 or Class 3 material requiring placarding in accordance with subpart F of this part;

(8) A large bulk quantity of a Division 4.2 material meeting the criteria for Packing Group I or II;

(9) A quantity of a Division 4.3 material requiring placarding in accordance with subpart F of this part;

(10) A large bulk quantity of a Division 5.1 material in Packing Groups I and II; perchlorates; or ammonium nitrate, ammonium nitrate fertilizers, or ammonium nitrate emulsions, suspensions, or gels;

(11) Any quantity of organic peroxide, Type B, liquid or solid, temperature controlled;

(12) A large bulk quantity of Division 6.1 material (for a material poisonous by inhalation see paragraph (5) above);

(13) A select agent or toxin regulated by the Centers for Disease Control and Prevention under 42 CFR part 73 or the United States Department of Agriculture under 9 CFR part 121;

(14) A quantity of uranium hexafluoride requiring placarding under §172.505(b);

(15) International Atomic Energy Agency (IAEA) Code of Conduct Category 1 and 2 materials including Highway Route Controlled quantities as defined in 49 CFR 173.403 or known radionuclides in forms listed as RAM–QC by the Nuclear Regulatory Commission;

(16) A large bulk quantity of Class 8 material meeting the criteria for Packing Group I.

(c) *Exceptions*. Transportation activities of a farmer, who generates less than $500,000 annually in gross receipts from the sale of agricultural commodities or products, are not subject to this subpart if such activities are:

(1) Conducted by highway or rail;

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(2) In direct support of their farming operations; and

(3) Conducted within a 150-mile radius of those operations.

[Source Note: At 70 FR 73164, December 9, 2005, added (c). At 71 FR 32258, June 2, 2006, effective October 1, 2006, revised (b)(6). At 75 FR 10988, March 9, 2010, effective October 1, 2010, revised (b). At 75 FR 53597, September 1, 2010, effective October 1, 2010, as amended March 9, 2010, at 75 FR 10988, effective October 1, 2010, revised (b)(2), (b)(7), and (b)(9). At 76 FR 56314, September 13, 2011, revised (b)(15).]

§172.802 Components of a security plan.

(a) The security plan must include an assessment of transportation security risks for shipments of the hazardous materials listed in §172.800, including site-specific or location-specific risks associated with facilities at which the hazardous materials listed in §172.800 are prepared for transportation, stored, or unloaded incidental to movement, and appropriate measures to address the assessed risks. Specific measures put into place by the plan may vary commensurate with the level of threat at a particular time. At a minimum, a security plan must include the following elements:

(1) *Personnel security.* Measures to confirm information provided by job applicants hired for positions that involve access to and handling of the hazardous materials covered by the security plan. Such confirmation system must be consistent with applicable Federal and State laws and requirements concerning employment practices and individual privacy.

(2) *Unauthorized access*. Measures to address the assessed risk that unauthorized persons may gain access to the hazardous materials covered by the security plan or transport conveyances being prepared for transportation of the hazardous materials covered by the security plan.

(3) *En route security.* Measures to address the assessed security risks of shipments of hazardous materials covered by the security plan en route from origin to destination, including shipments stored incidental to movement.

(b) The security plan must also include the following:

(1) Identification by job title of the senior management official responsible for overall development and implementation of the security plan;

(2) Security duties for each position or department that is responsible for implementing the plan or a portion of the plan and the process of notifying employees when specific elements of the security plan must be implemented; and

(3) A plan for training hazmat employees in accordance with §172.704 (a)(4) and (a)(5) of this part.

(c) The security plan, including the transportation security risk assessment developed in accordance with paragraph (a) of this section, must be in writing and must be retained for as long as it remains in effect. The security plan must be reviewed at least annually and revised and/or updated as necessary to reflect changing circumstances. The most recent version of the security plan, or portions thereof, must be available to the employees who are responsible for implementing it, consistent with personnel security clearance or background investigation restrictions and a demonstrated need to know. When the security plan is updated or revised, all employees responsible for implementing it must be notified and all copies of the plan must be maintained as of the date of the most recent revision.

(d) Each person required to develop and implement a security plan in accordance with this subpart must maintain a copy of the security plan (or an electronic file thereof) that is accessible at, or through, its principal place of business and must make the security plan available upon request, at a reasonable time and location, to an authorized official of the Department of Transportation or the Department of Homeland Security.

[Source Note: At 75 FR 10989, March 9, 2010, effective October 1, 2010, revised (a) introductory text; redesignated (b) as (c) and revised it; and added new (b) and (d).]

§172.804 Relationship to other Federal requirements.

To avoid unnecessary duplication of security requirements, security plans that conform to regulations, standards, protocols, or guidelines issued by other Federal agencies, international organizations, or industry organizations may be used to sat-

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isfy 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;

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

(4) A high-hazard flammable train (HHFT) as defined in §171.8 of this subchapter.

(b) 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. 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.

(i) A rail carrier subject to additional planning requirements of this section based on paragraph (a)(4) of this section, must complete the initial process by March 31, 2016, using data for the six month period from July 1, 2015 to December 31, 2015; or

(ii) A rail carrier subject to additional planning requirements of this section based on paragraph (a)(4) of this section, must complete the initial process by March 31, 2016, using data for all of 2015, provided the rail carrier indicates in their initial analysis that it has chosen this option.

(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 collected 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

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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) 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.

(2) 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.

(3) 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

(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:

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(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.

[Source Note: At 73 FR 72193, November 26, 2008, effective December 26, 2008, redesignated (g), (h), and (i) as (h), (i), and (j), respectively; added new (g); and revised (a)(2), (f) and newly designated (h)(1). At 76 FR 56314, September 13, 2011, revised (b) introductory text and (f). At 80 FR 26746, May 8, 2015, effective July 7, 2015, revised (a)(2) and (a)(3); and added (a)(4) and (b)(1)(i)–(b)(1)(ii).]

§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.

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