FEDERAL RAILROAD ADMINISTRATION

OFFICE OF RAILROAD SAFETY

Hazardous Materials Compliance Manual

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CHAPTER 1
ABOUT THIS MANUAL

The goal of the Federal Railroad Administration's (FRA) hazardous materials (HM, also referred to as hazmat) safety program is to manage the risks inherent to the transportation of HM by rail. Achievement of this goal requires reducing and eliminating risk, where possible, to protect the public and ensure the continuing economic viability of the Nation. The goal is cultivated through a variety of compliance tools including education, inspection, system assessments, and enforcement. This goal is the direct responsibility of the field and headquarters staff of FRA's Office of Railroad Safety HM Division and the Office of Chief Counsel's (RCC) Safety Law Division.

This discipline-specific manual provides guidance for Federal and State HM inspectors regarding inspection and investigative activities when evaluating regulated entities' compliance with Federal laws and regulations pertaining to the transportation of HM. The information in this manual is intended to provide internal guidance, and does not provide any basis for a private party to challenge FRA's exercise of enforcement discretion in a particular case. The guidance provided in this manual may be revoked or modified without prior notice at any time by FRA. This manual supersedes all previous hazardous materials enforcement and/or compliance manuals.

Inspectors should use this Hazardous Materials Compliance Manual as an aid in understanding their role and responsibilities in the implementation of the HM safety program. The success and the effectiveness of FRA's HM safety program hinges on the ability of inspectors to use good judgment and strategies with the regulated industry, so that compliance with the regulations is achieved. In carrying out their responsibilities, inspectors have considerable discretion and this manual should be used to guide the individual on how to exercise that discretion. If the manual does not provide adequate guidance for a particular situation or factual scenario, or if there is any doubt as to the meaning of any of the information provided in this manual, an inspector should seek assistance from their regional supervisory specialist, the appropriate Office of Railroad Safety headquarters HM staff, or RCC.

This manual is a complement to the Office of Railroad Safety's General Manual (General Manual). The General Manual provides detailed information regarding FRA's overall operations, history, and statutory authority; rulemaking process; and inspection and investigation procedures. Both manuals are specifically intended for use by HM safety inspectors and technical specialists throughout the country who monitor compliance with Federal law and safety regulations that apply to the transportation of HM by rail. Using both this discipline-specific manual and the General Manual will aid FRA inspectors in the uniform application and enforcement of the Federal HM transportation safety laws and implementing regulations, including laws and regulations affecting the security of HM in transportation.

1.1 Introduction

Within the U.S. Department of Transportation (DOT), implementation of the Federal HM transportation safety laws is coordinated through the Pipeline and Hazardous Materials Safety Administration (PHMSA).[1] PHMSA is the DOT operating administration responsible for promulgating regulations implementing the Federal HM transportation law. Each of the modes (rail, water,[2] highway, and air) is delegated responsibility to enforce the DOT regulations within its area of expertise and familiarity.[3] Under the guidance of PHMSA, groups spanning all of DOT's modes work to achieve consistency, equity, and fairness in these enforcement activities with the goal of improved safety in the transportation of dangerous commodities, regardless of how they move.

The policies, directives, procedures, and guidelines contained in this manual are designed to ensure effective use of available resources. By adhering to these policies, directives, procedures, and guidelines, inspectors will uniformly and consistently apply and enforce the Federal HM transportation law and its implementing regulations throughout the Nation. This uniformity is necessary for effective program management and execution.

Inspectors should refer to this manual as often as necessary to obtain a clear understanding of his or her role in carrying out the FRA mission. Inspectors are encouraged to review this manual thoroughly, and promptly report any errors or unclear statements to their supervisor and the Staff Director, HM Division. This manual is the property of FRA and is intended for use by FRA and participating State HM personnel only. Comments and suggestions for future changes and additions to this manual are invited and should be forwarded to the Staff Director, HM Division, through the relevant regional specialist.

In this manual, the rules of language construction established in the Hazardous Materials Regulations (HMR) at Title 49 Code of Federal Regulations (CFR) Section 171.9 apply unless the context requires otherwise.

1.2 Comments from Interested Persons

As required by the Freedom of Information Act (5 U.S.C. § 552), this manual is available for public review. Interested persons are invited to submit constructive comments regarding the content of this manual and to make recommendations regarding any material they believe should be added.

1.3 Updating the Manual

As changes, revisions, or deletions occur in the manual, revised pages will be sent to FRA HM enforcement personnel, along with a notice identifying and describing the revisions being made.

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[1] PHMSA is the successor agency to the Research and Special Program Administration. PHMSA was created by the Norman Y. Mineta Research and Special Programs Improvement Act of 2004.

[2] While the U.S. Coast Guard is now under the U.S. Department of Homeland Security, they retain the authority to enforce the hazardous materials transportation laws and regulations pertaining to water transportation.

[3] See the Memorandum of Understanding (MOU) in Appendix B for inspection procedures between modes.

The page number of the manual is identified at the bottom of each page. At appropriate intervals, a checklist of revised pages will be issued to show each page number that has been changed and the effective date of that change. When a checklist is received, manual holders should replace the affected pages in their manual and file the checklist at the front of the manual.

CHAPTER 2
BASIS FOR REGULATION AND INSPECTION

2.1 Statutory Authority

The Federal HM transportation law[4] directs the Secretary of Transportation (Secretary) to issue regulations "for the safe transportation, including security, of hazardous material in … commerce."[5] The law specifically provides that such regulations apply to persons who:

1. Transport HM in commerce.

2. Cause HM to be transported in commerce.

3. Design, manufacture, fabricate, inspect, mark, maintain, recondition, repair, or test a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting HM in commerce.

4. Prepare or accept HM for transportation in commerce.

5. Are responsible for the safety of transporting HM in commerce.

6. Certify compliance with any requirement of Federal HM transportation law (or its implementing regulations).[6]

The law further provides that such regulations govern all "safety aspects, including security, of the transportation of hazardous material the Secretary considers appropriate."[7]

2.2 Scope of Regulatory Authority

The regulations implementing the HMR are found in 49 CFR Parts 171–180. A central premise of the HMR is that the offering for transportation, acceptance for transportation, or transportation of a hazardous material is prohibited unless certain standards are met.[8] A hazardous material shipment that is not prepared in accordance with the requirements of the HMR may not be offered for transportation, or transported, by air, highway, railroad, or water. As such, the HMR impose regulatory requirements on persons who (1) perform functions in advance of transportation to prepare HM for transportation ("pre-transportation functions"); (2) perform "transportation" (i.e., movement and incidental loading, unloading, and storage functions); or (3) design, manufacture, inspect, or maintain packages that are represented or sold as qualified for use in the transportation of HM in commerce. Functions that are not "pre-transportation

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[4] In this manual, "Federal hazardous materials transportation law" (Federal HM law) or "Law" refers to the basic statute regulating hazardous materials transportation in the United States, codified at 49 U.S.C. § 5101 *et seq*.
[5] 49 U.S.C. § 5103(b)(1).
[6] 49 U.S.C. § 5103(b)(1)(A). "Commerce" means trade or transportation in the jurisdiction of the United States or that affects trade or transportation in the United States. 49 U.S.C. § 5102(1).
[7] 49 U.S.C. § 5103(b)(1)(B).
[8] See 49 CFR § 171.2.

functions" or "transportation functions," and otherwise not subject to the HMR's packaging requirements, are generally not regulated by the HMR (e.g., storage of a package containing HM at a shipper's facility prior to the package being offered for transportation, unloading HM from a packaging following the delivery of the HM to its destination, or storage of a railcar containing HM on private track).[9]

2.2.1 Pre-Transportation Functions

"Pre-transportation functions" are activities necessary to assure the safe transportation of the HM and are required to be performed prior to the transportation of HM in commerce. Pre-transportation functions include, but are not limited to:

1. Determining the hazard class of a HM.
2. Selecting a HM packaging.
3. Filling a HM packaging.
4. Securing a closure on a HM packaging.
5. Marking, labeling, or placarding a package to indicate that it contains HM.
6. Preparing a shipping paper.
7. Certifying a shipment as safe for transportation and in compliance with the HMR.
8. Providing and maintaining emergency response information.
9. Loading, blocking and bracing a HM package in a freight container or other conveyance.
10. Segregating a HM package from incompatible cargo.[10]

Pre-transportation functions must be performed in accordance with the requirements of the HMR and any person who performs a pre-transportation function (i.e., an offeror function) related to a hazmat shipment is considered a "person who offers." An "offeror" is defined to mean: (1) a person who performs, or is responsible for performing, any pre-transportation function required by the HMR, or (2) tenders or makes hazmat available to a carrier for transportation in commerce. Carriers who perform functions required by the HMR as a condition of acceptance of hazmat for transportation in commerce or who transfer hazmat to another carrier for continued transportation in commerce without performing a pre-transportation function, are specifically excluded from the definition of offeror.[11] Accordingly, that person is responsible for performing that function in accordance with the HMR.[12]

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[9] 49 CFR § 171.1(c)–(d).
[10] 49 CFR § 171.8.
[11] 49 CFR § 171.8 (defining "person who offers" or "offeror").
[12] 49 CFR § 171.2(a).

2.2.2 Transportation Functions

The HMR define "transportation" generally as the "movement of property and loading, unloading, or storage incidental to that movement."[13] The HMR provide that transportation in commerce begins when a carrier takes physical possession of an HM for the purpose of transporting it, and continues until the HM is delivered to the destination indicated on a shipping paper.[14] One exception to this general rule applies to rail transportation. Specifically, a railcar transporting HM is considered "in transportation" for purposes of the HMR until it is delivered to a "private track or siding."[15] This is true, even if the railcar is delivered to its final destination indicated on its shipping paper. While a railcar containing HM is in "transportation," it is subject to the requirements of the HMR.

For the purpose of the HMR, a "carrier" is a person who transports passengers or property in commerce by railcar, aircraft, motor vehicle, or vessel.[16] Common, contract, and private carriers are specifically included in this definition, so FRA's jurisdictional reach is as broad under the HMR as it is under the other railroad safety statutes.[17]

2.2.3 Other Regulated Functions and Standards

The HMR contain standards applicable to packages in which HM is transported (e.g., 49 CFR Part 178 (general packaging standards), Part 179 (railroad tank car specifications), and Part 180 (continuing qualification and maintenance of packagings)).

The HMR require persons who directly affect hazardous materials transportation safety (referred to as "hazmat employees") to be trained in the requirements of the HMR. It is the responsibility of persons employing individuals preparing HM for transportation or transporting HM to ensure that those individuals are properly trained in accordance with the HMR.[18]

The HMR also contain requirements aimed at ensuring the security of HM in transportation (e.g., 49 CFR Part 172, Subpart I). Sections 172.800–172.802 require certain offerors and transporters of HM to develop and maintain safety and security plans addressing, at a minimum, personnel security, unauthorized access, and en route security of HM in transportation. Section 172.820 requires carriers of certain "security sensitive materials" to annually analyze the safety and security risks of the routes over which the carriers transport the materials and choose the routes that pose the least overall safety and security risks for such transportation. (Enforcement of the route analysis regulation is primarily the responsible of headquarters staff).

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[13] 49 CFR § 171.8; 49 U.S.C. § 5102(13). See also 49 CFR § 171.8 for definitions of "storage incidental to movement" and "unloading incidental to movement."
[14] 49 CFR § 171.1(c).
[15] See 49 CFR § 171.8 for definition of "private track" or "private siding."
[16] 49 CFR § 171.8.
[17] In *CSX Transportation, Inc. v. Public Utilities Commission of Ohio,* 901 F.2nd 497 (6th Cir. 1990), *cert. denied,* 498 U.S. 1066 (1991), the court said that, when enforced against a railroad, the Federal hazardous materials transportation law is one of the Federal railroad safety laws.
[18] See 49 CFR § 171.8 for definition of "hazmat employee" and "hazmat employer" and 172.700–172.704 for specific training requirements.

2.2.4 Structure of HMR

FRA's HM inspection program is primarily responsible for monitoring compliance with the following parts of the HMR:

Part 171 – General information, regulations, and definitions

Part 172 – Hazardous materials table, special provisions, hazardous materials communications, emergency response information, training requirements, and security plans

Part 173 – Shippers—general requirements for shipments and packagings

Part 174 – Carriage by rail

Part 178 – Specifications for packagings

Part 179 – Specifications for tank cars

Part 180 – Continuing qualification and maintenance of packagings

2.3 Inspection Authority

Federal HM transportation law provides the authority for the Secretary to inspect facilities and records related to HM transportation. Specifically, 49 U.S.C. § 5121 provides designated agents of the Secretary (including FRA and certified State HM inspectors) the authority to "inspect and investigate, at a reasonable time and in a reasonable manner, records and property relating" to the regulated HM functions described in section 2.1.[19]

The Secretary has delegated enforcement authority under the Federal HM transportation law to the modal administrations. Specifically, FRA's Administrator is delegated the authority to:

> [c]arry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b), (c) and (d), 5122, 5123, and 5124, with particular emphasis on the transportation or shipment of hazardous materials by railroad.[20]

Accordingly, FRA has the authority to enter the property of railroads, offerors, and other entities performing functions subject to the HMR for the purpose of inspecting and monitoring compliance with the HMR, an authority supplemented by the power to subpoena persons and documents and to hold hearings and conduct investigations.[21]

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[19] 49 U.S.C. § 5121(a).

[20] 49 CFR § 1.49(s). Section 5122 to Title 49 of the United State Code authorizes the Secretary to seek enforcement action in court through the U.S. Attorney General in certain circumstances; Section 5123 authorizes the Secretary to assess civil penalties for certain violations of the Federal HM transportation law and/or HMR; and Section 5124 provides for criminal penalties for certain violations committed willfully or recklessly.

[21] *See* 49 U.S.C. § 5121(a) (detailing FRA's general administrative authority to investigate, issue subpoenas, and hold hearings).

Because offerors are authorized to introduce a hazardous material into transportation only in compliance with the Federal HM law and its implementing regulations, FRA has an obligation to investigate possible violations at points where shipments originate and to monitor compliance on a regular basis. The legal standard is clear: by engaging in the shipment of dangerous commodities, companies (and individuals) constructively accept the necessity of proper unannounced inspections.[22]

In order to ensure that all hazardous material shipments are designated as such and comply with all applicable statutes and regulations, DOT has interpreted the statutory authority to inspect to include shipments and shipping documentation other than just those declared to contain HM (i.e., undeclared HM shipments). This is necessary to ensure that all hazardous material shipments are designated as such and comply with all applicable statutes and regulations. This authority was enhanced by Congress' enactment of the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005, which revised 49 U.S.C. § 5121 to specifically authorize agents of the Secretary to (1) open packages to identify undeclared or noncompliant HM shipments; (2) inspect and temporarily detain suspicious packages; and (3) issue emergency orders (e.g., restrictions, prohibitions, and out-of-service orders) to address unsafe conditions or practices. PHMSA published a Final Rule on March 2, 2011[23] proposing Department-wide procedures for implementing this enhanced authority; however, internal procedures have not yet been published that would allow FRA to implement this enhanced authority.

2.3.1 Summary

FRA inspectors are authorized to inspect railroad, offeror, or other facilities and all pertinent documents whenever doing so would reasonably be expected to serve the purpose of ascertaining or encouraging compliance with the HMR. Neither a warrant nor any other prior approval is necessary. Inspectors and other enforcement personnel need only conduct their affairs courteously, including displaying credentials when asked, and in such a manner as to disrupt the facility's business as little as possible.

Simply stated, <u>any</u> <u>person</u> affecting the transportation of a hazardous material in commerce is subject to inspection and may be cited for a noncomplying condition under the Federal hazardous material transportation law or the HMR.[24] Moreover, <u>any</u> <u>activity</u> affecting the transportation of a hazardous material in commerce is subject to investigation and inspection to determine compliance with the Federal HM transportation law and the HMR.[25]

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[22] See *United States v. Biswell*, 406 U.S. 311 (1972), *United States v. V-1 Oil Co.*, 63 F.3d 909, (9th Cir. 1995), *cert. denied*, 517 U.S. 1208 (1996).

[23] 76 FR 11570.

[24] For example, shippers, shippers' agents, consignees, brokers, freight forwarders, contractors, and unloaders may be cited.

[25] For example, FRA and State inspectors may investigate and inspect loading activities, certification, documentation, handling of hazardous materials shipments, unloading, and placarding.

2.4 Coordination with DOT Modal Administrations and Other Federal Agencies

In August 1990, the five operating administrations within DOT responsible for conducting inspection and enforcement programs under the Federal HM transportation law adopted the "Coordination Guidelines for Hazardous Materials Inspection and Enforcement." This document established general coordination guidelines that foster cooperation and sharing of information, while preserving each administration's specific responsibilities for overseeing the safe transportation of HM. These guidelines are included in Appendix B of this manual and should serve as guidance for inspectors and other FRA technical representatives when interacting with other operating administrations of the DOT during inspection and enforcement activities. In addition, DOT and the U.S. Coast Guard have entered into a Memorandum of Understanding providing guidelines for coordination between the two agencies.

2.5 Hazardous Materials Regulatory Development

The HMR are promulgated by PHMSA in cooperation with representatives of DOT operating administrations (Federal Aviation Administration, FRA, Federal Motor Carrier Safety Administration) and the U.S. Coast Guard (U.S. Department of Homeland Security) under the authority of 49 U.S.C. § 5103. In recent history, essentially all the work done on railroad-related regulations has been done by the staff of FRA, with PHMSA acting as editors, maintaining modal consistency. This has been a valuable, productive, and collegial relationship.

PHMSA, with input from the affected modal administration(s), also rules on all applications for HMR Special Permits.

FRA's headquarters HM Division staff and RCC work together in communicating to PHMSA FRA's advice and concerns related to the transportation of hazardous material by rail. Headquarters HM Division staff provides technical, chemical, engineering, and operating expertise to PHMSA as appropriate. PHMSA's rulemaking procedures are set forth at 49 CFR Part 106. Inspectors are encouraged to make suggestions for additions or amendments to the HMR to improve safety. Such recommendations must be submitted through the relevant regional specialist for forwarding to the Staff Director, HM Division.

CHAPTER 3
ROLES AND RESPONSIBILITIES

3.1 Responsibilities of Hazardous Materials Division Personnel

3.1.1 Staff Director

The HM Division is led by the Staff Director who:

- Provides overall policy guidance.
- Provides evaluation, direction, and technical advice for rail safety programs for FRA and State safety programs.
- Coordinates programs with the Federal Motor Carrier Safety Administration, Federal Aviation Administration, Pipeline and Hazardous Materials Safety Administration, U.S. Coast Guard, and other concerned agencies and organizations.
- Administers the Safety Compliance Oversight Program for transportation of spent nuclear fuel.
- Assigns tasks to headquarters specialists and coordinates joint headquarters/regional HM safety programs.
- Ensures timely response to correspondence from outside of the agency.
- Assigns priorities to maximize the efficient use of resources.

3.1.2 Headquarters RRS Hazardous Materials Staff

Headquarters HM specialists and engineers work under the HM Division Staff Director. These staffers:

- Liaise with industry groups and associations.
- Lead specialized projects.
- Serve as a resource for the field force.
- Respond to information and interpretation requests from FRA's external customers (including Congress) in consultation with RCC, as appropriate.
- Analyze and issue one-time movement approvals affecting cars not in compliance with the regulations, and coordinate such analysis and approvals with regional HM personnel as appropriate.
- Analyze requests for Special Permits, coordinate with regional HM personnel, as appropriate, and advise PHMSA of FRA's findings.
- Analyze proposals for alternative inspection intervals and/or procedures under 49 CFR § 180.509(k).
- Collect and analyze data on releases of HM.

- Interpret the special needs of the ethanol program and provide advice where necessary.
- Serve as the technical representatives on HM investigations where the National Transportation Safety Board (NTSB) is involved.
- Advance the progress of quality assurance in the tank car building and repair industry.
- Provide expert assistance to regulatory development projects dealing with HM.
- Assist Office of Chief Counsel representatives with HM-related enforcement issues when requested (e.g., evaluating violation reports, technical assistance at claims conferences and in court proceedings).

3.1.3 Regional Hazardous Materials Supervisory Specialists

Each regional HM specialist is responsible for the technical guidance of all HM activities within their region. In this capacity, the regional specialist:

- Is the access point for HM activities within the region.
- Works to ensure uniformity of program implementation.
- Is the liaison between the regional field inspectors and the headquarters HM Staff Director and specialists.
- Assists the Regional Administrator in planning and managing programs.
- Advises the Regional Administrator on unique problem areas, operating practices, chemicals, research and development, and safety and health needs.
- Provides technical guidance on the HM activities within the region.
- Evaluates the allocation of HM inspection resources within the region, commensurable with the risks of the materials offered for transportation in the region and transported through the region.
- Evaluates and critiques the reports submitted by each HM inspector for technical and legal sufficiency.
- Evaluates and critiques HM inspectors' field reports concerning railroad accidents, incidents, and derailments to determine if the causal factors are appropriately identified.
- Analyzes safety data and other relevant information to identify trends, and makes recommendations.
- Works with the HM inspector(s) to provide technical guidance and uniform understanding of the laws, orders, rules, and regulations concerning the transportation of HM by railroad.
- Leads and coordinates special assessments, assignments, inspections and investigations, and focused enforcement activities.
- Provides technical knowledge of the typical reactions of a wide variety of HM to various environmental conditions (e.g., temperature and pressure changes, contact with other

materials) and considerations for containing or controlling fires, explosions, or leaks of these materials.

- Provides technical guidance to Federal and State agencies, local governments, railroads, chemical and container manufacturers, offerors, labor organizations, and employees of these entities.
- Conducts conferences and seminars for Federal and State agencies, local governments, railroads, chemical and container manufacturers, offerors, labor organizations, and employees of these entities.
- Assists Office of Chief Counsel representatives with HM-related enforcement issues when requested (e.g., evaluating violation reports, and technical assistance at claims conferences and in court proceedings).
- Monitors completion and updating of the regional inspection points list.

3.1.4 Hazardous Materials Inspectors

Each region has a cadre of HM inspectors who serve as the front line of the FRA HM program, ensuring the uniform application of the laws, rules, regulations, orders, and directives associated with HM transportation in an assigned territory. HM inspectors are also a resource within the territory to help each entity involved with dangerous chemicals be aware of both the responsibilities and the resources available to meet Federal requirements. In these vital capacities, the inspector:

- Informs the regional HM specialist of all practices he or she observes, and whether they are governed by regulation, which could endanger the safety of the regulated community, railroad personnel, and the public.
- Represents FRA in an assigned territory communicating and enforcing the requirements of FRA directives and the HMR.
- Performs inspections and investigations, initiating corrective action when warranted.
- Inspects containers (e.g., boxes, barrels, drums, tank cars, railcars, intermodal (IM) portable tanks, and IM bulk containers) used in the transportation of HM to determine compliance with regulations concerning their construction, testing, maintenance, and qualification requirements.
- Inspects the procedures of offerors of HM by rail concerning classification, packaging, marking, labeling, placarding, loading, and documentation of shipments of HM.[26]
- Inspects the loading, unloading, switching, and transportation of railcars of HM, and the carriers' documentation.
- As assigned, participates in team efforts with other Federal, State, and local agencies as appropriate to improve the safety of a particular area or entity.

[26] Examples include, but are not limited to, refineries, chemical and explosives' manufacturers, freight forwarders, and import/export agents.

- As assigned, participates with multiregional teams, usually including headquarters personnel, in the audit of tank car facilities.
- Inspects for compliance with HM registration and training requirements.
- Provides training and advises industry, local, and State authorities and other interested parties on the requirements of the HMR.
- Investigates alleged violations of the HMR.
- Maintains an accurate and up-to-date list of inspection points.
- When appropriate, drafts violation reports and gathers evidence supporting any alleged violations.
- Performs other duties as assigned.

CHAPTER 4
INSPECTION AND INVESTIGATION PROCEDURES

4.1 Inspections and Investigations

This chapter outlines the inspection and investigation process. Depending on the circumstances, inspectors will perform different types of inspections. The specific circumstances will dictate the types of documentation that will be reviewed and the different aspects of hazmat transportation to be analyzed. These activities combine to address the strategic goals of the Department and the agency—reducing the release of hazardous materials from shipments, whether in accidents or in normal transportation.

There is a hierarchy that the inspector should follow when planning and performing inspection activities. The inspector may be asked at any time to respond to an accident or incident scene. This investigation, largely due to the time-sensitive nature, will take priority over routine inspection activities, and may remain the inspector's number one priority for several days or weeks, depending on the severity and complexity of the incident.

In accordance with 49 CFR § 171.16, releases of HM in transportation are reported on DOT Incident Report Form 5800.1 by the entity in physical possession of the shipment. One of FRA's top priorities is decreasing the frequency of non-accident releases (NAR). The HM specialists receive information on NARs associated with their region (both originating in and occurring in). If assigned responsibility for a NAR investigation, the inspector should handle the inspection as expeditiously as possible. NAR investigations are an important tool, similar to accident/incident investigations, in identifying and resolving significant safety concerns and meeting the agency's strategic goals.

The National Inspection Plan (NIP), by design, allows inspection activity to be focused in a way that enhances FRA's ability to reduce train accidents and releases of HM. The plan uses historical data as a baseline to develop the resource allocation. The historical data used relates to Federal inspections (not inspections conducted by participant state partners) activities identified in the RISPC as routine inspections (source code A). A five-year average closing September 30 each FY is used as a baseline for establishing a yearly plan. In developing the allocation, inspections of railcars serves as the identifier. Presently, the NIP addresses railroad inspection time for HM in detail on a per carrier basis. Shipper allocations are provided as a total, by region. This allows regional personnel to expend resources as changes dictate.

The NIP is a data-driven model using a three-pronged approach. First, FRA headquarters establishes an initial baseline plan for each of the eight regions. The plan for the HM discipline sets numeric goals derived from models based on trend analyses and other data that allocate inspection activity for each railroad by State. This mechanism uses an accident/incident analysis tool to pinpoint locations where HM accidents/incidents are likely to occur, assisting in the allocation of inspection resources. Second, regional leadership adjusts the respective regional plans to reflect emerging issues. These adjustments are made before the beginning of each new

fiscal year and at the midyear point to respond to changing trends. Lastly, the NIP is implemented through a Web-based interface, allowing both regions and headquarters to monitor the progress of field inspections during the fiscal year.

FRA plans its safety-related activities based upon many considerations, including statutory requirements and congressional directions, review of relevant safety results, results of prior safety inspections and investigations, and recommendations of the NTSB and other oversight bodies, including the Office of the Inspector General. This National Safety Program Plan is a work plan that describes programs and projects that are expected to have significant impacts on the resources of the disciplinary staffs and the regions. The annual plan seeks to integrate the major activities of HQ and field staffs based on careful analyses of data. It also seeks to provide for the consistent presentation of regional activities aligned with the Government Performance and Results Act goals, NIP, National Rail Safety Action Plan (NRSAP), Risk Reduction Program strategies, and the Secretary's Highway-Rail Grade Crossing Safety Action Plan.

4.2 Types of Hazardous Materials Inspections or Investigations

Generally, there are seven reasons for conducting hazmat related activities: (1) regular inspections, (2) complaint investigations, (3) accident/incident investigations, (4) special inspections or investigations, (5) waiver investigations, (6) nuclear route inspections, and (7) re-inspections.[27] Each of these activities has an assigned source code. Source codes are included on the inspection report and help to identify the underlying reason for conducting inspection/investigation activities. Information about the use of source codes in completing inspection reports can be found in Chapter 5.

4.2.1 Regular Inspections (Source Code A)

Source Code A is used to indicate that the activity reported was part of an inspector's normal and routine inspection program. Regular inspections require inspectors to periodically inspect various types of facilities (e.g., railroads, offerors, contractors, or manufacturing facilities) and HM packagings within their assigned territories to determine compliance with Federal safety regulations. This requires inspectors to have a thorough knowledge of railroad operations in their assigned territory and use available data to drive decisions as to where to inspect. To accomplish this task in a systematic manner, inspectors must maintain an accurate, up-to-date list of regional inspection points (RIP), and should advise their regional specialists of any changes in inspection points or safety trends within their territories. As required, inspectors should review the records of railroads, shippers, and other regulated entities, as appropriate, to monitor their compliance with Federal requirements pertaining to the transportation of HM in commerce (e.g., accidents and incidents, fatalities, injuries, etc.).

In-depth accident analyses are conducted through the use of the FRA's safety data. Additional sources such as PHMSA's Hazardous Materials Intelligence Portal, which combines data from numerous government data sources, may provide additional indicators of areas for concern. In reaching decisions on inspection priorities, inspectors should not limit their data sources to the traditional accident or incident sources. Other sources of information, such as information

[27] Source codes are listed in Chapter 3 of the General Manual and Section 5.1.1 of this manual.

received from complaints or industry trade publications, may highlight areas where attention is needed. As the availability of precursor data becomes more prevalent, the information will guide inspectors in areas where activities will ensure the greatest return on time expended. Regardless of the source, inspectors should always be prepared to explain their use of data and reasons, when asked.

Inspectors should determine if any laws, rules, or orders within FRA's jurisdiction have been violated. In addition, inspectors should study accident trends in their inspection territory attributable to the transportation of HM by rail. For example, if the data indicates that recent accidents were related to a specific cause, concentrated inspections in that particular regulatory area should be conducted. This process should be applied to all inspection activity for better utilization of inspector resources.

Within the realm of regular inspections, site-specific inspections should be performed in part on the basis of each inspector's knowledge of enforcement areas requiring more attention to ensure safety coupled with indicators from the data analysis and information provided by regional supervision that point to problem areas.

4.2.2 Complaint Investigations (Source Code B)

Source Code B is used to indicate that the reported activity is related to complaint investigations. There are two types of complaints in this category, congressional complaints and those filed by railroad employees, labor organizations, other government agencies, or the general public. The principal difference is the involvement of headquarters staff in congressional complaints. The following guidelines are in addition to those located in the General Manual.

4.2.2.1 Complaints filed by railroad employees, labor organizations, other government agencies, or the general public.

A complaint may be submitted in writing (e.g., formal letter, email message) or verbally (e.g., telephone conversation, in person). A complaint investigation must be conducted without revealing to anybody other than FRA personnel that a complaint is or was under investigation. Although the inspector assigned to a complaint investigation normally knows the identity of the complainant, in no event should the inspector reveal the identity of the complainant to anyone other than FRA employees, unless:

- The complainant authorizes such disclosures in writing on the current FRA statement of witness form (Attached at Appendix C).
- FRA refers the matter to the Attorney General (AG) for enforcement, discussion limited to persons within the AG's Office. See 49 U.S.C. § 20109.

Each region is responsible for handling respective complaints from start to finish. This includes logging in, assigning numbers, acknowledging, investigating, closing out, and keeping the file. The region will assign the complaint to an inspector, who will complete the investigation within the prescribed timeframe (see General Manual). If a complaint investigation cannot be completed within the prescribed timeframe, the inspector will write a memorandum or email to

the regional office explaining the reason(s) for the delay. The HM Division (headquarters staff) should be relied upon for technical interpretations as the need arises.

4.2.2.2 Congressional complaints.

As noted in the General Manual, although each region is responsible for handling all aspects of congressional complaint investigations, headquarters staff often play a larger role responding to congressional complaints. Once a congressional complaint is received, the region will assign the complaint to an inspector, who should complete the investigation within the prescribed timeframe (see General Manual). If a congressional complaint investigation cannot be completed within the prescribed timeframe, the inspector must inform the headquarters HM Staff Director, in writing, of the reason(s) for the delay. After completing the investigation, the inspector should promptly forward a report of his or her findings and the relevant file to the headquarters HM Staff Director (or his or her designee) for completion of a closeout letter for the Administrator or Associate Administrator for Railroad Safety/Chief Safety Officer's signature, as appropriate.

4.2.3 Accident or Incident Investigations (Source Code C)

Source Code C is used to indicate that the inspection/investigation activity is directly related to the investigation of an accident. There are two occasions where this source code will be used—onsite investigations of accidents/incidents, and inspections at remote shipper facilities where involved shipments occurred. In both instances, the use of the source code will be directed by the inspector's regional specialist.

4.2.3.1 Onsite activities.

Upon arrival at an accident scene, inspectors should immediately identify themselves to other FRA inspectors already on the scene, the onscene coordinator or incident commander, State and local emergency response teams, State and local authorities and/or representatives, representatives from other Federal agencies (e.g., the NTSB, U.S. Environmental Protection Agency, etc.), and railroad representatives. If the onscene coordinator or incident commander is unaware of technical resources available to assess damage and environmental hazards or to clear wreckage, inspectors should provide the following contacts:

Immediate Emergency Assistance:

- Chemtrec: 24 hours, (800) 424-9300
- National Response Center: 24 hours, (800) 424-8802

If, during an accident investigation, an NTSB investigator arrives on the scene, FRA inspectors should introduce themselves, offer full cooperation, and promptly contact the regional office to advise them of NTSB's presence. Unless instructed otherwise, FRA investigation activities should continue independently. In those instances where NTSB and FRA jointly investigate an accident, NTSB generally assumes control of the activities, including statements to the media.

On these occasions, HM inspectors will typically be assigned to the HM team. As a member of this team, HM investigators' role will include:

- Packaging survivability or behavior at NTSB-run accidents.
- Factual conditions regarding compliance with Federal HM transportation law and the HMR.

4.2.3.2 Remote activities.

At times it will be necessary to conduct inspection/investigation activities at remote locations in support of an accident/incident investigation. Often, other inspectors will perform these activities. When the assistance of remote personnel is needed to complete an investigation or collect information, the inspector should contact their regional supervisor and request assistance.

When this occurs, the regional supervisor where the activity is taking place will direct the inspector to use Source Code C. If an accident number is assigned, that number should be reflected on the inspection report in the reference section (see Chapter 5).

4.2.4 Special Inspections or Investigations (Source Code D)

Source Code D is used to identify activities undertaken because of regional and national goals outlined in the National Safety Program Plan or identified by the regions. In general, this code is used for inspections initiated for a specific reason or purpose not otherwise identified and not involving routine inspections. A file number must be assigned and indicated on the inspection report when Source Code D is used.

This code should only be used when directed by the regional specialist who will provide the reference file number.

4.2.5 Waiver Investigations (Source Code E)

Waiver activities within the hazardous materials discipline, and the use of Source Code E, take the form of Special Permits and one-time movement approvals. Special Permits are issued by PHMSA whereas one-time movement approvals are issued by the FRA Associate Administrator for Railroad Safety/Chief Safety Officer.

4.2.5.1 One-time movement approval (OTMA) and Special Permit investigations.

The effective oversight of Special Permits and approvals to move noncomplying bulk packagings requires a coordinated approach between headquarters and the field. In specific instances, the coordinated effort begins before the approval or permit is issued. However, in all cases, surveillance is required to ensure that the terms of the approval or permit is adhered to by the grantee.

4.2.5.1.1 One-time movement approval investigation

During the evaluation of an OTMA document, HM specialists may request an inspection of the bulk packaging to provide additional information related to the condition of the shipment and evaluation of the vehicle's railworthiness. As outlined in Chapter 9, tank cars with structural integrity issues will require a review to ensure that the tank car can be moved safely. Field inspectors should consider the packaging condition, the route anticipated, and any other safety consideration when making recommendations.

Once issued, regional oversight may be required to validate that the grantee complies with the terms of the approval. This oversight includes notification to regional personnel, notification of train crews, and root cause reporting as mandated in the approval. Inspectors report this oversight activity under routine inspection actions unless the activity is part of a special inspection and directed by the regional specialist.

4.2.5.1.2 Special Permit investigation

Inspections related to special permits are grouped in two general categories: current holders (renewals and parties to) and applications (both new and modifications). Within each of these there are a number of subcategories. As the name suggests, current special permits are those under which the holder is currently operating or where another entity wishes to become a party to and existing special permit with no change to the permit itself. Inspections related to these special permits are intended to identify any of the following concerns.

- Is the special permit still needed?
  If not needed, FRA will recommend that PHMSA request a "Show Cause" letter to explain the need for the special permit.

- Is the special permit issued to a corporation, but specific to a particular location?
  If so, FRA will recommend that PHMSA request a "Show Cause" letter to explain why all locations should be included in the special permit.

- Is the permit holder "fit" to perform duties associated with the special permit?

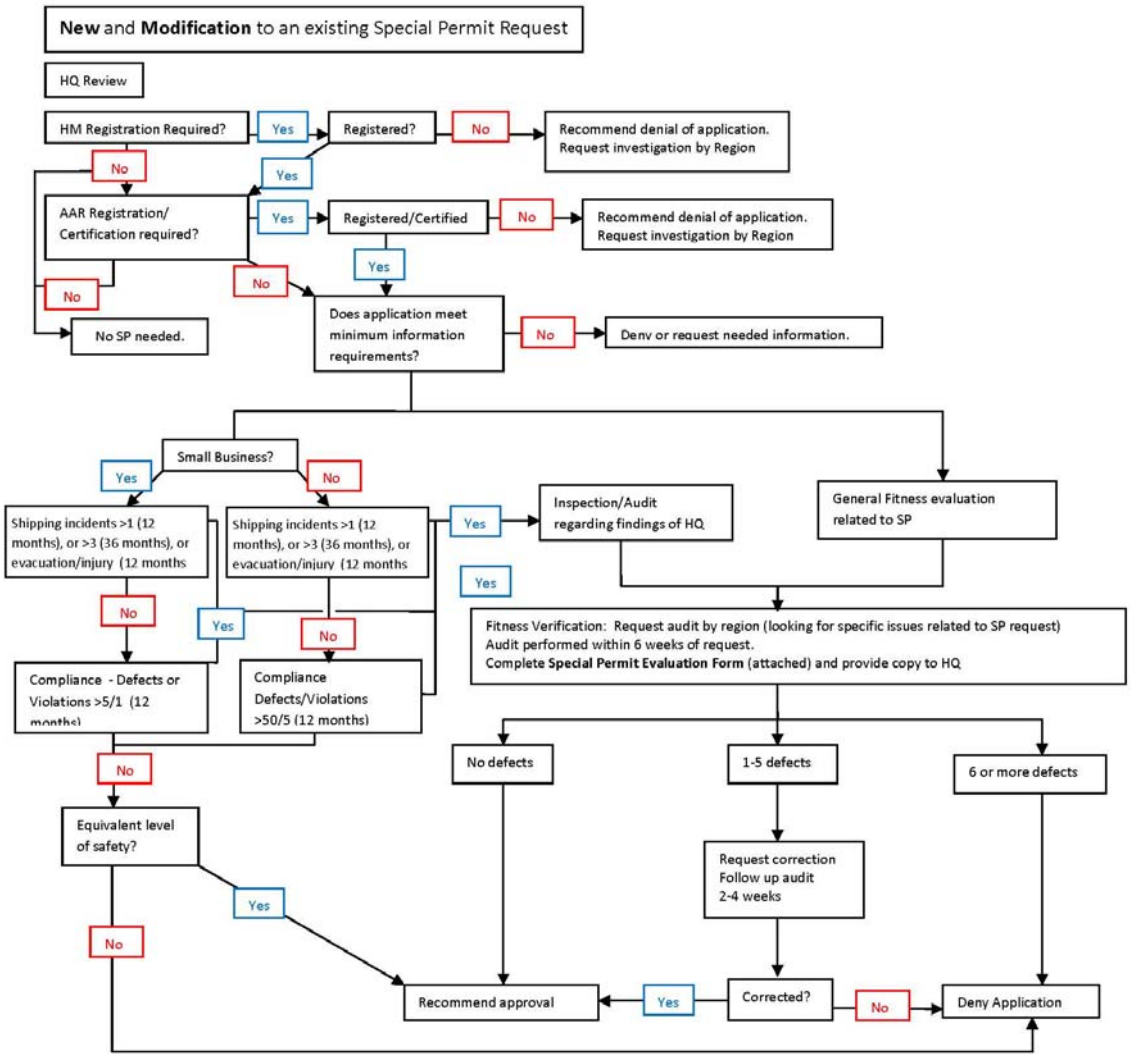
The results of the inspections and any recommendations will be sent to the responsible HQ specialist.

The other category is applications for special permits. The permits are further grouped by the requirement for proof of equivalent level of safety. Applications for new and modified special permits must demonstrate that the proposed equipment or process provides an equivalent level of safety as that provided by adherence to the regulations. Applications for renewal or party-to status do not require demonstration of an equivalent level of safety.

