

**DEPARTMENT OF TRANSPORTATION****Federal Railroad Administration****49 CFR Part 209**

[FRA-2007-28573]

RIN 2130-AB87

**Railroad Safety Enforcement Procedures; Enforcement, Appeal and Hearing Procedures for Rail Routing Decisions**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In a separate document published today, the Pipeline and Hazardous Materials Safety Administration is requiring railroad carriers to compile annual data on specified shipments of hazardous materials (security-sensitive materials), use the data to analyze safety and security risks along rail transportation routes where those materials are transported, assess alternative routing options, and make routing decisions based on those assessments. This document proposes procedures to enable railroad carriers to challenge rail routing decisions made by the FRA Associate Administrator for Safety in accordance with PHMSA's requirements.

**DATES:** Submit comments by June 16, 2008. To the extent possible, we will consider late-filed comments as we develop a final rule.

**ADDRESSES:** You may submit comments identified by the docket number FRA 2007-28573 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 1-202-493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Instructions:** You must include the agency name and docket number FRA-2007-28573 for this notice at the beginning of your comment. Internet users may access comments received by DOT at <http://www.regulations.gov>. Note that comments received may be

posted without change to <http://www.regulations.gov> including any personal information provided. Please see the Privacy Act section of this document.

Comments or those portions of comments FRA determines to include trade secrets, confidential commercial information, or sensitive security information (SSI) will not be placed in the public docket and will be handled separately. If you believe your comments contain trade secrets, confidential commercial information, or SSI, those comments or the relevant portions of those comments should be appropriately marked so that DOT may make a determination. FRA procedures in 49 CFR 209.11 establish a mechanism by which commenters may request confidentiality.

In accordance with 49 CFR 209.11, you may ask FRA to keep information confidential using the following procedures: (1) Mark the document or portions of the document "CONFIDENTIAL" or "CONTAINS CONFIDENTIAL INFORMATION"; (2) send DMS both the original document and a second copy of the original document with the confidential information deleted; and (3) include a separate, detailed statement justifying nondisclosure, explaining why the information is confidential (such as a trade secret, confidential commercial information, or SSI), and referring to the specific legal authority claimed. In your explanation, you should provide enough information to enable FRA to determine whether the information provided is protected by law and must be handled separately.

In addition, for comments or portions of comments that you believe contain SSI as defined in 49 CFR 15.7, you should comply with Federal regulations governing restrictions on the disclosure of SSI. See 49 CFR 1520.9 and 49 CFR 15.9. For example, these sections restrict the sharing of SSI to those with a need to know, set out the requirement to mark the information as SSI, and address how the information should be disposed. Note also when mailing in or using a special delivery service to send comments containing SSI, comments should be wrapped in a manner to prevent the information from being read. FRA and the Transportation Security Administration (TSA) may perform concurrent reviews on requests for designations as SSI.

After reviewing your request for confidentiality and the information provided, FRA will analyze applicable laws and regulations to decide whether to treat the information as confidential. FRA will notify you of the decision to

grant or deny confidentiality. If FRA denies confidentiality, you will be provided an opportunity to respond to the denial before the information is publicly disclosed. FRA will reconsider its decision to deny confidentiality based on your response.

Regarding comments not marked as confidential, prior to posting comments received in response to this notice in the public docket, FRA will review all comments, whether or not they are identified as confidential, to determine if the submission or portions of the submission contain information that should not be made available to the general public. FRA will notify you if the agencies make such a determination relative to your comment. If, prior to submitting your comment, you have any questions concerning the procedures for determining confidentiality or security sensitivity, you may call the individual listed below under **FOR FURTHER INFORMATION CONTACT** for more information.

**FOR FURTHER INFORMATION CONTACT:**

Roberta Stewart, Trial Attorney, Office of Chief Counsel, RCC-12, Mail Stop 10, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202-493-6027).

**SUPPLEMENTARY INFORMATION:****I. Background**

On December 21, 2006, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a notice of proposed rulemaking (PHMSA's NPRM), 71 FR 76834, proposing revisions to the requirements in the hazardous materials regulations (HMR) applicable to the safe and secure transportation of hazardous materials transported in commerce by rail. In today's edition of the **Federal Register**, PHMSA issued an interim final rule (IFR) on this subject. Specifically, PHMSA is requiring railroad carriers to compile annual data on specified shipments of hazardous materials (security-sensitive materials), use the data to analyze safety and security risks along rail transportation routes where those materials are transported, assess alternative routing options, and make routing decisions based on those assessments. In that IFR, PHMSA also issued clarifications of the current security plan requirements to address en route storage, delays in transit, delivery notification, and additional security inspection requirements for hazardous materials shipments.