4.2.5.1.3 Applications for new and modified special permits

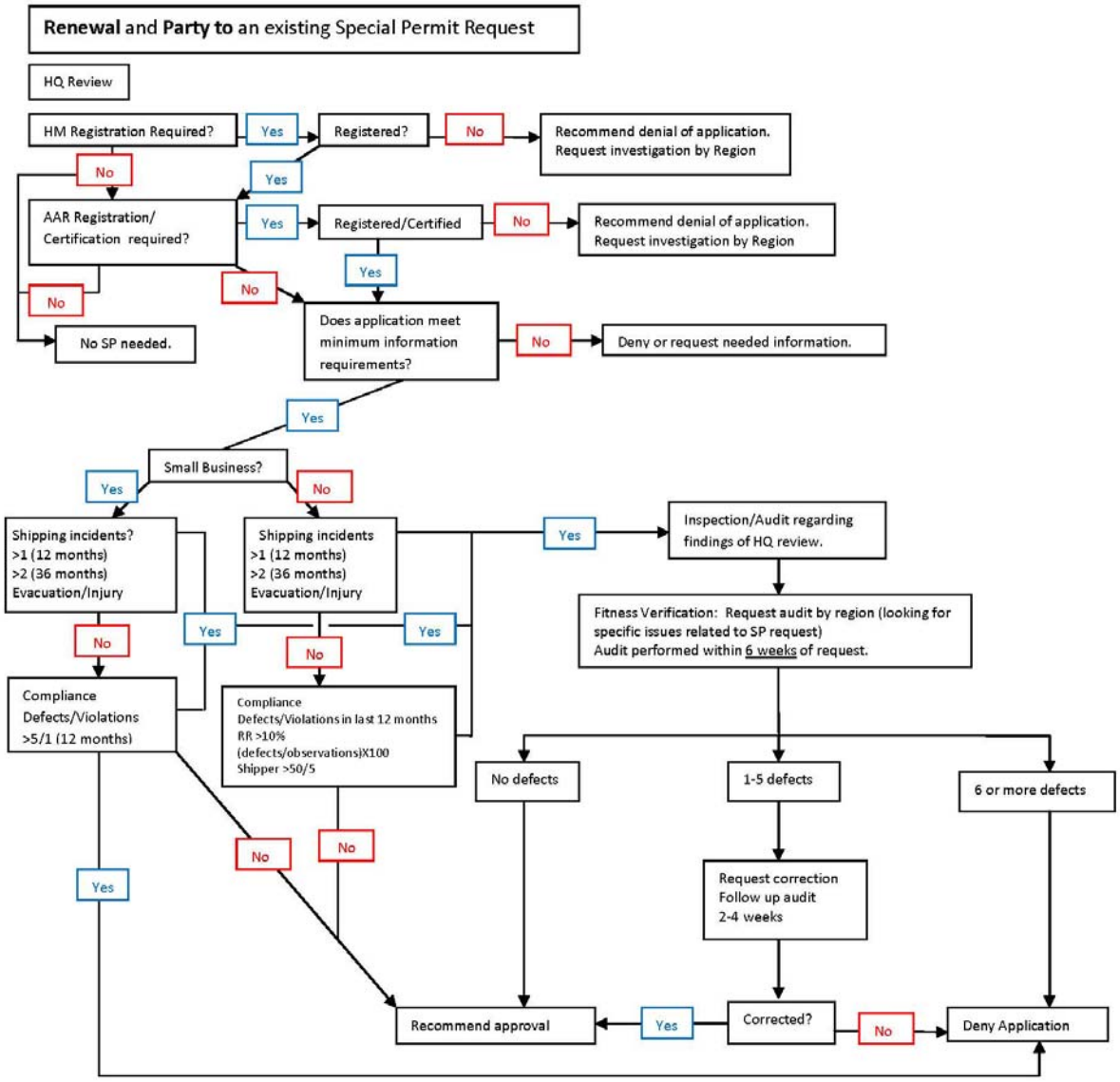
There are four levels of evaluation of applications for new or modified special permits. The first and broadest level is the determination if the information provided is complete and accurate and

if the applicant meets the minimum requirements for the provisions of the special permit. This will be performed by the HQ specialist to whom the special permit is assigned. The next level of evaluation is the compliance and incident history of the applicant. This will also include an evaluation of the stated equivalent level of safety. This will be performed by the HQ specialist as well. If the all of the minimum criteria (indicated on the flowchart below) are not met, an inspection of the applicant will be performed. This is the third level of evaluation. The inspection, performed by regional personnel, will be focused on the compliance issues or incident investigations. The inspector will report their findings to the assigned HQ specialist using existing channels via their regional specialist. The final level of evaluation will be an audit by regional personnel of the applicant to determine fitness relative to the special permit. The results of the audit will be submitted to the HQ specialist on the Facility Fitness document found in Appendix F.



4.2.5.1.4 Application for renewal or party-to status for existing Special Permits

The evaluation of applications for renewal or party-to status for existing Special Permits can be found in the flowchart below. Due to the fact that equivalent safety evaluation has previously been completed, the flowchart does not contain these criteria, nor are inspectors expected to consider this in developing their evaluation unless specific conditions have changed. If needed, inspectors should acquire a copy of the evaluation, either through the DOT Docket System or from the assigned headquarters specialist. Aside from this and slight differences in the evaluation criteria, the flowchart is very similar. Both flowcharts provide the timeframe in which the inspections/audits are to be performed.



4.2.6 Nuclear Route Inspections (Source Code H)

Source Code H is used to indicate that the activity reported was conducted in support of FRA's radioactive Safety Compliance and Oversight Plan (SCOP). Prior to the shipment of high-level radioactive waste and spent nuclear fuel via rail from Three-mile Island in the late 1980's, a comprehensive inspection policy was written by FRA. During subsequent shipment campaigns, the plan (known as the SCOP) was revised and expanded to address all critical areas of rail transportation. The plan addresses operational integrity, emergency response, route infrastructure integrity, highway-rail grade crossing safety, security, and other miscellaneous components of these high profile shipments. When performing inspections associated with the components of the SCOP or high-level radioactive waste and spent nuclear fuel shipments the inspector will use Source Code H when creating an inspection report.

4.2.7 Re-inspections (Source Code R)

As noted in the General Manual, followup activities (or re-inspections), recorded using Source Code R, are mandatory in some instances, while they are only recommended in others. In case of less egregious violations or deficiencies, inspectors and specialists may exercise discretion in scheduling followup inspections to balance with other inspection priorities. These inspections should be conducted within a reasonable time after the violation or deficiency was discovered.

Two findings require mandatory re-inspection for hazardous materials issues. The first relates to train consist problems. When inspectors find train crews operating with train consists that lack complete information about one or more hazardous materials shipments or that improperly identify the location of hazardous materials shipments, they must conduct a re-inspection of trains in that same location within the required timeframes. Additionally, when remedial action is required by the inspector in accordance with 49 CFR Part 209, and the required action is not reported to FRA within 60 days,[28] a followup inspection is mandatory.

4.3 Locations of Hazmat Inspections and Common Components of Inspections

Because of the extensive nature of hazardous materials transportation, inspectors conduct activities at a wide range of facilities and operations. Realizing that the list is not complete, the following examples are illustrative. The list is designed to highlight the majority of activities and location-specific components inspectors may experience.

4.3.1 Railroad Customer Service Centers

Where customer service centers exist, inspections are performed to determine the carrier's compliance with the documentation requirements of the HMR. The initial contact is usually the customer service center manager. Depending on the particular circumstances, an inspector should review the following documentation, as appropriate:

[28] Remedial action reporting is only required for railroads, and not shipper or other hazardous materials-related entities.

Bills of Lading. Paper or electronic documents created by persons offering HM for transportation, containing information required by Subpart C of 49 CFR Part 172 and Section 174.24.

Waybills. Carrier-created documents reflecting the information received from the shipper or other carriers.

Train Consists. Consists or notices issued in compliance with the regulations for train placement and notices to train crews of placarded cars (Note: A violation of 49 CFR § 174.26 cannot be substantiated solely by review of the train consists or other movement documents obtained from a customer service center. A violation can only be substantiated when it can be proven that the movement documents the crew actually used to move the train did not comply with 49 CFR Section 174.26).

Carrier Training Program and Records. The training program mandated by 49 CFR Part 172, Subpart H, and records demonstrating that employees have been properly trained.

4.3.2 Railroad Yards and Other Inspection Points

The purpose of an HM inspection at a railroad yard is to determine compliance with the operation of trains, handling of placarded cars, and the inspection of HM shipments. The initial contact is usually the yardmaster, who is responsible for yard operations. Depending on the particular circumstances, an inspector should look at the following:

Registration. 49 CFR § 107.601 applies to any person who offers or transports certain types and quantities of HM. There are some exceptions found in § 107.606.

Regulatory Exceptions. Shipments made under DOT Special Permits, special approvals, FRA approvals (49 CFR § 174.50), or a U.S. Department of Defense "Certification of Equivalency," must comply with the terms contained therein.

Transloading Operations. Must be conducted in accordance with 49 CFR § 174.67.
Packaging:

- Packages of HM are marked as required (49 CFR Part 172, Subpart D).
- Packagings must be labeled or placarded as required (49 CFR Part 172, Subparts E or F).
- Packages are manufactured as required (49 CFR Parts 178 or 179, and maintained in accordance with Part 180).

Securement. Closures and closures of openings on packagings are secured as required (49 CFR §§ 173.29, 173.31, and 174.67).

Inspection of Railcars Carrying Hazmat. Railroad cars are inspected as required (49 CFR § 174.9). Defects found under 49 CFR Parts 215, 231, and 232 shall be reported on DOT Form F6180.96.

Train Placement. Railroad cars are handled and placed in trains as required (49 CFR Part 174, Subpart D).

Carrier Training Program and Records. The training program mandated by 49 CFR Part 172, Subpart H, and records demonstrating that employees have been properly trained.

Incident Reporting: Releases of HM are properly reported (49 CFR §§ 171.15 and 171.16).

Security Plans. If applicable, carrier has a security plan in place as required by 49 CFR Part 172, Subpart I.

4.3.3 Intermodal Facilities (Marketers and Actual Facilities)

Intermodal inspections are performed to determine whether shipments offered to rail carriers from other modes of transport comply with the rail transportation requirements. The inspection requirements for intermodal shipments are generally the same as railroad customer service centers and yard inspections. Followup inspections may take place at a nonrailroad entity, such as a freight forwarder, broker, or an agent's place of business.

Intermodal shipments exported or imported into the United States are generally controlled by an agent or broker. Although the agent or broker may appear as the offeror (and as such may be responsible for performing certain functions in accordance with the HMR), this does not change the original offeror's duty to comply with the HMR.

4.3.4 Offeror Facilities

The purpose of this type of inspection is to determine if persons who offer HM for transportation by railroad do so in compliance with the HMR. Inspections of this type are conducted at facilities that ship or receive HM by railroad including intermodal offerors who do not have direct rail access.[29]

The initial contact is usually the plant manager or an official responsible for the handling of HM. Depending on the particular circumstances, an inspector may look at shipments made under a DOT Special Permit (exemption), special approval, FRA one-time movement approval (49 CFR § 174.50), or U.S. Department of Defense "Certification of Equivalency" to see if they comply with the terms contained therein.

Shipping Papers. Shipping papers comply with the regulations (49 CFR Part 172, Subpart C. See also 49 CFR §§ 171.12 and 171.22 (for shipments from Canada and Mexico and other international shipments)).

Packagings:

[29] Consistent with 49 CFR § 171.8's definition of "offeror," an Ocean Transportation Intermediary (Non-Vessel Operating Common Carrier) is considered an offeror when the intermediary performs any offeror function. When inspecting such entities, inspectors should concentrate on the specific functions that the intermediary performs.

- Packages of HM are marked as required (49 CFR Part 172, Subpart D).
- Packages are labeled or placarded as required (49 CFR Part 172, Subparts E or F).
- Packages are filled to the correct outages specified for the material as required (the applicable outage requirements in 49 CFR Part 173).
- Packages are manufactured and maintained as required (49 CFR Parts 178, 179, and 180).

Classification. Materials are properly classified (the applicable classification section in 49 CFR Part 173).

Loading and unloading:

- Tank cars are loaded or unloaded as required (49 CFR Sections 173.31 and 174.67 (transloading)). Note: Section 173.31(g) applies even if the tank car is not in transportation at the time of loading or unloading.

- Packages of HM are loaded into a transport vehicle or freight container as required (49 CFR Section 173.30, and Part 174, Subparts C, E–G, H–K).

Training. The offeror's training program mandated by 49 CFR Part 172, Subpart H, and records demonstrating that HM employees have been properly trained. (49 CFR Part 172, Subpart H).

Security Plans. If applicable, the offeror has a security plan in place as required by 49 CFR Part 172, Subpart I.

4.3.5 Tank Car Facilities (Owner, Manufacturing, and Repair Facilities)

The purpose of inspecting a tank car facility is to determine the manufacturer's, reconditioner's, or owner's compliance with the HMR concerning the manufacturing, maintenance, repair, qualification, testing, and retesting of specification containers. The initial contact is usually the facility manager.

When conducting a tank car manufacturing and repair facility inspection, depending on the particular circumstances, the inspector should look at the following:

- If the facility performs welding on tank cars, that it has a valid certification on file for fabrication, alteration, conversion, or welded repairs.

- The facility has a Quality Assurance Program (QAP) meeting the requirements of 49 CFR § 179.7.

- The facility ensures that only qualified personnel perform nondestructive inspections and testing. If the facility is a certified tank car repair shop, it has at least one person with a Level 3 qualification. (Tank car repair shops that employ no qualified Level 3 personnel must have a list of the companies they intend to use for those services.)

- A facility not in possession of localized heat treatment equipment or nondestructive testing equipment or not able to perform such testing (e.g., magnetic particle or radiological equipment using a radiation source) has on file a subcontractors evaluation sheet.

- Each person engaged in welding on tank cars is performance-qualified in accordance with Appendix W of the Association of American Railroads' Tank Car Manual. (M1002)

- Each person performing fabrication, maintenance, alteration, or preventative maintenance on a tank car, or to an appurtenance on a tank car, uses the methods, techniques, and practices prescribed in the current maintenance manual or assembly drawings prepared by the manufacturer. (See the Association of American Railroads' Tank Car Manual for sample forms.)

- Shipments made under a DOT Special Permit or FRA approval comply with the terms and conditions of the permit or approval.

- The facility has a training program on the HMR for their employees.

When conducting an inspection of a tank car owner's compliance, inspectors should concentrate on the records required to be maintained by 49 CFR Part 180, Subpart F.

4.4 Inspections Involving Multiple Inspectors or Days

Inspection activities will often cover multiple days or involve multiple inspectors. For instance, tank car facility audits and multi-agency strike force operations at a specific rail yard may require one or more inspectors working over several days. Documenting findings is important, not only for FRA's data purposes, but to also advise our regulated entities of the deficiencies found in order for them to institute corrective and preventive actions. To ensure understanding and reduce problems, it is important that every measure to reduce misunderstandings is taken. When an inspector conducts inspection activities over multiple days, he/she should document the activities on one inspection report covering the entire period. Likewise, when multiple inspectors conduct activities, whether 1 day or multiple days, they should choose one inspector to complete the inspection report showing each participating inspector as an accompanying inspector. The inspector tasked with preparing the inspection report is also responsible for preparing any associated violation or investigation reports.

This requirement does not include activities conducted during an accident investigation.

CHAPTER 5
FIELD REPORTING PROCEDURES AND FORMS

Data is vital at all levels of the organization in order to ensure adequate use of FRA's limited inspection/investigation resources. Because of this, it is vital that inspectors consistently and accurately report their results and findings related to inspection/investigation activities. Reports should be clear, concise, and factual. FRA's goal is to have inspectors' reports completed as uniformly as possible to ensure both the accuracy of the enforcement data and uniform application of the hazardous materials regulations throughout the regulated community.

Hazardous materials inspectors routinely generate five types of reports:

- Inspection reports (FRA Form F6180.96)
- Violation reports (FRA Form F6180.110)
- Notice to individuals of alleged violations (FRA Form F6180.80)
- HM incident or complaint investigation reports (via memorandum)
- Report of presentations conducted (FRA Form F6180.86)

The following is guidance in completing the five types of routine reports.

5.1 The Inspection Report (FRA Form F6180.96)

5.1.1 Completing the Report

Inspection reports are completed electronically using the Railroad Inspection System for Personal Computers (RISPC). Below is a listing of the fields in the RISPC system applicable to inspection reports and a brief description of what each field represents.

Note: The look-up binoculars located at the top of the RISPC program provides a drop-down menu containing a list of possible choices pertaining to each particular field for most fields. To activate the drop-down list:

1. Place the cursor in the block of the field desired and right click or tap on the cursor pad.
2. Move the cursor to the binoculars and right click or tap on the cursor pad.
3. When the drop-down list appears, choose the correct applicable data and right click or tap on the cursor pad.
4. Move the cursor to the "Select" box at the bottom of the table and right click or tap on the cursor pad to enrich the field.

Inspector's Name: The name of the inspector completing the report. RISPC fills in automatically.

Inspector's Signature: This field is only seen on printed copies of the report. The original ***printed copy handed to or mailed*** to the inspected entity will bear the original signature of the inspector completing report. All others, except those printed by the Office of Railroad Safety data site, by 0.96 generator, will bear ***an electronic*** copy of the signature.

Inspector's Identification Number: The five-digit inspector identification number is automatically filled in.

Report Number: Each report will receive a separate sequential number reverting to the number "1" at the beginning of each calendar year. No other report numbers are allowed.

Date: The RISPC program will automatically default to the current date that the inspection report is created, unless another date is specified at the time of the report's creation. The report date should accurately reflect the date of the inspection. When preparing a report for an incident investigation initiated by either a National Response Center (NRC) or Hazardous Materials Incident report (DOT Form F5800.1), the inspector will enter the date that the inspector began the investigation.

R/C: Enter the entity being inspected (railroad or company). Enter R or C.

RR/Co. Code: This field is the alphabetic railroad or company code assigned by the FRA Office of Railroad Safety. (Use the look-up binoculars to select the appropriate code.) If a company or railroad code does not appear in the drop-down menu, contact FRA's Knowledge Management Division.

Division: Click on "division code" and select the default code that appears. This is left blank for companies.

Subdivision: This field contains the subdivision of the railroad. (Use the look-up binoculars to get the drop-down listing of subdivisions and select the appropriate code.) It is a mandatory field for railroads but should be left blank for companies. If the railroad is a shortline or consists of one subdivision, enter "system."

RR/Co. Representative and Report Information: This field provides the basis for two separate fields seen on the printed report. The "Railroad/Company Name and Address" and the "RR/Co Representative" on the printed report are both taken from this field.

From City (Name): This field represents the city where the inspection took place. The user may key it in or may use the binocular look-up to select from the list of valid city names in the location reference file. If keyed in, it *must* match a valid name in the database. When preparing a report for an incident investigation initiated by either an NRC or Hazardous Materials Incident report (DOT Form F5800.1), the inspector will enter the city where the incident was discovered. This field is left blank if the inspection did not occur in a defined city.

From City Code: This field contains the General Services Administration (GSA) City Code alpha-numeric digit for the location where the inspection took place or originated, and it is automatically entered based on the city name entry. If the city name is blank (e.g., the inspection occurred outside of a city), this field is left blank.

State (Name): Enter the alphabetic State Postal Code two-letter abbreviation for the location where the inspection occurred. When preparing a report for an incident investigation initiated by either an NRC or Hazardous Materials Incident report (DOT Form F5800.1), the inspector will enter the State where the incident was discovered.

State Code: This entry is a two-digit GSA State Code obtained by the program from the location reference file and automatically entered. The code represents the name of the State in which the inspection occurred.

From County (Name): This field contains the county name for the location where the inspection took place or originated. When preparing a report for an incident investigation initiated by either an NRC or Hazardous Materials Incident report (DOT Form F5800.1), the inspector will enter the county where the incident was discovered. The software normally generates the county name based on the city name used; however, if multiple county names are linked to the city name or if the city name is blank, the field will require the user to enter the appropriate name. If so, consult the drop-down menu in the county name, or leave blank if no city is involved.

From County Code: This field contains the GSA County Code for the location where the inspection took place or originated. It is automatically generated based on the county name.

Destination City and County (Name): These items are to be completed whenever the inspection takes the inspector to a destination other than the location identified in the "From" blocks. If the inspection is conducted at a single location, it is not necessary to complete these items.

Destination City and County Code: This field contains the GSA city and county codes for the location where the inspection ended. If needed, see "From City Code" instructions for entry instructions.

Source Code: This code describes the reason for the inspection. Below are the authorized codes for HM inspector activities:

- A–Regular Inspection
- B–Complaint Investigation
- C–Accident Investigation
- D–Special Investigation
- E- Waiver Investigation (one-time movement approval or special permit investigation)
- H–Nuclear Route Shipment
- R–Re-inspection

File number: Entry is dependent on the source code. This field shows a connection to a previous report or can be used for special project designations. It can be up to 20 characters in length.

Accompanying inspector: This field contains the five-digit inspector identification number of every accompanying inspector. If none, this field is blank. The identification number will be validated against the inspector database in the software. For reporting requirements, see Section 4.4, Inspections Involving Multiple Inspectors or Days.

Mile Post From: Not applicable.

Mile Post To: Not applicable.

Outside Normal Shift: This field identifies the time spent on railroad property outside the inspectors regular work hours. The "Start Time" begins when the inspector arrives at the railroad's property, and the "End Time" is the time that the inspector leaves the railroad's property.

Inspection Point: This field contains the name of the specific site where the inspection was conducted (e.g., a repair facility, plant, building, etc.). Inspectors should be specific enough to support any future actions necessary (e.g., "Building A," "North Platte Yard," or "Track 3, Departure Yard"). A maximum of 50 characters may be entered into this field.

Activity Code: These fields contain the codes describing all activities taking place during the inspection. A list of activity codes and their meanings is located following these instructions in Section 5.1.3.

Units: The field indicates the number of units for each activity code. The location code has a maximum value of "1." A minimum value of "1" for each code entered is mandatory.

Subunit: The field indicates the number of elements associated with each unit. (Example: when reviewing shipping papers at a shipper's facility, the inspector would record one unit for each session and one subunit for each shipping paper reviewed.)

From latitude/longitude: Not applicable.

To latitude/longitude: Not applicable.

Line item types: Because the inspection report is a multidiscipline form, certain blocks are used to record different categories of information. Other blocks are applicable to one discipline but not another. There are three kinds of line items that may be entered: FRA Defects, Non-FRA Defects and Observations, and Inspector Comments.

- FRA Defects: Line items that are used to record the defects found during the inspections. When a railcar defect is observed and seals were removed for the inspection, the seal numbers must be recorded as specified in the seal removal procedure (see Chapter 7).

- Non-FRA Defects: Line items that are used to record defects that do not amount to FRA defects (e.g., Association of American Railroads' condemnable defects).

- Inspector Comments: Line items that are used by the inspector to say something to the railroad and/or to record inspections where no exceptions were taken.

(In RISPC, to change the "Line Item Type," simply click the radio button next to the line item type you want to select.)

Item number: This is a numeric field, up to three digits, no decimal. (In RISPC, to add a new line item, simply click on the yellow "plus" sign icon on the toolbar or press F4). Each report should begin with Item 1 and continue in numerical succession.

Initial/milepost: If a particular tank car, freight car, trailer, etc., is the basis for the inspection, enter the reporting mark initials here. A maximum of four alphabetic characters are allowed for this field.

Equipment/track: This field will contain the equipment number of the inspected item. If reporting mark initials are given, the car number must also be shown. A maximum of six numeric characters are allowed for this field.

Type/kind: Applicable only with some nonhazmat activity codes.

49 CFR/U.S.C.: The inspector may key in the 49 CFR/U.S.C. Code, or may press function key F2 to see a list of all of the codes. The inspector may then select a code from the list. The 49 CFR/U.S.C. must be EO (indicating Emergency Order) 107, 171–174, or 176–180.

Defect code: Enter the subsection of 49 CFR/U.S.C. under which the defect/observation is recorded.

Subrule: This field contains the subsection of the "Defect Code" under which the defect/observation is recorded.

Speed: Not applicable.

Class: Not applicable.

Train #/site: This field is optional. It can be used to provide additional description of where the defect is located.

SNFR (Special Notice for Repairs): Not applicable.

# of Occ. (Number of occurrences): Frequently, a single inspection unit has multiple defects of the same type. You may indicate the number of times a specific defect is found on a single unit of inspection here. If no entry is made, a defect count of one will be used.

Activity code: The Activity Code must match one of the activity codes reported in the header section of the report, and must correspond with the reported 49 CFR/U.S.C./Defect/Subrule combination used in the line item.

Description: This field contains a description of the defect, observation, or comment. There is a maximum of 1,000 characters permitted for the narrative description. The description can be keyed in or a system description can be pulled in from the drop-down menu.

Violation recommended: Enter "Yes" or "No."

Written notification to FRA of remedial action is: If "Violation Recommended" is "Yes" and the entity is a railroad, written notification of remedial action must be "Required," "Optional," or "Blank," depending upon the circumstances. If the entity is not a railroad (e.g., it is a shipper/consignee), written notification of remedial action may be indicated as "Optional," but it cannot be specified that it is "Required." If "Violation Recommended" is "No," then "Required" must not be checked for written notification of remedial action, but "Optional" may be checked. (If "Optional" is checked for a company, you cannot compel them to respond. Response is strictly voluntary.)

Latitude/longitude: Not applicable.

5.1.2 Remedial Action Responses

When railroad and company representatives report back to an inspector on remedial actions taken, the inspector should record those actions as follows:

Railroad action code: The railroad action codes, the date the action was completed, and an indicator as to whether the railroad comments are included, must be entered and the form returned to the inspector who originated the report. The inspector will then fill in this box(es) with a valid railroad action code. These can be found by pressing the "Table Lookup" button or the function F2 key.

Date (yy/mm/dd): This field contains the date the remedial action was taken by the railroad. There is a calendar that can be used or the date may be keyed in manually.

Comments on back? (Y/N) (Completed by the railroad): This field is only seen on the printed copy of the inspection report. This is a check box in which the railroad indicates if comments pertaining to this line item are included on the back of the form they are returning to the inspector. It may contain a "Y" or an "N." If there are any comments to be shown, the railroad must indicate them on the back of the railroad's inspection report copy.

5.1.3 Detailed Activity and Inspection Task Code Information for Hazardous Materials Inspections

Step 1. If performed, enter one or more of the following inspection task codes as applicable:

Activity	Discipline	Definition
107B	**H**	**Special Permits/Competent Authorities/Approvals -** One unit per permit or approval examined. This activity includes oversight of one-time movement approval compliance. Inspectors should conduct an online review at the appropriate PHMSA or FRA website to ensure the most current permit or approval is used to determine compliance level.
107G	**H**	**Registration of Persons Who Offer or Transport Hazardous Materials** - One unit for each registration record reviewed. The registration can normally be verified either at the shipper plant, HQ, or through PHMSA if necessary.
171	**H**	**General Requirements for North American Shipments/Requirements for the Use of International Transport Standards and Regulations** - One unit for each record inspection session regarding bulk and/or non-bulk package. **(See Section 4.4 Inspections Involving Multiple Inspectors or Days)** **Note 1:** An inspection **Session** is the time spent at a facility performing a compliance inspection. This could be a day or multiple days providing the inspection is in connection with the initial review. **Note 2:** Typically used in conjunction with BP and NB inspections.
172C	**H**	**Shipping Paper Information** - One unit for each record inspection session, and one subunit for each HM Shipping Paper examined. Emergency response information and emergency response numbers are considered part of the shipping paper and not recorded separately. This code does not include train consist inspection activities (see 174B).

172H	**H**	**Employee Training Documentation –** one unit for each record inspection session for both employee tasks and security training. Each employee record examined is a subunit.
172I	**H**	**Security Plans** - One unit for the inspection of each plan. The inspector must examine and review all components of the plan in order to claim this unit. For defects and violations against Class 1 railroads (Source Code D), the inspector must include reference number provided by the regional specialist.
174A	**H**	**General Requirements** - One unit for inspection of each car transporting hazardous materials. This activity code may only be used when assessing compliance with §§174.3, 174.5, 174.9, 174.14, 174.16 and 174.50.
174B	**H, O**	**General Operating Requirements -** One unit for each train consist inspected. The inspection includes reviewing train crew documentation for each rail car containing hazardous material, documentation of any changes in placement of the car containing hazardous material, and determining compliance with the basic hazardous materials shipping paper descriptions. Use subunit for each inspection of the basic shipping paper description of each car containing hazardous materials. This activity code may only be used when assessing compliance with §174.26. **Note 1: Inspectors must use activity code TPLH to record inspections associated with train placement requirements.** **Note 2: Inspectors must use this code instead of code 172C when inspecting shipping papers specific to a particular train.**

BP	**H, M**	**Bulk Packages (Applies to bulk packaging, including Intermodal Portable Tanks and Intermediate Bulk Containers, other than tank car) –** The unit count is one for each ground level inspection and does not include a top level inspection. Includes inspecting for marking, placards, structural integrity, and securement to the rail car. Use sub-unit for each comprehensive inspection of a package. In addition to the above inspection criteria, a comprehensive inspection includes an inspection of both sides of the bulk package and a top level inspection. MP&E inspectors should not report subunits. This activity code may only be used when assessing compliance with §§172.302, 172.304, 172.326, 172.502, 172.516, and 174.50.
FC	**H, M**	**Inspection of Freight Containers. General Handling and Loading Requirements–** The unit count is one for each exterior inspection of a container. Includes inspecting for marking, placards, structural integrity, and securement to the rail car. Use sub-unit for each comprehensive inspection of a package. In addition to the above inspection criteria, a comprehensive inspection includes the inspection of the interior of the container for blocking and bracing and loading segregation requirements. MP&E inspectors should not report subunits. This activity code may only be used when assessing compliance with §§ 174.55, 174.61, 174.81, 177.834). Note: Use BP code to record intermodal tank inspections.
HMII	**H**	**Incident Reporting by 5800.1, Notification by NRC, or NAR discovered during inspection –** Use of this activity code requires a comprehensive investigation to determine causal factor(s) associated with an incident. The count is one unit for each investigation.
NB	**H**	**Non-Bulk -** One unit for each package inspected. Use of this activity code requires the inspector to have total *access* to the entire package, and can determine compliance with all performance packaging requirements, including any associated closures.

NFY	**H**	**Notification of Nonconformance –** This activity code is used when a non-complying package is found on other than the responsible person's property. The activity code is used to record the activity necessary to report non-compliance to the responsible person. The count is one unit for all related activity. Note: This code is used on a separate inspection report, prepared after the fact, in order to document the non-compliance to the responsible person.
ORI	**H**	**Owner Records Inspection –** One unit for each inspection session. A subunit is used when examining records for a particular package whether it is one record or multiple records for a package. Example of Owner Records would include but not limited to maintenance record, car file, qualification record, 4-2, or R-1. The count is one subunit per package regardless of how many records are examined for that package. This activity includes inspecting for changes in specifications for tank cars, any related valves, certificate of construction, reporting, and record retention requirements, etc.
QAP	**H**	**Quality Assurance Program/Requirements for inspection and test of specification tank cars –** This activity code is used during audit activities to determine compliance with §179.7. Count one unit for the inspection or audit session, and one subunit for each element examined in the facility's QAP manual. (See Section 4.4 Inspections Involving Multiple Inspectors or Days)
RADX	**H, O, T**	**RADAR Speed Monitoring -** Claim one unit for each radar speed monitoring session, including Coupling Speed Audits, regardless of the number of locomotives, trains, cars, etc., subject to the monitoring. Record each locomotive, train, or car movement monitored as one subunit. §174.86. Note: FRA and participating state employees must not perform radar monitoring sessions unless they received a certificate of qualification from an FRA employee who holds a current certificate as a stationary radar trainer. See Chapter 3 of the General Manual for a complete discussion of FRA policy.

RAM	**H**	**Radioactive Materials –** One unit for each package inspected. This activity code is used for shipments of radioactive materials in Industrial, Type A, and Type B Packages. This activity code may only be used when assessing compliance with §173.410 through 173.477.
SWT	**H**	**Handling of Placarded Rail Cars, Transport Vehicles, and Freight Containers –** The count is one unit for the entire inspection session. Use of this activity code must include an observation of railcars, transport vehicles, or freight containers that are subject to the requirements of §§174.82, 174.83, and 174.86.
TC	**H, M**	**Tank Car Inspection –** One unit for each ground level inspection and does not include a top level inspection. Includes inspecting for markings, placards, and structural integrity. Use sub-unit for each comprehensive inspection of a tank car. In addition to the above inspection criteria, a comprehensive inspection includes a ground level inspection of both sides and performing a top level inspection. MP&E inspectors should not report subunits. This activity code may only be used when assessing compliance with §§172.302(a)(1), 172.304, 172.502(a)(1)(i), 172.516(c)(2) and (6), 173.31, 174.50, 179, & 180.
TPLH	**H**	**In-Train Placement of Placarded Rail Cars, Transport Vehicles, and Freight Containers -** One unit for each train inspected to determine compliance with positioning in-train of placarded cars, §§174.84 and 174.85.
TRHM		**Train Riding –** One unit for each train ride. This activity is used to record train rides in conjunction with verifying compliance with the hazardous material regulations that are associated with but not limited to 174.9 inspections. Examples include but are not limited to hazardous material documentation, train crew inspection procedures of HM at points of origin, and general handling of HM. **Note 1**: There are no defects nor violations associated with this activity code **Note 2**: Inspectors will use the applicable activity code for recording defects and or violations.

ULT	**H**	**Tank car loading, unloading, or transloading operations -** One unit for inspecting tank car loading, tank car unloading, or transloading operation. §§ 173.31(g) or 174.67. Note 1: Use TC codes for tank car inspections.

Step 2. If a multi-discipline activity is performed, enter the appropriate code.

Authorized Multidiscipline Activity Codes

Activity Code	Inspection Task & Definitions	Units	Sub-units
209	**Remedial Action -** Where appropriate, each time an inspector reports "remedial action not reported" by a railroad. (See General Manual for guidance).	One unit taken for each occurrence	
215D	**Freight Car Mechanical Inspections -** Inspection for freight car safety standards, safety appliance, and power brake compliance, for those conditions listed in Appendix D to 49CFR Part 215. **Note:** If a HM or OP inspector finds Federal defects on a car, they must enter the appropriate defect code(s), and also use the appropriate MP&E activity code for each defective car (215, 231, 232, or 232A).	One unit for each freight car inspected	
217E	**Emergency Order -** The code is used when observing conditions to determine compliance with the emergency order. Inspectors must explain the inspection in their narrative.	Record one unit for each day	Record one sub-unit for each associated record reviewed unless instructed differently by FRA HQ regarding a specific Emergency Order

217O	**Other Operations Observations -** The unit covers those inspections not otherwise specified, such as 217L, 217R, and 217T (if those inspections are within the yard). Inspectors will claim a subunit for each crewmember, yardmaster, etc., continually observed provided the inspector made a conscious effort to determine compliance. The code is used when observing safety-related railroad employees performing duties covered under railroad operating rules or railroad safety rules, or when examining mandatory operating information posted at a facility.	One count is one for an entire yard or equivalent facility	
217T	**Tampering -** Tampering issues, except as provided in §218.61 **Note:** Tampering issues found on equipment not operated should not be recorded under 218T, but should be recorded under "comments to the railroad" and the railroad's managers notified immediately.	One unit is recorded for each locomotive being operated	
229X	**Locomotive Cab Inspection -** Locomotive Cab Inspection – The activity code is to be used by other disciplines whose collateral duties require them to board locomotives, such as onboard inspections, discussing operations with crewmembers, etc. The inspection may include, but is not limited to; determination of locomotive daily inspection, passageway tripping hazards, cab sanitation, cab lighting, speed indicator check, and etc. Note 1: This activity code should be used for all locomotive inspections, including RCL. Note 2: If an inspector other than an MP&E inspector finds Federal defects on a locomotive, they must enter the appropriate defect code(s), and use the appropriate MP&E activity code for each defective locomotive.	One unit is claimed for any locomotive assessment	

232O	**Freight Train Brake Test Observation -** Freight Train Brake Test Observation - Any brake test required by Part 232 observed by HM and OP inspectors. This activity code is used with all associated Part 232 defect codes, including for collateral activities such as examination of Class 1 air brake test records, and for inspection/evaluation of EOT devices. This activity code is used instead of any 217 activity codes. Note 1: This is the only freight train air brake test code HM or OP inspectors are permitted to use. Note 2: If an HM or OP inspector finds Federal defects on a car, they must enter the appropriate defect code(s), using the appropriate MP&E activity code for each car with defective air brakes (232 or 232A).	One unit of inspection claimed for each train observed	
LTH	**Life Tips -** When using this code, the inspector must write a brief description (two sentences or so) in the "Comments" section of the F6180.96 report. **Example 1:** The Inspector attends a safety meeting to discuss railroad safety issues related to safe handling of hazardous materials in transportation. The meeting consists of one yardmaster and 20 T&E employees. Record this activity as one unit under LTH, and 21 subunits. **Example 2:** The inspector boards a locomotive and makes contact with a three person operating train crew. Work activities by the crew were disrupted by the inspector and the inspector advises the crew that a new job briefing must be performed and the inspector listens. Record this activity as one unit under LTH, and one subunit for each crew member. **Note 1:** This activity code does not include an	One unit for interacting with/briefing railroad or contractor employees regarding Federal regulations or issues regarding railroad safety	Count each member of the work group as a subunit

	FRA inspector debriefing a railroad representative(s) in connection with an FRA inspection report (F6180.96). **Note 2:** This activity code does not include attending meetings with short line railroad operator, labor organizations, etc., regardless of whether the inspector discussed safety regulations.		

5.1.4 Submission and Arrangement of the Inspection Report

The inspector will prepare and transmit the Inspection Report (FRA Form F6180.96) and supporting data as follows:

- The original is provided to the FRA data contractor when the inspector uploads the reports. (Uploads should be made via RISPC in accordance with the regional policy at least once per week.)

- One copy of each report must be provided to the facility inspected on the same day as the inspection, when practicable. When not practicable, the report must be provided as soon as possible, but within 4 days of the inspection. If defects are found that are the responsibility of entities outside the inspector's territory, one copy must be forwarded to that facility either via mail or electronically.

- One additional copy must be forwarded electronically to the railroad email address listed below if the railroad is a Class I railroad and the report identifies defects that are deemed the responsibility of that carrier. The addresses for forwarding the reports are:
    - Canadian Pacific Railway HMReports@cpr.ca
    - Union Pacific Railroad uphazmat@up.com
    - Kansas City Southern Railway Hmreports@kcsouthern.com
    - CSX Transportation FRAhmreports@csx.com

- Norfolk Southern Railway HMReports@nscorp.com
- BNSF Railway BnsfHAZMATTEAM@bnsf.com
- Canadian National Railway Hmreports@cn.ca

- One additional copy of the report provided for the region if the deficiency or violation occurred in another region. The regional specialist will forward this copy to the regional specialist in the region where the deficiency or violation occurred.[30]

If the deficiency or violation is of a serious nature, the inspector shall telephone the facility where the deficiency or violation occurred, as well as telephone his or her regional specialist.

When inspectors arrive at a facility and it is determined that the facility no longer offers, transports, or causes hazardous materials to be transported, or otherwise performs a regulated HM function, the inspector will submit a short memorandum or email to the regional specialist with a request to remove the location from the RIP. In these instances no inspection report should be submitted.

5.2 Violation Report

When an inspector discovers a violation, and he or she determines that the best method of gaining compliance with the applicable regulation is a recommendation for a civil penalty, the inspector shall complete an FRA Form F6180.110 (violation report) electronically and submit the report to his or her regional specialist.

5.2.1 Preparing the Violation Report

The following instructions shall be strictly followed in the completion of FRA Form F6180.110:

Respondent and RR/Co Code: Name of the entity that the violation is against. This is taken from FRA Form F6180.96, Railroad/Company Name and Code. If needed, the name of the railroad or company can be keyed in manually.

Name of Inspector: The inspector's name and identification number are automatically filled in.

Address of Respondent: Address of entity is taken from FRA Form F6180.96; this cannot be keyed in manually.

Violation Report Number: The report number is entered by the inspector before the violation report is generated. Consecutive numbers are recommended. Duplicate numbers are not allowed and will result in an error.

F6180.96 Report Number - Date: The inspection report number and date are taken from the corresponding FRA Form F6180.96 and are automatically filled in. These cannot be changed.

[30] The additional copy must have an attached "Route Slip" (DOT Form F1320.9).

Location Where Violation was Observed: City, State, and respective GSA codes are taken from corresponding FRA Form F6180.96. These cannot be changed.

Date Violation Occurred: By default, the date the inspection report was created will be used, but this can be manually changed. To do so, enter the date of the violation or use the drop-down calendar. The date of the violation is the actual date of the triggering event and not necessarily the day the violation was discovered. For example, a violation for an improperly prepared shipping paper arises on the day the offeror offered the car for transportation.

Train Designation: Enter the train number, if applicable.

Line Item No./Primary Section Violated/Number of Claims: These are automatically filled in from the corresponding FRA Form F6180.96. To see additional line items, use the control arrows in the lower left-hand corner to scroll up and down.

Violation Narrative: This is an editable field and must include a narrative description of the violation, including all relevant facts and analysis sufficient to prove each element of a violation. See memo attached at Appendix C, "Improvements in Civil Penalty Enforcement." The following guidelines should be followed in writing the violation narrative:

Do not reproduce or quote the regulation at issue in length, unless quoting a portion of it would assist the reader's understanding of the violation.

If more than one page is needed to accurately describe and analyze the violation, attach a continuation sheet. The continuation sheet must be prefaced, "Violation Report Narrative - Continued."[31] Provide the following information, as applicable, in the violation report narrative:

- Car or container number should be clearly identified.
- DOT specification of the tank car or general description of other transport vehicle (or if a bulk packaging, DOT specification or description of the packaging).
- Whether the violation involves a leak, injury, death, or evacuation, and, if so, a description of the relevant facts surrounding the incident (e.g., extent and nature of leak, extent and nature of injury, extent of evacuation).
- If the retest dates or improper stenciling are involved, a description of what was improper about the stenciling or dates (include photos to support observations where appropriate).
- Car movement history (where applicable).
- Proof of "triggering event," which forms the basis for liability (e.g., party cited performed an offeror function not in compliance with the HMR, party cited transported the HM package at issue, etc.).
- The causal relationship between cited party and the violation.[32]

[31] For identification purposes, the "Detail of Violation(s) Continued" and any other attachment to the report must have the violation report number typed in the upper right-hand corner of each sheet. Example: CEK 175.
[32] This is particularly important. For instance, if a considerable amount of time has elapsed between shipment and

- Citation to the regulation(s) violated and why the defect noted violates that regulation. It is unnecessary to quote the regulation unless quoting a portion of it would assist the reader's understanding.

- The Offeror (if applicable) should be clearly identified, including:

  - Name and address (corporate headquarters if possible).
  - Brief description of organization (size, type of business).
  - Compliance history, including any knowledge of previous inspections, violations, discussions, and quality of procedures for loading/unloading HM (if applicable).

- The HM being transported should be clearly identified, including:

  - Proper shipping name, hazard class, identification number, placarding, and brief description of nature and hazard of the product.
  - Description of the gravity of this violation as it relates to the product involved.

- Corrective Handling

  - Report the name, title, and affiliation of any person contacted by the inspector in connection with the violation (except complainants who have not signed a witness statement), and include a summary of all conversations between the inspector and any such person. In particular, report any oral admissions concerning the violation made by any representative of the person committing such violation. Report such conversations in an objective manner without interjecting your opinions on the representative's character or veracity. Obtain signed witness statements when possible, or record verbal admissions of liability in reports of interview, as appropriate.
  - Report repairs made to cars or packaging (as applicable), plus any emergency response, if applicable.

Inspectors should bear in mind that RCC is required by law to take into account certain factors in determining the amount of civil penalties to be assessed for a particular violation. These factors are as follows:

- The nature, circumstances, extent, and gravity of the violation committed; and, with respect to the person who committed such violation:

  1. The degree of culpability.

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inspection, it is useful to explain why a loose closure can fairly be attributed to the cited offeror (e.g., by explaining that seals were intact, there was no evidence of post-shipment vandalism, and/or the nature of the defect indicated it must have occurred as the result of the offeror's failure to properly close all openings). In some instances, it is useful to explain why a particular party is being cited when several actors may have played a part in the shipment and transportation of the hazardous material.

2. Any history of prior offenses.
3. Ability to pay.
4. Effect on ability to continue to do business.
5. Such other matters as justice may require.

The violation report should contain as much information as possible bearing on the proper application of these factors.

Inspectors should also bear in mind the distinction between knowledge of the law and knowledge of the facts constituting the violation. Knowledge of the law is presumed in the case of a corporate respondent, but an individual must be shown to have had knowledge of the regulation(s) involved or to have recklessly disregarded the law before enforcement action may be taken (see below). Each violation report must also contain evidence demonstrating that the respondent had knowledge of all the facts that constituted the violation. The Federal HM transportation law's civil penalty provision, 49 U.S.C. § 5123, makes liable only those persons who have "knowingly" committed an act in violation of the statute or regulations. In this context, "knowingly" means that the respondent: (1) had actual knowledge of the facts, or (2) had the respondent exercised reasonable care under the circumstances, the respondent would have known of the facts.

Violation reports should be concise and state only those facts that pertain to the violation. All narrative information should be listed in chronological order. A report recommending prosecution should never contain a statement indicating that it resulted from a complaint investigation or refer to a witness as a complainant.

Every violation must be reported to the violator, or his/her appropriate representative, by serving that person with a copy of the inspection report at the earliest possible time. Subsequently, in the associated violation report, the inspector should state to whom and when the violation was reported.

Recommendations for prosecution against different respondents must be submitted as separate violation reports.

If a regulated HM function is performed by an agent for another entity, the narrative of the report should explain as fully as possible the relationship between the agent and the other entity, and the violation report should provide sufficient evidence of the agent's (or principal's) culpability. If an inspector determines that civil penalties should be recommended against both parties, each violation report should address the culpability of the party cited in the report and why, despite the action (or inaction) of the other party, a civil penalty is justified. On the other hand, in some instances, the culpability of one party may be so low, and that of the other party so high, that seeking a civil penalty against the first party might not serve any deterrent purpose. The "Transmittal From Region" sheet (TFR) should note any related reports in the block for "Related Violation Report(s)," in order for reviewers to be aware of the relationship between the reports.

If all of the elements of the violation cannot be proven by the inspector's personal observations, documented admissions against interest by the person to be charged (e.g., a manager's admission that the violation occurred as alleged), or by documentary or physical evidence, there must be a witness to the violation (i.e., at least one person with knowledge of the violation) who is willing to testify on behalf of the United States concerning the violation and who specifically authorizes the use of his or her signed statement in an enforcement proceeding.

Where one or more elements of a claim are based on a witness statement (which must be on the prescribed form), the transmittal sheet for the violation report must be marked with an "X" on the "Witness Statement" line.

If the violation is the result of a complaint investigation, the report must never disclose that fact. The name of the complainant or a job description must never be referenced in any portion of the report or attachments.

Every violation report should include a "List of Attachments" identifying what supporting documentation is provided with the report and if it would aid in the reader's understanding of the report, the violation report narrative should reference specific attachments.

Photographs that actually show the violation are strong evidence and may make the difference between sustaining a violation and having it severely compromised in the claims collection process.[33] If the violation report is to be submitted in paper copy to RCC (as opposed to electronically), the inspector should include the photographs as attachments to the report, along with an explanation as to what each photographs shows. Two original copies of each photograph should be submitted to RCC so that the respondent receives the same evidence as FRA.[34] If the report is to be submitted electronically, follow the protocol for such submissions.

Include in the violation report the name and title, the regulated entity's person notified of the violation, as well as the date of the notification.

Date Report Prepared: The date the violation report was prepared. This date can be modified manually.

Signature of Inspector: This field is only seen on the printed report. Sign the form when complete.

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[33] The inspector shall never tamper with the evidence, such as removing pipe plugs on tank cars to show that they are loose. The proper evidence for showing loose closures may include the following: a signed witness statement, a railroad repair record, or notes taken by emergency response personnel during a hazardous materials emergency.

[34] FRA's authority to take pictures within areas under inspection is clear. This counters objections from shippers and carriers that their rights of privacy or their proprietary rights within a plant would be violated by photographs taken by an inspector. Even if the equipment to be photographed is protected under trade secret laws, FRA is still authorized to take photographs to carry out its regulatory enforcement objectives. FRA cannot execute a confidentiality agreement, but the agency might be able to treat the photographs as confidential, provided the regulated entity makes a request for confidential treatment. The process by which the private entity can make this request is set out at 49 CFR § 209.11. As with all objections to an inspector's presence or activities, the inspector should withdraw and contact the regional specialist and Regional Administrator, together with RCC.

Respondent Notification: Entity representative name and title taken from FRA Form F6180.96, if available. If not present on FRA Form F6180.96, then these can be keyed in manually. The date and time must be filled in; the date cannot occur prior to the inspection date.

5.2.2 Submission and Arrangement of the Violation Report

Each violation report should be packaged together with the relevant inspection report and all supporting data. The inspector should prepare the violation report and submit it to his or her regional specialist, either in hard copy or electronically, in accordance with the applicable region's policy. When submitted in hard copy, typically the original and two copies of the report are required. (Depending on the region's policy, individual inspectors may be required to generate a TFR for each report or the regional office itself may do so).

When submitting the violation report, the report and attachments must be assembled together as follows:

1. FRA Form F6180.110 (violation report).
2. Detail of violations continued.
3. FRA Form F6180.96 (inspection report).
4. FRA Form F6180.96 (continuation sheet).
5. List of attachments (including any witness statements, photographs, etc.) providing evidence and supporting the factual statements in the violation.

If submitting hard copies only, submit your violations in accordance with the following:

Copy 1: Original report with photographs.

Copy 2: Copy of the report with a duplicate set of original photographs.

Copy 3: Copy, including photocopied photographs.

If submitting violation report electronically, follow the regional policy.

After review by the regional office, the region will either distribute the three reports received to RCC and the regional file (with two copies to RCC and 1 copy to the regional file) or the region will submit the reports electronically to RCC in accordance with the protocol agreed upon by RCC and the region.

5.3 Notice to Individual of Alleged Violation

FRA Form F6180.80 should be used by all Office of Railroad Safety technical staff to provide notice to individuals regarding violations of Federal railroad safety laws or regulations. The form is designed to serve one of two purposes. First, the form provides the individual involved with timely written notice that FRA believes he or she violated a Federal law or regulation and that he or she should consider the notice a warning that any such future violations could lead to

FRA enforcement action, but also that further action will not be taken for the specific violation identified.

Secondly, where a regional warning is deemed insufficient, FRA Form F6180.80 provides a timely written notice to individuals of FRA's decision that they have violated a Federal law or regulation, and that formal further enforcement action is being recommended for the specific violation(s) identified.

Issuance of this form does not require headquarters approval unless there is doubt about the proper individual to be charged or whether the facts of the circumstances amount to a violation. FRA does not want a "Notice to Individual of Alleged Violation" issued to an individual whose violation was compelled by a superior. If the inspector has properly determined that a railroad, offeror, or contractor employee has committed a violation and that employee asserts, or facts otherwise indicate, that a violation resulted from compliance with orders from a superior, that employee must be given an opportunity to provide evidence to support such an assertion. If such evidence is provided by the individual or otherwise uncovered, the inspector will investigate those in the railroad's or other regulated entity's chain of command to properly determine culpability. Such an investigation must be conducted very carefully to ensure that blame is properly determined. It will usually be necessary to consult with the applicable Regional Administrator, Office of Railroad Safety headquarters staff, and the Office of Chief Counsel for guidance prior to concluding such an investigation.

5.3.1 Preparing the Notice to Individuals

The following instructions shall be strictly followed in the issuance of FRA Form F6180.80:

Subject: Enter "Hazardous Materials."

Violation of 49 CFR: Enter the applicable part, rule, and subrule.

F6180 Report Type & No: Enter the applicable inspection report type and inspector's sequential calendar year number as submitted to the railroad/offeror to document the inspection or investigation during which the violation was established.

Any violation by an individual is also a violation by the employing railroad or offeror, which may be the subject of a separate enforcement action. This corporate noncompliance needs to be properly recorded. Accordingly, inspectors are required to complete an inspection report (e.g., FRA Form F6180.96) concerning the noncompliance, and submit a copy to the railroad or offeror involved. This report will include notation of the fact that a specific individual violated a Federal law or regulation. This notation does not raise Privacy Act concerns because it is not a part of or taken from a system of records concerning individuals, and does not indicate what action, if any, will be taken against the individual.

Violation recommended: If a regional level warning is recommended, mark "X" in the "NO" box. If a Chief Counsel warning letter or civil penalty is recommended, mark "X" in the "YES" box.

Name: Enter the last name, first name, and middle initial of the individual.

Address: Enter the individual's street number, street name, apartment number, box number, or any other valid mailing address information.

Social Security Number: Enter the individual's Social Security number. As indicated in the Privacy Act notice, disclosure of the Social Security number by the individual is voluntary.

Date of Birth: Enter the individual's date of birth, using two digits each for the month, day, and year. For example, January 21, 1960, would be entered as 01/21/60.

Job Title of Individual: Enter the individual's job title. The inspector will request that the individual present proof of his or her identity, such as a valid State vehicle operator's license. The individual is required to provide all information; however, disclosure of the individual's Social Security number is voluntary. If the individual refuses to provide any of the requested information, including the Social Security number, the inspector will secure the information from the individual's employer. If the employer is not cooperative, the inspector will contact the RCC, through the Regional Administrator, for guidance.

Time and Date of Violation: Enter the time the violation occurred, including "a.m." or "p.m." Enter the date the violation occurred using two digits each for the month, day, and year as shown in Date of Birth, above.

Time and Date Individual Notified: Enter the time and date the individual was orally advised by the inspector of the facts, including the fact that the inspector intended to recommend that a formal notice be issued to the individual. Use the format specified in Date of Birth for these entries.

Location of Violation: Enter the city or county, and State where the violation occurred. Enter the city or county, and State GSA location codes.

Operating RR Code: Enter the alpha code of the railroad or offeror that is responsible for the operation at the location where the violation occurred.

OPR Division Code: Enter the railroad division code of the railroad that is responsible for the operation at the location where the violation occurred.

Employing RR Code: Enter the alpha code of the railroad that employs the individual. If the individual is employed by an offeror or contractor, enter "N/A" and give the employer's name first in the summary of the violation.

Employing Division Code: Enter the division code of the employing railroad where the individual's regular reporting location is located. If a railroad is not the employer, enter "N/A."

Summary of Violation: Enter a summary of the circumstances of the violation. This summary must contain the facts and why it constituted a violation. If more space is needed, attach a typed continuation sheet. If a continuation sheet is attached, the inspector will note this fact in this

section. This section should not be the detailed discussion of facts, culpability, and compliance history required on a violation report. The purpose is merely to summarize what the individual did. As is always true in any inspection report or violation report, the name of any complainant—or even the fact that a related complaint exists—should not be mentioned.

The remainder of the form is self-explanatory. If two inspectors observed or determined the violation, both must sign the FRA Form F6180.80. The date the report is prepared and mailed will be entered by the regional office, or headquarters, prior to mailing the form to the individual.

5.3.2 Guide to Preparation of Violation Reports Against Individuals

In any violation report recommending assessment of a civil penalty, issuance of a warning letter, or disqualification, the FRA inspector should address the following subjects (in memorandum format) under separate headings:

Factual details. All factual details of the violation(s) must be explained, with specific references to sources of proof if other than the inspector's own observations. The Violation Report (FRA Form F6180.110) should not be submitted but should provide some assistance as a guide to the basic facts that must be explained.

Severity of the violation(s). The memorandum should describe in detail any harm (e.g. derailment, personal injury, leakage and/or evacuation) that resulted from the violation or was seriously threatened by the violation. Any aggravation of the offense caused by the degree of the violation should be discussed here.

Culpability of the individual. Keep in mind that a civil penalty may be assessed against an individual only if that individual has actual knowledge of the law or acts in reckless disregard of legal requirements. This section address four factors:

- **Knowledge of the facts.** The memo should explain whether the individual, with regard to each alleged violation, actually knew or had a duty to know of each fact constituting the violation. If actual knowledge (e.g., insecure closures) is alleged, explain what supports that allegation (e.g., a crewman's conversation with a yardmaster in which the crewman pointed out the defect). An admission of knowledge is not necessary, but there must be sufficient information from which the reasonable inference is that the individual knew of the facts. If the allegation of violation consists of a failure to meet a duty to know the facts, explain the basis for concluding that the person had the duty and failed to meet it (e.g., an offeror's employee assigned to inspect a tank car prior to shipment does not fully complete his/her task and fails to discover obvious defects).
- **Knowledge of the law.** This section should explain what the individual knew of the particular law allegedly violated. Had it been discussed with FRA prior to the incident? Had the person been trained on the particular law or corresponding railroad or offeror rules? Is the requirement of the law so fundamental to safe transportation of hazardous materials by railroad that any violation of the law should be seen as reckless disregard of the law?

- **Compliance history.** This section should address any previous enforcement actions against, or warnings (even informal) given to, the individual concerning compliance with the particular requirement(s) now violated, or other railroad safety laws, and any railroad disciplinary record relevant to compliance with safety requirements.
- **Mitigating factors** (if any). In some situations certain factors will be present that tend to lessen the severity of the violation or the culpability of the individual (e.g., the requirement was new and the individual had not been fully trained on it). These factors should be addressed in fairness to the individual.

Recommendation. This section will briefly state the inspector's recommendation as to whether a warning letter, civil penalty, or disqualification from safety-sensitive service is appropriate.

Note: The inspector should keep in mind that he or she may be called on to testify under oath each allegation in a warning letter or individual liability violation report, either before an administrative law judge or in Federal district court. As with any violation report, great care must be taken to substantiate all assertions, but this is especially true where, as here, the individual's livelihood is at stake.

5.4 Memoranda

5.4.1 Hazardous Material Incident Investigation

Hazardous material incident investigations shall be reported on a memorandum as follows:

Inspectors shall forward a report for any assigned investigation activity, other than complaint investigations, involving hazardous materials (e.g., NRC reports, 5800.1 reports, or OTM reports). The report must be in a memorandum format containing the information outlined in the attached example. Inspectors shall forward the report within 60 days, or as otherwise set forth by regional supervisory railroad safety specialist (HM). The following instructions shall be used when completing the report:

Memorandum reference: The memorandum reference shall contain the transport vehicle reporting marks along with the inspector's inspection report reference number. The inspector's reference number shall be the writer's initials, followed by the year, and then followed by the report number for the inspection report (FRA F6180.96) detailing initial investigation contact. Subsequent inspection reports will not change the HMII reference number.

For example: **ARTX 431523**
WSS-2011-43

Incident details

- Date of Incident: Enter the day, month, and year (DDMMYY) of incident.
- Reporting Marks: Enter the initials and numbers of transport vehicle.
- Location State: Enter the State where incident occurred.
- Location City: Enter the city where incident occurred.

- Railroad: Enter the primary railroad involved.
- Railroad Code: Enter the FRA assigned alpha code.
- Offeror: Enter the actual loader/unloader responsible for noncompliance.
- Company Code: Enter the FRA Office of Railroad Safety assigned alpha code.
- Offeror's Location State: Enter the State where transport vehicle was offered into transportation.
- Offeror's Location City: Enter the city where transport vehicle was offered into transportation.
- Material: Enter the proper shipping name of material released from the transport vehicle or contained in the transport vehicle.
- UN/NA Number: Enter the appropriate UN or NA identification number for the material.
- Transport Vehicle Type: Enter the appropriate information to identify the type of packaging involved (e.g., DOT, AAR specification, or other applicable type (e.g., IM 101, Trailer/Container, etc.)).
- Date of Construction: Enter the date of construction from original certificate of construction or stenciling on the transport vehicle.
- NRC Report: Check appropriate box or boxes if more than one applies.
  5800.1 Report: Same as above.
  OTM approval: Same as above.

Note: If material was not hazardous, there is no need to take further action unless directed to do so by the supervisory railroad safety specialists (HM).

Investigation and findings

- Date: Enter date investigation was initiated.
- Person Contacted: Enter name and job title of person contacted.
- Company: Enter the name of the company employing the person contacted.
- Location City and State: Enter the city and State of the above-referenced company.
- Narrative: Enter a brief summary of the circumstances of the incident, including the probable cause of incident and ensuing discussion about the nature of the incident and measures to prevent future occurrences.

The following format will be used for the incident investigation report:

INCIDENT

Date of Incident _____ Car Reporting Marks _____

Location: State _____ Location: City _____

Railroad:	_____	Railroad Code:	_____
Offeror:	_____	Company Code:	_____
Offeror's Location State:	_____	Offeror's Location City:	_____
Material:	_____	UN/NA Number:	_____
Tank Car Type:	_____	Date of Construction:	_____
5800.1#:	_____	NRC Rpt.#:	_____

Note: If material was not hazardous, there is no need to take further action unless directed to so by the regional hazardous material specialist.

The investigation and discussion took place at the following location:

INVESTIGATION

Date: _____

Person Contacted: _____

Company: _____

Location: City and State: _____

The cause of the incident was reviewed and measures were discussed that could prevent future problems.

5.4.2 Special Permit Recommendations/Fitness Evaluation Recommendations

Assigned fitness evaluation/recommendations shall be reported using a memorandum or other suitable regional reporting mechanism. The report shall outline the application, the entity seeking a Special Permit, their fitness, regional recommendations, and any other information relevant to the Special Permit sought. Inspectors should submit one copy with all relevant supporting evidence to the regional HM specialist, either electronically or in paper. Regional specialists shall forward an electronic copy or a paper copy of the report to headquarters for handling.

5.4.3 Complaint Investigation

In accordance with the General Manual, complaint investigations should be reported on a memorandum with the assigned complaint number in the upper right hand corner, and using the source codes recorded on the inspection report form.

Inspector Responsibility: The report should describe the circumstances encompassing the report (see "Violation Narrative" under Section 5.2.1 entitled "Preparing the Violation Report" for information requirements).

Regional Responsibility: When submitting the completed investigation to the FRA headquarters office, the complaint investigation will include a complaint closeout letter. The closeout letter will indicate if a violation was discovered.

CHAPTER 6
INVESTIGATOR SAFETY

6.1 Introduction

By the very nature of your employment, you are frequently exposed to an environment where safety is paramount. You work with **hazardous materials**—materials that have been found to present some level of inherent risk to the safety of personnel and/or the environment. Further, you are representatives of the agency responsible for the safety of hazardous materials in transportation. It is therefore required that you set a good example.

FRA's Industrial Hygiene Division, under the direction of the Staff Director and regional industrial hygienists, together with the FRA Safety and Health Committee, has published "Safe at Work, Federal Railroad Administration Safety Policy, Procedures, and Recommendations." This manual should be in the possession of every FRA employee.

6.2 Basic Safety Practices

The safety practices that follow are mandatory and may not be waived without the permission of the Staff Director, HM Division.

- At no time will FRA personnel knowingly open hazardous materials packaging to the point where hazardous materials are exposed. Personnel may open combination packaging to view the inner packaging. However, the inner packaging may not be breached for any reason without prior permission from the Director. This practice will be done only when you have the ability to restore the package to its original condition, i.e., close the outer packaging in a manner consistent with the manufacturer's instructions. If absolutely necessary that you confirm what condition a hazardous material is in, you may request that the owner open the package for you if proper facilities are available. If the owner does not feel the package can be opened safely, you are not to force the issue.

- At no time are FRA personnel to open any level of packaging containing explosives, radioactive materials, or infectious substances.

- When opening vans, freight containers, box trailers, and other enclosed transport vehicles that contain hazardous materials, first secure the doors with a safety strap prior to opening to ensure the load has not shifted against the door and to prevent spillage if load shifting has occurred. After the doors have been opened and secured, wait several minutes for an air exchange to take place within the vehicle; some hazardous materials give off vapors that permeate through the package and you may be overcome if you enter the freight container or vehicle immediately after opening.

  Van, freight container, box trailer, and other enclosed transport vehicle inspections requiring entry into the container should be conducted as a two-person team, with one investigator always positioned at the doorway. Never enter the unit alone and never allow yourself to be shut inside of a unit even to determine if the seals are leak proof.

When exiting a van, freight container, box trailer, or other enclosed transport vehicle, or when leaving a freight dock area, always climb down using stairs, ladder rungs, and/or ladders; never jump down from the unit or the dock.

- Never handle leaking packages of hazardous materials.

The safety practices listed below are provided as guidance. HM staff are to give these practices due consideration whenever they are working in a hazardous materials environment.

- Use caution when climbing on top of cargo tanks, tank cars, or portable tanks. Surfaces may be slippery from water, oil, ice, or snow. Do not proceed if you know the surface is not safe.

- Wear leather work gloves when handling freight.

- When lifting, bend your knees and keep your back relatively straight. Do not bend over at the waist and lift. You can quickly injure your back by improper lifting. Ask for assistance when moving freight around.

- Do not jump from loading docks. Use the stairs or ramps to get down to ground level.

- Always wear eye protection in manufacturing and industrial environments, as appropriate.

- Ear protection is necessary in many manufacturing and shipping facilities.

- Be aware of vehicles operating in the area. Ports and warehouses have heavy vehicle traffic activity.

These are only some of the safety practices you must be aware of in the course of your daily activities. Always be aware of your surroundings and use good judgment. When you are not sure, check with your supervisor.

6.3 Accident/Injury Reporting

You are to report even the smallest injuries, cuts, scrapes, etc., to your supervisor immediately. In a chemical environment, even the smallest cut can become infected. Reporting injury will preserve your right to workers compensation and other employee benefits you may be entitled to receive.

6.4 Personal Safety

By the very nature of this business, which is enforcement, people are not always happy to see us. This is especially true if they know they have not been conducting business in accordance with the HMR, or if they have previously been cited for violations of the HMR. That being said, most people behave professionally. However, there are some who become overly emotional.

If you encounter a situation where someone becomes overly aggressive or threatens you with violence, get out! Go to a safe place and contact your supervisor. Supervisors will consult with RCC and RRS to determine how to proceed.

If you are struck or molested in any way, contact the local law enforcement agency and your supervisor immediately. Supervisors will contact the HM Staff Director and the Office of the Chief Counsel.

Always maintain vigilance regarding your surroundings, the environment, and the inspected individual's bearings towards you as an investigator and as an individual (profession, gender, and/or race). Be aware of what is going on around you so you can react appropriately. Never attempt to remain and engage an overly aggressive individual.

6.5 Operating Nongovernment Equipment

An inspector will not operate any piece of railroad, contractor, or company equipment. This prohibition specifically includes railroad operating and/or maintenance equipment, switches, bridges, etc. ***There is no exception to this rule.*** An inspector may, however, request that a railroad, contractor, or company move a piece of equipment to facilitate an inspection or investigation. Note also that this prohibition does not apply to office equipment used exclusively to perform administrative functions; handling or opening of packagings authorized under the Department's enhanced authority; or the opening, closing of doors necessary in the course of an inspector's normal duties.

6.6 Offering Advice on Handling Damaged Cars

Inspectors will not offer instructions or advice, become involved in any advisory capacity or direct the handling of damaged railcars. However, during emergency response and recovery operations, the inspector may warn the incident commander/on-scene coordinator if, in the inspector's judgment, an imminent hazard exists and the inspector may refer responders to published DOT guidance outlined in Technical Bulletin G-08-01, "Policy Regarding Intervention When FRA Personnel Observe Railroad Employees Performing Unsafe Acts."

CHAPTER 7
REMOVAL, REPLACEMENT, AND RECORDING OF CAR SEALS[35]

7.1 Authority

Federal law permits FRA inspectors to inspect records and property related to railroad safety, including hazardous materials transportation safety. The Federal hazardous materials statutes authorize inspection, "at a reasonable time and in a reasonable way," of records and property related to the transportation of hazardous materials in commerce; the Federal railroad safety law authorizes, also, "at reasonable times and in a reasonable way," inspection of "railroad equipment...rolling stock, operations, and relevant records."[36] Conducting inspections in a reasonable way requires, among other things, that seals be replaced in kind to maintain equivalent security.

FRA exercises its hazardous materials authority over any facility, package, or document where there is a reasonable, articulable belief that hazardous materials are present. When an inspector makes a determination that a car seal must be removed, the inspector shall follow the procedures listed below.

7.2 Security

FRA seals issued to inspectors must be kept in a secure location and each inspector must maintain control of his or her seals at all times. Inspectors may use seals from other agencies (e.g., the Federal Highway Administration) when conducting joint inspection activities with those agencies.

Inspectors shall provide positive control of a shipment after a seal has been removed and until the shipment is resealed. Positive control means not leaving the item of inspection until it is resealed. At locations where shipper or railroad personnel are available, inspectors should offer/invite their accompaniment.

When accompanied by railroad personnel, inspectors should, of course, offer the railroad employee the opportunity to remove and replace any seals necessary to be broken for inspection. This process allows carriers to maintain seal control for their security purposes. If the railroad employee cannot or will not remove and replace seals, the inspector should do so consistent with the needs of his/her inspection.

7.3 Records

Office of Safety Assurance and Compliance headquarters staff shall maintain a record of seals issued to the regions. Each region shall maintain a record of seals issued to individual inspectors. Inspectors shall maintain a continuing seal log that will contain:

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[35] The guidance in this chapter supersedes and replaces HMG-106 (See Appendix A).
[36] 49 U.S.C. §§ 5121(c)(1) and 20107(b).

- Seals received from the region.
- Seals replaced including:
    1. Date/Time
    2. Reporting marks of transport unit
    3. Removed seal number
    4. Replacement seal number
    5. Accompanying personnel
    6. Name/location of facility
    7. Inspection report number, if applicable

In addition, the seal number shall be recorded on the relevant resulting inspection reports, including reports notifying an entity of a recommended violation.

7.4 Replacement Standards

When removing seals, inspectors shall ensure that the replacement seal provides an equivalent level of security. As an example, a high-level cable seal must not be replaced with a low-level tin seal. If the inspector is unable to provide this level of security, **the seal shall not be removed**. Seals with "an equivalent level of security" may be provided by the application of a seal by the carrier, facility representative/agent, or governmental agency.

7.5 Notification

Shippers are notified of the removal of a seal or seals in one of two ways. First, if a defect is to be reported on an FRA Form F6180.96, the report shall include the identifying mark (letters/numbers, as applicable) of the removed and replacement seals. Second, if no defect is found, the presence of an agency-issued FRA seal will be deemed adequate notice that an FRA inspector has removed a shipper seal to inspect for compliance.

The railroad must be verbally notified at an early and convenient time that a seal on one of the cars in its possession has been replaced; the details to be furnished are those described in paragraph 7.3, above.

7.6 Procurement

Seals will be procured by headquarters and issued to the regions. FRA seals will be marked with lettering to indicate the agency, followed by a serial number, i.e., USDOT FRA 0001.

7.7 Removal Safety

Seals may be removed by an inspector using government equipment, or by the accompanying person using their own equipment. Inspectors must not use carrier/facility equipment to remove seals.

When removing seals, inspectors must, at a minimum, wear safety glasses and work gloves.

7.8 Accountability

Seal supplies stored by headquarters, regions, and inspectors must be kept secured and inaccessible to non-agency personnel.

7.9 International Shipments

It is recommended that seal removal from international shipments be informally coordinated with the regional office of the U.S. Department of Homeland Security's Border and Transport Security Directorate (BTSD). (BTSD has assumed the functions formerly assigned to the U.S. Customs Service.) No "in-bond" seal on an alcoholic beverage shipment should be broken without first contacting the Bureau of Alcohol, Tobacco, Firearms, and Explosives and following their instructions.

7.10 Discovery of Contraband

If an inspector discovers evidence of possible contraband, the inspector must immediately contact the U.S. Customs Regional Office, local law enforcement agencies, and the FRA regional office.

CHAPTER 8
ENFORCEMENT AND COMPLIANCE PROGRAM AND TOOLS

FRA's Office of Railroad Safety continues to increase emphasis on data-driven safety analysis. The NIP is one method used to improve the effectiveness of safety resources by focusing on the most serious safety concerns. Communication of safety data and an emphasis on safety results are critical to the success of FRA's enforcement and compliance program.

8.1 Railroad System Oversight

Railroad System Oversight is one of FRA's processes to achieve regulatory compliance, encourage railroad labor and management participation in developing measures to enhance safety, and foster an environment that improves the safety of railroad operations. It focuses on a railroad's systemic safety. Safety issues and concerns addressed by this process include those that may result from a lack of systemic control, whether manifested across an entire system, or regional or local in nature. The FRA Railroad System Oversight Manager acts as FRA's safety advocate with senior-level railroad managers and labor organizations. Liaising and collaboration with labor and senior railroad managers are critical tools used to resolve nonregulated safety problems. However, noncompliance with established regulations generally will be addressed through standard FRA enforcement policy.

8.2 Focused Enforcement

Focused enforcement means use FRA's limited enforcement resources to address the most serious and persistent compliance problems.

FRA inspectors should utilize FRA's accident, injury, and inspection data (available on agency's secure site), as well as any data available from other sources (e.g., PHMSA) to gain better insight into the types of violations that are actually causing large numbers of accidents, incidents, and/or injuries. With this information, inspectors are well equipped to weigh the discretion criteria concerning the inherent seriousness of violations and the level of risk posed in specific circumstances. Of course, enforcement decisions should not become entirely driven by data, and an inspector's direct observations and experience will always be necessary elements of any enforcement decision. Activities conducted in this area are recorded as Source Code D ("Special Inspections or Investigations").

8.3 Unusual Problems or Occurrences

An inspector should notify his or her supervisor of any unusual problems or occurrences related to an inspection, and as appropriate, the supervisor should consult with the HM Division Staff Director. Unusual occurrences should be documented using email, the inspection report, or memorandum.

8.4 Imminent Hazard/Potential Violations

The term "imminent hazard" means the existence of a condition relating to hazardous materials that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begins to lessen the risk of that death, illness or endangerment. 49 U.S.C. § 5102(5). Occasionally, an inspector may encounter a situation involving an imminent hazard or the possibility that someone intends to violate, or continue to violate, the HMR. In such situations, an inspector needs to take appropriate action to promote safety, but be careful to not act outside of the scope of his or her governmental duties. If an inspector believes an imminent hazard related to the transportation of hazardous materials exists, the inspector should follow these general principles:

> ***DO:** Advise parties of the potential imminent hazard, the applicable regulatory requirements and penalty consequences of noncompliance. If no one else has advised an emergency response agency of an imminent danger, do so.
>
> ***DO NOT:** Order or direct a party to take (or not to take) a specific action if that party's actions are clearly contrary to the HM regulations and could reasonably result in severe consequences including death or injury. If this action is taken because of the gravity of the immediate situation, an inspector should immediately notify his or her supervisor of the circumstances, the inspector's analysis of the situation and resulting decision, as well as the potential consequences if the inspector had not interceded.

When an inspector believes an imminent hazard may exist, the inspector should ensure that involved parties are aware of their responsibilities under the HMR. However, the inspector should not take charge or attempt to carry out the responsibilities of the regulated parties. Although you may advise involved parties of applicable regulatory requirements and prohibitions, be very careful not to order, direct, instruct, or mandate that particular actions be taken. Ordering, directing, instructing, or mandating that an action be taken is beyond the scope of an inspector's authority and could result in the imposition of personal legal liability.

Instead of giving orders or directions, regulated parties should be advised what the regulations require. An inspector may advise a party that failure to comply with the regulations could result in the imposition of civil penalties. Where a party appears to need additional reasons for complying with the regulations, an inspector may certainly explain that, because the party has now been advised about what the regulations require or prohibit, the party's subsequent violation of those regulations could be considered "willful" and thus subject to possible criminal prosecution. There is a significant difference between (1) telling someone what the regulations require or prohibit and (2) ordering someone to do something or prohibiting someone from doing something. The latter actions carry the risk of a legal action against an individual inspector for acting outside the scope of his or her official government duties.

The following example demonstrates the difference. Assume that you discover hazardous materials on a company's shipping dock in non-approved or non-conforming packaging. The shipment does not comply with the regulations and it appears that further transportation of the

packaging is likely. You should advise the company (1) of the shipping requirements for the hazardous materials involved, (2) that failure to comply with those regulations could result in a substantial civil penalty for the offeror and carrier, and (3) (if necessary) that the company and its individual employees may be held personally liable or subject to criminal prosecution if they proceed to willfully violate the regulations. You should not prohibit the company from shipping the hazardous materials until they are properly packaged. The distinction between advising and ordering is so critical that you should also explicitly state that you are not ordering or prohibiting a specific action.

In the example, therefore, you might say:

> The regulations, specifically 49 CFR___, require these hazardous materials to be shipped and transported in UN standard packaging, specifically _____. If they are shipped or offered for transportation in packaging that does not meet those requirements, the company, you, and others involved may be subject to a civil penalty of up to $50,000 per violation, $100,000 if someone is injured or killed. Also, the carrier is likely to be subject to similar civil penalties. In addition, because I have now told you what the regulations require, if you go ahead and ship these hazardous materials in this packaging, you, personally, and the company, may be subject to criminal penalties involving up to 5 years imprisonment and fines of a quarter- to half-million dollars. I am not telling you what to do or ordering you; I am simply telling you what the regulations require and what the penalties, prescribed by law, could be for violating them. Do you understand?

Any listener should clearly understand that you are not ordering anything to be done.

Because of the importance of what you say, write down your statement just before or just after making it. Also, you should attempt to make these statements in front of another investigator, a law enforcement official, or some neutral party, because a witness, other than affected parties, may later prove to be useful.

As discussed in Chapter 2 of this manual, the Department's statutory authority at 49 U.S.C. § 5121 was amended by the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005 to specifically authorize agents of the Secretary to take certain actions to address unsafe conditions or practices. Such authority is directly applicable to situations in which an inspector believes an imminent hazard related to the transportation of hazardous materials exists. As also noted in Chapter 2, PHMSA published a Notice of Proposed Rulemaking on October 2, 2008, proposing Department-wide procedures for implementing this enhanced authority, but a final rule has not yet been published that would allow FRA to implement this enhanced authority. Accordingly, until final regulations are promulgated and FRA has issued specific guidance to its field enforcement personnel as to how to implement such regulations, inspectors and other Office of Railroad Safety enforcement personnel should follow the guidelines discussed above.

8.5 Determining When and What Enforcement Action is Necessary

FRA does not have to take a formal enforcement action every time it discovers or learns of a deviation from the Federal railroad safety laws. FRA has enforcement discretion: it can choose which violations to pursue based on its resources and on what it believes to be the best method of promoting compliance. Inspectors and regional and headquarters personnel periodically analyze relevant data on accidents, incidents, and inspections to determine patterns of noncompliance or other problem areas that necessitate more stringent or broad-based enforcement actions. Conversely, data indicating that a railroad or shipper has an overall good safety record, particularly regarding the specific regulation in question, might dictate less stringent enforcement measures, such as informal warnings.

The civil penalty enforcement system, while only one aspect of FRA's safety enforcement scheme, is absolutely vital to FRA's safety mission.

When FRA decides that enforcement action is called for, it has a range of enforcement tools (discussed below) and has the authority to choose those best suited to the circumstances. One of these tools (the emergency order) can be used to address an immediate hazard even if no existing law has been violated.

The existence of this broad enforcement discretion, concerning when and what enforcement action is necessary, calls for general guidelines to ensure effectiveness, fairness, and an acceptable level of consistency in the exercise of that discretion. The purpose of the guidelines is not to dictate absolutely identical treatment of identical situations. That would be an unrealistic ideal based on the false assumption that each of the many variables going into an enforcement decision could objectively and accurately be quantified. Instead, the purpose of these guidelines is to control the necessarily subjective elements of this process, as much as is feasible, by requiring that those making enforcement decisions weigh the same factors and make full use of objective information bearing on those factors. In this way, the appropriate enforcement tool is applied, responsible discretionary judgments are made,[37] and an acceptable level of consistency in similar situations is achieved.

8.6 Enforcement Discretion

Appendix A to Part 209 explains how FRA exercises its enforcement discretion, and lists various factors that an inspector considers in determining which instances of regulatory or statutory noncompliance merit a recommendation of assessment of a civil penalty. Those factors are:

- The inherent seriousness of the condition or action.
- The kind and degree of potential safety hazard the condition or action poses in light of the immediate factual situation.
- Any actual harm to persons or property already caused by the condition or action.

[37] Application of these factors should preclude abuses of discretion, such as basing an enforcement decision on personal bias, or failure to enforce the law because of a personal aversion to the extra work required.

- The offending person's (i.e., railroad's or individual's) general level of current compliance as revealed by the inspection as a whole.
- The person's recent history of compliance with the relevant set of regulations, especially at the specific location or division of the railroad involved.
- Whether a remedy, other than a civil penalty (ranging from a warning to an emergency order), is more appropriate under all of the facts.
- Such other factors as the immediate circumstances make relevant.

The following discussion briefly addresses each of these seven factors and is intended to describe the thought process that should go into weighing each factor. A more detailed discussion of each factor is found in the General Manual, Part II, Chapter 4.

8.6.1 The Inherent Seriousness of the Condition or Action

In the abstract (i.e., when the immediate circumstances are not considered), every violation is more or less severe than others. For example, a hazardous material shipping paper that is incomplete but still contains enough information to enable the material to be identified is less serious than a shipping paper that does not permit such identification to be made.

A good source of relevant information to help determine the inherent seriousness of a condition or action is the national data on accidents, incidents, and hazardous material releases; viewed over time (e.g., the most recent 2 or 3 years). FRA's safety database and the historical incident reports maintained by PHMSA (FRA Form 5800.1) provide this type of information. Although these databases provide useful insight into what can be the most dangerous violations, the use of hard data in determining the inherent seriousness of a condition or action has its limitations and such data may reveal little or nothing about a violation that is obviously serious (e.g., an inaccurate shipping paper that could interfere greatly with emergency response).

Because inherent seriousness is difficult to apply between disciplines, it is usually considered to be a relative matter within each discipline. This is where regional and headquarters specialists can play a significant role in explaining the relative severity of the various violations. Special care should be taken to keep inspectors aware of any specific types of violations that are causing an increasing proportion of accidents so that the inspector can focus on those violations as possible enforcement actions.

A relatively nonserious violation is not automatically excluded from candidacy for enforcement. Only when all of the criteria have been considered can a decision be made. Consideration of the inherent seriousness of a violation is a good place to begin. If the other factors do not point toward enforcement action, a relatively nonserious violation is a poor candidate for enforcement action as it is likely to produce little safety benefit in return for the FRA resources expended on enforcement.

8.6.2 The Kind and Degree of the Potential Safety Hazard the Condition or Action Poses in Light of the Immediate Factual Situation

While the first factor focuses on seriousness apart from circumstances, this factor focuses on the potential for injury or property damage posed by the violation in the context of its actual facts. For example, a hazardous material defect (e.g., failure to secure all openings of a tank car) may create more (or less) of a potential hazard depending on the nature of the material or whether a leak actually occurred. Note, however, a conclusion that little or no actual hazard was caused by a violation does not automatically rule out the need for enforcement action.

8.6.3 Any Actual Harm to Persons or Property Already Caused by the Condition or Action

The ultimate goal of FRA's regulatory and enforcement programs is to prevent death or injury to persons or damage to property caused by unsafe behavior. Accordingly, enforcement action should always be taken when a violation either has caused or contributed to the severity of harm to persons or property.

The violation report, itself, must explain the causal link between the violation and the harm. The violation need not have been the sole or primary cause, and need not have been a cause at all if it contributed to the severity of the harm. However, it will not suffice simply to say that a violation and some actual harm coincided (e.g., a shipping paper violation is discovered on a train involved in a fatal accident, but the violation played no apparent role in the accident's cause or severity). If no relationship between the violation and the harm can be shown, the violation may still be a strong candidate for enforcement, but not based on consideration of this factor. A violation report in such a case must also explain the extent of the harm. For example, rather than simply stating that two persons were injured by the violation, the report should discuss the nature and extent of the injuries. These cases are inherently strong candidates for extraordinary penalties and the report should provide information necessary to support such a claim. Any recommendations for extraordinary penalties (i.e., maximum penalty, multiple-day penalty, or a total fine of $100,000 or more for a related set of violations) must be submitted to the Office of Chief Counsel with a memo signed by the Regional Administrator explaining the rationale for the recommendation.

8.6.4 The Offending Person's[38] General Level of Current Compliance as Revealed by the Inspection as a Whole

Most FRA inspections or investigations entail observation of more than one event or piece of equipment. This enables the inspector to draw a conclusion about the railroad or offeror's general level of compliance at the current time. At one end of the spectrum, this factor could lead the inspector to conclude that a violation is merely an aberration and enforcement action is not needed to encourage compliance. At the other end of the spectrum, violations may be so common that enforcement action is obviously in order.

[38] Under the HMR, the term "person" is broadly defined, and includes companies and corporations as well as individuals. For the purposes of the regulations, offerors and carriers are considered persons.