The Federal hazardous materials transportation law (Federal hazmat law), 49 U.S.C. 5101 *et seq.*, authorizes the Secretary of the Department of

Transportation (Secretary) to “prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce.” The Secretary has delegated this authority to PHMSA (formerly the Research and Special Programs Administration).

The HMR (49 CFR parts 171–180), promulgated by PHMSA under the mandate in 49 U.S.C. 5103(b) govern safety aspects, including security, of the transportation of hazardous material the Secretary considers appropriate. Consistent with this security authority, in March 2003, PHMSA adopted new transportation security requirements for offerors and transporters of certain classes and quantities of hazardous materials and new security training requirements for hazardous materials employees. The security regulations, which are explained in more detail below, require offerors and carriers to develop and implement security plans and to train their employees to recognize and respond to possible security threats.

When PHMSA adopted its security regulations, shippers and railroad carriers were informed these regulations were “the first step in what may be a series of rulemakings to address the security of hazardous materials shipments.” 68 FR 14509, 14511 (March 25, 2003). PHMSA also noted that “TSA is developing regulations that are likely to impose additional requirements beyond those established in this final rule,” and stated it would “consult and coordinate with TSA concerning security-related hazardous materials transportation regulations \* \* \*” 68 FR 14511.

Enforcement of the HMR has been delegated by the Secretary to modal administrations within DOT. Specifically, FRA is authorized to “carry 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.” 49 CFR 1.49(s).

FRA is the agency within DOT responsible for railroad safety, and is the primary enforcer of safety and security requirements in the HMR pertaining to rail shippers and carriers. FRA inspectors routinely review hazardous materials security plans required by the HMR during site visits to railroad carrier and shipper facilities and may offer suggestions for improving the security plans, as appropriate. If an inspector’s recommendations are not implemented, FRA may compel a rail shipper or carrier to make changes to its security plan through its normal

enforcement process. FRA consults with TSA concerning railroad security issues in accordance with the FRA–TSA annex to the DOT–Department of Homeland Security Memorandum of Understanding (DOT–DHS MOU) on transportation security.

PHMSA’s NPRM and IFR provide that a railroad carrier may be required to revise its analysis or make changes to a route selected by the carrier to move covered hazardous materials if the route selection documentation or underlying analysis is found to be deficient. In addition, both PHMSA’s NPRM and IFR provide that if the carrier’s chosen route is found not to be the safest and most secure commercially practicable route available, the FRA Associate Administrator for Safety (Associate Administrator), in consultation with TSA, may require the use of an alternative route until such time as identified deficiencies are satisfactorily addressed. PHMSA’s NPRM stated that FRA would establish procedures for railroad carriers to appeal a decision by the Associate Administrator to require the use of an alternative route.

Several comments were submitted regarding the PHMSA NPRM and the possibility that the FRA Associate Administrator could require rerouting. The Association of American Railroads (AAR) questioned whether FRA properly had the authority to require rerouting. The Dow Chemical Company and the Institute of Makers of Explosives suggested that, consistent with fundamental concepts of due process, PHMSA should provide an immediate procedure to appeal an FRA determination to require the use of an alternative route. The Surface Transportation Board (STB) suggested that prior to making a determination requiring the use of an alternative route, FRA and TSA obtain the comments of the STB as to whether the contemplated alternative route(s) would be commercially practicable.

FRA’s authority to require the use of an alternative route derives from § 5121(a) of the Federal hazmat law. The Secretary is authorized to issue an order, after notice and an opportunity for a hearing, requiring compliance with the Federal hazmat law or a regulation, order, special permit, or approval issued under Federal hazmat law. The authority provided in 49 U.S.C. 5121(a) has been delegated to FRA “with particular emphasis on the transportation or shipment of hazardous materials by railroad” (49 CFR 1.49(s)), as well as to PHMSA, the Federal Aviation Administration, the Federal Motor Carrier Safety Administration and the United States Coast Guard (with

“particular emphasis” on the respective authority of these agencies).