Ordinarily, of course, the facts will be somewhere in between, requiring the inspector to balance this factor against the seriousness of the violations and other factors. On the other hand, the inspection might reveal a multitude of violations that, even though not serious in relative terms, indicate a very poor compliance program on the part of the company. This could lead the inspector to recommend enforcement action on some or all of the violations discovered.

8.6.5 The Person's Recent History of Compliance with the Relevant Set of Regulations, Especially at the Specific Location or Division of the Railroad Involved

The historical record of a company's (or an individual's) compliance is an important factor to be weighed. This is an important area where Office of Railroad Safety and the regional specialists will help the inspectors sift through the data for important indicators. While inspectors form their own impressions about companies and specific locations based on experience, resource limitations prevent inspectors from getting to all locations as frequently as would be preferable. The inspector who is equipped with national and/or regional data on that company may be better able to focus the inspection and more or less inclined to take enforcement action depending on the broader picture of compliance.

This factor is aimed primarily at either spotting patterns of noncompliance that might not be apparent from a single, isolated inspection or patterns of good compliance that might temper an inspector's reaction to an otherwise unsatisfactory inspection. Although the consideration of this factor should be based on the available data, there is no rigid prescription for which data to include. Generally, the older the information, the less useful it is (e.g., noncompliance 4 years before the inspection is not very meaningful), and the more specific the information, the more useful it is (e.g., a clustering of violations of a particular regulation over time may indicate the need to come down hard on any such violations currently discovered, especially if the violations are serious).

Focusing the review of the historical data on the particular facility presently involved often makes sense. If one facility or division manages to achieve a very high level of compliance as compared to the rest of the company or the industry generally, that argues for encouraging such efforts by restricting enforcement actions to the most serious matters. Of course, if one facility is clearly out of line in terms of historical and current compliance, that argues for taking enforcement action on even less serious violations in order to increase the deterrent effect. Spotting broader trends in the data (e.g., a particular railroad's frequent noncompliance with the hazardous materials placement regulations) that may have a systemic cause is the job of the regional and headquarters specialists, aided by the observations furnished from the field. Together, they can devise enforcement strategies (e.g., a recommendation to the Office of Chief Counsel that an action for an injunction against such violations be undertaken) that are responsive to patterns of violations that are apparent from analysis of the overall data.

8.6.6 Whether a Remedy Other Than a Civil Penalty is More Appropriate Under the Circumstances

FRA has more than just two options (civil penalty against the company or a warning) available when it detects noncompliance. Civil penalties against individuals are one option. Emergency

orders, compliance orders, rail worthiness directives, and injunctions are other possibilities, as is criminal prosecution. It may be that a combination of these options (e.g., a civil penalty against the company and warning to a responsible individual) would be the best way to ensure safety and deter noncompliance.

8.6.7 Such Other Factors as the Immediate Circumstances Make Relevant

The foregoing list is not all-inclusive; specific situations may involve specific facts that do not fall under any of those headings but need to be figured into the decision of whether to take enforcement action. Perhaps the most common of these additional factors is the violator's culpability, i.e., the relative degree of blameworthiness. In hazardous materials cases, FRA must show the violative acts were committed "knowingly."[39] In hazardous material civil penalty cases against individuals, FRA must show that the violation was committed both "knowingly" and "willfully."

8.7 Enforcement Discretion

Reasonable minds can differ as to whether enforcement action is necessary in a given situation and, if so, which action is preferable. What is important is that every inspector, specialist, chief inspector, and regional manager be fully familiar with and apply these criteria. Doing so will help ensure effectiveness, fairness, and an acceptable level of consistency in exercising discretion. Consistent application of these criteria will also be in accord with FRA's policy of focused enforcement, i.e., use of our limited resources to attack the most serious and persistent compliance problems.

It is important to note that the enforcement discretion being applied is that of the agency. While inspectors make the initial determinations on the need for enforcement action, regional personnel play an active and important role in reviewing those determinations with a goal of ensuring effectiveness and reasonable consistency. Supervisory railroad safety specialists play a primary role in ensuring that field inspectors have the data necessary to make informed enforcement decisions. Toward that end, headquarters and field personnel analyze data using the Dashboard Analysis System on a rotating weekly basis. Additionally, supervisory railroad safety specialists, along with their Regional Administrator and Deputy Regional Administrators, analyze data on accidents, incidents, and inspections to detect problem areas at the regional, railroad, or shipper level. This information is used not only in deciding where to inspect, but also in making enforcement decisions. Office of Railroad Safety headquarters personnel, with input from the regions, are responsible for spotting national trends that require enforcement action and for providing guidance to the regional and field staff on difficult enforcement policy issues.

Even where the law does not require that FRA show the offender's mental state, culpability is a factor that should be considered in deciding whether to take enforcement action. For example, the violation may have been the result of a good faith misunderstanding of the relevant law,

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[39] Under the hazardous materials transportation statute, a person acts "knowingly" when: (1) the person has actual knowledge of the facts giving rise to the violation or (2) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge. 49 U.S.C. § 5123.

which often happens when a regulation is brand new or inherently ambiguous. Unless the violation is very serious, enforcement action would ordinarily not be appropriate where there is solid evidence that such a good faith mistake was in fact the cause. Such good faith mistakes, which imply an honest attempt to know and obey the law, should not be confused with simple ignorance of the law resulting from a failure to attempt to know it.

Culpability is also very low where the violation is discovered on the property of one company that has not had a reasonable opportunity to correct it, but the violation was clearly more attributable to another company. For example, this may be true with regard to an equipment defect where the receiving railroad has hauled the car only a short distance from the interchange to a major repair point and FRA is confident—based on its experience at that location—that the violation would have been caught and corrected by the receiving railroad even had FRA not been present. There, the better candidate for enforcement action would be the delivering railroad if the evidence indicated that the defect was present when that railroad delivered the car. Likewise, where a placarded tank car is found on railroad property with loose fittings that could not be observed from the ground and with no evidence of a leak, the culpable party is nearly always the car's offeror. It is the offeror that has the primary responsibility to ensure that all closures on a car are secured in such a manner as to remain secured under conditions normally incident to transportation. To get at the root cause of the problem, the violation should be taken against the offeror (unless there is some evidence of vandalism or extremely rough handling since the car left the offeror).

While very low culpability might tip the inspector's discretion toward not taking enforcement action, very high culpability might have the opposite effect. For example, a clearly egregious violation may warrant enforcement action even if isolated or not especially serious. Blatant disregard for the law, even on relatively lesser matters, may indicate an overall poor attitude toward compliance that could carry over to very serious matters.

Inspectors and regional personnel are not expected to spend hours deliberating about every possible enforcement action. Instead, these guidelines are intended to provide a framework that enforcement personnel will incorporate into their entire enforcement approach so that these factors are weighed quickly and effortlessly in most situations. Of course, the time spent weighing these factors should correspond to the seriousness of the situation.

8.8 Enforcement Tools

The inspector—with guidance on the difficult cases from regional and headquarters staff—needs to weigh all of the factors to determine the appropriate course of action. In deciding whether more severe action than the implicit warning conveyed by an inspection report is necessary, one consideration is that choosing to recommend a formal enforcement action entails a considerable investment of time to prepare the violation report and obtain necessary supporting documents. Time spent preparing violation reports is time not spent inspecting, so it makes sense in terms of time allocation for the inspector to choose carefully for enforcement action those violations that—due to seriousness, frequency, and/or other reasons—are most in need of being deterred.

When a hazardous materials inspector has decided that enforcement action is necessary, a variety of tools are available. Below is a brief discussion of each of the available tools.

8.8.1 Defect Notice and Spoken Warning

Even if an inspector has decided that no enforcement action will be taken for a defective condition he or she identified, the inspector must complete a defect notice. Copies of these and the accompanying inspection reports must be provided to the offending railroad or shipper and FRA headquarters for data entry and analysis.

8.8.2 Warning Letter to an Individual

Warning letters to individuals discovered to have violated a regulation or law may be issued by the region or through the Office of Chief Counsel. Warning letters are intended to put the individual involved on notice that he or she violated the law or a regulation.

- A "Regional Warning Letter" (FRA Form F6180.80) is used when an individual has violated a regulation or law and the Regional Administrator believes a written warning to the individual, with a copy to the railroad, will provide an adequate deterrent effect. The letter and violation report are filed for evidence to support a future enforcement action if necessary. Inspectors and regional management may use this tool independently of headquarters management or the Office of Chief Counsel.
- A "Chief Counsel Warning Letter" is also used when an individual has violated a regulation or law, but the region believes a stronger warning is necessitated. Inspectors and regional management must work closely with the Office of Chief Counsel to issue this type of warning letter.

8.8.3 Civil Penalty Against a Railroad or Offeror

Of all the enforcement tools available, inspectors use civil penalties against railroads more frequently than others. To assess a civil penalty against a railroad or shipper, FRA must prove a "knowing" violation of the HMR. Unless it is determined that a more severe penalty is needed, FRA usually follows the penalty schedules for the relevant section of the Code of Federal Regulations. The penalty guidelines are published at 49 CFR Part 209, Appendix B.

In the event an inspector recommends the assessment of civil penalties for multiple days or for an aggravated penalty amount, the procedures outlined in the June 18, 2009, joint RCC/RRS memo must be followed. That memo is included in this manual at Appendix C.

8.8.4 Extraordinary Civil Penalty

FRA may assess civil penalties of up to $100,000 per day for violations of the HMR if the violation results in death, serious illness, or severe injury to any person, or substantial destruction of property. 49 U.S.C. § 5123; 28 U.S.C. § 2461, note.

In the event an inspector recommends the assessment of an extraordinary civil penalty amount, the procedures outlined in the June 18, 2009, joint RCC/RRS memo must be followed. See Appendix C.

8.8.5 Civil Penalty Against an Individual

To assess a civil penalty against an individual for a violation of the HMR, FRA must demonstrate that the individual both "knowingly" and "willfully" violated the HMR. Inspectors and regional management must work closely with the Office of Chief Counsel to assess this type of penalty.

8.8.6 Compliance Order

When the cooperative approach has not worked, and civil penalties are either inappropriate or have proven ineffective in particular circumstances, but the violation(s) do not create an emergency, FRA may issue a compliance order directing a party to comply with regulations issued under either the Federal railroad safety laws or hazardous materials transportation law. See 49 U.S.C. §§ 5121(a) and 20111(b). Inspectors and regional management must work closely with the Office of Chief Counsel to pursue this type of remedy.

8.8.7 Disqualification from Safety Sensitive Service

When a railroad employee is found to have committed a series of safety violations or a particularly serious violation such that the individual's fitness to perform safety-sensitive service (including service subject to the Federal HM transportation law or HMR), FRA may disqualify that individual from performing safety-sensitive service. A finding of "willfulness" is not a prerequisite, but it must be demonstrated that the individual is "unfit for safety sensitive service." See 49 CFR Part 209, Subpart D. Disqualification is achieved through a Notice of Proposed Disqualification issued through the Office of Chief Counsel.

Any inspector who suspects a disqualification action may be justified, should inform his or her regional specialist as soon as possible. The regional specialist should consult with regional management and if management concurs, the region should contact the HM Staff Director and RCC's individual liability expert for guidance.

8.8.8 Injunction

An injunction is a court order from a U.S. District Court judge requiring a party to comply with the law immediately. FRA uses this tool to stop a pattern of violations that do not present an emergency, but which the railroad or shipper has not acted upon to prevent, despite civil penalties and/or warnings from FRA. Inspectors and regional management must work closely with the Office of Chief Counsel to pursue this type of remedy.

8.8.9 Rail Worthiness Directives

If FRA determines, based on the existence of probable cause, that a tank car or a class or design of tank cars may be in an unsafe operating condition, FRA may require that the car or cars be inspected without regard to any other periodic inspection requirements. The agency issues a Rail Worthiness Directive that describes the condition or defect, and orders the testing and inspection of the tank car(s). In addition, the directive requires correction of all defects and unsafe conditions, whether determined by Federal standards or under the Association of American Railroads' Tank Car Manual. See 49 CFR § 180.509.

8.8.10 One-Time Movement Approvals

FRA may issue approvals to move bulk packagings that do not conform to the HMR on a case by case basis. Generally, these movement approvals are issued by headquarters HM staff after consultation with interested regions. However, as stated in the approval document, the approval does not preclude enforcement action for the transportation of nonconforming packages prior to issuance of the approval. See 49 CFR § 174.50 and Chapter 9 of this manual.

8.8.11 Emergency Order

If FRA determines, based on testing, inspection, investigation, or research, that an unsafe condition or practice (or combination) creates an imminent hazard of death or serious injury, FRA may issue an emergency order to impose restrictions or prohibitions necessary to abate the emergency situation. A hazard is "imminent" if it is reasonably likely to result in death or serious injury to the public or railroad employees before a civil penalty action or compliance order proceeding could be expected to produce a remedial action. Inspectors and regional management must work closely with the Office of Chief Counsel to pursue this type of remedy. See 49 U.S.C. § 20104; see also 49 CFR Part 209, Appendix A, Extraordinary Remedies.

8.8.12 Criminal Penalties

The Federal hazardous materials law provides for criminal penalties (a monetary fine and/or imprisonment) for any person who willfully or recklessly violates the hazardous materials laws or HMR. See 49 U.S.C. § 5124. Because FRA has to work with the U.S. Department of Justice to pursue criminal penalties, inspectors and regional management must work closely with the Office of Chief Counsel to pursue this type of remedy. Accordingly, if an inspector believes that a criminal violation exists, the regional specialist, Regional Administrator, and Office of Chief Counsel should be notified as early as possible in the investigation.

8.9 Deciding which Enforcement Option is Appropriate

When the inspector has decided that merely reporting his/her findings to the company or individual and discussing the need to improve compliance is unlikely to have a sufficient deterrent effect under the circumstances, the inspector will decide which enforcement tool is most appropriate. If the violation creates an immediate hazard of death or serious injury, and the inspector is not confident of immediate corrective action, consideration should be given to an

emergency order. In the case of a situation that may require an emergency order, immediate consultation with the Regional Administrator is essential. Remember that emergency orders can be used even when the unsafe condition does not violate existing law if FRA can make a rational case that the conditions or practices create a hazard of death or injury.

If the violation presents a very serious risk of death or injury, but the risk is not so imminent as to warrant emergency action, or the violation actually caused significant harm (death, injury, or substantial hazardous material release), consideration should be given to a civil penalty case with a recommendation for aggravated penalties. When submitted to the Office of Chief Counsel, such a report must include a cover memorandum from the region explaining the basis for extraordinary penalties (i.e., penalties above the ordinary scheduled amount or for multiple days). If such a penalty is recommended, the report must indicate the basis for that recommendation. In the hazardous materials area, a penalty of up to $32,500 per day per violation is possible where a grossly negligent violation, or pattern of repeated violations, has created an imminent hazard of death or injury to persons, or has caused death or injury. Extraordinary penalties should never be recommended without providing the necessary support for the recommendation because this will only delay transmittal of the penalty demand letter.

If the situation is one that does not rise to the level of an emergency, but the sheer volume of violations or their recurring nature suggests that a measure other than a civil penalty might be necessary to obtain corrective action on a specific problem, consideration should be given to recommending a compliance order, or injunction. A compliance order entails the possibility of an administrative hearing before the order would even be issued, so it is not a tool designed for extremely quick action. It would most likely be useful only on the most clear-cut and repetitious violations, where FRA has sought reasonable and well-defined remedial action from the offender but has been met with resistance. In such situations, a compliance order proceeding may provide the extra leverage FRA needs, but not result in cumbersome litigation, because the facts are indisputable.

Injunctions are court orders prohibiting violations that add the weight of the court's contempt powers to further FRA's compliance efforts. However, to obtain such an injunction, FRA will first persuade the U.S. Department of Justice (DOJ) of the need for such extraordinary relief and, assuming that DOJ is willing to file suit, FRA will then be able to persuade the court that it should issue an injunction. This tool is most likely to be used where civil penalties alone have been ineffective in lessening the frequency of a particular type of violation, the violation is serious, and the company is unusually obstinate in its safety behavior.

Individual liability (including warning letters and civil penalties) is a tool that should be considered in any situation where deterring a particular individual's noncompliance is what is most needed. This tool is especially useful where the violation arose from the individual's own choice. Where the violation is more attributable to corporate policy or failure by the company to properly train or supervise the individual, the company is usually the better target (unless the policy or failure can be traced directly to a specific individual). The inspector need not choose between individual liability and corporate liability. In some situations, enforcement action against both will be warranted.

Finally, under 49 U.S.C. § 5124, a person willfully or recklessly violating the Federal hazardous materials transportation safety law, or the regulations implementing it, is liable for criminal prosecution. If the inspector believes that a criminal violation exists, the regional specialist, the Regional Administrator, and the Office of Chief Counsel should be contacted as early in the investigation as possible. If the Office of Chief Counsel, after a legal evaluation of the evidence, concurs with a recommendation to pursue criminal sanctions, the Chief Counsel will refer the case to the DOT's Office of Inspector General. As a matter of caution, evidence in criminal cases may become "tainted" through improper handling by its custodians; in addition, a criminal investigation involves the constitutional rights of the respondent/defendant. This means that *early* consultation with the Office of Chief Counsel is necessary. It also means that access to the facts of the case should be limited to those with a need to know to make policy and legal decisions. If a particular case becomes a matter for the criminal courts, access to the evidence will be severely restricted by Federal rules and that task is easier if the facts have not been the subject of wide discussion.

8.10 Determining the Existence of a Violation

The HMR require that certain elements be present for a violation to exist. A person subject to the regulations must commit an act (in most cases, the offer, acceptance, or transportation of a shipment) that does not comply with the regulations. For a civil penalty to be assessed, the act must have been committed "knowingly" (i.e., with actual knowledge of the facts or with presumed knowledge of the facts that would have been obtained had the person exercised reasonable care under the circumstances). In order to determine who the responsible "person" is, the test is functional: anyone engaged in an activity covered by the HMR is responsible for the proper accomplishment of the activity. In addition, the regulations contain "triggering events": actions taken by a person after which that person may be held responsible for compliance or noncompliance with the regulations.

8.10.1 Person who Offers or Offerors

Generally, a person must perform a regulated HM function to be held liable for a violation. See the discussion of FRA's "Scope of Regulatory Authority" in Chapter 2 of this manual.

Under traditional commercial law, the offer for transportation occurs when the bill of lading is prepared and signed by the offeror. However, an "offer for transportation" may occur when a person takes actions indicating that preparation of the car is complete, and the car is ready to be picked up by the railroad. These actions depend upon the customary practices of that person, and may include notifying the railroad that the car is ready for pickup, transmitting the shipping papers to the railroad (electronically or by placing them with or near the car), placing the car on a "ready" track, or a clear statement by an authorized representative of the offeror that the shipment is ready for transportation. Other indicators that an offeror has completed preparation of the shipment are the presence of appropriate loaded or residue placards and/or seals on closures. All of these elements need to be analyzed to determine whether an offer has been made.

For instance, violations for insecure closures, which are found on a loaded tank car after the manway cover or the lid of the protective housing has been sealed, may be violations under 49 CFR §§ 173.24(b) and (f), and 173.31(d)(1)(iv), which requires fittings to be in proper condition for safe transportation prior to shipping. (The theory is that, once the seal is applied, the offeror has no further intention to recheck the car.) However, we would also want to check whether the offeror had signed the shipping paper, notified the railroad, etc., and what the offeror's specific intentions were with respect to that car. It may be possible that, despite the presence of the seals, the offeror intended to recheck the shipment prior to the actual offer.

The point to remember is that we do not necessarily have to demonstrate that a shipment left the offeror's property in order to show that it was offered for transportation in noncomplying condition. By addressing the criteria discussed here, we may be able to show that, for all practical purposes, the offer had effectively been made before the railroad had actually hauled the shipment away. However, we do not want offerors cited for violations that necessarily entail an offer in situations in which the offeror can demonstrate—by reference to specific facts—that it was the offeror's intention to inspect or remedy the noncomplying condition before the shipment left the property.

Certain regulations may be violated before an offer is made or after receipt of a completed shipment. See the discussion of FRA's "Scope of Regulatory Authority" in Chapter 2 of this manual. In these situations, proof of an offer by the offeror is unnecessary; instead an inspector must demonstrate what regulated HM function(s) were performed in noncompliance with the HMR (or were required to be performed and were not). Inspectors will evaluate the situation in light of the specific wording of the relevant regulations. During loading or unloading operations, the noncomplying activity, itself, usually triggers the violation. Examples are failure to place appropriate caution signs on the tracks during unloading, or improper loading, of specific materials. In some situations, a violation may exist even before the HM is actually tendered to the carrier for transportation (i.e., when a pre-transportation function is performed not in compliance with the HMR).

8.10.2 Originating Carriers

The "trigger" for a railroad is the acceptance or transportation of a shipment of hazardous materials. See 49 CFR § 174.3. Under traditional commercial law, the acceptance occurs when the bill of lading is signed by the carrier. Acceptance by an originating carrier can also occur when the carrier takes physical possession of a car (e.g., by coupling to the car and moving it); this concept is in agreement with the definition of "in service" from FRA's Freight Car Safety Standards. See 49 CFR § 215.5(e).

It should be noted that a carrier may be deemed to have "accepted" a car, and become liable under the HMR even though no "offer" was made. For instance, a carrier might remove a car from an offeror's facility although the offeror has taken no action to "offer" the car for transportation. In that case, the carrier will be liable for defects (since it has "accepted" or taken the car), while, except as noted above relating to pre-transportation functions, the offeror is not (since it never "offered" the car and presumably could argue that it had not completed preparing it for transportation).

8.10.3 Non-originating Carriers

Non-originating carriers come under the regulations when they accept a car in interchange by "placing it in service," usually by coupling to it. Alternate methods of acceptance may be created by agreement between railroads and must be examined on a case-by-case basis. Delivering carriers remain responsible, of course, for all violations occurring up to that point.

8.10.4 Manufacturers

A manufacturer of packagings generally becomes liable for compliance with the hazardous materials law and regulations when it marks a container with a "DOT" specification.

8.10.5 Repair or Reconditioning Facility

A repair or reconditioning facility becomes liable for noncompliance with the hazardous materials law and regulations when it performs a repair or other function regulated by the HMR or subject to the HMR's packaging standards, and that repair or activity does not comply with the HMR.

Circumstances outside the scope of these examples are possible and entities other than those listed here may violate the HMR. Inspectors should seek guidance from their specialist on how to proceed in such circumstances.

8.11 Interregional Coordination

The need for interregional coordination is more important than ever with the consolidation of the railroad industry. Interregional coordination has improved in the past few years and we strongly encourage further coordination to avoid inconsistent enforcement activities. We need to ensure that we continue to assess whether a specific issue might extend beyond a specific regional boundary. Regional and headquarters specialists, through periodic conferences, emails, and telephone contacts, need to play a key role in ensuring that systemwide compliance problems are addressed in a coordinated rather than piecemeal approach. Railroad System Oversight Managers (RSOM) should be involved in the discussions regarding major, interregional enforcement issues, and should be providing information to specialists on systemwide compliance problems, especially those on which cooperative efforts are not achieving results.

8.12 Enforcement Actions Against Individuals

8.12.1 General Principles

The Federal HM transportation law (at 49 U.S.C. § 5123), states that a person who knowingly violates the hazardous materials laws or regulations is liable to the U.S. Government for a civil penalty.

This standard is very similar to that used in conjunction with individual liability cases prosecuted under the railroad safety laws. See 49 CFR Part 209, Appendix A, which provides that a

"willful" violation is one that is "an intentional, voluntary act committed either with knowledge of the relevant law or reckless disregard for whether the act violated the requirements of the law." Penalties of up to $ 100,000 per violation are available under the hazardous materials law for individual violations.

Consideration of the Totality of the Circumstances

An inspector will determine from the totality of the facts and circumstances whether actual knowledge or reckless disregard for the regulations is present. A clear-cut example of a "willful" violation occurs when the violating act was committed by or at the direction of the individual following a specific warning from an FRA inspector to that individual that such an act would be a violation of Federal law. However, that is not the only possible situation that establishes individual liability. The inspector should thoroughly investigate to gather all relevant information, and determine from that information if the necessary standard may be proven.

FRA and Inspector Discretion

Individual liability is an important tool but should be used appropriately, and where it will achieve the desired result. Overuse and/or use in questionable or weak cases will damage FRA's credibility and the effectiveness of the enforcement tool. Individual liability is a tool that should be considered in situations where deterring a particular individual's noncompliance is what is most needed. This tool is especially useful where the violation arose from the individual's own choice. FRA has the discretion to pursue enforcement action against the railroad, the individual, or both. The decision should depend on the culpability of the respective parties.

Inspectors should not be afraid to use his or her discretion to recommend individual liability when warranted, but inspectors should not "threaten" individuals with individual liability actions. Instead, an inspector should communicate to the individual that if the practice continues, the inspector might have to recommend to their supervisor that individual liability be considered. Of course, at the same time, an inspector should be absolutely sure the violation would be a probable and worthy case. For all these reasons, early communication between the investigating inspector and regional specialist on potential individual liability issues is critical.

8.12.2 Level of Individual Liability to Recommend

Decision to Issue a Regional Warning Letter

Usually, regional warning letters will be used for a first-time offense where there is doubt as to the offending employee's knowledge of the law, or where the offense is not highly serious and a warning is deemed adequate to prevent a recurrence.

When an inspector determines that an individual should be issued a regional warning letter for a violation, the inspector shall orally advise the individual of the facts, <u>including the fact that the inspector intends to recommend that a written warning notice be issued to the individual</u>. This will ensure that the individual immediately knows that he or she has performed an unlawful act and should not do so again. The circumstances, including the time of the violation and the time the individual was so notified shall be carefully noted by the inspector.

As soon as practicable, the inspector should contact his or her regional specialist, who will arrange a conference call with the Regional Administrator or regional staff member, delegated by the director. If the specialist is not available, the inspector shall directly contact the Regional Administrator.

Once it is decided that the facts support at least the issuance of a regional warning letter against the individual, the inspector will submit a completed FRA Form F6180.80 to the Regional Administrator, making sure to check Item 4, "No," to indicate that no formal enforcement action will be recommended. The Regional Administrator will then cosign the form and mail the original (first copy) to the individual by registered mail. The Regional Administrator will insert the region's sequential calendar year report number (e.g., 3-90-1) in the space provided in the upper right corner, on the copies only, and will mail the appropriate copy to the office of the Associate Administrator for Railroad Safety/Chief Safety Officer in an individual envelope with "F6180.80" marked on the outside; mail the "Employer" copy to the individual's employer; and retain the appropriate copy in the secure regional file.

Regional warning letters can be issued by the region without RCC involvement, but RCC must be provided a copy of the letter (FRA Form F6180.80) once issued. For headquarters warning letters, email the information to the FRA attorney for the region in which the incident occurred and/or the subject matter expert, and notify the RCC attorney assigned to coordinate individual liability actions.

Note: If it is subsequently determined that no violation occurred, the inspector must contact the individual and discuss the circumstances that led to the verbal warning and explain why the warning was not valid.

Decision to Recommend a Formal (Chief Counsel) Warning Letter or Assessment of a Civil Penalty

When an inspector or Regional Administrator determines that an individual should be issued a warning letter from the Office of Chief Counsel or assessed a penalty, the inspector shall orally advise the individual of the circumstances surrounding the violation, including the fact that the inspector intends to recommend formal enforcement action against the individual. This will ensure that the individual immediately knows that he or she has performed an unlawful act. The circumstances, including the time of the violation and the time the individual was notified, shall be carefully noted by the inspector.

As soon as practicable, the inspector shall contact his or her regional specialist, who will arrange a conference call with the Regional Administrator or regional staff member delegated by the Regional Administrator . If the specialist is not available, the inspector shall directly contact the Regional Administrator.

The Regional Administrator will contact the Director, Office of Safety Assurance and Compliance, and the Assistant Chief Counsel for Safety and advise them of the circumstances. When headquarters concurs about the need and basis for formal enforcement action, the inspector will submit a completed FRA Form F6180.80 (checking Item 4, "Yes") and a narrative

memorandum detailing the facts to the Regional Administrator, which should show as its subject: "Violation Report concerning (fill in individual's name) with a recommendation for (fill in with formal warning letter or penalty)." The memorandum must specifically address each element necessary to make a case against an individual in the format prescribed in Chapter 5. The Regional Administrator will cosign the FRA Form F6180.80 and mail the original to the individual by registered mail. The Regional Administrator will insert the region's sequential calendar year number in the space provided in the upper right corner on the copies.

The appropriate copy of the FRA Form F6180.80 and the original, along with one copy of the memorandum and any attachments, shall be forwarded to the Assistant Chief Counsel for Safety, Office of Chief Counsel, for further action. (Do not use violation report transmittal FRA Form F6180.72 for this transmission or include these documents in any envelope with unrelated violation reports against railroads or offerors.) The appropriate copy of the FRA Form F6180.80 and a copy of the memorandum shall be forwarded to RRS-1 in an individual envelope with "F6180.80" marked on the outside, and the appropriate copy shall be retained in the secure regional file. The "Employer" copy will be mailed to the individual's employer.

See Chapter 2 of this manual for guidance in the preparation of violation reports against individuals.

8.12.3 Chief Counsel Warning Letters, Civil Penalties, Disqualifications

Mail five hard copies of the individual liability form (FRA Form F6180.80), the individual liability memorandum, and relevant and appropriate supporting documentation to the IL Expert Attorney (if unknown, contact the HM Staff Director).

8.12.4 Privacy Act Restrictions

The Privacy Act of 1974, 5 U.S.C. § 552a, was created in response to concerns about how the creation and use of personal data might impact individuals' privacy rights. It safeguards privacy through creating four procedural and substantive rights in personal data.

First, it requires government agencies to show an individual any records kept on him or her. Second, it requires agencies to follow certain principles, called "fair information practices," when gathering and handling personal data. Third, it places restrictions on how agencies can share an individual's data with other people and agencies. Fourth, it allows individuals to sue the government for violating its provisions. Therefore, FRA employees can be held personally liable for the unauthorized release of information from any "system of records" about individuals maintained by the Federal Government.

A system of records is defined as any group of records where information is retrieved by the name of the individual or by an individual identifier. Databases and collections of records that do not allow retrieval of information on particular individuals are not included. FRA has two systems of records (one kept by the Office of Railroad Safety, the other kept by the Office of Chief Counsel) concerning noncompliance with the railroad safety laws by individuals. Included in those systems of records are (1) information contained in a FRA Form F6180.80 notice

concerning the individual to whom the notice is addressed and (2) any other information contained in a "system of records" concerning the individual's noncompliance, such as a computer or paper file on a particular violation by an individual for which the individual is being investigated, warned, or cited for penalty as an individual. In order to prevent the existence of secret databases, agencies must publish the details of all their systems of records in the Federal Register. The publication must cover intended uses of the system, and allow for interested persons to submit written data, views, or arguments to the agency.

Agencies are permitted to make certain disclosures from their Privacy Act systems of records when necessary to further certain "regular uses" if a notice proposing such regular uses has been published in the Federal Register, and a comment period has run. FRA has established the following regular uses for information contained in the Office of Railroad Safety Individual Enforcement Case System:

- To review these records to determine whether cases should be forwarded to the Office of Chief Counsel for prosecution.
- To otherwise review these records to accomplish the mission of the Office of Railroad Safety.
- To disclose pertinent information in these records to any source from which additional information is requested in the course of conducting an investigation to the extent necessary to identify the purposes of the request and to identify the information requested.
- To provide notice of the investigation and its outcome to the individual's employing railroad or offeror or another railroad related to the case through joint facilities or trackage rights in order to give those entities information they may need to assist in preventing a recurrence of noncompliance.
- To provide information concerning enforcement actions for violations of safety statutes and regulations to government agencies and the regulated industry in order to provide them with information necessary to carry out their responsibilities.
- To provide information concerning enforcement actions for violations of safety statutes and regulations to the public in order to increase the deterrent effect of the actions and keep the public informed about how the laws are being enforced.

55 FR 17851 (April 27, 1990).

These regular uses provide regional personnel and field inspectors sufficient flexibility to accomplish their mission without running afoul of the Privacy Act. For example, the third use clearly permits inspectors to disclose information about individuals to any source of pertinent information to the extent necessary to identify the purpose of the information request and identify the information requested. <u>Ordinarily, only the fact that an investigation is being conducted and the name of the individual should be provided to the person from whom you are requesting information</u>. The fourth regular use is what permits the regional office to send a copy of the FRA Form F6180.80 notice to the individual's employing railroad or offeror.

However, in order to ensure that the regular uses are not misapplied or applied inconsistently, disclosure of information on individuals to those outside FRA other than the types of disclosure discussed in the preceding paragraph may not be made without prior approval from the Office of Railroad Safety, which will consult with the Office of Chief Counsel on the propriety of any such disclosure. Moreover, certain rules on storage of records on individuals must be observed in order to comply with the Privacy Act.

Accordingly, inspectors are not to maintain file copies of records about noncompliance of an individual after they have forwarded a notice concerning that individual to the region; instead, inspectors will submit their file to the region. Regional Administrators will establish a secure file for all such records and will ensure that, except as discussed above, no information contained in this file is released without the authorization from the Office of Railroad Safety. Information submitted by the individual will be placed in that file along with the other pertinent records. The files will be stored in file cabinets that will be locked after working hours. Automated files will be password protected and will only be retrievable by direct terminal access with the selection of the data elements determined by the authorized user. Manual (paper) records will be retained for a period of 3 years. Automated (computer) records will be maintained for 5 years. (Consult the Office of Chief Counsel prior to disposing of any records that may still be subject to an enforcement action.) Disposal will be by shredding, except that certain automated records will be retained indefinitely to provide complete compliance histories.

To avoid problems in this area, regional and field personnel should follow this general rule: except for sending the individual's employer its copy of the FRA Form F6180.80 notice, do not disclose records about individuals to, or discuss information in those records with, anyone outside the agency, except as is necessary to complete the investigation and any resulting enforcement action, or as specifically authorized by the Office of Railroad Safety. If you are in doubt how to handle a situation or have a question pertaining to the Privacy Act contact the Office of Chief Counsel through your regional management.

CHAPTER 9
FRA HAZARDOUS MATERIALS ONE-TIME MOVEMENT APPROVAL PROCESS

9.1 Purpose

The movement approval process, established in 49 CFR § 174.50, was developed in response to the generation of large numbers of emergency Special Permit (formerly called exemptions) requests by the regulated community in their effort to move nonconforming tank cars for repair. An emergency Special Permit (49 CFR § 107.117) is generally issued to prevent a significant economic loss, neutralize a condition that threatens national security, or prevent injury to persons or property. Often times, the "significant economic loss" criterion was used even though the primary reason for the emergency processing request was the necessity to move a tank car to effect repairs that could not be accomplished at the car's current location.

FRA and PHMSA, formerly the Research and Special Programs Administration (RSPA), sought a process that would increase movement efficiency without compromising the safety of hazardous materials transportation. The final rule (Docket HM-216, 61 FR 28677, June 5, 1996) consolidated and revised 49 CFR §§ 174.47, 174.48, and 174.50 (Section 174.50 already allowed for short movements of nonconforming or leaking packages under certain conditions) into the current § 174.50. The new section prohibited the movement of bulk packagings, as defined in 49 CFR § 171.8, that do not conform to the HMR without prior approval, or unless a short movement will reduce or eliminate an immediate threat or harm to human health or the environment. A brief explanatory discussion of the movement approval process accompanies an optional form for submitting the necessary information to the agency, which is available in both Adobe Acrobat (.pdf) and Microsoft Word (.doc) formats on the FRA hazardous materials safety Web site (http://www.fra.dot.gov/us/content/1799).

The primary purpose of movement approvals is to ensure that bulk packagings that no longer meet their packaging specifications move safely by rail, when necessary, in order to effect corrective actions and/or necessary repairs. However, the movement approval process also serves to provide an informational database that can be mined and evaluated to determine potential or actual systemic problems with a particular series of tank cars, type of valve, gasket material, etc., as well as identify the root causes of defects and potentially affect permanent long-term solutions. The information obtained as a result of the movement approval process can also lend itself to being able to identify facilities that may have procedural problems and require greater assistance in ensuring that their practices, in regard to package preparation for transportation, are adequate to ensure regulatory compliance and safety.

9.2 General Information

Since 1996, FRA has implemented an approval process in accordance with 49 CFR § 174.50 of issuing one-time approvals that, under the authority of the FRA Associate Administrator for Railroad Safety/Chief Safety Officer, permits the movement of bulk packagings in rail transportation in accordance with specifically identified conditions, as stated in any given approval issued, when the packagings no longer conform to their regulatory packaging specification. The HMR, at 49 CFR § 174.50, provide in relevant part:

Section 174.50, Nonconforming or leaking packages:

> A leaking non-bulk package may not be forwarded until repaired, reconditioned, or overpacked in accordance with § 173.3 of this subchapter. Except as otherwise provided in this section, a bulk packaging that no longer conforms to this subchapter may not be forwarded by rail unless repaired or approved for movement by the Associate Administrator for Safety, Federal Railroad Administration. Notification and approval must be in writing, or through telephonic or electronic means, with subsequent written confirmation provided within two weeks. For the applicable address and telephone number, see § 107.117(d)(4) of this chapter.

Title 49 CFR § 174.50 is applicable to all bulk packagings, as defined in 49 CFR § 171.8, that are being or will be transported by rail when they do not conform to their packaging specifications in some manner. This includes bulk packagings that may not contain regulated hazardous materials, but which are being represented in transportation by rail as specification packagings per 49 CFR § 171.2(g). While all bulk packagings transported by rail are encompassed by 49 CFR § 174.50, including portable tanks and intermediate bulk containers, to date, approvals have generally only been requested and issued for tank cars. Occasionally, approvals for hopper or gondola cars (i.e., bulk packagings) containing a regulated hazardous material have been requested and issued.

Notices have been issued in the past by the Hazardous Materials Division headquarters staff with respect to movement approvals to provide information and guidance on the approval process. The information provided in this chapter incorporates and supersedes previously issued guidance documents.

9.3 Approval Guidance

The following general policies and guidance exist to assist persons seeking approval for the movement of nonconforming bulk packagings and for inspectors who provide advice to such entities:

- Approval is required for the movement of bulk packagings not conforming to the HMR, except where the movement is short and necessary to reduce or eliminate an immediate threat or harm to human health or the environment.
- Approvals for bulk packagings that are leaking will generally not be issued; however, they may be moved "only so far as necessary to reduce or to eliminate an immediate threat or harm to human health or to the environment when it is determined its movement would provide greater safety than allowing the package to remain in place." (49 CFR § 174.50)
- Approval requests for bulk packagings where a temporary valve securement device, commonly referred to as a "C-kit," has been applied, will be considered for issuance of an approval with certain specific provisions, and consideration of the movement distance

requested, the nature of the product, as well as determining if movement is the best course of action during the request evaluation process.

- Approval is needed to move nonconforming DOT-specification bulk packagings, even if they are secured on a flatcar or in a gondola car.
- An approval is generally not needed for tank cars that are overloaded by weight to the extent of 1 percent or less of the allowed maximum gross weight for the tank car, except in cases where the weighing was performed on a properly calibrated static scale vs. a weigh-in motion or "hump" scale, or where a rail carrier will not continue to transport the tank car without an FRA approval being issued.
- Approvals will not generally be granted to move cars that are overloaded by volume and have insufficient outage in the tank for the product they contain. In these instances, shippers will need to arrange for transloading with the rail carrier having possession of the shipment.
- Approval is not needed for tank cars when the tank and/or service equipment is overdue for testing, provided that the tank car was filled prior to the inspection date (49 CFR § 173.31(a)(3).
- Rail carriers are not obligated to honor an approval issued by FRA and have the right to refuse movement even if an approval is issued. They may require alternate solutions that do not involve further movement on their rail system. FRA recommends that the requestor needing the approval contact appropriate representatives from the rail carriers who will be involved in moving the defective packaging. This is to ensure that the rail carriers are willing and able to conduct transportation of the packaging on their respective systems in order to get the packaging to the requestor's desired location upon issuance of an approval by FRA.
- FRA cannot issue movement approvals for tank cars that are offered into transportation for interchange service and exceed the 40-year age limit, as stated in the Association of American Railroads' Interchange Rules, Rule 90. This is not a Federal regulatory age limit, and persons with cars affected by this will need to seek resolution with the Association of American Railroads and the rail carriers involved.
- Approvals issued by FRA will only be applicable to movements of defective packagings by rail within the United States. Authorized movement of defective packagings in Canada requires the issuance of an "temporary certificate" from the appropriate representatives of Transport Canada. The requestor will need to coordinate their request and obtain corresponding approval from Transport Canada. Movements of defective packagings across the border to or from Mexico will require the requestor to coordinate with the appropriate Mexican agency representatives.
- Verbal movement approvals can be requested, and FRA may grant a verbal approval when circumstances and situations warrant. See the verbal movement approval process in Section 9.4 of this chapter for more detailed information on the process.

9.4 Movement Approval Process

The movement approval process, per 49 CFR § 174.50, is administered and maintained by the headquarters staff of the Hazardous Materials Division in the Office of Safety Assurance and Compliance in Washington, DC, with the assistance of the various hazmat specialists and inspectors in the field.

9.4.1 Written Approvals

The process for a written approval is as follows:

9.4.1.1 Evaluating Applications

- Approval requests are received from the industry. FRA does not stipulate who should request the approval. However, requests must include sufficient information so that the headquarters hazmat staffer can effectively evaluate the request and determine if the defective packaging can be moved safely. It is preferred, but not required, that the submission of this information is provided using a movement approval request document, which can be downloaded at http://www.fra.dot.gov/Pages/1799.shtml. This document should be completed and sent by email or fax.
- Once a request is initially determined to be required in accordance with 49 CFR § 174.50, a sequential approval number is automatically assigned by entering the approval request information into the One-Time Movement (OTM) database. An approval number consists of the letters "FRA" followed by a dash and an eight-digit number. The first two numbers being the year; the second two, the month; and the last four, the sequentially assigned number that begins with "0001" at the start of each calendar year. (All FRA regional HM specialists have access to the hazmat OTM database.)
- The assigned HM Division staff member handling the application conducts a thorough review and evaluation of the submittal in order to determine if movement can be accomplished safely. If the movement can be accomplished safely, then the approval is issued with all conditions determined to be necessary to ensure safe movement. This review may include consideration of a requestor's past history in complying with previously issued movement approvals.
- The assigned specialist coordinates, as needed, with the requestor to obtain any additional information in order to effectively evaluate the nature and severity of the defective condition as identified in the request. Failure to respond to requests may result in denial of the application.
- To the extent necessary and practicable, the assigned specialist coordinates with the appropriate representatives of the rail carriers who will be transporting the defective bulk packaging in order to include them in the process and take any operational concerns they may have into consideration during the evaluation process. Additionally, the assigned specialist coordinates with the car owner, as appropriate, to ensure awareness of the problem.

- Depending on the nature and severity of the defective condition, specialists may request, through the regional hazmat specialist, that a hazmat field inspector conduct a field observation of the packaging, and provide feedback that may assist in the movement approval evaluation process.
- If, upon evaluation, it is determined that an approval is to be issued, the assigned specialist drafts the approval, signs it, and provides a signed approval to the applicant by email or fax.
- The processor ensures that all appropriate FRA regional HM specialists, who may be affected by or have a need to know of the movement of the packaging under the issued approval, are provided with a copy of the approval and the approval request documentation by either email or fax.
- Regional HM specialists review each movement approval sent to them to determine what followup action, if any, is warranted based on the nature of the noncompliance issue and the conditions, as stated in the approval.

9.4.1.2 Structural Issues

- Specialists processing applications must consult with a headquarters Hazardous Materials Division engineer when the defect requiring the movement approval involves the structural integrity of the tank car tank that could affect the tank car tank. These include, but are not limited to, the stub sill, head brace, reinforcing bars, and pad to tank welds. On other components, such as service equipment, the HM staff handling the approval request will use discretion in determining whether an engineering consultation is necessary.
- Headquarters engineers will evaluate the integrity of the tank and provide the specialist with any conditions necessary to ensure a safe movement. If the engineer deems that movement of the tank car on its own wheels cannot be made safely, the assigned specialist shall deny the application unless the equipment can be loaded and secured on other rail equipment.
- When the structural integrity is in question, the regional staff shall also be consulted with in order to ensure that the proper conditions are met to ensure safe movement of the tank car.

9.4.1.3 Coordination with Additional Disciplines

- If necessary, the approval processor coordinates with the appropriate Motive Power and Equipment (MP&E) Division specialists if a tank car also has mechanical noncompliance issues that will not or cannot be repaired before movement. Coordination is to be made with headquarters MP&E staff if car movement is interregional (involves more than one FRA region) and with the appropriate regional MP&E specialist if car movement is intraregional (within a single FRA region). This may result in a separate MP&E one-time move being issued or the issuance of a joint approval under the hazmat approval process.

- Coordination with MP&E personnel is not required if the tank car is loaded onto and secured to a mechanically compliant flatcar or into a mechanically compliant gondola car, regardless of whether the tank car meets the mechanical regulations.

9.4.2 Verbal Approvals

A verbal movement approval can be requested and may be granted for emergency situations where 49 CFR § 174.50 applies and the movement is outside the scope of the regulations for short movements. Generally, the reason for verbally granting approvals is to prevent serious harm to the public and the environment. The process for requesting a verbal approval is as follows:

- During regular work hours (Monday–Friday, 8 a.m. to 5 p.m. EST), verbal movement approvals may be requested by contacting the FRA Hazardous Materials Division in Washington, DC, either by telephone or electronically.
- After normal work hours, verbal movement approvals may be requested by contacting the National Response Center (NRC) at (800) 424-8802, and notifying the NRC watchstander that emergency processing of a movement approval is needed.

  The NRC watchstander will notify either the Director, Office of Safety Assurance and Compliance, or another authorized representative of the Hazardous Materials Division, who will discuss the request with the applicant.

  If the car is not leaking and the requested move is no further than 25 miles, the specialist for the region in which the car is located is authorized to verbally grant the approval.
- The requestor should be prepared to provide basic information, i.e., product involved, type of bulk packaging/railcar, brief summary of the situation and reasons for needing a verbal approval.
- FRA will evaluate the request and the need for a verbal approval. If warranted, the hazmat representative shall verbally authorize movement, with operational conditions if determined to be necessary for safe movement. If approved, the applicant shall be issued an identifying number for tracking purposes that is structured "FRA-YY/MM/DD/R_/V" (where YY=Year, MM=Month, DD=Date, R=Region involved, and V=Verbal).
- A written approval request shall still be submitted to FRA in accordance with the written approval process as soon as is reasonably possible, but no later than 2 days after the granting of the verbal approval.

9.5 Root Cause Analysis Reports

A root cause analysis (RCA) is a vital component in efforts to achieve FRA's goal of eliminating non-accident releases. Currently, we can identify components in which defects are encountered with the highest frequency. Without determining the root cause, the defects cannot be adequately addressed. To this end, the following procedures are provided to guide FRA personnel in requesting, evaluating, and processing root cause analysis reports.

9.5.1 Requirements for Requesting and Submitting an RCA

The reporting requirements of the OTMA are found in Section 9 of the signed approval. An RCA report will be required for all non-accident related defects in valves and fittings and their appurtenances, lining and coating failures, cracks and holes in tanks, attachment welds to the tank and tank pads, and sill failures (separations and cracks greater than 6 inches in the parent metal).

- The words "root cause analysis" will be used in the reporting requirements. The form contains the basic guidelines for the content.

- The RCA must be submitted 90 days from the date the OTMA is issued. The grantee may request extension of this deadline but must provide justification. The maximum extension will be 90 days.

- Grantees will be instructed to submit the RCA to the HM Division group mailbox (HMASSIST@dot.gov). In the case where an engineer evaluated the request, that engineer must be copied on the email. If the submission is to be via regular mail, the RCA must be submitted to the Staff Director, with the engineer copied.

9.5.2 Review of Submitted Analyses

HM Engineers are responsible for RCA evaluation. The following minimum content requirements comprise and acceptable RCA:

- A detailed statement of the problem.
    - This should include basic information such as the tank car number, the location of defect on tank car, the make and model of component, the description of the defect, and a detailed statement of the problem.

- Factor(s) contributing to the problem.
    - This should include a narrative of the investigation and findings supported by inspection reports, photographs, and drawings.

- The cause of the factor(s), if a cause can be determined.
    - This should tie the stated defect/problem to the findings in a logical manner.

- Steps taken to prevent future occurrence.
    - Based on the findings and conclusions of the investigation, this section should describe the steps taken to modify operational or inspection steps to prevent reoccurrence.

If the minimum content requirements are not met, the engineer will request additional information to satisfy the requirements. Failure to respond may constitute nonreporting and could result in denial of future applications or penalty action.

9.6 File Closure

Once the grantee has satisfied the requirements of the application, the file shall be considered closed. When the approval requires a root cause analysis, the reviewing engineer will save all related information to the database in the respective file for the assigned OTMA number. The engineer will submit a comment describing the root cause and insert the final approval date in the response received field in the database.

APPENDIX A
HAZARDOUS MATERIALS GUIDANCE DOCUMENTS

Hazardous Materials Notice

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
1200 New Jersey Avenue SE, Washington, DC 20590

Issue Date:	HM Notice Number: HM-101
Revision: 1	49 CFR Section(s) Affected: 174.50
Page: 1 of 1	Key Words: Movement approval process, bulk package
Approved: Ron Hynes	

RESCINDED: See Appendix I to the Compliance Manual

Hazardous Materials Notice

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
1200 New Jersey Avenue SE, Washington, DC 20590

Issue Date:	HM Notice Number: HM-102
Revision: 1	49 CFR Section(s) Affected: 174.50
Page: 1 of 1	Key Words: Movement approvals, valve defects, presumed approval
Approved: Ron Hynes	

RESCINDED: See Appendix I

Hazardous Materials Guidance

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
1200 New Jersey Avenue SE, Washington, DC 20590

Issue Date: May 1, 2011	HM Guidance Number: HMG-103
Revision: 2	49 CFR Section(s) Affected: 174.85
Page: 1 of 5	Key Words: Train placement, special equipped cars, tie-down, vehicles
Approved: Ron Hynes	

Summary:

The purpose of this Hazardous Materials Guidance is to clarify the train placement rules in 49 CFR § 174.85 that allow "specially equipped cars with tie-down devices for securing vehicles" to be entrained next to placarded rail cars transporting Division 1.1 and 1.2 materials and loaded, placarded tank cars.

Discussion:

The interpretation of the train placement regulations has become an issue due to the various TTX Company (formerly known as Trailer Train Corporation) specially-equipped flatcars that are now in service.

TTX Company owns a fleet of approximately 95,000 flatcars for assorted service requirements. While most TTX Company cars are used for TOFC/COFC service, there are many specially-equipped type flatcars which, if placed next to loaded placarded tank cars, will not comply with the train placement requirements of 49 CFR § 174.85.

The provisions of § 174.85(d), Restrictions (3) and (4), specify the requirements for placing hazardous materials (HM) tank cars next to flat cars with shiftable loads. The regulation states:

> (d) Position of rail cars in a train. In the following table:
>
> 3. A placarded car may not be placed next to an open-top car when any of the lading in the open car protrudes beyond the car ends, or if the lading shifted, would protrude beyond the car ends...
>
> 4. A placarded car may not be placed next to a loaded flat car, except closed TOFC/COFC equipment, auto carriers, and other specially equipped cars with tie- down devices for securing vehicles. Permanent bulk head flat cars are considered the same as open top cars.

This guidance includes a table explaining the various types of TTX owned equipment. This car owner uses the reporting marks to designate features of a particular car type. For instance, cars with reporting marks HTTX, ITTX, OTTX, and TTDX are open flatcars equipped with chain tie-downs for particular types of equipment. When used as designed, they may be entrained next to a loaded placarded tank car in compliance with § 174.85. Similarly, cars with reporting marks ETTX, TTBX, TTGX, TTQX, and TTSX are flat cars with autoracks; when used as designed, they, too, may be placed in a train next to a loaded placarded tank car. Cars with the reporting marks PTTX, TTJX, TTPX, and TTZX are rigid bulkhead flatcars. They are not in violation if placed next to a loaded placarded tank car provided they are not loaded above the top of the bulkhead with a shiftable load.

The flatcars pictured on the last page bear the reporting mark FTTX. These are specially-equipped flatcars for handling auto and truck frames, as pictured. These cars are not equipped with tie-downs for securing *vehicles*, but only parts of vehicles. They do not meet the requirements of § 174.85(d), Restriction (4), and placing them in a train next to a loaded placarded tank car is a violation of the HMR (the hazardous materials regulations).

INDEX BY REPORTING MARKS
(Figure 1)

No.	Reporting Mark	General Description of Car
1	ATTX	75 foot, all purpose flatcar (Center and side tie-downs)
2	BTTX	2-unit articulated standard level autorack car
3	DTTX	Five platform articulated well type COFC cars capable of carrying double-stacked containers and single, 3-unit and 4-unit all purpose (COFC-TOFC) double stack, well cars
4	ETTX	Low-level flatcar equipped with totally enclosed tri-level auto rack. (hydraulic draft gears)
5	FTTX	Flatcar equipped with tie-down devices for loading automotive or truck frames
6	GTTX	Low-level and standard-level cars in transit for the application of autorack
7	HTTX	Flatcar equipped with thirty-eight (38) heavy-duty chains, with snubbers and turnbuckles, each secured to movable and retractable tie-down winches in four (4) longitudinal channels for transporting large earth moving equipment.
8	ITTX	Flatcar equipped with special foldaway pedestals and thirty-two (32) tie-down winches with chains and bridge plates for transporting trailer tractors saddleback style
9	JTTX	Flatcar with miscellaneous devices applied by lessee for special service
10	KTTX	“Twin-45" standard-level flatcar with fixed hitches on ends of car for handling two (2) 45'

		trailers, (overhead loading only)
11	MTTX	60 foot flatcar with stake pockets for general service, or 85 foot flatcar with sixteen (16) stake pockets, eight (8) per side for transporting long pipe
12	NTTX	5-unit articulated COFC car for transporting containers (spine car)
13	OTTX	Flatcar equipped with thirty-six (36) chains, with snubbers each secured to movable and retractable tie-down winches in four (4) longitudinal channels, for transporting agricultural equipment
14	PTTX	Flatcar equipped with bulkheads, spaced 48 feet, 6 inches apart for transporting plywood, wallboard, etc.
15	QTTX	Heavy duty flat deck and depressed deck flatcar
16	RTTX	“Twin-45/Triple-28" - standard-level flatcar with fixed hitches on ends of car and retractable hitch at center of car for handling two 45' or three 28' trailers. Overhead loading only (standard draft gears) 2-unit RTTX car - same as above except 2-units semi-permanently connected with a drawbar
17	STTX	“Twin-45" standard level flatcar for handling two (2) 45' trailers equipped with sliding bridge plates for circus style loading
18	TTAX	All purpose spine car for TOFC/COFC service
19	TTBX	Flatcar equipped with bi-level autorack. Rack can be either open or shielded on the sides, but does not have roof or doors
20	TTCX	Flatcar equipped with container pedestals for COFC service (hydraulic draft gears)
21	TTDX	Flatcar equipped with sixteen (16) tie-down winches with chains and bridge plates for transporting military vehicles
22	TTEX	2-unit TOFC car for hauling 4-45' or 3-57' trailers (sill above cars only) or up to 3-57' trailers (flush deck cars only) overhead loading only
23	TTFX	Four platform TOFC car capable of carrying four 45' trailers overhead loading only
24	TTGX	Flatcar equipped with totally enclosed bi-level autorack
25	TTHX	60 foot flatcar equipped with eighteen (18) heavy-duty chains anchored to stake pocket castings
26	TTJX	68 foot 100 ton flatcar equipped with twenty-two (22) screw type tie-down devices and stake pockets. Some cars are finger rack, rebar, coil, or shape and plate cars
27	Reserved	
28	TTLX	Five platform articulated TOFC car capable of carrying one trailer per platform 40' to 48' long and up to 102" wide with front mounted refrigeration unit. Overhead loading only, Same as UTTX cars
29	TTMX	68 foot 100 ton flatcar equipped with stake pockets and lading strap anchors for general service
30	TTOX	Single platform TOFC car with single axle trucks capable of carrying one trailer 40' to 48' long and up to 102" wide with nose mounted refrigeration unit overhead loading only

31	TTPX	68 foot 100 ton flatcar equipped with bulkheads, spaced to 60'6" to 62'0" apart, and thirty-four (34) transverse tie-down anchors with chains, used for transporting plywood, wallboard, etc.
32	TTQX	Low-level flatcar equipped with totally enclosed autorack. Autorack height - 20'2". (hydraulic draft gears)
33	TTRX	3 unit articulated flatcar
34	TTSX	Flatcar equipped with coverless enclosed bi-level autorack (hydraulic draft gears)
35	TTWX	“Twin-45" standard level flatcar equipped with foldaway container pedestals and hitches for TOFC and/or COFC service (hydraulic draft gears)
36	TTX	Flatcar equipped with two (2) hitches for TOFC service
37	TTZX	100 and 110 ton bulkhead car equipped with center partition and winch type tie-down system for carrying lumber products. 110 ton cars equipped with stake pockets
38	UTTX	Five platform articulated TOFC car capable of carrying one trailer per platform 40' to 48' long and up to 102" wide with front mounted refrigeration unit. Overhead loading only, Same as TTLX cars
39	VTTX	Flatcar equipped with fixed container pedestals for COFC service only
40	WTTX	“Twin-45" standard level flatcar equipped with two (2) hitches for TOFC service
41	ZTTX	Flatcar equipped with thirty (30) stake pockets for transporting long poles and pipes

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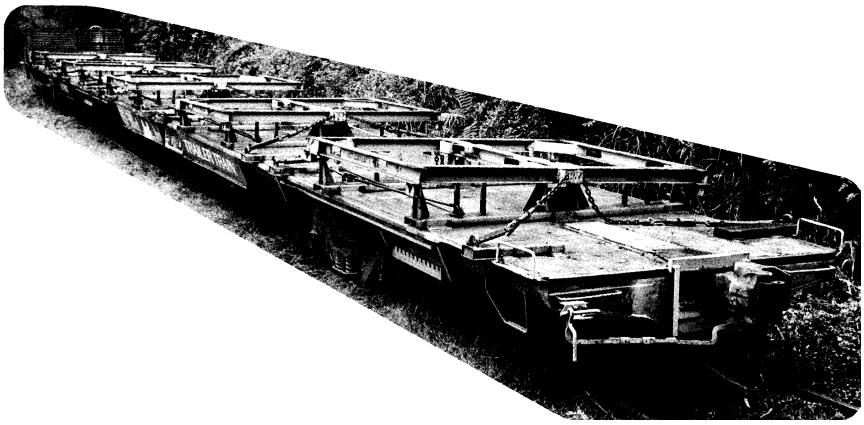

Hazardous Materials Guidance

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
1200 New Jersey Avenue SE, Washington, DC 20590

Issue Date: May 1, 2011	HM Guidance Number: HMG-104
Revision: 2	49 CFR Section(s) Affected: (Examples) 172.102, 173.22, -.22a, -.24, -.31(b)(1), -.240(a), 174.67, and -.85
Page: 1 of 2	Key Words: tank car, covered hopper car, pressure differential car.
Approved: Ron Hynes	

Summary:

The purpose of this Guidance is to clarify issues surrounding AAR (Association of American Railroads) Class 207 cars. NOTE: This guidance annuls and replaces former HM-09 and HM-94-06.

Discussion:

Until 1996, AAR 207 cars were listed in the Tank Car Manual[1] as tank cars. From then on, they were reclassified as "pressure differential covered hoppers." Following the 1996 revisions to the Tank Car Manual, AAR petitioned RSPA (Research and Special Programs Administration) to amend the "B" code Special Provisions (49 CFR § 172.102(c)(3)) to amend the wording for B59 to accommodate the reclassification. RSPA agreed and, effective January 1, 1997, the "B" code reads:

> B59 Water-tight, sift-proof, closed-top, metal-covered hopper cars are also authorized provided that the lading is covered with a nitrogen blanket.

Special provision codes[2] appear in column 7 of the hazardous materials table[3] and contain packaging provisions, prohibitions, exceptions from requirements for particular quantities or forms of materials, and requirements or prohibitions applicable to specific modes of transportation. "Special provisions" include multi-modal codes (numbers only), air transportation codes ("A" codes), bulk packaging requirements, ("B" codes), highway transportation codes ("H" codes), non-bulk packaging requirements ("N" codes), rail

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[1] Formally, the *Manual of Standards and Recommended Practices,* Section C - Part III, Specifications for Tank Cars, Specification, M-1002, ¶3.4, (AAR.400), © Association of American Railroads, Washington, DC, incorporated by reference 49 CFR § 171.7(a)(3).

[2] See 49 CFR § 172.102, generally.

[3] 49 CFR § 171.101.

transportation codes (“R” codes), IM portable tank codes (“T” codes), and water transportation codes (“W” codes).
AAR Class 207 cars are authorized to transport bulk solid dangerous chemicals listed in the hazardous materials table with the B59 special provision. Examples include calcium carbide and phosphorous pentasulfide. AAR 207 cars are designed to accept a minimum internal pressure of 15 psig (103kPa) and are used to carry granular commodities, both hazardous and non-hazardous, that are unloaded pneumatically. These cars can be constructed of carbon steel (AAR 207A***W), aluminum (AAR207A***ALW), and alloy steel (AAR207A***W6).

Because these cars are not tank cars, they are not required to have shelf couplers under 49 CFR § 173.31(b)(1), and the provisions for unloading tank cars at § 174.67 do not apply. However, when placarded for Group 2 materials, Class 207 cars are subject to the train placement requirements of § 174.85, and the packaging requirements at §§ 173.24, and 173.24b continue to apply.

Inspectors and others with safety interests are advised that AAR 207 cars containing hazardous materials should be inspected like any other similarly loaded bulk conveyance: the hazardous materials regulations on registration, shipping papers, placarding, emergency response information, training, and transportation should be considered when inspecting an AAR 207 covered hopper car.

This guidance annuls and replaces former HM-09 and HM-94-06.

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Hazardous Materials Guidance

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
1200 New Jersey Avenue SE, Washington, DC 20590

Issue Date: May 1, 2011	HM Guidance Number: HMG-105
Revision: 2	49 CFR Section(s) Affected: 172.704, and new 172.800, 172.802, and 172.804
Page: 1 of 4	Key Words: Inspection, Security, Training, Plans
Approved: Ron Hynes	

Summary: This Hazardous Materials Guidance discusses the inspection and enforcement requirements for hazardous materials security plans and training required by the Pipeline and Hazardous Materials Administration's final rule in docket HM-232[1]. This HMG also provides contact personnel who are responsible for the various security plans and reiterates the question and answers which were contained in the original guidance document.

Enforcement Activity: Docket HM-232 has been in effect for over two years with consideration provided to the carriers to develop and implement their security plans and train their employees. Regional and headquarters HM specialists have inspected all Class 1 carrier plans. This was done to alleviate the burden on the carriers from having multiple inspectors contacting the carriers and inspecting at various times utilizing considerable FRA and carrier resources.

During elevated threat levels, inspectors can expect to see a variety of security safeguards in place enhancing security from lesser threat levels. Depending on the carrier, inspectors can expect to see heightened security measures such as employees displaying identification badges (contractor personnel may or may not have railroad ID badges).

On Class 1 railroads inspectors should not expect to see security plans or employee training records. An inspector may report on activities addressed in the previous paragraph during elevated threat levels. When threat levels have escalated an inspector may ask a carrier official if what the inspector observes is required by the security plan. For example, if an inspector observes employees displaying their company identification badges that are not normally exposed during lower threat levels, an inspector may ask the carrier official if this display is required by their security plan. If so and an inspector later observes employees not displaying their identification then the inspector will respond with appropriate action. As information, lists of security measures taken by each company during elevated threat levels have not and will not be compiled by headquarters or regional specialists for obvious security reasons.

[1] RSPA Docket No. RSPA–02–12064, 68 FR 14510.

Questions or concerns about security on the Class 1 railroads may be addressed with regional specialists or Washington headquarters. Immediate concerns can be raised directly with the Class 1 carriers by contacting Mr. Ray Kasey who will coordinate with the appropriate railroad official.

Future inspections of Class 1 railroads' security plans will rest with the specialist in whose territory the Class 1 has its headquarters, and assisted by one or more specialists, preferably those who have that carrier operating in their region.[2]

Inspectors will inspect security plans of regional and short line railroads to determine compliance with the regulations in 49 CFR Part 172, Subparts H and I. It is recommended that regional and short line carriers be inspected in the same manner as the Class 1s; if the regional carrier operates in more than a single region then one or more inspectors from each of the regions conduct the inspection. This allows both regions the opportunity to view the plan as well as ensure a more thorough inspection. Short line carriers operating within a single region should also have at least two inspectors examining the plan.

Inspection at shipper facilities may differ for a fixed facility but must still have elements concerning "enroute" security. Many shippers do not feel enroute security is their problem.
Enroute security should address the steps taken and what agreement, understanding, cooperation, or work that's been done with their carriers to ensure enroute security has been adequately covered. Many shippers do not cover rail transportation. A question to ask is "Does the railroad have a key to your gate and do you monitor their entrance and exit?" Another part of their security plan can include use of a wrench to tighten plugs (further enhanced with seals) can be the first line of defense for enroute security.

FRA does not view a security plan as a monolithic document. At its broadest, a security plan includes "an assessment of possible transportation security risks" and "appropriate measures to address the assessed risks."[3] Just as the regulation contemplates that risks will vary over time and depending on the threat level, so it is obvious that risks and the measures to address them will vary with the particular facility involved: Movements of combustible liquids from a remote terminal far from a population center present different risks from movements of poison gases in or near an incorporated area.

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[2] "If everybody sees "the plan", then there isn't one" as stated by an unnamed NS source.

[3] 49 CFR 172.802(a).

FRA believes that an entity's full security plan will be made up of an overall broad-scope plan and one or more smaller-scope plans relevant to the risks attendant at each operating facility. Portions of the overall plan might not be relevant to a particular operating facility. For example, if a corporation elects to handle personnel security on a unified basis, there is no need for the operating facility to have any portion of the security plan related to that issue. Similarly, if a corporation elects to make the details of its risk assessment part of the "master" plan, the operating facility's security plan addressing, among other things, unauthorized access and en route security, need not contain the threat level evaluation/risk assessment details that are behind the working-level implementing details.

The requirement that "copies 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 requirements and a demonstrated need to know."[4] In most cases only top-level carrier officials will have access to the plan.

In responding to PHMSA's rulemaking proposal, several commenters expressed concern about the possibility that security plans might become publicly available. One major railroad stated, "It is critical that carrier and shipper plans remain confidential; not subject to public disclosure and Freedom of Information Act requests." Commenters were particularly concerned about plans that might be obtained by enforcement personnel during a compliance inspection. Accordingly, FRA will not collect or retain security plans on a routine or general basis. In the rare instance where FRA enforcement personnel must copy a plan, or a limited portion of it, first, they will copy no more of the plan than is necessary to sustain the violation and, second, FRA's long-standing policy, in compliance with FOIA, is that information in a violation file is not released until the case is closed. Prior to submission of a security plan to FRA in these unusual instances, companies should follow the procedures described in both 49 CFR 105.30 (because the rule was promulgated by PHMSA) and 209.11 (because the rule is being enforced by FRA) for requesting confidentiality. Under those procedures, a company should identify and mark the information it believes is confidential and explain why. Inspectors should consult with their Specialists who will make an initial determination about the necessity for copying a portion of the plan. If the Specialist agrees with the Inspector about the need for copying, the Specialist should refer these matters to the Hazardous Materials Division at Headquarters who will, with the Specialist and Inspector, coordinate with the Office of Chief Counsel to reach a decision. Field personnel should note that the Office of Chief Counsel has the final say about what documentation is necessary to sustain a violation.

When noting any non-compliance of security regulations care should be taken to ensure the proper company is noted. For instance, many railroads lease or subcontract functions such as their intermodal facilities and may, by contract, require those

[4] 49 CFR 172.802(b).

companies to have their own plans which would then release the railroad from their security obligation on that location.

Activity Reporting: Railroad safety inspectors, railroad safety specialists, and state participants should record inspection activities concerning review of security plans using the inspection task code 172I in the RISPC program. Each plan constitutes a separate unit and the total units should be recorded. In addition, inspection activities concerning security training should be recorded using the inspection task code 172X in the RISPC program. Each training record (employee record) reviewed constitutes a separate unit and the total units should be recorded. Both of these inspection tasks are appropriate for the eight location codes. If the HM training records are inspected at the same time as security training records, codes 172H and 172X should both be used. Because it is FRA's policy to examine security plans at designated locations, the appropriate location code should reflect the city and state where the actual inspection occurred.

Enforcement Policy: PHMSA's website (http://hazmat.dot.gov) contains additional guidance for persons seeking to comply with the new hazardous materials security requirements. The security regulations are now fully effective. Inspectors should conduct inspections applicable to the guidelines in this document. This is in line with previous enforcement policies adopted after other significant changes to the regulations.

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Hazardous Materials Guidance

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
1200 New Jersey Avenue SE, Washington, DC 20590

Issue Date:	HM Guidance Number: HMG-106
Revision: 1	49 CFR Section(s) Affected: None
Page: 1 of 1	Key Words: Seals, seal replacement, security
Approved: Ron Hynes	

RESCINDED: See Chapter 5

Hazardous Materials Guidance

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
1200 New Jersey Avenue SE, Washington, DC 20590

Issue Date:	HM Guidance Number: HMG-107
Revision: 1	49 CFR Section(s) Affected: 172.101, 172.310, 172.403, and 173 Subpart I "Radioactive Materials"
Page: 1 of 1	Key Words: Radioactive materials, IAETA TS-R-1
Approved: Ron Hynes	

RESCINDED: Now incorporated into the regulations.

Hazardous Materials Guidance

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
1200 New Jersey Avenue SE, Washington, DC 20590

Issue Date: May 1, 2011	HM Guidance Number: HMG-108
Revision: 1	49 CFR Section(s) Affected: 171.1, 171.8, 173.31, 174.67
Page: 1 of 4	Key Words: Loading, Unloading, and Storage
Approved: Ron Hynes	

Summary:

The purpose of this Hazardous Materials Guidance Document is to explain several changes, effective June 1, 2005, to the hazardous materials regulations (HMR) concerning tank car loading, unloading, and storage.

Discussion:

On October 30, 2003, the Research and Special Programs Administration (RSPA), predecessor agency to the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a Final Rule under Docket HM 223, entitled, "Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage." 68 FR 61906. This final rule was intended to clarify the applicability of the HMR to functions and activities related to the safe and secure transportation of hazardous materials, including loading, unloading, and storage operations. The changes to the final rule were delayed pending appeals, and on April 15, 2005, PHMSA published a final rule responding to the appeals. 70 FR 20018. This final rule became effective June 1, 2005.

General Definitions:

(1) **Transportation:** The movement of property, and loading, unloading, or storage incidental to the movement. In the preamble to the rule, RSPA explains that transportation in commerce begins when a carrier takes physical possession of a hazardous material for the purpose of transport and it continues until delivery to destination. (§ 171.8)

(2) **Movement:** The physical transfer of a hazardous material from one location to another by rail car, etc. (§ 171.8)

(3) **Regulated Functions:** Those activities related to design, manufacture, and qualification of packaging for use in the transportation of hazardous materials. Regulated functions also include pre-transportation functions and transportation functions. (§ 171.1(a), (b), & (c))

(4) **Non-regulated Functions (Functions not subject to the HMR):** Non-regulated functions include (1) Storage of a freight container, transport vehicle (e.g., rail car), or package containing a hazardous material (a) at an offeror facility prior to a carrier taking possession of the hazardous

material or (b) after delivery by a carrier to the end destination indicated on a shipping document; (2) unloading of a hazardous material from a transport vehicle or bulk packaging performed by consignee personnel following delivery of the hazardous material to its end destination; (3) Non-regulated functions also include activities such as rail and motor vehicle movements of hazardous materials solely within a facility and restricted from public access; and transportation by Federal, state, or local governments solely for non-commercial governmental purposes; and by an individual for non-commercial purposes in a private motor vehicle. Finally, any activity subject to U.S. postal laws and regulations is beyond the scope of the HMR. (§ 171.1(d))

(5) **Pre-transportation Functions:** Functions performed in advance of transportation that are required to assure the safe transportation of a hazardous material in commerce. For example, these functions include determining the hazard class of a material, preparing a shipping paper, filling a packaging, and marking, labeling, and placarding. (§§ 171.1(b) & 171.8) A more extensive list of "pre-transportation" functions is found in the definition of the term at § 171.8.

(6) **Transportation Functions:** Functions, in addition to movement that are considered to be "incidental" to such movement, including:

- **Loading incidental to movement:** Loading, by carrier personnel or in the presence of carrier personnel, of a packaged or containerized hazardous material into a transport vehicle, including blocking and bracing and segregation, for the purpose of transporting the hazardous material. For bulk packaging, loading incidental to movement includes filling the packaging with a hazardous material for the purpose of transportation. (§§ 171.1 (c)(2) & 171.8) (Note: OSHA may share jurisdiction with DOT for certain aspects of loading incidental to movement.)

  Illustration I: In the presence of carrier personnel, a package or containerized shipment of hazardous material is loaded onto a rail car or other transport vehicle.

  Illustration II: Carrier personnel load a package or containerized shipment of hazardous material onto a rail car or other transport vehicle.

  Illustration III: The filling of a **bulk packaging** with a hazardous material by carrier personnel or in the presence of carrier personnel for the purpose of transport.

- **Unloading incidental to movement:** The removal, by carrier personnel or in the presence of carrier personnel, of a packaged or containerized hazardous material from a transport vehicle or the emptying of a bulk package after its delivery to the consignee. (§§ 171.1 (c)(3) & 171.8)) (Note: OSHA may share jurisdiction with DOT for certain aspects of unloading incidental to movement.)

  Illustration I: A consignee performing unloading on consignee property after the delivering carrier has departed the facility is not considered unloading incidental to movement; therefore this function is not regulated under the HMR (except for the 173.31(g) requirements described below).

- **Storage incidental to movement:** Temporary storage of a transport vehicle, freight container, or package containing a hazardous material that takes place between the time that a carrier takes possession of the hazardous material for the purpose of transporting it until the package reaches destination indicated on the shipping document. (§§ 171.1(c)(4) & 171.8)

  Illustration I: The temporary holding of a package containing a hazardous material at a motor carrier terminal for consolidation purposes is considered storage incidental to movement and is, therefore, subject to the HMR.

  Illustration II: The temporary holding of a package, freight container, rail car, or other instrument of containment of a hazardous material at a marine terminal awaiting loading onto vessel or prior to movement by rail or highway is considered storage incidental to movement and is, therefore, subject to the HMR.

  Illustration III: The holding of a freight container or trailer at a carrier's intermodal container transfer center is considered storage incidental to movement and is, therefore, subject to the HMR.

FRA Hazardous Materials Inspector's Duty: During loading, unloading and storage incidental to movement, the hazardous materials are in transportation, and all of the HMR apply, including the requirements for shipping papers, and emergency response information.

- **Transloading:** The transfer of a hazardous material from one bulk packaging to another, from a bulk packaging to a non-bulk packaging, or from a non-bulk packaging to a bulk packaging for purposes of continuing the movement of the hazardous material in commerce. (§ 171.8) a Section 174.67 is now applicable to transloading operations only. Some form of attendance/monitoring is required for the transloading process.

FRA Hazardous Materials Inspector's Duty: During transloading, FRA HM inspectors will inspect for attendance/monitoring of the transloading process, and for the presence of caution signs, application of a sufficient number of handbrakes, and wheels appropriately chocked. Remember, these requirements affect the safety of rail carrier personnel.

- **Unloading/Loading (at consignee/shipper facility):** Tank car unloading and loading operations, as they impact railroad crews, are now regulated under § 173.31(g) which requires securing access to the unloading track, placing caution signs, and setting hand brakes, all of which must be done before unsecuring any closure. The stated purpose of these requirements is to protect the tank car against movement or coupling. Because this new section pertains to both loading and unloading, it is now in Part 173, the traditional "shipper's requirements."

***FRA Hazardous Materials Inspector's Duty*:**
Unloading Operations At Consignee Facility: Attendance/Monitoring No Longer Required
Under the revised regulations, the unloading of rail tank cars at a consignee facility directly into a manufacturing process is considered a part of the manufacturing process and not a transportation process. In accordance with the new § 173.31(g), attendance/monitoring is no longer required for such unloading operations, and FRA HM Inspectors will not inspect these operations for attendance. HM inspectors will, however, continue to inspect such unloading operations for the presence of caution signs, application of sufficient number of handbrakes, and wheels appropriately blocked, as required by § 173.31(g).

For both unloading and loading operations at a consignee facility, FRA HM inspectors will monitor for securing access to the track, placement of caution signs, and application of handbrakes.

Hazardous Materials Guidance

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
1200 New Jersey Avenue SE, Washington, DC 20590

Issue Date:	HM Guidance Number: HMG-109
Revision: 1	49 CFR Section(s) Affected: 173.31(b), (e) & (f)
Page: 1 of 1	Key Words: tank car(s); safety systems; PIH materials; hazardous substances
Approved: Ron Hynes	

RESCINDED: Regulatory compliance time elapsed July 1, 2006

Hazardous Materials Guidance

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
1200 New Jersey Avenue SE, Washington, DC 20590

Issue Date: May 1, 2011	HM Guidance Number: HMG-110
Revision: 1	49 CFR Section(s) Affected:
Page: 1 of 2	Key Words: Fumigant, IMDG, International Transportation, Transport Documents, Marking
Approved: Ron Hynes	

Summary: The purpose of this HMG is to explain the requirements of fumigated containers received by rail carriers from ocean carriers.

Discussion: Questions continually arise concerning the application of the fumigant regulations in regard to documentation, training, and marking, especially on international shipments. The use of fumigants in containerized shipments into this country will significantly increase due to new EPA regulations.

The requirements of 49 CFR 173.9(f) state; “For international shipments, transport documents must indicate the date of fumigation, type and amount of fumigant used, and instructions for disposal of any residual fumigant, including fumigation devices.”

Similarly, Volume 1 of the International Maritime Dangerous Good Code, Chapter 5.5, Section 5.52; Documentation and identification of fumigated units, requires that transport documents associated with the transport of units that have been fumigated shall show the date of fumigation and the type and amount of the fumigant used. In addition, instructions for the disposal of any residual fumigant, including fumigation devices (if used) shall be provided.

Paragraph (b) of 49 CFR 173.9 states, “No person may offer for transportation or transport a rail car, freight container, truck body, or trailer in which the lading has been fumigated or treated with any material, or is undergoing fumigation, unless the FUMIGANT marking specified in paragraph (c) of this section is prominently displayed so that it can be seen by any person attempting to enter the interior of the transport vehicle or freight container. For domestic transportation, a hazard warning label authorized by EPA under 40 CFR part 156 may be used as an alternative to the FUMIGANT marking.” (EPA only provides a description of a label but no illustration.)

Paragraph (g) states, “Any person subject to the requirements of this section, solely due to the fumigated lading, must be informed of the requirements of this section and the safety precaution necessary to protect themselves and others in the event of an incident or accident involving the fumigated lading.”

Paragraph (h) states, “Any person who offers for transportation or transports a rail car, freight container, truck body or trailer that is subject to this subchapter solely because of the hazardous materials designation specified in paragraph (a) of this section is not subject to any other requirements of this subchapter.”

Shipping companies offering rail carriers containers which display the fumigated marking must provide the receiving rail carriers the shipping papers with the information required by paragraph (f) of the HMR and Section 5.52 of the IMDG.

The phrase “...must be informed...” in 49 CFR Part 173.9(g) means an offeror, receiver, and the employees subjected to the fumigated container should be notified of the fumigated container and dangers associated with the fumigation and safety precautions to be taken. Rail carriers have asked if the training requirements in 49 CFR 172.700 apply. The training regulations do not apply if paragraph 173.9(h) applies to the transport vehicle. For example; what is required if an ocean carrier offers a rail carrier a container loaded with furniture that has been fumigated? 1) Display of the fumigant marking with the appropriate entries, 2) notification to the receiving carrier of the entries on the shipping papers, and, 3) the safety precautions necessary to protect employees in the event of an incident or accident involving the fumigated lading.

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Hazardous Materials Guidance

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
1200 New Jersey Avenue, SE, Washington, DC 20590

Issue Date: May 1, 2011	HM Guidance Number: HMG-111
Revision: 1	49 CFR Section(s) Affected: 173.29
Page: 1 of 1	Key Words: Shipment of Hazardous Substances
Approved: Ronald Hynes	

Summary:

The following provides guidance regarding the Office of Safety's policy on the return shipments of a hazardous substance residue.

Discussion:

This memorandum provides FRA's interpretation and guidance for application of the hazardous materials regulations as they pertain to residue shipments of hazardous substances, as defined in 49 CFR 171.8.

When determining whether a residue shipment meets the definition of a Hazardous Substance, the following will apply:

A rail car that contains any material listed in Appendix A to the Hazardous Materials Table (or its mixture) in a quantity **greater than or equal to** its reportable quantity in one package, is subject to the requirements of the HMR.

A rail car that contains any material listed in Appendix A to the Hazardous Materials Table (or its mixture) in a quantity **less than** its reportable quantity in one package, and the material neither meets the criteria for any other hazard class in Part 173 of the HMR nor is a hazardous waste or a marine pollutant, is not subject to the requirements of the HMR.

The determination of whether the residue package contains a reportable quantity of a hazardous substance is the responsibility of the shipper. Generally, the shipper is not expected to actually measure the amount remaining after unloading (the heel) but can, in good faith, estimate it by using its knowledge of the material, the packaging, and the unloading method.

If a shipper elects to classify the materials as "Residue, last contained:.....RQ," it may do so even if it was unable to actually determine that the package contained an amount greater than or equal to the reportable quantity. If the shipper makes a good faith, reasonable determination about the presence or absence of a reportable quantity of a hazardous material, the shipper will be deemed to be in compliance

Hazardous Materials Guidance

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
1200 New Jersey Avenue SE, Washington, DC 20590

Issue Date: May 1, 2011	HM Guidance Number: HMG-112
Revision: 1	49 CFR Section(s) Affected: 174.85
Page: 1 of 1	Key Words: Locomotive-dead-in-tow
Approved: Ron Hynes	

Summary:

This Hazardous Materials Guidance document explains FRA interpretation of the terms locomotive “dead-in-tow” and “occupied caboose.”

Discussion:

A locomotive remains a locomotive regardless of operational status, running or not. The term “dead-in-tow” does not create an exception to the definition of engine or to the in-train placement regulations. Locomotive dead in tow, which is not part of the handling consist, must not be nearer than the second position from a placarded tank car or rail car in Placard Group I. This does not apply to the exclusions listed in 49 CFR 174.82 (a).

The purpose of a caboose is for occupation of non-passenger rail employees who are usually members of the train crew. “Occupied caboose” is a rail car in use to transport non-passenger railroad personnel. The term “occupied caboose” does not apply to a non-passenger using the end platform and steps of a placarded rail car to control the movement of a train.

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Hazardous Materials Guidance

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
1200 New Jersey Avenue SE, Washington, DC 20590

Issue Date: May 1, 2011	HM Guidance Number: HMG-113
Revision: 1	49 CFR Section(s) Affected:
Page: 1 of 1	Key Words: Luting Materials
Approved: Ron Hynes	

Summary:

The purpose of this Hazardous Materials Guidance Document is to define “Luting Materials.”