## II. Proposals in This NPRM

As previously noted, in its rail security NPRM, PHMSA stated that FRA would provide a procedure for administrative due process so that a railroad carrier may seek redress of decision by the Associate Administrator that the carrier’s routing analysis is deficient and directing a carrier to use a route while the deficiencies are corrected. 71 FR at 76844. This NPRM proposes procedures governing the review of rail routing decisions, including appeal, and these procedures are summarized below. FRA notes in this regard that the procedures are carefully designed so that a carrier is fully informed of deficiencies found by FRA in a carrier’s safety and security routing analysis, and that the carrier is permitted to work with FRA to correct those deficiencies. FRA will only require the use of an alternate route if it concludes the carrier’s analysis did not satisfy the minimum criteria for performing a safety and security risk analysis, as established by § 172.820 and appendix D to part 172, and that an alternative route poses the least safety and security risks based on the information available to the agency. Moreover, FRA expects to mandate temporary route changes only for the most exigent circumstances.

Section 209.501 provides that if the Associate Administrator determines that a carrier’s route selection documentation and underlying analysis are deficient and fail to establish that the route chosen by the carrier is the safest and most secure route, the Associate Administrator will issue a written notice of review (“Notice”) to the railroad carrier. The Notice will specifically address each deficiency found in the railroad carrier’s route analysis, and may also include suggested mitigation measures that may be taken to remedy the deficiencies, including selection and use of an alternative commercially practicable route. After issuing the Notice, the Associate Administrator will conference with the railroad carrier for a 30-day period (or longer, if necessary, as determined by the Associate Administrator) to resolve the deficiencies. The Associate Administrator will keep a record of all written correspondence with the railroad carrier, as well as written summaries of each meeting and telephone conversation with the carrier pertaining to the Notice.

If, after the close of the 30-day period, the Associate Administrator concludes

that the identified deficiencies have not been satisfactorily resolved, the Associate Administrator will:

(1) Consult with TSA and PHMSA regarding the safety and security of the route proposed by the railroad carrier and any alternative route(s) over which the carrier is authorized to operate that are being considered by the Associate Administrator. A written summary of the recommendations from TSA and PHMSA will be prepared;

(2) Obtain the comments of the STB regarding whether the alternative route(s) under consideration by the Associate Administrator would be commercially practicable; and

(3) After fully considering the input of TSA, PHMSA and STB, render a decision.

In section 209.501(d), there are two possible outcomes of a decision by the Associate Administrator. First, the Associate Administrator may find that the route analysis and documentation provided by the railroad carrier are sufficient to support the route selected by the carrier or that commercial practicability issues preclude the use of an alternative route. In either of those circumstances, the Associate Administrator would conclude the route review without further action, and notify the railroad carrier of the decision in writing.

Alternately, the Associate Administrator may conclude that the railroad carrier's route analysis does not support the railroad carrier's original selected route, that safety and security considerations establish a significant preference for an alternative route, and that the alternative route is commercially practicable. The Associate Administrator would then issue a second written notice (2nd Notice) to the railroad carrier that specifically identifies deficiencies in the route analysis, including a clear description of the risks that have not been satisfactorily mitigated; explains why the available data and reasonable inferences support an alternative route; and directs the railroad carrier to temporarily use the alternative route determined by the Associate Administrator to be the safest and most secure route. The railroad carrier would be required to start using the alternative route selected by the Associate Administrator within 20 days after the issuance date of the 2nd Notice. The railroad carrier shall use the alternative route until such time as the carrier has adequately mitigated the risks identified by the Associate Administrator on the original route selected by the carrier.

When the Associate Administrator issues a 2nd Notice directing the use of

an alternative route pursuant to section 209.501(d)(2), the Associate Administrator shall make available to the railroad carrier the administrative record relied upon in issuing the 2nd Notice, including the recommendations of TSA, PHMSA and the STB to FRA.

Within 20 days after the issuance date of the 2nd Notice, the railroad carrier may: (1) Comply with the Associate Administrator's directive to use an alternative route while addressing deficiencies in its route analysis identified by the Associate Administrator; or (2) file a petition for judicial review of the Associate Administrator's 2nd Notice. Judicial review would be available in an appropriate United States court of appeals as provided in 49 U.S.C. 5127. The filing of a petition for judicial review will not stay or modify the force and effect of final agency action unless otherwise ordered by the Associate Administrator or the court of appeals.