Discussion:

The etymology of the word “luting” is derived from the 14th century Middle English word luten meaning mud or to pollute. During the 15th century, the term was used to denote a cement like substance for packing a joint. On April 8, 1932, the term was introduced into the Federal regulations by the Interstate Commerce Commission (ICC) under Docket 3666. The new ICC rule was supported by comments received from the Bureau of Explosives in a conference held in New York City on December 14, 1932. The comments indicated that there was a need to limit the use of any material or substance on threaded pipe joints that would dissolve as a result of the action of the commodity being transported.

FRA has taken the position that luting material is any material which will react with the lading.

Lubricant is defined as a substance, as oil, grease, etc., for lessening friction, especially in the working parts of a mechanism. The use of lubricants is recommended and is permissible as long as the lubricant is compatible with the lading (provided it is not considered a luting material) and is used for making a tight threaded joint and prevention of excessive wear. Keep in mind that some petroleum based products are not compatible with chlorine, oxidizers, or organic peroxides.

Technological advances in joint efficiency led to the development of new materials, such as Teflon tape, or Teflon paste to ease the removal of threaded elements. Since Teflon is impervious to a substantial number of materials, it is unlikely that it would ever be considered a luting material. Therefore, in the course of inspection activity, inspectors are not to take exception to Teflon tape or paste provided they are compatible with the lading.

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Hazardous Materials Guidance

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
1200 New Jersey Avenue, SE, Washington, DC 20590

Issue Date: May 1, 2011	HM Guidance Number: HMG-114
Revision: 1	49 CFR Section(s) Affected: 172.336 and 172.504
Page: 1 of 2	Key Words: Multi-Compartmented, Placards
Approved: Ron Hynes	

Summary:

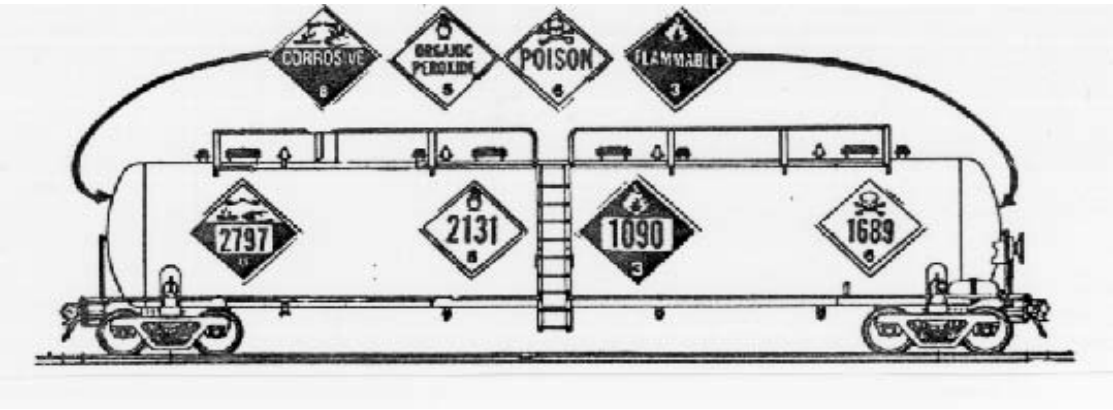
The purpose of this Hazardous Materials Guidance Document is to provide FRA's interpretation of 49 CFR §§ 172.336(c) and 172.504 as they pertain to the marking and placarding of multi-compartment and articulated tank cars.

Discussion: Multi-Compartmented Tank Cars

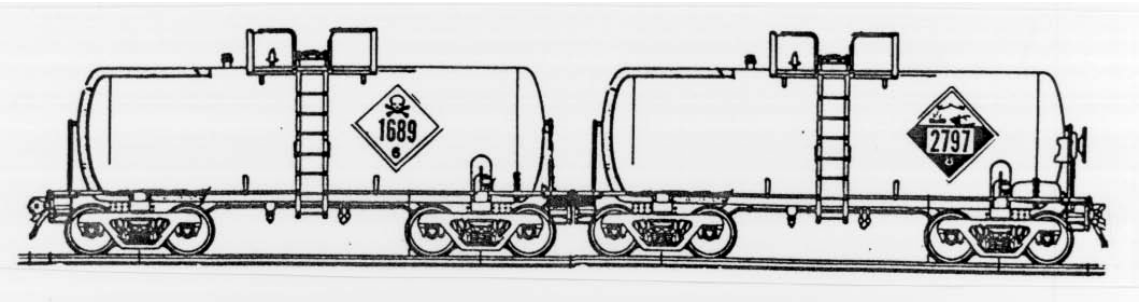
Each compartment of a multi-compartment tank car tank containing materials of different hazard classes must be marked in sequence with the appropriate identification number on each side. The identification number markings must be displayed on either the corresponding placard, an orange panel, or a white square-on-point configuration.

The ends of the compartmented car must display the corresponding placards associated with the product being transported, but there is no requirement that placards on the ends of such a car be in a particular sequence. In addition, the ends may display the appropriate identification number markings on either the appropriate placard, white square on point configuration, or orange panel. See Figure 1.

Articulated Tank Cars

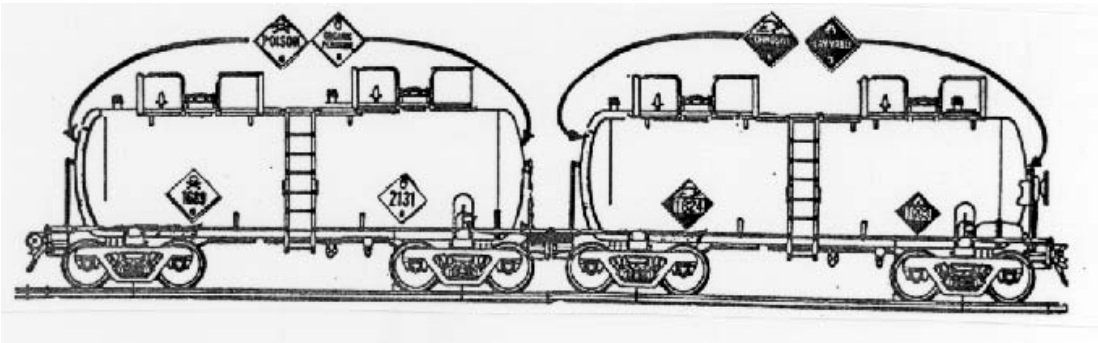


Each unit of an articulated tank car must be placarded on each side and each end with the appropriate placard and identification number marking, as though it were a single tank car. See Figure 2.



Compartmented Articulated Tank Cars

Each unit of a compartmented articulated tank car must be placarded and marked in the same manner as a compartmented tank car. See Figure 3.



Hazardous Materials Guidance

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
1200 New Jersey Avenue SE, Washington, DC 20590

Issue Date: May 1, 2011	HM Guidance Number: HMG-115
Revision: 1	49 CFR Section(s) Affected: 173.132
Page: 1 of 2	Key Words: Materials Poison by Inhalation
Approved: Ron Hynes	

Summary:

This Hazardous Materials Guidance document discusses the calculations that can be used to determine whether or not a material meets the poison-by-inhalation requirements of 49 CFR 173.132. As an illustration of these calculations, two material safety data sheets (MSDS) are analysed.

Discussion:

Chemical Company A ships a material under the proper shipping name "Corrosive Liquid NOS," which contains diamylamines. Chemical Company B ships an analogous material under the proper shipping name "Toxic liquids, organic n.o.s." which has similar characteristics to Chemical Company A's product. Based on the MSDSs supplied by the two manufacturers, the classification and proper shipping name of the two materials are determined as follows:

Chemical Company A

Based on Chemical Company A's MSDS, the LC_{50} value of diamylamine is 66 ppm (based on a 4-hour exposure). The 4-hour exposure may be used to determine an acceptable 1-hour exposure by multiplying the value by 2.

$$LC_{50}\ 66\ \text{ppm} \times 2 = 132\ \text{ppm}$$

The vapor pressure of diamylamine is 5 mm Hg at 20 °C. Therefore, a saturated vapor concentration may be calculated using the formula:

$$\frac{\text{VP (in mm Hg)}}{760} \times 10^6 = \text{SVC (in ppm)}$$

Substituting 5 mm Hg for VP:

$$\frac{5\ \text{(in mm Hg)}}{760} \times 10^6 = 6578.9473\ \text{ppm SVC}$$

When the LC_{50} value is 1000 ppm (132 ppm in this example) or less and the saturated vapor concentration at 20 °C is equal to or greater than ten times its LC_{50} value, then the material would

be considered to have an acute inhalation toxicity; subject to 49 CFR 173.132 (a) (b). As indicated below, Chemical Company A's material has a SVC nearly 50 times its LC_{50} value.

$$\frac{6578.95}{132} = 49.84$$

Chemical Company A's MSDS indicates that the material "may cause chemical burns on skin." This does not indicate that it will cause irreversible alterations in skin, therefore, based on Chemical Company A's MSDS the material should be classified as:

Toxic Liquids, organic n.o.s.
(Diamylamine)
6.1 PGI, Zone A
UN 2810
Inhalation Hazard

Chemical Company B

The same analogy may be used to determine the proper shipping name and hazard class for Chemical Company B's material.

$$LC_{50}\ 58\ ppm \times 2 = 116\ ppm$$

$$\frac{3\ (\text{in mm Hg})}{760} \times 10^6 = 3947.3684\ ppm\ SVC$$

$$\frac{3947.37}{116} = 34.02$$

As indicated above, Chemical Company B's material has a SVC nearly 34 times its LC_{50} value. Further, Chemical Company B's MSDS indicates that the material "causes reversible redness and swelling." This does not indicate that it will cause irreversible alterations in skin. Consequently, the material should coincide with the classification accredited to Chemical Company A.

Conclusion

Neither Chemical Company A's or Chemical Company B's MSDS considers the material corrosive, therefore, the proper shipping name would be Toxic liquids, organic n.o.s. Based on the MSDS's supplied by both chemical companies, diamylamine is also a material toxic by inhalation and subject to the special packaging requirements of 49 CFR 173.3a(a).

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Hazardous Materials Guidance

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
1200 New Jersey Avenue SE, Washington, DC 20590

Issue Date: May 1, 2011	HM Guidance Number: HMG-116
Revision: 1	49 CFR Section(s) Affected: 173.31(a)(3)
Page: 1 of 1	Key Words: Tank car, Residue, Overdue
Approved: Ronald Hynes	

Summary:

This Hazardous Materials Guidance document provides guidance regarding the movement of tank cars overdue for inspection/qualification.

Discussion:

The Hazardous Materials Regulations, at 173.31(a)(3) state:

> No person may fill a tank car overdue for periodic inspection with a hazardous material and then offer it for transportation.

The regulation allows the movement of tank cars loaded before they became due for periodic inspection, but such tank cars may not be subsequently reloaded until the periodic inspection requirements have been filled.

Example:

Tank car FRAX 12345, due for a pressure relief valve inspection in 2007, is loaded in November 2007 and offered for transportation in 2008. The regulation allows this movement. If the same car were instead loaded in January 2008, it could not be offered into transportation.

Tank car FRAX 6789, due for periodic inspection in 2007, is discovered in January 2008 at the loading rack awaiting loading. It may not be loaded and offered into transportation, but may be moved to a tank car facility for inspection without further approval by FRA.

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Hazardous Materials Guidance

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
1200 New Jersey Avenue SE, Washington, DC 20590

Issue Date: May 1, 2011	HM Guidance Number: HMG-117
Revision: 1	49 CFR Section(s) Affected: 171.8
Page: 1 of 1	Key Words: Sift-proof packaging
Approved: Ron Hynes	

Summary:

This guidance document explains the meaning of “sift-proof packaging” and the practical effect of the term.

Discussion:

The regulatory definition of sift-proof packaging (49 CFR 171.8) is packaging impermeable to dry contents. PHMSA, the Pipeline and Hazardous Materials Safety Administration, treats this as a performance requirement that does not require the railcar itself to be sift-proof as long as the producet, essentially any dry powdery substance, is fully contained. The particular example raised by an offeror concerned the movement of ferrous sulfate materials in closed bulk bags loaded into closed containers or box cars.

As PHMSA has stated, a rail car may be rendered sift-proof in any manner that satisfies the performance requirement either by utilizing structural features (e.g. integral gaskets or liners) or non-structural features (e.g., inner packagings).

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Hazardous Materials Guidance

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
1200 New Jersey Avenue SE, Washington, DC 20590

Issue Date: May 1, 2011	HM Guidance Number: HMG-118
Revision: 1	49 CFR Section(s) Affected: 173.31(b)(4)
Page: 1 of 1	Key Words: Spray-on Thermal Protection
Approved: Ron Hynes	

Summary:

The purpose of this Hazardous Materials Guidance document is to describe FRA's policy dealing with so-called "spray-on" thermal protection.

Discussion:

Very few of the 112T and 114T tank cars remain in service and, with the increasing age of such systems, shippers and car owners are advised to inspect the cars for thinning, missing or damaged spray-on thermal protection. FRA Inspectors have reported finding cars with large sections of the spray-on thermal protection system missing and one occasion the thermal protection was not of the proper thickness. Tank cars found with thinning, missing or damaged spray-on thermal protection are not in compliance with Parts 173 and 179 of 49 CFR and should be removed from service until repaired.

Inspectors are reminded to cite Sections 173.31(a)(1) and 179.18 when tank cars are found with thinning, missing or damaged spray-on thermal protection systems. Cars found with bubbles, but still intact, are not to be cited. The car owner and/or shipper however, should be advised that the bubble(s) may at some point fail and expose the tank to fire in the event of a derailment. It is recommended that cars with bubble(s) be repaired.

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Hazardous Materials Guidance

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
1200 New Jersey Avenue SE, Washington, DC 20590

Issue Date: May 1, 2011	HM Guidance Number: HMG-119
Revision: 1	49 CFR Section(s) Affected: 172.700
Page: 1 of 1	Key Words: Hazardous Materials Training
Approved: Ron Hynes	

Summary:

The purpose of this Hazardous Materials Guidance Document is to clarify an existing regulation concerning the training of "hazmat employees" as well as the "hazmat employers" role in ensuring adequate training.

Discussion:

It is the policy of the Federal Railroad Administration (FRA) to ensure, through routine inspection activities, that each hazmat employer guarantees the training of their hazmat employees in regard to the safe transportation of hazardous materials by railroad. FRA will review the training received by hazmat employees after completion of their training to ensure that each hazmat employee was trained, tested, and certified on the employee's area of responsibility.

FRA inspectors will review hazmat employers' training programs during the course of special investigations (e.g., HMII), compliance reviews, and investigations of complaints, and investigations of accidents/incidents. FRA believes that these inspection activities will promote a hazmat employer and employee awareness of safety and regulatory requirements; thereby' reducing the occurrence human error related hazardous materials incidents.

Inspectors may attend and observe training classes given by the employer to learn the content and determine whether interpretations and clarifications of the regulations are consistent with the Department of Transportation and FRA policy. However, FRA does not "approve" training programs and will not review for the purpose of certifying training programs.

The training rule addresses broad subject areas with respect to training needs. PHMSA (Pipeline and Hazardous Materials Safety Administration) intentionally made the requirements in the training rule as broad and objective as practicable to accommodate training programs and materials currently used in the public and private sectors. It is FRA's position that responsible hazmat employers are better able to determine the training needs of their employees.

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Hazardous Materials Guidance

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
1200 New Jersey Avenue SE, Washington, DC 20590

Issue Date: May 1, 2011	HM Guidance Number: HMG-120
Revision: 1	49 CFR Section(s) Affected: 174.14; 174.16
Page: 1 of 1	Key Words: The “48-hour” Rule
Approved: Ron Hynes	

Summary:

The purpose of this Hazardous Materials Guidance Document is to clarify an existing regulation. The existing guidelines are in effect until the regulation can be revised to remove outdated terminology.

Discussion:

49 CFR 174.14(a)

- The 48-hour rule came into existence to expedite a shipment from origin to destination.
- It is applicable to shipments that are already in transportation and en route to their final destination.
- En route encompasses the period of from acceptance at originating point, transfer point, or interchange point to the arrival at destination.
- The requirement is for rail carriers to forward shipments within 48-hours, so that they can continue en route to destination.

49 CFR 174.16(b)

- The rule provides a means for delivery and disposition when the consignee does not make the arrangements.
- The carrier is required to notify the consignee that the shipment has arrived.
- When the consignee cannot arrange for final delivery of the shipment (e.g., physical plant has insufficient room to accommodate cars), the carrier has the following options: (1) store the shipment, providing safe storage is maintained; or (2) sell the shipment providing 15 days have elapsed after notifying the consignee; or (3) may elect to store the shipment indefinitely providing safe storage can be maintained.

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Hazardous Materials Guidance

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
1200 New Jersey Avenue SE, Washington, DC 20590

Issue Date: May 1, 2011	HM Guidance Number: HMG-121
Revision: 1	49 CFR Section(s) Affected: 49 U.S.C. § 20107
Page: 1 of 2	Key Words: Records, Shipping papers, Emergency Response Information, Training records
Approved: Ron Hynes	

Summary:

The purpose of this Hazardous Materials Guidance document is to provide guidelines on FRA's policy regarding reasonable access to records pertaining to the safe transportation of hazardous materials by railroad.

Discussion:

The Federal railroad safety laws grant "officers, agents, and employees" of the Secretary of Transportation access "at reasonable times and in a reasonable way" to "railroad equipment, facilities, rolling stock, operations, and relevant records." 49 U.S.C. § 20107. The Federal hazardous materials transportation safety laws, similarly, grant authority for inspections of "records and property related to . . . the transportation of hazardous material in commerce." 49 U.S.C. § 5121(c)(1)(B).

The standard for access to emergency response information is clear. Under 49 CFR §172.600(c)(1), such information must be "immediately available". The relevant paragraph reads:

> Emergency response information, including the emergency response telephone number, required by this subpart is immediately available to any person who, as a representative of a Federal, State or local government agency, responds to an incident involving a hazardous material, or is conducting an investigation which involves a hazardous material.

This makes it clear that, where hazardous materials are involved, access to the "emergency response information" must be so immediate that an emergency responder could use it in the initial assessment of an incident.

While the statutes may not be explicit on how long an inspector will have to wait for routine, non-emergency records, they do establish the standard of "a reasonable time and in a reasonable way." FRA believes that "reasonable access," for instance, means

that records will be made available within the practical limitations of records retrieval systems and during the normal business hours of the party holding the records.

It is not possible to establish absolute minimum times for non-emergency access to records, but the following examples may serve as guidelines:

Shipping papers for a shipment in transit	Same business day
Shipping papers for a shipment delivered 30 days ago	48 hours
Shipping papers for a shipment delivered six months ago	7 calendar days
Training records	48 hours

[Note that under 49 U.S.C. 5110(e), shipping papers have to be retained for two years after the shipment has been delivered, and made available upon request of a Federal, state, or local government agency.]

Note: This memorandum is for the practical guidance of FRA personnel and is not a fully developed, formal legal interpretation on the accessibility of records. Any person wishing a formal legal interpretation may request such of the Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590.

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Hazardous Materials Guidance

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
1200 New Jersey Avenue SE, Washington, DC 20590

Issue Date: May 1, 2011	HM Guidance Number: HMG-122
Revision: 1	49 CFR Section(s) Affected: 174.55
Page: 1 of 2	Key Words: Blocking, Bracing, Rear Door Protection
Approved: Ron Hynes	

Summary:

This Hazardous Materials Guidance is to provide clarification involving blocking and bracing (49 CFR Section 174.55).

Discussion:

In response to a request for clarification involving blocking and bracing (49 CFR Section 174.55), the Office of Safety provides answers to the following questions:

Question: Does a shipper have the option to use their judgment in blocking and bracing a hazardous materials load, since the regulations state that the methods in Pamphlet Nos. 6 and 6C are only recommended methods?

Answer: You are correct; Pamphlets No. 6 and 6C are recommended practices. The ultimate responsibility for ensuring compliance with § 174.55 (i.e., making sure the packages are loaded, blocked, and braced to prevent them from changing position) rests with the person loading the car, trailer, or container.

Question: If the FRA were to inspect a hazardous material load consisting of mixed freight containing some portion of hazardous materials, would a violation exist if the hazardous material packages were blocked or braced with the other freight in the container, or with the back door when moving via rail?

Answer: In response to the first part of your question, FRA does not specify what method of blocking and bracing to use and would not take exception, as long as the packages of hazardous materials are loaded and securely blocked and braced to prevent the packages from changing position, falling to the floor, or sliding into each other. In answer to the second part of the question, unless specifically designed for lading restraint, trailer and container rear doors are not adequate to the task. Heavy, dense loads such as 55-gallon drums exceed the capacity of even specially designed rear doors. Typical loads of hazardous materials (and mixed loads of hazardous materials and nonhazardous materials) in boxes, drums, and bags will compress under the

movements normal to transportation such that a void space appears at the head, tail, or sides of the trailer or container. Only adequate blocking and bracing, properly applied, will hold this to an acceptable minimum. FRA inspectors will take exceptions or recommend violations, as appropriate, when they inspect hazardous materials and discover conditions that do not meet the regulatory standard.

Question: Are LTL shippers or freight consolidators required to comply with Pamphlet Nos. 6 and 6C when shipping hazardous materials via rail?

Answer: LTL shippers and freight consolidators are required to comply with 49 CFR Section 174.55, if the original loading, blocking, and bracing is disturbed and then reoffered. Since Pamphlets Nos. 6 and 6C are recommendatory and not regulatory, they would not be required to follow the exact procedures prescribed by the pamphlets.

Question: Could you identify some of the "loading methods designed to permit limited movement of the load and that are approved by the Department?"

Answer: The Pipeline and Hazardous Materials Programs Administration's Office of Hazardous Materials Approvals and Permits has issued special approval (SA-961102), authorizing the use of Drumgard, Palla-Gard, and Ty-Gard restraint systems.

If a shipper inquires about other authorized systems, refer the individual to Mr. Ryan Paquet, Director of the Approvals and Permits Division at (202)366-4511. Industry sources of relevant information include the Bureau of Explosives, Association of American Railroads, 425 Third Street, SW, Suite 1000, Washington, DC, 20024, (202) 639-2100, and the freight damage prevention department of the railroad serving the shipper.

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Hazardous Materials Guidance

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
1200 New Jersey Avenue SE, Washington, DC 20590

Issue Date: May 1, 2011	HM Guidance Number: HMG-123
Revision: 1	49 CFR Section(s) Affected: § 171.8
Page: 1 of 2	Key Words: Train
Approved: Ron Hynes	

Summary:

This Hazardous Materials Guidance document provides FRA's guidance on the application of the term "train" as defined in 49 CFR § 171.8 for the determination of compliance with train-placement and hazard communication requirements.

Discussion:

The Federal hazardous materials transportation safety regulations have defined "train:"

> 'Train' means one or more engines coupled with one or more rail cars, except during switching operations or where the operation is that of classifying and assembling rail cars within a railroad yard for the purpose of making or breaking up trains.

If the operation is that of a train, proper placement of cars carrying hazardous materials is required within the train and the train crew must have documentation for the hazardous materials cars that meets the regulatory standards.

"Switching operations" must mean something different from "assembling cars . . . for the purpose of making or breaking up trains," otherwise the definition is merely redundant. "Switching service," according to a useful railroad dictionary,[1] "consists of moving cars from one track to another track or to different positions on the same track. It includes the moving of cars in the make-up and break-up of trains; also moving cars on industrial switching tracks or interchange tracks, and the general movement of cars within terminals or at junctions." Justice Douglas, commenting on switching in a case before the Supreme Court,[2] described switching operations as "sorting, or selecting, or classifying

[1] *Railway Age's Comprehensive Railroad Dictionary,* p. 143, Simmons-Boardman Publishing Company, ©1984.

[2] *United States v. Seaboard Air Line Railroad Co.* 361 US 78 (1959) The quote that follows is at 361 US at 81.

cars involving coupling and uncoupling, and the movement of one or a few at a time over short distances." It follows from this that switching operations are railroad operations in yards, sidings, and industries where the air brake rules do not apply. In a letter to Southern Pacific dated March 3, 1980, FRA provided an explanation of the term "train" as it related to the air brake regulations:

> A train consists of one or more locomotives coupled to one or more cars except during operations involving switching. Although the lines are not always clearly drawn, where there is a movement of a considerable number of cars for more than one mile, without any setting out or picking up cars enroute, that movement involves a train rather than a locomotive performing switching. Other factors that indicate a train are transfers between yards and crossing of public highways or other railroad tracks at grade. Movements on mainline track and use of road crews and locomotives are not essential for a train.

To summarize, if the air brake rules apply to a movement, it is a train and the train placement and hazardous materials documentation rules apply.[3] In addition, because interchange operations involve the transfer of custody/responsibility with the cars, transfer movements, regardless of the applicability of the air brake rules, are not considered switching.

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[3]Operations not covered by the air brake rules are nonetheless covered by the requirements for emergency response information: 49 CFR §§ 172.600 through 172.604.

Hazardous Materials Guidance

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
1200 New Jersey Avenue SE, Washington, DC 20590

Issue Date: May 1, 2011	HM Guidance Number: HMG-124
Revision: 1	49 CFR Section(s) Affected: 172.508(a) and 172.510(a)
Page: 1 of 2	Key Words: Placard, White Square Background
Approved: Ron Hynes	

Summary:

The purpose of this Hazardous Materials Guidance is to provide the FRA's interpretation of 49 CFR § 172.508(a) and 172.510(a) as they pertain to the use of the white square background.

Discussion:

The Hazardous Materials Regulations, at 49 CFR § 172.508(a), provide in relevant part:

> Each person offering a hazardous material for transportation by rail shall affix to the rail car containing the material, the placards specified by this subpart. Placards displayed on motor vehicles, transport containers, or portable tanks may be used to satisfy this requirement.

The Hazardous Materials Regulations, at 49 CFR § 172.510(a), provide in relevant part:

> The following must have the specified placards placed on a white square background, as described in §172.527:
>
> (1) Division 1.1 or 1.2 (explosive) materials which require EXPLOSIVES 1.1 or EXPLOSIVES 1.2 placards affixed to the rail car;
>
> (2) Materials classed in Division 2.3, Hazard Zone A or 6.1 Packing Group I Hazard Zone A which require POISON GAS or POISON placards affixed to the rail car, including tank cars containing only a residue of the material; and
>
> (3) Class DOT 113 tank cars used to transport a Division 2.1 (flammable gas) material, including tank cars containing only a residue of the material.

The description of the white square background in § 172.527 makes it clear that this device is a "background … for certain placards" and, thus, not a placard itself.

Reading the requirements of both section 172.508 and 173.510 together makes it clear that, when placarded motor vehicles, transport containers, or portable tanks are offered for rail transportation, 172.508(a) states the authority for not also placarding the rail cars carrying the intermodal equipment. The regulation at 172.508 is, however, permissive and properly placarding the rail car is not contrary to the regulations. When rail cars transporting containers carrying the materials described in 172.510 are placarded, the white square background is required on the rail cars.

FRA's enforcement policy is that appropriate placards are required: If only on the containers, they do not require the white square background; if only on the rail cars, the white square background is required; if both the containers and the rail cars are placarded, each must fully comply with the placarding requirements applicable to it.

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Hazardous Materials Guidance

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
1200 New Jersey Avenue SE, Washington, DC 20590

Issue Date: May 1, 2011	HM Guidance Number: HMG-125
Revision:	Root-Cause Analysis
Page: 1 of 2	Key Words: Ethanol, vacuum relief valve, seats, seals, gaskets, O-ring, procedures, root cause analysis
Approved: Ron Hynes	

Summary: The purpose of this HMG is to establish a standard operating procedure to be followed to ensure root cause analysis is performed on defective tank car vacuum relief devices for cars transporting ethanol that are found during inspections.

Discussion: Root-cause analysis has proven to be an effective tool in the reduction of non-accident releases (NARs) from tank cars. Root cause analysis enables car owners, valve owners, and FRA to make informed decisions based on fact, not conjecture. To accomplish this, defective valves and fittings must be made available to perform a root cause analysis.

Ethanol is now the number one rail transported hazardous material. Along with the increase in shipments has been an increase in the number of non-accident releases. The various types of denaturant, the variety of available gasket materials, and the differing handling procedures at each plant appear to be the prime contributing factors. However, without a root-cause analysis we may never be able to implement to specific corrective actions necessary to resolve these problems.

One of the primary sources of leaks from tank cars used for transporting ethanol is the vacuum relief device. These leaks have also been reported during inspections as identified through the movement approval process. A number of suspected causes for this leakage are: incompatible O-ring material; misaligned O- rings caused by misuse of the valve; loss of valve spring tension, and other failure modes.

When field repairs are made, the defective vacuum relief valve is often discarded or otherwise not returned to the car/valve owner, preventing examination to determine the cause of the failure (root cause). This guidance outlines the procedures that should be taken to facilitate the necessary analysis. When an inspector identifies a tank car transporting ethanol with a leaking vacuum relief device, they shall:

- Obtain the name of the individual(s) performing the work on the car as well as the name, address, and telephone number of the company he/she represents. This information should be included on the inspection report or on a separate document used to notify the device owner.

- Notify the individual removing the device that a root cause analysis will be performed on the defective valve and all care should be taken to prevent additional damage during the removal process.

- Ensure that the company removing the device ships the valve back to the owner for analysis rather than discarding on site. Inspectors should caution the individual responsible for repairing or shipping the defective device to take all necessary and required precautions to ensure that a valve/fitting contaminated with a hazardous material is either adequately cleaned or cleared of contamination or is safely packaged and transported in compliance with all applicable regulations. If the entity removing the device indicates that they will not ship it to the owner, acquire the device (if possible) and ship via UPS after ensuring no hazards exist.

- Inspectors shall notify the railroad or company official who will receive the report for the day's activity when the defective valve was identified that the valve, if no repaired and reinstalled, should be sent to the tank car/valve owner for further analysis.

- If time permits, without disassembling the device, record all pertinent information marked on the exterior of the valve including, but not limited to:
    - manufacturer name/station stencil, model number and serial number
    - reconditioner name/station stencil and serial number (if reconditioned)
    - size, material type, elastomeric type
    - reported defective condition
    - apparent failure mode (if discernable)

NOTE: If elastomeric components such as seats/seals/gaskets/O-rings are removed in the field to effect the repairs, they must also be returned to the car/valve owner intact for examination.

- If it is necessary to disassemble the valve, fitting, or appurtenance for on scene investigation, return all parts to the car/valve owner after the inspection is completed.

- If the car / valve owner is not known, contact a member of the HQ HM staff to obtain the necessary information.

- The information gathered shall be forwarded to the tank car/valve owner via inspection report or other suitable communication means.

- Car/valve owners, manufacturers and reconditioners should use the root cause analysis reports to improve the performance of their products and prevent NARs.

NOTE: Inspectors should not attempt to operate a vacuum relief device to determine if it is properly functioning. Evaluations of these devices shall be limited to visual observations.

##

Hazardous Materials Guidance

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
1200 New Jersey Avenue SE, Washington, DC 20590

Issue Date: May 1, 2011	HM Guidance Number: HMG-126
Revision:	49 CFR Section(s) Affected: 173.24, 179.7, 180.501, 180.509,
Page: 1 of 4	Key Words: Coatings, linings, product purity
Approved: Ron Hynes	

Summary:

The purpose of this Hazardous Materials Guidance is to clarify the intention of the regulations and DOT Special Permit 12095 regarding classification of interior coatings as exclusively for reasons of product purity.

Background:

On August 25, 2008, tank car ACFX 94828, containing ethyl chloroformate, a poison inhalation hazard, was involved in a non-accident release at PPG Industries, La Porte, Texas. FRA's investigation revealed that this was not the first incident of this type and was a result of the product contacting the tank shell due to an insufficient lining that resulted in the formation of gases that were released into the atmosphere when the safety valve, with a start-to-discharge pressure of 375 p.s.i., unseated. The investigation revealed that the lining owner mistakenly thought that the lining was in place for product purity and therefore did not require qualification.

Applicable Regulations:

The HMR (Hazardous Materials Regulations) at 49 CFR 173.24, *General requirements for packagings and packages,* states general provisions for the required characteristics of packages. Specifically, 173.24(b) states the following:

> Each package, used for the shipment of hazardous material under this subchapter shall be designed, constructed, maintained, filled, its contents so limited, so that under conditions normally incident to transportation-
>
> (2) The effectiveness of the package will not be substantially reduced; for example, impact resistance, strength, packaging compatibility, etc. must be maintained for the minimum and maximum temperatures, changes in temperature, changes in humidity, and pressure, and shocks, loadings and vibrations, normally encountered during transportation;

> (3) There will be no mixture of gases or vapors in the package which could, through any credible spontaneous increase in heat or pressure, significantly reduce the effectiveness of the packaging.

The HMR also establish intervals for the inspection of linings and coatings. 49 CFR 180.509(i) states:

> When this subchapter requires a lining or coating, at a minimum, each tank car facility must inspect the lining or coating according to the inspection interval, test technique, and acceptance criteria established by the owner.

Special Permit 12095, at Appendix B, 180.509(i)(1), modifies the CFR mandate:

> Each lining or coating owner shall ensure the qualification of a lining or coating used to protect the tank from a material listed in Attachment A of this alternative program (i.e. materials corrosive to the tank).

Attachment A to Appendix B contains a list of

> Materials identified either by proper shipping name or shipped under an N.O.S. shipping description that, under certain conditions have shown to corrode carbons steel tanks or service equipment at a rate that will reduce the design level of reliability and safety of the tank or equipment to an unsafe level before the next qualification. Materials identified on this list are considered corrosive to the tank and service equipment.

The text introducing the list in Attachment A goes on to explain that it is not an exclusive list of corrosive or metal-reactive materials:

> While every effort was made to identify material deemed corrosive to the tank or service equipment, owners and operators are cautioned that this list may not be inclusive. Tank car owners and operator are reminded of their duty to ensure that no in-service tank will deteriorate below the specified minimum thickness requirements in this exemption (See 180.509(f)(3) of this alternative program).
>
> Based on future thickness tests, this list may be modified based on an analysis of test results by the car owner, the Department of Transportation, or the Association of American Railroads Tank Car Committee.

Discussion:

A lining or interior coating in a tank car tank can serve two basic purposes: Protect the tank shell from corrosion or maintain the purity of the product during transportation. An owner of a lining or interior coating is responsible for the selection of a lining or interior coating based on their knowledge of the properties of the chemical to be transported. Additionally, it is incumbent

upon the owner to designate the purpose of the lining or coating as being for corrosion protection or product purity. The designation takes the form of a **PP** for product purity in the Lining row of the qualification stencil applied to each tank car after successful qualification.[1] This designation eliminates the requirement for inspection of the lining or interior coating at set intervals.

It has become clear to FRA that some tank car lining owners are assuming that, if the product transported in a given car is not on the Attachment A list, then no lining/coating inspections are required. Through this Hazardous Materials Guidance document, FRA intends to make it clear that such assumptions are wrong.

The attachment A list, by its own terms may not be inclusive. Chemicals exist that under certain conditions are corrosive to the tank, will reduce the design level of reliability and safety of the tank or equipment to an unsafe level, or will result in mixtures of gases or vapors which could significantly reduce the effectiveness of the package. Examples include:

- ☐ Hydrolysis resulting in the formation of dilute acid.
- ☐ Preferential corrosion of a carbon steel tank in the presence of stainless steel components. A scenario is possible in which, if an interior coating of a carbon steel tank has a small breach and the contents of the tank (which is equipped with a stainless steel siphon pipe) form a conductive liquid, the tank will experience concentrated, aggressive corrosion at the location of the breach.
- ☐ Generation of excessive pressure or explosive, flammable, toxic, asphyxiating vapors when exposed to the tank and/or its components, heat or moisture.

Under each of these, or other similar scenarios, a lining or interior coating in a tank used in a service that was initially thought to be properly designated for product purity is, in actuality, a lining or coating designed to protect the tank. This designation invokes the inspection and test requirements of 180.509(i) of Appendix B to SP-12095.

The HMR, at 49 CFR 180.501, prescribes requirements applicable to any person who marks, maintains, repairs, inspects, or services tank cars;" among those mandates are the quality assurance program requirements of 49 CFR 179.7. The QA program[2] requires owners to know what is happening to their cars and to linings and coatings applied to those cars and to adjust inspection, test, and maintenance practices accordingly.

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[1] As detailed in Appendix C, Figure C8, The Association of American Railroads *Manual of Standards and Recommended Practices, Section CV-III,* SPECIFICATIONS FOR TANK CARS, Issue of October, 2007, ® Association of American Railroads.

[2] The Quality Assurance program encompasses a wide swath of Federal regulations, augmented by the AAR Tank Car Manual, designed to ensure that the highest possible standards of safety are applied to tank cars transporting regulated hazardous materials. Relevantg in this document are 49 CFR §§ 173.24(b), 179.7, 180.501, and 180.509.

Conclusion:

While a lining or coating may have been applied with the primary purpose of protecting the product, such a product purity lining loses that status and becomes subject to the periodic inspections and test requirements if any of the conditions of 173.24(b) are seen.

- ## -

APPENDIX B
MEMORANDUMS OF AGREEMENT/UNDERSTANDING AND OTHER INTERAGENCY COORDINATION GUIDANCE

INTERAGENCY MEMORANDUM OF AGREEMENT ON CROSS-MODAL HAZARDOUS MATERIALS INSPECTION AND ENFORCEMENT

Purpose

The purpose of this Memorandum of Agreement (MOA) is to establish specific coordination guidelines for the Department of Transportation's Operating Administrations (OAs) with hazardous materials (hazmat) civil enforcement authority. By fostering cooperation, sharing information, and outlining each OA's and agency's specific responsibilities, the Department strives to increase the efficiency of its hazmat inspection and enforcement programs.

Parties

The parties to this MOA are: Federal Aviation Administration (FAA); Federal Motor Carrier Safety Administration (FMCSA); Federal Railroad Administration (FRA); Pipeline and Hazardous Materials Safety Administration (PHMSA); and the Director, Office of Safety, Energy, and Environment (OSEE).

Background

There are four OAs within the Department of Transportation (DOT) that are responsible for conducting inspection and civil enforcement programs under the Federal hazardous materials transportation law (49 U.S.C. 5101 et seq.), and the Hazardous Materials Regulations (49 CFR Parts 171-180) adopted there under. Prior to August 15, 2000, each of the then five OAs (--the U.S. Coast Guard was transferred to Department of Homeland Security on March 1, 2003, and their authority is addressed in a separate MOA--) had been delegated mode-specific hazmat enforcement authority, but the program lacked a clearly defined Department-wide approach for coordinating and cooperating on cross-modal violation discoveries. Certain entities, including carriers, shippers, and freight forwarders, are subject to enforcement by more than one OA. There may also be occasions when one OA wishes to conduct joint operations with another. Furthermore, inspections or investigations by one OA may produce information or evidence that might be within the traditional authority of, or more appropriately handled by, another OA.

An August 15, 2000 Final Rule (65 Fed. Reg. 49763) re-delegated authorities to the then five affected OAs to allow them to inspect for compliance with the HMR in all transportation modes. This broadened authority allows OAs to more actively coordinate with each other to increase the efficiency in their inspection and enforcement programs, which in turn will enhance the overall enforcement effort of the Department. The Final Rule further delegated to the Under Secretary for Policy (previously titled Associate Deputy Secretary and Director, Intermodalism), who created the position of Director, Intermodal Hazardous Materials Program (IHMP), authority to serve as the Secretary's principal adviser on intermodal hazmat policy and objectives, and to resolve disputes between the OAs. Since then, the Director, OSEE has assumed the responsibilities previously assigned to the Director, IHMP.

This MOA clarifies how the affected OAs can best achieve the intent of the Final Rule by establishing baseline cross-modal policy on inspection and enforcement procedures for inspectors, hazmat program managers, and attorneys. This will both ensure a more effective use of DOT's hazmat resources and provide the regulated industry with a good government approach to hazmat enforcement.

Authority

The heads of the four OAs are delegated the authority to carry out the compliance functions vested in the Secretary by the Federal hazardous materials transportation law (as amended) "relating to investigations, records, inspections, penalties, and specific relief...

> ***FAA*** – 49 CFR 1.47(k) – ...with particular emphasis on the transportation or shipment of hazardous materials by air."
>
> ***FMCSA*** – 49 CFR 1.73(d) – ...with particular emphasis on the transportation or shipment of hazardous materials by highway, including the manufacture, fabrication, making, maintenance, reconditioning, repair or test of containers which are represented, marked, certified, or sold for use in the bulk transportation of hazardous materials by highway."
>
> ***FRA*** – 49 CFR 1.49(s) – ...with particular emphasis on the transportation or shipment of hazardous materials by railroad, including manufacture, fabrication, marking, maintenance, reconditioning, repair, or test of containers which are represented, marked, certified, or sold for use in the bulk transportation or hazardous materials by railroad."
>
> ***PHMSA*** – 49 CFR 1.53(b) – ...with particular emphasis on the shipment of hazardous materials and the manufacture, fabrication, marking, maintenance, reconditioning, repair, or test of multi-modal containers that are represented, marked, certified, or sold for use in the transportation of hazardous materials."

Further, the Secretary delegated the following responsibilities to the Under Secretary for Policy summarized below, who has tasked the position of Director, OSEE and staff to:

> ***Under Secretary for Policy*** – 49 CFR 1.74 – serve as the Secretary's principal adviser on intermodal hazmat issues policies, priorities and objectives; resolve disputes among the OAs; review and monitor OAs' activities; coordinate with the Assistant Secretary for Budget and Programs in applying resources; coordinate outreach and data activities; and address other regulatory and cross-modal issues as warranted.

Coordination and Cooperation

The parties agree to coordinate and cooperate with each other to the maximum extent possible in the following areas of hazardous materials inspection and enforcement:

Areas of Specialty

There are areas of specialty within traditional OAs' areas of expertise that should be handled only by each specific OA due to specialized training and other factors. Inspectors or investigators from other OAs will not initiate inspections or investigations in these areas of specialty. If discrepancies are discovered during an inspection or investigation that indicate a possible violation within another OA's area of specialty, that portion of the inspection or investigation will be forwarded to the OA with that area of specialty. The only exception will be if there is a specific agreement in place between the affected OAs allowing the discovering OA to inspect or investigate the area of specialty.

Recognized areas of specialty that should be handled only by the designated OA are:

FMCSA	Cargo tank manufacturers, inspection/test, and repair facilities.
FRA	All passenger and cargo carrying rail carriers, to include rail specific transport vehicles, and tank car manufacturing, qualification, repair, testing, inspection and maintenance.
PHMSA	Cylinder and other multi-modal container manufacturers/retesters, drum reconditioners, non-bulk packaging manufacturers, 3rd party non-bulk packaging certifiers.
FAA	All passenger and cargo carrying air carriers, to include passenger checked and carry-on baggage, cargo containers, unit load devices, loading and handling procedures, and repair facilities.

Inspections and Investigations

Generally, each OA will focus on inspection or investigation activities in its respective traditional areas of operation. For example, FMCSA will continue to conduct inspections at roadside or at trucking companies; FRA will continue to conduct inspections at rail yards or rail shippers, etc. However, each OA has an obligation to act as outlined in paragraphs 1-3 below when, in the course of its normal activities, its inspectors or investigators discover information that indicates a possible violation of the HMR. When a person or entity is suspected of non-compliance, but is outside the area of specialty of the discovering OA, (and prior to any legal enforcement action), inspectors and investigators will take the following steps:

1. *Detection*: When possible, the discovering inspector/investigator will give oral or written notice to the shipper, carrier, or their agent that the shipment is not in compliance, and that further movement would be considered a willful violation and subject to possible criminal enforcement action. The inspector is not obligated to monitor the shipment once notice is given. If such a notice is ignored, the inspector/investigator should immediately contact the appropriate OA program manager as listed in Appendix A, at the address/phone listed in the *Hazardous Materials Employee Resource Book,* or posted on the Internet at http://hazmat.dot.gov/pubs/free/hmpe_resourcehandbook.pdf.

2. *Documentation:* If the inspector/investigator is made aware that the initial oral or written notice was ignored and the shipment re-entered transportation, the discovering inspector/investigator will record the discovered discrepancy in writing on his/her agency forms. Records should include all normally collected information to allow future investigation of the matter. All records of the discrepancy will be forwarded to the affected mode as soon as possible, but in no case longer than 30 days following the event.

3. *Intervention*: If the inspector/investigator has an objectively reasonable and articulable belief that the discrepancy may constitute a recognizable, imminent threat to public safety, where lack of action would result in loss of life or injury, he or she will immediately contact their supervisor or the legal counsel and program office of the traditional OA so that they can determine, under 49 U.S.C. § 5122(b), whether sufficient evidence exists to bring a civil action in an appropriate U.S. district court to suspend or restrict the transportation of the hazardous materials responsible for the hazard or to take action the traditional OA is authorized to take under other authority (such as 49 U.S.C. § 20104). The inspector/investigator will also document the circumstances justifying the notification to the traditional OA legal counsel and program office.

Coordinating Enforcement

Prior to recommending civil penalty action that would impact the authority or the area of specialty of another OA, the OA seeking to recommend a civil penalty will contact the appropriate field office of the impacted OA. If the discrepancies discovered could result in legal enforcement action, the discovering OA will contact the appropriate field office (as described in paragraph 1 above) of the most directly concerned OA to insure that the discovered case does not interfere with any ongoing action. If it does not interfere, the discovering OA will notify the traditional OA that it is taking enforcement action and will describe the violation(s) being cited. If the traditional OA does have an ongoing action, the discovering OA will forward its evidence to the traditional OA. To expedite the process, notification may be made by e-mail.

Data Collection

Each OA will contribute inspection, exemption, incident, registration, approval records, and closed final enforcement case information to DOT's Intermodal Hazardous Materials Data System in accordance with the procedures contained within the July 17, 2002 DOT directive entitled "Implementation of Required Procedures for Data Entry into the Unified Shipper database for Hazardous Materials Enforcement Actions".

Joint Operations and Cooperation

Each OA will cooperate in joint inspection and training activities with other OAs as the opportunities arise. To promote inspector safety and maintain institutional knowledge, joint inspection teams will always include a member of the OA with traditional authority over the physical area involved (i.e., FRA-rail yards and FMCSA-roadside inspections, etc.).

OAs will provide personnel to appear as witnesses at each other's enforcement hearings as necessary to corroborate evidence.

Agency Reorganization Issues and Amendments

As soon as practicable, each OA will notify all parties to this MOA of reorganizations, dramatic changes to its policies or procedures, or anything that may affect the united cross-modal nature of this MOA. Any additions to, or modifications of, this MOA may be initiated by any of the OAs at any time, and will become effective when agreed to, in writing, by all parties.

Effective and expiration dates

This Memorandum of Agreement on Cross-Modal Hazardous Materials Inspection and Enforcement is approved and agreed to by the signatories listed below, and expires on **December 31, 2011:**

7/7/05 (Date)

Lynne A. Osmus
Assistant Administrator, Office of Security and Hazardous Materials
Federal Aviation Administration

7/11/05 (Date)

William Paden
Acting Associate Administrator for Enforcement and Program Delivery
Federal Motor Carrier Safety Administration

7/22/05 (Date)

Daniel C. Smith
Associate Administrator for Safety
Federal Railroad Administration

7/7/05 (Date)

Robert A. McGuire
Associate Administrator for Hazardous Materials Safety
Pipeline and Hazardous Materials Safety Administration

7/7/05 (Date)

Linda L. Lawson
Director, Office of Safety, Energy and Environment
Office of the Under Secretary for Policy

MEMORANDUM OF AGREEMENT BETWEEN THE U.S. DEPARTMENT OF TRANSPORTATION AND THE UNITED STATES COAST GUARD REGARDING HAZARDOUS MATERIALS TRANSPORTATION

1. PARTIES. The parties to this Memorandum of Agreement (MOA) are the U.S. Coast Guard (USCG) and the U.S. Department of Transportation (DOT) (the Parties), including the Research and Special Programs Administration (RSPA); Federal Motor Carrier Safety Administration (FMCSA); Federal Railroad Administration (FRA); Federal Aviation Administration (FAA); and DOT's Intermodal Hazardous Materials Program (IHMP).

2. AUTHORITY.

a. DOT enters into this MOA under the authority of 49 U.S.C. §301.

b. USCG enters into this MOA pursuant to 14 U.S.C. § 93(d), 14 U.S.C. §141, and 14 U.S.C. §148.

3. PURPOSE. The purpose of this MOA is to ensure an enduring working relationship concerning hazardous materials transportation between the Parties following transfer of the USCG to the Department of Homeland Security (DHS). By entering into this relationship, the Parties intend to promote an efficient, uniform, secure, and safe system of hazardous materials transportation. To this end, the DOT and USCG agree to comply with the principles set forth in Paragraph 5 of this MOA and any accompanying annexes. This agreement does not apply to those hazardous materials functions that have been delegated exclusively to the Coast Guard by 49 CFR § 1.46(f). This agreement is not intended to address relationships among the DOT agencies.

4. BACKGROUND. The Federal hazardous materials transportation law (Federal hazmat law) provides authority to the Secretary of Transportation to regulate hazardous materials transportation safety and security. 49 U.S.C. § 5101 et seq. The Secretary has delegated hazardous materials responsibilities to the DOT operating administrations. Except as provided in 49 CFR § 1.53(b)(2), regulatory responsibility was delegated primarily to RSPA, and enforcement authority was delegated to FMCSA, FRA, FAA, RSPA and Coast Guard. By a final rule published on August 15, 2000, the enforcement authorities were broadened to allow the operating administrations, including Coast Guard, to inspect for compliance in all transportation modes. 65 Fed. Reg. 49763.

The Secretary of Transportation also delegated authority to the Associate Deputy Secretary and Director, Office of Intermodalism, to serve as the Secretary's principal adviser on intermodal hazmat issues, policies, priorities and objectives; resolve disputes among the operating administrations; review and monitor activities; coordinate with the Assistant Secretary for Budget and Programs in applying resources; coordinate outreach

and data activities; and address other regulatory and cross-modal issues as warranted. 49 CFR § 1.74.

Although the USCG and the DOT agencies share enforcement authority, each agency has a particular area of emphasis and expertise as follows:

- USCG: transportation or shipment of hazardous materials by water. 49 CFR § 1.46(u).

- FAA: transportation or shipment of hazardous materials by air, including the manufacture, fabrication, marking, maintenance, reconditioning, repair, or test of containers which are represented, marked, certified, or sold for use in bulk transportation of hazardous materials by air. 49 CFR § 1.47(k).

- FRA: transportation or shipment of hazardous materials by railroad, including manufacture, fabrication, marking, marking, maintenance, reconditioning, repair, or test of containers which are represented, marked, certified, or sold for use in the bulk transportation of hazardous materials by railroad. 49 CFR §1.49(s).

- FMCSA: transportation or shipment of hazardous materials by highway, including the manufacture, fabrication, marking, maintenance, reconditioning, repair or testing of containers that are represented, marked certified, or sold for use in the bulk transportation of hazardous materials by highway. 49 CFR § 1.73(d).

- RSPA: shipment of hazardous materials and the manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of multi-modal containers that are represented, marked, certified, or sold for use in the transportation of hazardous materials. 49 CFR § 1.53(b).

After Coast Guard transfers to the Department of Homeland Security, it will continue to play an integral role in the transportation of hazardous materials with its particular emphasis on the transportation or shipment of hazardous materials by water. The Homeland Security Act provides that USCG's authorities, functions, personnel, and assets transfer to DHS (See Pub. L. No. 107-296, 116 Stat. 2135 (2002) (HSA), Section 888(b)). Consequently, USCG's authority to enforce the Hazardous Materials Regulations (49 C.F.R. parts 171-180) transfers with it to DHS. Because of its enforcement role with respect to hazardous materials, Coast Guard plays a role in other hazmat regulatory functions, such as exemptions and preemptions.

5. ACTION

a. DOT and USCG agree to the following principles regarding the following subjects:

(1) General coordination. The Parties will make continuing good faith efforts to coordinate with one another on activities that have the potential to materially affect the missions or areas of particular emphasis of any of the parties. Coordination of policies and activities that have the potential to materially affect the missions or areas of particular emphasis of the parties will begin as soon as reasonably practicable. When a Party determines that its actions may materially affect the area of particular emphasis of another Party, that Party will notify the other Party prior to taking action, or as soon thereafter as possible.

(2) Regulatory Coordination. DOT (RSPA) will continue to develop and issue the Hazardous Materials Regulations (HMR) in cooperation with USCG and the other DOT agencies (FAA, FRA, and FMCSA). In developing these regulations, DOT (RSPA) will seek early and frequent coordination with USCG on issues involving areas falling within USCG's particular emphasis. When preparing letters of clarification and interpretations concerning issues within USCG's particular emphasis, DOT (RSPA) will coordinate with USCG. Further, DOT (RSPA) and USCG will continue to coordinate on any exemptions and approvals involving their particular areas of specialty, including USCG review of technical issues, modal perspectives, and processing of emergency requests.

(3) Enforcement. USCG and DOT (FAA, FRA, FMCSA and RSPA) share enforcement authority of the Hazardous Materials Regulations. However, due to the specialized training required, there are areas that should be primarily handled by a particular agency. These areas are as follows:

- USCG: IM portable tank frame and intermodal freight container manufacturers
- FAA: Transportation by air
- FRA: Tank car manufacturers, inspection/test, and repair facilities
- FMCSA: Cargo tank manufacturers, inspection/test, and repair facilities
- RSPA: Cylinder manufacturers/retesters, drum manufacturers and reconditioners, non-bulk and certain bulk packaging manufacturers, 3rd party non-bulk packaging certifiers

Generally, USCG and DOT (FAA, FRA, FMCSA and RSPA) will focus on inspection or investigation activities in their respective areas of particular emphasis. However, when one Party, during the course of conducting its enforcement activities, identifies a possible violation in the area of particular emphasis of another Party, the Party conducting enforcement activities will notify the other Party of the possible violations as soon as possible. When possible, the inspector will give oral or written notice to the shipper, carrier, or their agent that the shipment is not in compliance and

that further movement may be considered to be a willful violation. If a Party identifies an imminent hazard, that Party will take any and all action authorized by law necessary to stop transportation until the hazard is mitigated, including enlisting aid from other relevant law enforcement agencies if needed. As soon as possible, the Party identifying the imminent hazard will notify the Party whose area of particular emphasis is involved.

If a possible violation in another Party's area of particular emphasis could result in a formal enforcement action, the Party discovering the violation will coordinate with the other Party to ensure that a new enforcement action would not interfere with any ongoing enforcement action and to determine which Party should most appropriately take the enforcement action based on related investigations, expertise, etc. Conflicts that cannot be resolved between the Parties will be referred to DOT's Associate Deputy Secretary and Director, Office of Intermodalism (Office of Intermodal Hazardous Materials Program) for resolution.

USCG and DOT (FAA, FRA, FMCSA and RSPA) will continue to cooperate in the planning, sponsoring and conduct of joint enforcement activities, such as the multi-agency HazStrikes.

USCG and DOT (FAA, FRA, FMCSA and RSPA) will enter their enforcement data into central databases that can be accessed by all the Parties. USCG and the DOT agencies will continue to enter information on closed final enforcement cases in DOT's Unified Shipper Database (UNISHIP) in accordance with the procedures contained in a July 17, 2002 DOT directive titled, "Implementation of Required Procedures for Data Entry into the Unified Shipper Database (UNISHIP) for Hazardous Materials Enforcement Actions."

USCG will enforce the HMR in accordance with the relevant interpretations, exemptions and approvals issued by DOT (RSPA).

(4) Preemption. The Federal hazmat law authorizes DOT to issue preemption decisions concerning requirements of States or Indian tribes. DOT (RSPA) will continue to coordinate with USCG on preemption decisions issued under RSPA's delegated authority involving USCG's area of particular emphasis.

(5) Outreach and Training. DOT (RSPA) in cooperation with the Coast Guard and the other DOT agencies (FAA, FRA, and FMCSA), will continue to administer an outreach program regarding the Hazardous Materials Regulations to provide information to industry, State and local agencies, and other members of the public. Coast Guard will continue to provide training and assistance to Federal and State agencies, and industry through such units as its Container Inspection Training and Assistance Team (CITAT). Coast Guard will continue to participate in outreach efforts such as DOT's (RSPA's) Multi-Modal Seminars to provide the public with information on water mode issues. Coast Guard will continue to cooperate with DOT (RSPA) in the development of training

materials including CD-ROM training modules, videos, and written materials. Coast Guard will continue to participate in cross-modal inspector training initiatives with the other DOT operating administrations as coordinated with the DOT OST's Intermodal Hazardous Materials Program.

(6) International coordination. Coast Guard representatives will continue to participate and support DOT (RSPA) in meetings of the UN Committee of Experts on the Transport of Dangerous Goods. Coast Guard will continue to lead the U.S. delegation to the International Maritime Organization's (IMO) Dangerous Goods, Solid Cargoes and Containers (DSC) Subcommittee. However, DOT (RSPA) will maintain overall responsibility for the contents of the International Maritime Dangerous Goods Code as they relate to the Hazardous Materials Regulations and will serve as a member of the U.S. delegations to the IMO DSC Subcomittee meetings.

(7) Research and Development. Coast Guard and DOT will keep each other informed of research and development projects or efforts that have the potential of improving safety and security during hazardous materials transportation.

(8) Other. USCG will continue to participate with DOT (FAA, FRA, FMCSA and RSPA) in intermodal meetings concerning hazardous materials transportation.

b. This MOA does not impose specific programming, resource, or budgeting obligations on either Party.

c. The parties agree to enter into reimbursable agreements or other arrangements as necessary to fulfill the responsibilities described in this agreement.

6. OTHER PROVISIONS.

a. Severability. Nothing in this MOA or any annex shall be construed to conflict with current law, regulation, or directive of the Department of Transportation or the Department of Homeland Security. If a term of this MOA is inconsistent with such authority, that term shall be invalid to the extent of the inconsistency. The remainder of that term and all other terms of this MOA or any annex shall remain in effect.

b. Rights and Benefits. Nothing in this agreement is intended to diminish or otherwise affect the authority of any agency to carry out its statutory, regulatory or other official functions, nor is it intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies or officers, state agencies or officers carrying out programs authorized under Federal law, or any other person.

c. Amendment and Modification. This MOA and any annexes hereto may be amended or revised at any time with the written agreement of the Department of Transportation and the Commandant of the Coast Guard or the Secretary of Homeland

Security.

d. Period of Agreement/Termination. This MOA will be effective as of the date of final signature by both Parties and remain in effect until terminated by either Party. Either Party may terminate this MOA and any annexes hereto upon written notice.

7. POINTS OF CONTACT.

The following is a list of the points of contact (POC) for USCG and the DOT agencies. Additional contact information can be found in the Hazardous Materials Employee Resource Book posted at http://hazmat.dot.gov/pubtrain/hmpe_resourcehandbook.pdf.

U.S. Coast Guard

Contact the nearest USCG Marine Safety Office for the area in which the alleged violation occurs, or the USCG District office as noted in the Hazardous Materials Employee Resource Book (or web site). Local port POC is the Captain of the Port. District POC is the Chief, Marine Safety.

For matters other than individual enforcement cases, please contact:

Chief, Hazardous Materials Standards Division
Marine Safety and Environmental Protection
United States Coast Guard
2100 Second Street, SW
Washington, DC 20593
(202) 267-1577

Federal Aviation Administration

Contact one of the eight FAA Region Offices in the area in which the alleged violation occurs.
For matters other than individual enforcement cases, please contact:

Manager, Hazardous Materials Division
Aviation Security and Investigation
Federal Aviation Administration
800 Independence Ave., SW
Washington, DC 20591
(202) 267-7530

Federal Motor Carrier Safety Administration

Contact the appropriate FMSCA Division Office as noted in the Hazardous Materials Employee Resource Book (or web site) in the area in which the alleged violation occurs. POC is the Division Administrator.

For matters other than individual enforcement cases, please contact:

Chief, Hazardous Materials Division
Office of Enforcement and Compliance
Federal Motor Carrier Safety Administration
400 Seventh Street, SW
Washington, DC 20590
(202) 366-6121

Federal Railroad Administration

Contact one of the eight Region Field Offices as noted in the Hazardous Materials Employee Resource Book (or web site) in the area in which the alleged violation occurs. POC is the Hazardous Materials Specialist.

For matters other than individual enforcement cases, please contact:

Director, Hazardous Materials Division
Office of the Associate Administrator for Safety
Federal Railroad Administration
1120 Vermont Avenue, NW
Washington, DC 20005
(202) 493-6248

Research and Special Programs Administration

Contact one of the five Region Offices or Headquarters office as noted in the Hazardous Materials Employee Resource Book (or web page) in the area in which the alleged violation occurs. POC is the Director, Office of Hazardous Materials Enforcement.

For matters other than individual enforcement cases, please contact:

Associate Administrator for Hazardous Materials Safety
Research and Special Programs Administration
400 Seventh Street, SW
Washington, DC 20590
(202) 366-8553

APPROVED BY:

UNITED STATES COAST GUARD

THAD W. ALLEN
Chief of Staff

2/25/2003
Date

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

ANNETTE M. SANDBERG
Acting Administrator

2/24/2003
Date

FEDERAL RAILROAD ADMINISTRATION

ALLAN RUTTER
Administrator

2/24/2003
Date

FEDERAL AVIATION ADMINISTRATION

MARION C. BLAKEY
Administrator

2/26/03
Date

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

ELLEN G. ENGLEMAN
Administrator

2/24/03
Date

OFFICE OF INTERMODALISM, DOT, OFFICE OF THE SECRETARY

JEFFREY N. SHANE
Associate Deputy Secretary of Transportation

2/24/03
Date

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENT OF HOMELAND SECURITY
AND
THE DEPARTMENT OF TRANSPORTATION
ON ROLES AND RESPONSIBILITIES

1. PARTIES.

The "Parties" to this Memorandum of Understanding (MOU) are the Department of Homeland Security (DHS) and the Department of Transportation (DOT).

2. AUTHORITY.

a. DHS enters into this MOU pursuant to 6 U.S.C. § 112(b), 49 U.S.C. § 114, and Homeland Security Presidential Directive/HSPD-7.

b. DOT enters into this MOU pursuant to 49 U.S.C. § 301 and Homeland Security Presidential Directive/HSPD-7.

3. PURPOSE.

The purpose of this MOU is to facilitate the development and deployment of transportation security measures that consider efficiency in the movement of goods and people at the same time that they engender greater safety and security. The Parties recognize the importance of having dedicated points of contact to facilitate communication between the two departments and a clear mandate laying out how and when consultation will occur on issues that have the potential to impact both departments' statutory responsibilities. The primary objective is to develop procedures by which the two departments can continue to improve their cooperation and coordination in promoting the safe, secure, and efficient movement of people and goods throughout the transportation system. Specific delineations of roles, responsibilities, resources, and commitments concerning particular matters will be addressed in annexes to this MOU.

4. BACKGROUND.

a. The events of September 11, 2001, significantly changed the Nation's homeland security posture. Recognizing the importance of transportation security, on November 19, 2001, the President signed into law the Aviation and Transportation Security Act (ATSA), Pub. L. 107-71, 115 Stat. 597 (2001), which, among other things, established the Transportation Security Administration (TSA), originally in DOT and now in DHS. In enacting ATSA, Congress recognized the importance of security for all forms of transportation and related infrastructure, established TSA, and conferred upon TSA responsibility for security in all modes of transportation.

b. Thereafter, on November 25, 2002, Congress enacted the Homeland Security Act (HSA), Pub. L. 107-296, 116 Stat. 2135 (2002), which consolidated 22 Federal agencies with responsibilities for homeland security, including TSA and the U.S. Coast Guard, into the new DHS. DOT recognizes that DHS has primary responsibility for transportation security, and that DOT plays a supporting role, providing technical assistance and assisting DHS when possible with implementation of its security policies, as allowed by DOT statutory authorities and available resources. In addition to DHS authority, DOT retains statutory authority and responsibilities for such matters as passenger and freight transportation safety (including rail security), and the transportation of hazardous materials (including security), which will have some effects on security matters. In light of these authorities, DHS and DOT will work together to achieve the required level of multi- and inter-modal transportation security. The Parties desire a strong partnership in order to reduce the vulnerability of transportation passengers, employees, and systems to terrorism and other disruptions.

5. COMMUNICATIONS.

a. The Parties place high value on regular, timely, and full communications between themselves, and commit themselves to ensuring strong communication links through their actions. Timely communications between the two Parties at the highest level (Secretary, Deputy Secretary, or Chief of Staff) will take place if judged necessary by either Party.

b. DHS will designate a single point of contact to coordinate with DOT for each individual project or issue. Unless otherwise designated, DHS' Director of the Operational Integration Staff will be the overall point of contact for operational matters and the Executive Secretary will be the point of contact for all other matters. Unless otherwise designated, the DOT Director, Office of Intelligence and Security, will serve as the coordinator for DOT.

6. PRINCIPLES OF AND GENERAL AREAS FOR COOPERATION.

a. **Principles**. The Parties agree to the following principles:

(1) DHS has primary responsibility for security in all modes of transportation. In this regard, DHS will establish national transportation security performance goals and, to the extent practicable, develop appropriate security measures for the respective modes to achieve an integrated national transportation security system.

(2) DHS, in consultation with DOT and affected stakeholders, will identify, prioritize, and coordinate the protection of critical infrastructure to achieve established national performance goals for transportation security and seek the resources for Federal implementation. DOT will assist DHS in developing those protective measures affecting transportation, consistent with DOT's existing legal authority.

(3) Recognizing that DHS has responsibility for transportation security, DHS and DOT will continue to develop relationships with domestic and international stakeholders, both governmental and non-governmental, to ensure that the concerns of such stakeholders are considered in the establishment of national transportation security policies, strategies, and plans. DOT will cooperate with and assist in DHS' efforts to address stakeholder concerns regarding transportation security.

(4) DOT has unique owner-operator internal and protective security responsibilities for its own facilities, personnel, operations, and information systems, including the air traffic control system and two locks of the St. Lawrence Seaway. DOT will identify, prioritize, assess, remediate, and protect such internal critical infrastructure and key resources, and coordinate and collaborate with DHS on such matters, as appropriate.

(5) DHS will set appropriate transportation security standards, taking into consideration such comments as may be provided by DOT, facilitate coordination of intermodal security issues, and ensure the execution of those standards. DOT will collaborate with DHS in the implementation of such security standards, to the extent consistent with DOT's legal authority and to the extent that DOT can provide such assistance without adversely impacting its ability to perform its core missions. Where DOT anticipates that assisting DHS will require a substantial expenditure of resources, DOT will discuss with DHS the possible need for an annex to this MOA setting forth the terms and conditions of such assistance in a particular area.

(6) While DHS has the overall lead for transportation security regulations, both Parties have regulatory responsibilities in the area of transportation security. The Parties will work cooperatively to develop an integrated system of regulations providing for a safe, efficient, and secure transportation system and will issue regulations within their respective legal authorities. Each Party will seek early and frequent coordination with the other Party during the development of these regulations. The Parties will strive to exchange timely comments and coordinate issues concerning such regulations to the fullest extent possible. In addition, DHS or DOT may issue other requirements (including DHS security directives) or guidance affecting transportation security, after coordinating with the other Party.

(7) Throughout the budget development, justification, and execution process, the Parties will communicate with each other concerning funding for transportation security projects in order to present a coordinated position on transportation security funding matters and to avoid duplicative requests for security funding.

(8) The Parties will cooperate to the extent permissible by law in sharing intelligence, security, law enforcement, and threat information affecting transportation. To that end, DHS will promptly provide threat information, intelligence, and intelligence products related to transportation to DOT's Office of Intelligence and Security. DOT will promptly provide the same to DHS, through the Homeland Security Operations Center.

(9) Pre-existing memoranda of agreement (MOA) or MOUs between elements of DHS and elements of DOT, such as the TSA-Federal Aviation Administration MOA dated February 28, 2003, are not superseded by this MOU and remain in effect until rescinded, modified, or incorporated into annexes to this MOU. DOT and DHS will review these pre-existing agreements to determine whether to amend, continue or revoke.

b. **Cooperation**. As the need arises, DHS and DOT will continue to review their respective legal authorities, core competencies, and capabilities to identify specific areas of common interest in which the Parties may benefit from specific designation of roles and responsibilities in accordance with the principles set forth in this MOU.

Specific tasks and areas of responsibility that are appropriate for cooperation will be documented in annexes to this MOU. Each annex will be individually approved and signed by appropriate representatives of DHS and DOT.

c. **Obligations**. Unless otherwise provided for in annexes hereto, this MOU does not impose specific program, resource, or budgeting obligations on either Party.

7. OTHER PROVISIONS.

a. **Severability.** Nothing in this MOU or any annex thereto is intended to conflict with current statutes, regulations, orders, or directives of DHS or DOT, or any other Federal agency or entity. If a provision of this MOU, or any annex thereto, is inconsistent with such authority, then that provision will be invalid to the extent of such inconsistency, but the remainder of that provision and all other provisions, terms, and conditions of this MOU and any annexes thereto will remain in full force and effect.

b. **Rights and Benefits**. Nothing in this agreement is intended to diminish or otherwise affect the authority of any agency to carry out its statutory, regulatory or other official functions, nor is it intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies or officers, State agencies or officers carrying out programs authorized under Federal law, or any other person.

c. **Amendment and Modification.** This MOU may be amended or revised at any time by written agreement of the Secretary or Deputy Secretary of Homeland Security and the Secretary or Deputy Secretary of Transportation. Similarly, annexes to this MOU may be revised at any time by written agreement of the appropriate representatives of DHS and DOT.

d. **Period of Agreement/Termination.** This MOU will be effective as of the date of final signature by both Parties and remain in effect until terminated by either Party. Unless otherwise specifically provided in an annex hereto, either Party may terminate this MOU or any annex hereto upon ninety (90) days written notice.

APPROVED BY:

DEPARTMENT OF HOMELAND SECURITY

J.M. Loy, ADM
Deputy Secretary of Homeland Security

Date: 9/28/04

DEPARTMENT OF TRANSPORTATION

Kirk K. Van Tine
Deputy Secretary of Transportation

Date: 9/27/04

ANNEX TO THE
MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENT OF HOMELAND SECURITY
AND
THE DEPARTMENT OF TRANSPORTATION
ON ROLES AND RESPONSIBILITIES
CONCERNING

RAILROAD SECURITY

1. PARTIES.

This agreement is an Annex to and part of the Memorandum of Understanding between the Department of Homeland Security and the Department of Transportation on Roles and Responsibilities (MOU) dated September 28, 2004. The "Parties" to this Annex are the Department of Homeland Security (DHS) and the Department of Transportation (DOT). Within DHS the agency with primary responsibility for carrying out this Annex is the Transportation Security Administration (TSA). Within DOT the agencies with primary responsibility for carrying out this Annex are the Federal Railroad Administration (FRA) and the Office of Intelligence, Security, and Emergency Response (OISER) within the Office of the Secretary. When designated officials are identified in various sections of this Annex, the officials include their designees.

2. AUTHORITY.

a. DHS enters into this Annex pursuant to 49 U.S.C. §§ 106(m) and 114(m); the Homeland Security Act of 2002, Pub. L. No. 107-296, § 430, 116 Stat. 2135, 2178; the Intelligence Reform and Terrorism Prevention Act of 2004 (IRPTA), Pub. L. No. 108-458, 118 Stat. 3638; Homeland Security Presidential Directive No. 7, December 17, 2003, *Critical Infrastructure Identification, Prioritization, and Protection* (HSPD-7); and Homeland Security Presidential Directive No. 8, December 17, 2003, *National Preparedness* (HSPD-8). At the direction of the Secretary of Homeland Security, TSA has primary authority for the development of the National Strategy for Transportation Security.

b. DOT enters into this Annex pursuant to 49 U.S.C. § 301, 49 U.S.C. chapters 51 and 201 through 213, and HSPD-7.

c. All terms used in this Annex that also appear in the MOU have the meanings used in the MOU, except as otherwise provided; further, this Annex will be interpreted in a manner that is consistent with the interpretation of the MOU.

3. PURPOSE.

The Parties to this Annex have a mutual interest in ensuring coordinated, consistent, and effective activities that have the potential to materially affect their respective missions. The purpose of this Annex is to delineate clear lines of authority and responsibility and ensure cooperation and collaboration between the Parties in the area of passenger and freight railroad security based on existing legal authorities and core competencies. To achieve this purpose, the Parties agree to abide by the terms of this Annex, subject to applicable Federal laws, regulations, Presidential Directives, and relevant policies.

4. BACKGROUND.

The United States railroad network is a vital link in the Nation's transportation system and is critical to the economy, national defense, and public health. Amtrak and commuter railroads provide passenger rail service to more than 500 million passengers yearly. Some 40 percent of all intercity freight, measured in ton-miles, moves by rail, including 64 percent of the coal used by electric utilities to produce power. Over 1.7 million shipments of hazardous materials are shipped by rail annually, including materials that could be used in attacking the public such as toxic inhalation hazard materials, flammable liquids and gases, explosives, radiological materials, and poisonous materials. Maintaining a safe and secure railroad transportation system is essential.

In accordance with the Homeland Security Act and HSPD-7, DHS holds lead authority, primary responsibility, and dedicated resources for security activities in all modes of transportation, including rail. Pursuant to the Aviation and Transportation Security Act (ATSA) (Pub. L. 107-71) and specific delegation by the Secretary of Homeland Security, TSA acts as the lead Federal entity for transportation security generally and rail security in particular.

Within DOT, FRA has authority over every area of railroad safety (including security). See 49 C.F.R. § 1.49. The term "railroad" means all forms of non-highway ground transportation that runs on rails or electromagnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. The term "railroad" does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation. See 49 C.F.R. Part 209, Appendix A. FRA administers the Federal railroad safety laws, issues and enforces a substantial body of safety regulations, investigates railroad accidents and incidents, and has authority to address emergency situations involving hazards of death or injury in the railroad industry. FRA also enforces the Federal hazardous materials laws and regulations issued by DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA).

The Nation's freight and passenger railroads and railroad shippers, with the assistance of DHS and DOT, have been working on enhancing the security of their systems to address validated regional and national level threats. In accordance with the MOU, this Annex makes clear how FRA and TSA will coordinate their programs and initiatives in order to better assist railroads and railroad shippers in prioritizing and addressing their current and emerging security-related needs.

TSA and FRA recognize that PHMSA plays an integral role in hazardous materials safety and security. DHS/TSA and DOT/PHMSA roles and responsibilities are outlined in a separate Annex.

5. COORDINATION OF PLANNING, INSPECTION, TRAINING, AND ENFORCEMENT ACTIVITIES, AND THE DEVELOPMENT OF STRATEGIES FOR FURTHER ENHANCING RAILROAD SECURITY.

The Parties to this Annex place high value on communications between themselves, and commit themselves to endeavor to coordinate, to the maximum extent practicable, their programs and activities in order to improve passenger and freight railroad security in the United States while minimizing disruptions to railroad operations to the extent practicable.

a. Coordination meetings. In addition to the regular coordination envisioned by the MOU and this Annex, the Parties agree to hold coordination meetings as necessary at the headquarters level, and at regional offices, to discuss:

(1) coordinating training for their field inspectors;

(2) coordinating inspections and enforcement actions by their respective inspectors to:

(A) minimize disruption to entities being inspected;

(B) maximize the utilization of inspector resources;

(C) ensure that both Parties provide consistent information to the rail industry on security matters and safety matters with security implications; and

(D) ensure that the Parties take consistent enforcement action for violation of Federal laws and regulations, and that the Parties use appropriate enforcement tools to address security-related problems;

(3) emerging security threats based on intelligence indicators; and

(4) such other matters as warranted by the interaction of the Parties in pursuit of their respective missions or as necessitated by the operational environment, emergency circumstances, or other contingencies.

b. Inspectors.

(1) FRA and TSA deploy inspectors tasked with ensuring the accomplishment of their respective entities' missions and compliance with their respective regulatory regimes. To the extent practicable, the agencies will coordinate inspection activities to leverage knowledge and expertise, avoid duplication of effort, and minimize demands on stakeholders.

(2) TSA inspectors hold lead authority and responsibility in conducting security inspections and reviews to ensure compliance with TSA security requirements, identify security gaps, develop and share security best practices, and monitor the state of awareness and readiness throughout the rail mode. TSA inspectors do not initiate or conduct safety inspections, though they will refer significant safety problems they observe to the FRA as per subparagraph (6) of this section.

(3) FRA inspectors hold lead authority and responsibility in conducting safety inspections of railroad freight and passenger operations, ensuring safety compliance, and providing safety guidance and information to stakeholders. FRA inspectors conduct hazardous materials security inspections to ensure compliance with DOT security regulations and inspections as requested by TSA in accordance with subparagraph (5) of this section and Section 10 below. FRA inspectors will refer significant security problems they observe to TSA as per subparagraph (6) of this section.

(4) TSA and FRA agree to develop, periodically review, and amend standard operating procedures as operational requirements or other factors warrant. The Parties also agree to ensure inspection activities are effective and cause minimal disruption to stakeholder operations.

(5) If FRA's inspectors are needed to support TSA's security efforts in a time of an elevated security threat or during or after an event, FRA will make every effort to provide the necessary support. See also Sections 10 and 11.(d) below.

(6) Referrals.

> (A) If a TSA inspector observes an obvious and significant rail safety issue, the TSA inspector will immediately notify the appropriate TSA point of contact who will relay the information to FRA. If the safety issue requires immediate attention the TSA inspector will first report it to the proper railroad authority and then the TSA point of contact.
>
> (B) If an FRA inspector observes an obvious and significant security issue, the FRA inspector will immediately notify the appropriate FRA point of contact who will relay the information to TSA. If the security issue requires immediate

attention the FRA inspector will first report it to the proper railroad authority and then the FRA point of contact.

(C) FRA will continue to provide TSA with information on major railroad accidents via the DOT Crisis Management Center. If, during the course of conducting a railroad accident investigation, FRA suspects that the incident may have been deliberately caused, FRA will immediately alert TSA, provide access to all relevant information, and cooperate with TSA inspectors and other personnel deployed to investigate the incident. See also Section 7b below.

c. Points of contact. For matters of regular coordination and scheduling of meetings, the points of contact are:

DHS: Director, Transportation and Infrastructure Security Policy
TSA: Director, Surface Transportation Security Inspection Program
OST: Director, Office of Intelligence, Security and Emergency Response (OISER)
FRA: Director, Office of Safety Assurance and Compliance

6. CRITICALITY/VULNERABILITY ASSESSMENTS AND SECURITY REVIEWS.

Pursuant to HSPD-7, DHS is responsible for coordinating the national effort to identify and enhance the protection of the critical infrastructure and key resources of the United States. DHS meets this responsibility as the lead Federal entity for conducting criticality and vulnerability assessments, monitoring and assessing the threat to transportation systems, and developing risk-based countermeasures to enhance security, deter attacks, and minimize vulnerability and potential consequences.

When taking these actions in the rail mode, DHS and TSA will consult with DOT and FRA in the development of procedures that impact the facilities or operations of rail passenger and freight carriers or rail shippers.

To support DHS and TSA efforts in this area, FRA agrees to provide compliance data derived from security inspections or other reviews of the security plans required under 49 CFR 172.800 and activities of rail carriers and rail shippers. FRA will provide this data to TSA's General Manager for Freight Rail Security.

DHS and TSA will coordinate with DOT and FRA on observations or recommended measures derived from the results of criticality and vulnerability assessments to ensure they do not conflict with or adversely affect current or planned safety requirements.

7. RESPONSIBILITIES DURING AN EMERGENCY.

a. Background. The Parties have extensive emergency response procedures already in place to address their respective responsibilities in the event of an emergency. These responsibilities are encompassed under the National Response Plan and the associated National

Incident Management System, pursuant to Homeland Presidential Security Directive No. 5, February 28, 2003 (HSPD-5), *Management of Domestic Incidents*. Under HSPD-5 the "Secretary of Homeland Security is the principal Federal official for domestic incident management." Emergency Support Function #1 (Transportation) (ESF #1) of the National Response Plan establishes DOT as the primary agency for transportation in emergencies. Under ESF #1, DOT is responsible for the Emergency Management of the Transportation System, coordination of alternate transportation services, the restoration and recovery of transportation infrastructure, and other functions.

b. Sharing information during an emergency. The point of contact at DOT for receiving and distributing information about an incident during an emergency and providing situational awareness of the transportation enterprise is DOT's Crisis Management Center (CMC). The points of contact at DHS for receiving and distributing information about emergencies with an impact on rail security are TSA's Transportation Security Operations Center (TSOC) and the DHS National Operations Center (NOC). As set forth in Section 6, FRA has the lead role in investigating rail accidents and for reporting and coordinating the accident with the CMC until it is determined that the incident may have been deliberately caused. By this Annex the Parties do not intend to alter the established emergency response procedures. However, the Parties acknowledge in this Annex that they both require timely information during emergencies and commit themselves to promptly sharing information about emergency situations that implicate the missions and interests of the other Party. Information in this context includes both the initial incident report and ongoing information about incident developments. The timely sharing of such information serves the public interest in the operation of a secure and safe national rail system. Each Party requires this information to perform their respective roles in responding to the incident, including dedication of Federal resources, coordinating other forms of assistance, and advising the White House or other Federal agencies, as necessary.

8. COMMUNICATING INTELLIGENCE, INCLUDING THREATS AND WARNINGS, AND DECISIONS ON PROTECTIVE MEASURES TO RAIL INDUSTRY STAKEHOLDERS.

a. Communication of threats. DHS is responsible for communicating intelligence, including threats and warnings, and changes to the Homeland Security Advisory System threat conditions, on a timely basis to DOT and to the railroad industry stakeholders. DOT's efforts in this area, through both FRA and OISER, are coordinated with DHS. DOT is responsible for communicating any intelligence it may have including threats and warnings promptly to the TSOC and NOC.

b. Communicating protective measures to affected organizations. In pursuit of the joint interest in ensuring the highest state of security awareness and readiness, DHS will consult with DOT prior to disseminating security requirements (including regulations, orders, and security directives) and voluntary standards and guidelines to the public. Additionally, DOT will consult with DHS prior to disseminating safety requirements (including regulations and orders) and voluntary standards and guidelines that impact security to the public.

c. Points of contact. The points of contact are:

DHS: Director, Transportation and Infrastructure Security Policy
TSA: Freight Rail: General Manager, Freight Rail Security
Passenger Rail: General Manager, Transit and Passenger Rail Security
OST: Director, Office of Intelligence, Security and Emergency Response (OISER)
FRA: Director, Office of Safety Assurance and Compliance

9. SOLICITING, RECEIVING, AND CONSIDERING INPUT ON RAILROAD SECURITY MATTERS.

Each Party recognizes that timely input from the other Party will benefit the Parties' decisions on railroad security matters. Section 5(a) of the DHS-DOT MOU states that the Parties "place high value on regular, timely, and full communications between themselves, and commit themselves to ensuring strong communication links through their actions." The Parties also commit themselves to coordinating, to the maximum extent practicable, their programs and activities in order to improve railroad security in the United States. Moreover, given DHS's lead role on railroad security matters, TSA's timely input on FRA decisions will ensure that FRA's decisions in this area conform to DHS policy.

TSA and FRA will provide each other an opportunity to participate on conference calls and general meetings with railroad industry stakeholders concerning security-related matters. Communications to DOT pursuant to this paragraph will be sent to both OISER and to FRA's Director, Office of Safety Assurance and Compliance. Communications to DHS pursuant to this paragraph will be sent to TSA's General Manager for Freight Rail Security or TSA's General Manager for Transit and Passenger Rail Security, as appropriate.

To gain the benefits of opportunities for timely input, the Parties designate the officials listed below as the points of contact on the prescribed subjects, and commit to providing advance notice of planned actions, with the exception of emergencies requiring immediate action, in which case the Parties will consult as early as time permits. The Parties will provide notice at a time when the other Party can still have genuine input and adequate time for review, typically during the development phase of the action contemplated.

a. Regulations, orders, directives, standards, and guidelines. In accordance with the MOU, the Parties "will seek early and frequent coordination" in the development of regulations, other requirements – such as orders and directives (including security directives) – and guidelines and standards affecting rail security. In most cases, these will be TSA actions, with FRA having the opportunity to provide input, but DOT and FRA will have the same obligation to consult with TSA on any such proposals and actions relevant to rail security, including safety measures with security implications.

The Parties recognize that emergencies or other exigent circumstances may preclude thorough coordination prior to dissemination of these types of measures. The parties will coordinate as extensively as circumstances allow and review actions taken as necessary.

The TSA point of contact will be TSA's Deputy Chief Counsel, Regulations. The FRA point of contact will be FRA's Assistant Chief Counsel, Safety Law Division.

b. Legislation and testimony. For matters with an impact on railroad security, the Parties will consult with each other to the extent reasonably practicable on draft bills they are developing, comments on bills, draft testimony or briefings to be given before Congressional bodies or staff, and answers to questions for the record. The TSA point of contact will be TSA's Legislative Counsel. The FRA point of contact will be FRA's Assistant Chief Counsel, Safety Law Division.

c. Public statements, press releases, and publications. For matters with an impact on railroad security, the Parties will consult with each other to the extent reasonably practicable on public statements, press releases, and publications prior to issuance. The TSA point of contact will be the TSA Assistant Director for Strategic Communications and Public Affairs. FRA's point of contact will be FRA's Director of Public Affairs.

d. Research and development. The Parties will consult on research on railroad security related matters that either is conducting or sponsoring, including long-term plans or proposals to certify a security-related technology for rail transportation. The DHS points of contact will be TSA's Chief Support Systems Officer and the State and Local Government Coordination and Preparation Systems Support Division Director. The FRA point of contact will be FRA's Deputy Associate Administrator for Railroad Development.

e. Other. The Parties will generally consult at an appropriate time prior to final action on all other types of projects affecting railroad security or involving safety programs with security implications. The TSA points of contact will be TSA's General Manager for Freight Rail Security and TSA's General Manager for Transit and Passenger Rail Security. The DOT point of contact except on matters otherwise specified in this Annex will be FRA's Director, Office of Safety Assurance and Compliance.

10. USE OF FRA PERSONNEL AND/OR RESOURCES.

The Parties recognize that exigent circumstances or other contingencies may tax available security resources. In these situations, DHS may seek to supplement its resources with FRA personnel and/or other assets. If DHS determines such support is necessary to develop, support, staff, implement, or enforce railroad security regulations, orders, directives, plans, programs, or other measures, or to conduct security reviews during a period of elevated security threat, DHS will request such assistance from FRA in writing. Electronic mail is an appropriate form of written communication for this requirement.

The request must be sent to FRA as soon as practicable after DHS determines such a need exists. Whenever circumstances permit, DHS should make the request at least thirty (30) days prior to the date on which it desires the FRA personnel or other resources. The request should be directed to FRA's Director, Office of Safety Assurance and Compliance, who will respond in

writing as soon as practicable as to whether FRA will be able to provide the requested resources. If FRA agrees to provide personnel and/or resources, the Parties are authorized to establish the terms and conditions of that arrangement by a separate written agreement that references this Annex. If reimbursement of any Party becomes an issue in connection with that arrangement, Section 11.d, below, applies.

11. GENERAL PROVISIONS.

a. Severability. Nothing in this Annex or any supplement thereto is intended to alter or conflict with statutory provisions, regulations, orders, or directives of DHS, DOT, TSA, FRA, or any other Federal agency or entity. If a provision of this Annex or any supplement thereto is inconsistent with such authority, then that provision will be invalid to the extent of such inconsistency, but the remainder of that provision and all other provisions, terms, and conditions of this Annex and any supplement thereto will remain in full force and effect.

b. Rights and benefits. Nothing in this Annex is intended to diminish or otherwise affect the authority of any agency to carry out its statutory, regulatory or other official functions, nor is it intended to create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, officers, or employees, state agencies or officers carrying out programs authorized under Federal law, or any other person.

c. Period of agreement/termination. This Annex shall be effective as of the date of final signature by all Parties and remain in effect until terminated by either FRA or TSA. Either FRA or TSA may terminate this Annex and any supplement hereto upon ninety (90) days written notice to the respective contact listed in Section 9(f) herein.

d. Reimbursement. Absent subsequent agreement, each Party will be responsible for its own expenses. If, at a future date, a Party desires to address issues of reimbursement with regard to particular activities, that Party will request a meeting on the subject of reimbursement with the other Party prior to incurring expenses related to those activities. In that event, the Parties will meet promptly to determine whether reimbursement will be addressed by a separate agreement or not at all. Any such reimbursements will be in accordance with the provisions of the Economy Act, or other applicable authority, and applicable agency procedures. If a Party seeking such reimbursement is not satisfied with the outcome of such a meeting, it may decline to provide the other Party resources for which it desires reimbursement.

e. Exchanging and keeping contact information current. Within thirty (30) days of the effective date of this agreement, every person listed as a point of contact in any part of this Annex shall provide to each of the other points of contact listed in that part the following information: full name and title, office telephone number, full address, and cell phone number. All persons serving as points of contact shall provide to any person acting in their positions all necessary information about the other points of contact in that subject area. If any person occupying a position shown as a point of contact in this Annex changes any of this information, that person will immediately provide the new information to all other affected points of contact.

f. Amendment and modification. If, in addition to the matters specifically covered in this Annex, either Party identifies additional matters on railroad security that should be specifically included in this Annex, that Party will request that the Annex be amended accordingly, and the Parties will meet to discuss the need for such an amendment. Any agreed amendment or modification must be in writing, and executed by the appropriate representatives of TSA and FRA.

APPROVED BY:

TRANSPORTATION SECURITY ADMINISTRATION

Robert D. Jamison for

Kip Hawley
Assistant Secretary

9/28/06
Date

FEDERAL RAILROAD ADMINISTRATION

Joseph H. Boardman

Joseph H. Boardman
Administrator

9/12/2006
Date

APPENDIX C
CHECKLIST FOR WRITING VIOLATION REPORTS

- **Establish Elements of Violation.**
  - Review language of specific regulation, order, or statute violated.
  - Address each element of the violation in logical order.
  - If willfulness is alleged, explain basis (See discussion of term in Part 209, Appendix A).

- **Determine Likely Sources of Evidence to Support Each Element of Violation.**
  - Inspector's own observations.
  - Photographs: very helpful if violation lends itself to being captured on film.
  - Documents: describe source of each document and purpose for including it (what does it show and how does it help make the case?); do not alter the document.
  - Admissions against interest: statements by company officials or employees admitting element of violation; can be found in company documents or reports of interview.
  - Signed witness statements: need to use most current version of witness statement form and need to address elements of violation and basis of witness's knowledge.

- **Anticipate Defenses or Mitigating Factors.**
  - Consider records (e.g., repair records contradicting our version of events) railroad might offer to rebut allegations; obtain them and explain why they do not defeat the case.
  - Expect challenges to allegations based solely on witness statements; make sure statements anticipate and rebut those statements.
  - Anticipate ways railroad may try to minimize seriousness of violation or mitigate by reference to remedial action, and explain why such points are or are not valid.

- **Provide Important Background Information.**
  - Recent history of compliance with relevant set of regulations, especially at this location.
  - Course of dealings with railroad or shipper on this enforcement issue.
  - Any circumstances that make this violation especially hazardous.
  - Any circumstances that substantially mitigate the seriousness or culpability
  - Alleging violations for multiple days, seeking maximum penalty, or seeking total penalties in excess of $100,000? If yes:

    - Violation report itself should very briefly summarize basis of request for extraordinary penalties.
    - Consult region and determine who will draft cover memo from regional manager that will provide more extensive discussion of need for such penalties.
    - Need only one cover memo for related group of violation reports.

- **Review Draft Report.**
    - Quality control: fix typos, misspellings, etc.; remove any references to a complaint or to a complainant; Remove opinions about companies or individuals.
    - Ask yourself if all elements of violation are satisfactorily addressed.
    - On a complicated case, ask a colleague (even from another discipline) to read draft to see if it clearly states the case and answers relevant questions.

APPENDIX D
TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL (TWIC) INFORMATIONAL BULLETIN

Transportation Security Administration

U.S. Department of Homeland Security
United States Coast Guard

TWIC INFORMATIONAL BULLETIN
List of Agencies Qualifying for the "Federal Officials" Exemption

Federal officials and Law Enforcement officials are not required to obtain or possess a TWIC in order to gain or have unescorted access to MTSA regulated facilities and/or vessels while in the performance of their official duties (33 CFR 101.514(b), (c), (d)). This also includes contractors assigned to Federal agencies that are issued agency credentials (either HSPD-12 compliant credentials or the agencies official credentials currently in use) and to those State and local regulatory enforcement officials that are described in TWIC Policy Advisory Council Decision 01-07 (http://homeport.uscg.mil/twic).

The following list is provided to serve as a quick reference guide at access control points aboard MTSA regulated facilities and vessels; it is not intended to be all inclusive as there are numerous federal agencies with jurisdiction in and around the maritime transportation sector. All personnel with security duties including CSOs, FSOs, VSOs, and security guards should familiarize themselves both with this list and with the credentialing and/or uniforms (if applicable) from the below list of agencies.

Personnel with security duties are reminded that the TWIC exemption applies only to those Federal officials, Law Enforcement officials and Federal Government contractors who are entering while in the performance of their official duties and who have their respective agency/department credentials and/or Department of Defense Common Access Card (CAC) to provide for verification in accordance with 33 CFR 101.515(c).

- Army Corp of Engineers
- Centers for Disease Control
- Federal Bureau of Investigation
- Federal Emergency Management Agency
- Federal Grain Inspection Service
- Federal Railroad Administration
- National Marine Fisheries
- National Oceanographic & Atmospheric Administration
- National Science Foundation
- National Transportation Safety Board
- Pipeline & Hazardous Materials Administration
- Transportation Security Administration
- US Coast Guard
- US Coast Guard Auxiliary
- US Customs & Border Protection
- US Department of Agriculture
- US Department of Defense
- US Department of Energy
- US Department of Homeland Security
- US Department of Interior
- US Department of Transportation
- US Drug Enforcement Agency
- US Environmental Protection Agency
- US Immigration & Customs Enforcement
- US Maritime Administration
- US Marshals Service
- US Nuclear Regulatory Commission
- US Postal Service
- US Secret Service

** Security personnel are encouraged to contact their local Coast Guard Captain of the Port (COTP) with any questions regarding this bulletin and for clarification on agency and/or department officials not listed above.

APPENDIX E
GLOSSARY AND ACRONYMS

Glossary of Terms and Definitions

Acceptance: Consent to the terms of an offer in which consent creates a contract: implies the right to reject.

Administrator: The Administrator of the Federal Railroad Administration.

Agent: One who, by mutual consent, acts for the benefit of another; one authorized by a party to act on that party's behalf.

Associate Administrator: The Associate Administrator for Railroad Safety/Chief Safety Officer of the Federal Railroad Administration.

Broker: One who acts as an intermediary for a commission or fee, brings parties together, and assists in negotiating contracts between them.

Federal Hazardous Material(s) Law: Federal Hazardous Material(s) Transportation Law found at 49 U.S.C. § 5101 et seq.

Fitness: Demonstrated and documented knowledge and capabilities resulting in the assurance of a level of safety and performance necessary to ensure compliance with the applicable provisions and requirements of the Hazardous Materials Regulations, Special Permit, or approval issued under the regulations.

Freight Forwarder: A person who, having no interest in goods and no ownership or interest in the means of their carriage, undertakes (for hire) forwarding these goods by safe carrier to a destination.

General Manual: The manual that provides the general duties and responsibilities common to all field personnel of the Office of Railroad Safety.

Hazardous Materials Regulations or HMR: Title 49 Code of Federal Regulations (CFR) Parts 100–199.

Hazardous material, Hazmat, or HM: A substance or material, including a hazardous substance, which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.

Hazardous Material Incident: A hazardous material event that requires the submission of a DOT Form 5800.1. See 49 CFR 171.15 and 171.16.

Inspection: Checking or reviewing a person against established laws, rules, regulations, and standards.

Inspection Report: Federal Railroad Administration Inspection Report Form FRA F6180.96, and the continuation sheet FRA Form F6180.96a.

Inspector: A Federal hazardous materials inspector and any authorized person acting in that capacity.

Investigation: An inspection or study by close examination and systematic inquiry of accidents, incidents, violations, or alleged violations of laws, rules, regulations, and standards.

Offer: A "manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." Restatement, Contracts (2d) §24.

Offeror: A person who performs functions associated with offering a hazardous material for transportation. A person who offers packagings of a hazardous material or packages containing the residue of a hazardous material for transportation. Although the word "shipper" does appear in the Hazardous Materials Regulations (HMR), it is used in an ordinary layman's manner rather than as a specific, technical term of art.

Office of Hazardous Materials Safety: A division within the Pipeline and Hazardous Materials Administration. Its responsibilities include the development of the HMR.

One-Time Movement Approval: The Federal Railroad Administration's process to allow movement of non-complying bulk packages for a special purpose (usually repair) under specified conditions ensuring the safety of the rail movement. (See 49 CFR § 174.50.) Granting of such authority does not relieve a party from any statutory liability applicable to such movements.

Person: An individual, corporation, company, firm, partnership, society, association, or joint-stock association, which includes any trustee, receiver, assignee, or personal representative thereof.

Pipeline and Hazardous Materials Safety Administration (PHMSA): The lead agency in the development of the HMR. The agency was formerly known as Research and Special Programs Administration.

Principal: "One who has permitted or directed another to act for his benefit and subject to his direction or control." Seavey Law of Agency § 3 (1964)

Secretary: The Secretary of Transportation.

Sensitive Security Information: Information that, if publicly released, would be detrimental to transportation safety and/or security as defined by 49 CFR Parts 15 and 1520. Although not considered classified information, there are specific procedures for recognizing, marking, protecting, safely sharing, and destroying it.

Special Permit: A document issued by the Associate Administrator of PHMSA under the authority of 49 U.S.C. § 5117 permitting a person to perform a function that is not otherwise permitted under Subchapter A or C of 49 CFR or other regulations issued under 49 U.S.C. § 5101 et seq. (e.g., Federal Motor Carrier Safety Administration routing requirements). The terms "Special Permit" and "exemption" have the same meaning for the purposes of Subchapter A or C or other regulations under 49 U.S.C. § 5101 through 5127.

Specialist: A hazardous materials specialist, who is a key advisor to the Regional Administrator or Hazardous Materials Staff Director on hazardous materials matters. Specialists provide technical guidance to inspectors.

Violation Report: Hazardous Materials Violation Report Form FRA F6180.110.

Acronyms

AARRS/CSO	Associate Administrator Railroad Safety/Chief Safety Officer
AAR	Association of American Railroads
ALARA	as low as reasonably achievable
ASTM	American Society for Testing and Materials
ASME	American Society of Mechanical Engineers
ASSE	American Society of Safety Engineers
ATSDR	Agency for Toxic Substances and Disease Registry (U.S. Department of Health and Human Services)
BOE	Bureau of Explosives
CDC	Center for Disease Control
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
CFR	Code of Federal Regulations
CHEMNET	A mutual aid network of chemical offeror and contractors
CHEMTREC	Chemical Transportation Emergency Center
CHLOREP	A mutual aid group comprising offerors and carriers of chlorine
CMA	Chemical Manufacturers Association
COFC	container on flatcar
DHS	U.S. Department of Homeland Security
DOD	U.S. Department of Defense
DOE	U.S. Department of Energy
DOT	U.S. Department of Transportation
EPA	U.S. Environmental Protection Agency
EPCRA	Emergency Preparedness and Community Right-to-Know Act
EO	emergency order
FEMA	Federal Emergency Management Agency
FHML/FHMTL	Federal Hazardous Material Law or Federal Hazardous Material(s) Transportation Law
FR	Federal Register
FRA	Federal Railroad Administration
GAO	Government Accountability Office
HHS	U.S. Department of Health and Human Services
HMR	Hazardous Materials Regulations
HTUA	high-threat urban area
MOT	material of trade
NAR	non-accidental release
NCP	National Contingency Plan
NIOSH	National Institute of Occupational Safety and Health
NSPP	National Safety Program Plan
NTSB	National Transportation Safety Board
NIP	National Inspection Plan
NRT	National Response Team
NRF	National Response Framework
OHMS	Office of Hazardous Materials Safety
OSC	on-scene coordinator

OSHA	Occupational Safety and Health Administration
OTA	Office of Technology Assessment, U.S. Congress
OTMA	one-time movement approval
PHMSA	Pipeline and Hazardous Materials Safety Administration (formerly RSPA)
PIH	poison inhalation hazard
PPB	parts per billion
PPM	parts per million
PPT	parts per trillion
RCA	root-cause analysis
RCRA	Resource Conservation and Recovery Act
RDV	Office of Research and Development
RIP	Regional Inspection Point
RPD	Office of Railroad Policy and Development
RSIA	Rail Safety Improvement Act of 2008
RRS	Office of Railroad Safety
RRT	regional response team
RSAC	Railroad Safety Advisory Committee
RSOM	Railroad System Oversight Manager
RSPA	Research and Special Programs Administration (Now PHMSA)
RTECS	Registry of Toxic Effects of Chemical Substances
RQ	reportable quantity
SARA	Superfund Amendments and Reauthorization Act of 1986
SCA	Safety Compliance Agreement
SIDT	Safety Improvement and Development Team
SP	Special Permit
SSI	sensitive security information
STRACNET	Strategic Rail Corridor Network
TOFC	trailer on flatcar
TIH	toxic inhalation hazard
TSA	Transportation Security Administration
TSCA	Toxic Substances Control Act
TWA	time-weighted average

Appendix F: Forms List

Inspection Report Form FRA 6180.96

- FRA Copy
- Railroad/Company Copy
- Reverse Side of Report (Railroad Remedial Action)

Hazardous Materials Violation Report Form FRA 6180.110

Notice to Individual Regarding Violation(s) of Federal Railroad Safety or Hazardous Materials Transportation Statutes, Regulations or Orders Form FRA 6180.80

- Individual's Copy
- Office of Safety's Copy
- Chief Counsel's Copy
- Employer's Copy
- Region's Copy

FRA One Time Movement Approval Request

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

INSPECTION REPORT

OMB No. 2130-0509

Inspector's Name	Inspector's Signature	Inspector's ID No.	Report No.	Date yyyy	mm	dd

Railroad/Company Name & Address	R/C	Division	RR/Co. Representative (Receipt Acknowledged)
	RR/Co. Code	Subdivision	Name Title Signature

From: City	Codes	Destination City & County	Codes	From Latitude:
State		City		From Longitude:
County		County		To Latitude:
Mile Post: From _____ To _____		Inspection Point:		To Longitude:

Activity Code:											
Units:											

Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect Code	Subrule	Speed	Class	Train #/Site	SNFR *	RCL **	# of Occ. ***	Activity Code

Description

Violation Recommended Yes ☐ No ☐ Latitude: Longitude:

Written Notification to FRA of Remedial Action is: Required ☐ Optional ☐ Railroad Action Code ☐ Date (mm/dd/yyyy) ____/____/____ Comments on back? ☐

Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect Code	Subrule	Speed	Class	Train #/Site	SNFR *	RCL **	# of Occ. ***	Activity Code

Description

Violation Recommended Yes ☐ No ☐ Latitude: Longitude:

Written Notification to FRA of Remedial Action is: Required ☐ Optional ☐ Railroad Action Code ☐ Date (mm/dd/yyyy) ____/____/____ Comments on back? ☐

Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect Code	Subrule	Speed	Class	Train #/Site	SNFR *	RCL **	# of Occ. ***	Activity Code

Description

Violation Recommended Yes ☐ No ☐ Latitude: Longitude:

Written Notification to FRA of Remedial Action is: Required ☐ Optional ☐ Railroad Action Code ☐ Date (mm/dd/yyyy) ____/____/____ Comments on back? ☐

Source Code	File Number	I.D.(s) of Accompanying Inspector(s) _____, _____, _____, _____, _____, _____, _____, _____, _____, _____

Activity Code								
Activity Code Hours								

Public reporting burden for this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. According to the Paperwork Reduction Act of 1995, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information unless it displays a currently valid OMB control number. The valid OMB control number for this information collection is 2130-0509. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden to: Information Collection Officer, Federal Railroad Administration, 1200 New Jersey Avenue, S.E., Third Floor West, Washington, D.C. 20590.

* SNFR - Special Notice for Repairs ** RCL - Remote Control Locomotive *** # of Occ. - Number of Occurrences

FRA COPY

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

INSPECTION REPORT

OMB No. 2130-0509

Inspector's Name	Inspector's Signature	Inspector's ID No.	Report No.	Date yyyy	mm	dd

Railroad/Company Name & Address	R/C	Division	RR/Co. Representative (Receipt Acknowledged)
	RR/Co. Code	Subdivision	Name Title Signature

From: City	Codes	Destination City & County	Codes	From Latitude:
State		City		From Longitude:
County		County		To Latitude:
Mile Post: From _____ To _____		Inspection Point:		To Longitude:

Activity Code:											
Units:											

Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect Code	Subrule	Speed	Class	Train #/Site	SNFR *	RCL **	# of Occ. ***	Activity Code

Description

Violation Recommended Yes ☐ No ☐ Latitude: Longitude:

Written Notification to FRA of Remedial Action is: Required ☐ Optional ☐ Railroad Action Code ☐ Date (mm/dd/yyyy) ____/____/____ Comments on back? ☐

Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect Code	Subrule	Speed	Class	Train #/Site	SNFR *	RCL **	# of Occ. ***	Activity Code

Description

Violation Recommended Yes ☐ No ☐ Latitude: Longitude:

Written Notification to FRA of Remedial Action is: Required ☐ Optional ☐ Railroad Action Code ☐ Date (mm/dd/yyyy) ____/____/____ Comments on back? ☐

Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect Code	Subrule	Speed	Class	Train #/Site	SNFR *	RCL **	# of Occ. ***	Activity Code

Description

Violation Recommended Yes ☐ No ☐ Latitude: Longitude:

Written Notification to FRA of Remedial Action is: Required ☐ Optional ☐ Railroad Action Code ☐ Date (mm/dd/yyyy) ____/____/____ Comments on back? ☐

* SNFR - Special Notice for Repairs ** RCL - Remote Control Locomotive *** # of Occ. - Number of Occurrences

RAILROAD/COMPANY COPY

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

INSPECTION REPORT
(Continuation)

Inspector's ID No.	Report No.	Date		
		yy	mm	dd

OMB No. 2130-0509

Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect Code	Subrule	Speed	Class	Train #/Site	SNFR *	RCL **	# of Occ. ***	Activity Code

Description

Violation Recommended Yes ☐ No ☐ Latitude: Longitude:

Written Notification to FRA of Remedial Action is: Required ☐ Optional ☐ Railroad Action Code ☐ Date (mm/dd/yyyy) ____/____/____ Comments on back? ☐

Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect Code	Subrule	Speed	Class	Train #/Site	SNFR *	RCL **	# of Occ. ***	Activity Code

Description

Violation Recommended Yes ☐ No ☐ Latitude: Longitude:

Written Notification to FRA of Remedial Action is: Required ☐ Optional ☐ Railroad Action Code ☐ Date (mm/dd/yyyy) ____/____/____ Comments on back? ☐

Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect Code	Subrule	Speed	Class	Train #/Site	SNFR *	RCL **	# of Occ. ***	Activity Code

Description

Violation Recommended Yes ☐ No ☐ Latitude: Longitude:

Written Notification to FRA of Remedial Action is: Required ☐ Optional ☐ Railroad Action Code ☐ Date (mm/dd/yyyy) ____/____/____ Comments on back? ☐

Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect Code	Subrule	Speed	Class	Train #/Site	SNFR *	RCL **	# of Occ. ***	Activity Code

Description

Violation Recommended Yes ☐ No ☐ Latitude: Longitude:

Written Notification to FRA of Remedial Action is: Required ☐ Optional ☐ Railroad Action Code ☐ Date (mm/dd/yyyy) ____/____/____ Comments on back? ☐

* SNFR - Special Notice for Repairs ** RCL - Remote Control Locomotive *** # of Occ. - Number of Occurrences

RAILROAD/COMPANY COPY

RAILROAD FOLLOW-UP INSTRUCTIONS

1. Cease violating the Federal Railroad safety laws immediately. The time allowed to file this report does not allow a violation to continue.
2. Report remedial actions within 30 days after the end of the month in which notification of the recommendation for the assessment of a civil penalty was received. NOTE: If remedial actions cannot be taken within the 30-day period, an explanation of the reason for the delay must be submitted to the address indicated on this report.
3. Enter the type of remedial actions taken, using the appropriate Remedial Actions Source Codes for each item number.
4. Enter the completion date of the remedial actions for each item number.
5. The individual completing the remedial actions report form for the railroad must sign and date the form, thereby attesting to the completion of the remedial actions report for all line numbers. NOTE: This remedial actions report is intended to provide FRA with information of specific actions taken by the railroad in response to notification that a failure to comply with a provision of the Federal Railroad safety laws has been alleged; submission of this report does not preclude the railroad from later raising all pertinent defenses in response to a penalty demand.
6. Mail to the address indicated on the top right of this page.

WARNING! Any person who violates any requirement of 49 CFR Part 209 Subpart E-Remedial Actions or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. A person may also be subject to the criminal penalties provided for in 49 U.S.C. 21311 (formerly codified at 45 U.S.C. 438(e)) for knowingly and willfully falsifying reports required by Subpart E-Remedial Actions.

RR/Co. Representative's Title	Date Signed
RR/Co. Representative's Signature	

Return this form to the following address:

RAILROAD REMEDIAL ACTION CODES

A	-	Disciplinary action/decertification
B	-	Document filed
C	-	Inspection performed
D	-	Locomotive or car moved for repair (where permitted)
E	-	Removed from service
F	-	Repaired
G	-	Replaced
H	-	Report filed
J	-	Secured
K	-	Speed restriction, if applicable and sufficient
L	-	Test performed
M	-	Training/remedial actions training
N	-	Other remedial actions
P	-	Adjusted

Item	Railroad Remedial Comments

Item	Railroad Remedial Comments

Item	Railroad Remedial Comments

OMB No. 2130-0509

U.S. Department of Transportation
Federal Railroad Administration

Hazardous Materials Violation Report Form

1. Respondent: RR/Co Code:	2. Name of Inspector: ID No.:	
3. Address of Respondent:	4. Violation Report Number:	5. F6180.96 Report Number - Date:
6. Location Where the Violation was Observed: GSA Codes: City: State:	7. Date Violation Occurred: Month Day Year	8. Train Designation:
9. Line Item No. / Primary Section Violated / Number of Claims: Line Item _____ _____._____._____ (____ claim(s))		

10. Violation Narrative:

11. Date Report Prepared:	12. Signature of Inspector(s):	13. Respondent Notification: Name: Title: Date: Time:

Public reporting burden for this information collection is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. According to the Paperwork Reduction Act of 1995, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information unless it displays a currently valid OMB control number. The valid OMB control number for this information collection is 2130-0509. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden to: Information Collection Officer, Federal Railroad Administration, 1200 New Jersey Avenue, S.E., Third Floor West, Washington, D.C. 20590.

U.S. Department of Transportation
Federal Railroad Administration

Notice to Individual Regarding Violation(s) of Federal Railroad Safety or Hazardous Materials Transportation Statutes, Regulations or Orders

REGION/HQ'S SEQUENTIAL CALENDAR YEAR NO.

The Federal railroad safety and hazardous materials transportation laws authorize the Federal Railroad Administration (FRA) to bring enforcement actions directly against individuals who violate those laws. Individuals who willfully violate the railroad safety laws or who knowingly violate the hazardous materials transportation laws are subject to civil penalties of up to $100,000 per violation. Individuals whose violation(s) of those laws are shown to make them unfit for the performance of safety-sensitive functions are subject to suspension or disqualification from such service. (Willful violations of the hazardous materials transportation laws subject an individual to possible criminal sanctions.) If you have questions about the laws pertaining to railroad safety or hazardous material transportation, contact the officer of your employer responsible for safety matters or the closest FRA office.

FRA has reason to believe that you violated the statute, regulation or order described below. Box 4 below indicates whether or not a violation report recommending enforcement action will be sent to FRA's Office of Chief Counsel. If the box is checked "YES," you will be hearing from that office as to what action will be taken and will have an opportunity to respond at that time. If the box is checked "NO," you should consider this a warning that any future violations you may commit will result in enforcement action. In the case of a warning, you may submit any information in explanation or mitigation to the Regional Administrator at the address below. A copy of this notice will be provided to your employer, and in the case of joint operations, to the railroad responsible for the operation.

PRIVACY ACT NOTICE: Under authority of the Federal railroad safety and hazardous materials transportation laws, FRA collects the information on this notice for inclusion in its records concerning violations of the Federal railroad safety and hazardous materials transportation laws by individuals. Those records may be used to support enforcement actions against individuals and may be disclosed to other government agencies, the public, the railroad industry, or Congress in the interest of promoting compliance with the safety laws. Disclosure of your social security number is voluntary and would be used to distinguish your compliance records from those of someone with the same name and date of birth.

1. SUBJECT:	2. VIOLATION OF 49 CFR:	3. F6180 REPORT TYPE & NO:	4. VIOL./CHIEF COUNSEL WARNING LETTER RECOMMENDED: ☐ YES ☐ NO

5. NAME
Last: *First:* *Middle Int.:*

6. HOME ADDRESS *Street:*
City: *State:* *Zip Code:*

7. SOCIAL SECURITY NUMBER/EMPLOYEE ID NUMBER:		10. TIME AND DATE OF VIOLATION Time: Date:
8. DATE OF BIRTH (mm/dd/yy)	9. JOB TITLE OF INDIVIDUAL:	11. TIME AND DATE INDIVIDUAL NOTIFIED Time: Date:
12. LOCATION OF VIOLATION City or County: State:	GSA CODE / 13. OPERATING RR CODE: / 14. OPR DIVISION CODE:	15. EMPLOYING RR CODE / 16. EMPLOYING DIVISION CODE

17. SUMMARY OF VIOLATION:

18. NAME OF INSPECTOR(S) /SPECIALIST(S) I.D. Number		NAME/ADDRESS–Regional Administrator/Staff Director
Date Report Prepared	Date Report Mailed	Registered Mail Number
Signature of Inspector(s)/Specialist(s) Date		Signature of Regional Administrator/Staff Director

U.S. Department of Transportation
Federal Railroad Administration

Notice to Individual Regarding Violation(s) of Federal Railroad Safety or Hazardous Materials Transportation Statutes, Regulations or Orders

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PRIVACY ACT NOTICE: Under authority of the Federal railroad safety and hazardous materials transportation laws, FRA collects the information on this notice for inclusion in its records concerning violations of the Federal railroad safety and hazardous materials transportation laws by individuals. Those records may be used to support enforcement actions against individuals and may be disclosed to other government agencies, the public, the railroad industry, or Congress in the interest of promoting compliance with the safety laws. Disclosure of your social security number is voluntary and would be used to distinguish your compliance records from those of someone with the same name and date of birth.

1. SUBJECT:	2. VIOLATION OF 49 CFR:	3. F6180 REPORT TYPE & NO:	4. VIOL./CHIEF COUNSEL WARNING LETTER RECOMMENDED: ☐ YES ☐ NO

5. NAME
Last: *First:* *Middle Int.:*

6. HOME ADDRESS *Street:*
City: *State:* *Zip Code:*

7. SOCIAL SECURITY NUMBER/EMPLOYEE ID NUMBER:		10. TIME AND DATE OF VIOLATION Time: Date:
8. DATE OF BIRTH (mm/dd/yy)	9. JOB TITLE OF INDIVIDUAL:	11. TIME AND DATE INDIVIDUAL NOTIFIED Time: Date:
12. LOCATION OF VIOLATION City or County: State:	GSA CODE / 13. OPERATING RR CODE: / 14. OPR DIVISION CODE:	15. EMPLOYING RR CODE / 16. EMPLOYING DIVISION CODE

17. SUMMARY OF VIOLATION:

18. NAME OF INSPECTOR(S) /SPECIALIST(S) I.D. Number		NAME/ADDRESS–Regional Administrator/Staff Director
Date Report Prepared	Date Report Mailed	Registered Mail Number
Signature of Inspector(s)/Specialist(s) Date		Signature of Regional Administrator/Staff Director

U.S. Department of Transportation
Federal Railroad Administration

Notice to Individual Regarding Violation(s) of Federal Railroad Safety or Hazardous Materials Transportation Statutes, Regulations or Orders

REGION/HQ'S SEQUENTIAL CALENDAR YEAR NO.

The Federal railroad safety and hazardous materials transportation laws authorize the Federal Railroad Administration (FRA) to bring enforcement actions directly against individuals who violate those laws. Individuals who willfully violate the railroad safety laws or who knowingly violate the hazardous materials transportation laws are subject to civil penalties of up to $100,000 per violation. Individuals whose violation(s) of those laws are shown to make them unfit for the performance of safety-sensitive functions are subject to suspension or disqualification from such service. (Willful violations of the hazardous materials transportation laws subject an individual to possible criminal sanctions.) If you have questions about the laws pertaining to railroad safety or hazardous material transportation, contact the officer of your employer responsible for safety matters or the closest FRA office.

FRA has reason to believe that you violated the statute, regulation or order described below. Box 4 below indicates whether or not a violation report recommending enforcement action will be sent to FRA's Office of Chief Counsel. If the box is checked "YES," you will be hearing from that office as to what action will be taken and will have an opportunity to respond at that time. If the box is checked "NO," you should consider this a warning that any future violations you may commit will result in enforcement action. In the case of a warning, you may submit any information in explanation or mitigation to the Regional Administrator at the address below. A copy of this notice will be provided to your employer, and in the case of joint operations, to the railroad responsible for the operation.

PRIVACY ACT NOTICE: Under authority of the Federal railroad safety and hazardous materials transportation laws, FRA collects the information on this notice for inclusion in its records concerning violations of the Federal railroad safety and hazardous materials transportation laws by individuals. Those records may be used to support enforcement actions against individuals and may be disclosed to other government agencies, the public, the railroad industry, or Congress in the interest of promoting compliance with the safety laws. Disclosure of your social security number is voluntary and would be used to distinguish your compliance records from those of someone with the same name and date of birth.

1. SUBJECT:	2. VIOLATION OF 49 CFR:	3. F6180 REPORT TYPE & NO:	4. VIOL./CHIEF COUNSEL WARNING LETTER RECOMMENDED: ☐ YES ☐ NO

5. NAME
Last: *First:* *Middle Int.:*

6. HOME ADDRESS *Street:*
City: *State:* *Zip Code:*

7. SOCIAL SECURITY NUMBER/EMPLOYEE ID NUMBER:			10. TIME AND DATE OF VIOLATION Time: Date:
8. DATE OF BIRTH (mm/dd/yy)	9. JOB TITLE OF INDIVIDUAL:		11. TIME AND DATE INDIVIDUAL NOTIFIED Time: Date:
12. LOCATION OF VIOLATION City or County: State:	GSA CODE	13. OPERATING RR CODE: 14. OPR DIVISION CODE:	15. EMPLOYING RR CODE / 16. EMPLOYING DIVISION CODE

17. SUMMARY OF VIOLATION:

18. NAME OF INSPECTOR(S) /SPECIALIST(S) I.D. Number		NAME/ADDRESS–Regional Administrator/Staff Director
Date Report Prepared	Date Report Mailed	Registered Mail Number
Signature of Inspector(s)/Specialist(s) Date		Signature of Regional Administrator/Staff Director

U.S. Department of Transportation
Federal Railroad Administration

Notice to Individual Regarding Violation(s) of Federal Railroad Safety or Hazardous Materials Transportation Statutes, Regulations or Orders

REGION/HQ'S SEQUENTIAL CALENDAR YEAR NO.

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Signature of Inspector(s)/Specialist(s) Date		Signature of Regional Administrator/Staff Director

Approval Requirements for Moving Nonconforming Packages by Rail

You have asked for an FRA approval to move a specification rail car (or other bulk package moving by rail) that may or may not contain a hazardous material, when that package no longer conforms to the Hazardous Materials Regulations. In order to assist us in evaluating and processing your request, the information blocks in the attached request guide should be completed as fully and accurately as possible. The collection of this information is authorized under 49 CFR § 171.6 and OMB Control Nos. 2137-0557 and 2137-0059. Although filling out the guide is not required under Federal law, it will help provide all the information necessary for FRA to accurately evaluate and process your Approval request. Please read the questions and answer carefully and completely. Failure to provide all the information requested may result in processing delays. If you have any comments on the guide, please provide them to the address below. If FRA needs additional information to process your application, we will contact you.

FRA has the enforcement authority and responsibility to ensure the safe transportation of hazardous materials. Nothing in any approval granted as a result of this application limits the Federal Railroad Administration from pursuing enforcement, including the collection of civil penalties, for any violations that predate the approval.

With respect to the movement of tank cars overdue for periodic inspection and test, 49 CFR § 173.31(a)(3) authorizes the movement of such a car if it was loaded while still in date. The regulation forbids the *"filling"* and subsequent *"offering"* of a tank car overdue for periodic inspection. A car loaded in date, or a residue car, may be moved to any facility, including a consignee, a repair ship, or a cleaning facility, without FRA approval.

A copy of the Movement Approval must be forwarded to the tank car owner (if different than the grantee).

A Root Cause Analysis, if requested, must contain at least the following information:

- A detailed statement of the problem;
- Factor(s) contributing to the problem, including photographs and drawings
- The cause of the factor(s), if a cause can be determined;
- Steps taken to prevent future occurrence.

The grantee must notify the tank car facility, to which the defective car is sent, of the requirements for a Root Cause Analysis prior to arrival of the car to ensure that the defective condition is adequately investigated. The Root Cause Analysis report, if so required in Section 9 of an issued Approval, should be e-mailed to the HMASSIST@dot.gov e-mail address or, if by mail, to HM Staff member Susan Starks, General Engineer Hazmat Packaging, at the USPS mailing address below.

While Approval requests can be mailed or faxed in, it is recommended that an applicant submit the application to the e-mail address listed below.

Submit your request for approval to HMASSIST@dot.gov or, if by mail or fax to:
Federal Railroad Administration
Office of Safety Assurance and Compliance
Hazardous Materials Division
1200 New Jersey Avenue, SE,
RRS-12
Washington, DC 20590
FAX: 202-493-6478

Current FRA Movement Approval Request Contact List:

William Schoonover, Staff Director	202-493-6229	HMASSIST@dot.gov
Kevin Blackwell, HM Specialist	202-493-6315	HMASSIST@dot.gov
Lisa Matsinger, HM Specialist	202-493-0324	HMASSIST@dot.gov
Tom Phemister, HM Specialist	202-493-6050	HMASSIST@dot.gov
Erich Rudolph, HM Specialist	202-493-6248	HMASSIST@dot.gov
Karl Alexy, General Engineer Hazmat Packaging	202-493-6245	HMASSIST@dot.gov
Susan Starks, General Engineer Hazmat Packaging	202-493-6306	HMASSIST@dot.gov

Information Necessary to Obtain
Federal Railroad Administration Movement Approval
Approval Number _____

(Assigned by FRA)

[Collection of this information is authorized under OMB Control Nos. 2137-0557 and 2137-0559.]

Date of Application: (Month)_____ (Day) _____ (Year) 20___

Company Name: _____
Mailing Address: _____
(City) _____ (State) _____ (Zip)_____
Company Fax (facsimile) Number: _____

Company Contact: _____
Title / Position: _____
Contact Telephone Number: _____ Contact E-mail address: _____

Reporting Mark & Number _____ Type of Rail Car/Bulk Package: _____
DOT tank car/bulk package specification (if other, specify):_____

Complete Hazardous Materials Description:
DOT Proper Shipping name:_____
DOT Hazard class: _____ UN/NA Identification Number: _____ P.G. Number:_____
***** ***NOTE: Attach or forward with this Application a copy of the original shipping paper*** *****

Where did this shipment originate (Facility):_____
City: _____ State: _____
Origin shipper point of contact: (Name)_____ Phone Number: _____
Present location of car : (Facility or carrier): _____ City:_____ State:_____
Present location point of contact: (Name)_____ Phone Number: _____
Planned destination of this move: (facility):_____ City:_____ State:_____
Planned destination point of contact: (Name)_____ Phone Number: _____
Planned rail route: _____
Approximate total mileage of this movement : _____ miles

If more than 30 days will be required to complete movement sought under this approval, please explain:
_____

Descriptive: What is the car's defective condition?
_____
_____
_____
_____

From what regulation is relief sought? 49 Code of Federal Regulations Section:_____
***** ***NOTE: If car load is overweight, provide a copy of the scale weight ticket, if available, car loading documentation and any other information used to determine the actual weight of the car.*** *****

Explain, with supporting documentation, the measures you are taking to ensure the safe movement of this car:

Submit your request for approval to: HMASSIST@dot.gov , or if by mail to the Federal Railroad Administration, Office of Safety Assurance and Compliance, Hazardous Materials Division, 1200 New Jersey Avenue, SE, RRS-12, Washington, DC 20590, or by fax at (202) 493-6478 or 6309. Should you have any questions, please call the Hazardous Materials Division at the numbers provided on the cover sheet for assistance. ***Be sure to submit above requested attachments!***
INCOMPLETE OR INACCURATE INFORMATION WILL RESULT IN DELAYING PROCESSING!