With respect to enforcement of the new rail security requirements established in PHMSA's IFR, FRA plans to work closely with TSA to develop a coordinated enforcement strategy to include both FRA and TSA inspection personnel. We note in this regard that TSA does not have the authority to enforce safety or security requirements established in the HMR. If in the course of an inspection of a railroad carrier, TSA identifies evidence of non-compliance with a DOT security regulation, TSA will provide the information to FRA and PHMSA for appropriate action. TSA will not directly enforce DOT security rules, and will not initiate safety inspections. Consistent with the PHMSA-TSA and FRA-TSA annexes to the DOT-DHS MOU, all the involved agencies will cooperate to ensure coordinated, consistent, and effective activities related to rail security issues.

### III. Rulemaking Analyses and Notices

#### A. Statutory/Legal Authority for This Rulemaking

This NPRM is published under authority of the Federal hazmat law (49 U.S.C. 5101 *et seq.*) Section 5103(b) of Federal hazmat law authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. The HMR are issued by PHMSA. 49 CFR 1.53(b). Responsibility for the enforcement of the hazardous materials transportation law and regulations primarily in instances where violations involve railroads and those entities

which ship by rail has been delegated to FRA. 49 CFR 1.49(s).

#### B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This NPRM is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This NPRM is not significant under the Regulatory Policies and Procedures of DOT (44 FR 11034). The economic impact of this proposed rule is minimal to the extent that preparation of a regulatory evaluation is not warranted.

#### C. Executive Order 13132

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed rule would not have any direct effect on the States or their political subdivisions; it would not impose any compliance costs; and it would not affect the relationships between the national government and the States or their political subdivisions, or the distribution of power and responsibilities among the various levels of government.

#### D. Regulatory Flexibility Act and Executive Order 13272

FRA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would apply to carriers of hazardous materials by rail. Some of these entities are classified as small entities; however, there is no economic impact on any person that complies with Federal hazardous materials law and the regulations and orders issued under that law.

#### E. Paperwork Reduction Act

There are no new information requirements in this proposed rule.

#### F. Unfunded Mandates Reform Act of 1995

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Act of 1995. It does not result in annual costs of \$128,100,000 or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector, and is the least burdensome alternative to achieve the objective of the rule.

#### G. Environmental Assessment

There are no significant environmental impacts associated with this proposed rule.

## H. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy action.” 66 FR 28355 (May 22, 2001). Under the Executive Order, a “significant energy action” is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking, that: (1)(i) Is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. We have evaluated this proposed rule in accordance with Executive Order 13211, and we have determined that this NPRM is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, we have determined that this regulatory action is not a “significant energy action” within the meaning of Executive Order 13211.

## I. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in spring and fall of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

## List of Subjects in 49 CFR Part 209

Administrative practice and procedure, Hazardous materials transportation, Penalties, Railroad safety, Railroad safety enforcement procedures, Reporting and recordkeeping requirements.

Therefore, in consideration of the foregoing, chapter II, subtitle B of title 49 of the Code of Federal Regulations is amended as follows:

## PART 209—[AMENDED]

1. The authority citation for part 209 continues to read as follows:

**Authority:** 49 U.S.C. 5123, 5124, 20103, 20107, 20111, 20112, 20114; 28 U.S.C. 2461, note; and 49 CFR 1.49.

2. Amend § 209.3 by adding the following new definitions:

\* \* \* \* \*

*Associate Administrator* means the Associate Administrator for Safety, Federal Railroad Administration, or that person's delegate as designated in writing.

\* \* \* \* \*

*Railroad carrier* means a person providing railroad transportation.

\* \* \* \* \*

3. Add new Subpart F to read as follows:

## Subpart F—Enforcement, Appeal and Hearing Procedures for Rail Routing Decisions Pursuant to 49 CFR 172.820

### § 209.501 Review of rail transportation safety and security route analysis.

(a) *Review of route analysis.* If the Associate Administrator for Safety determines that a railroad carrier's route selection, analysis and documentation pursuant to § 172.820 of chapter I of this title is deficient and fails to establish that the route chosen by the carrier is the safest and most secure route, the Associate Administrator shall issue a written notice of review (“Notice”) to the railroad carrier. The Notice shall specifically address each deficiency found in the railroad carrier's route analysis. The Notice may also include suggested mitigation measures that the railroad carrier may take to remedy the deficiencies found, including selection of an alternative commercially feasible routing.

(b) *Conference to resolve deficiencies.* After issuing the Notice, the Associate Administrator conferences with the railroad carrier for a thirty (30)-day period, or such longer period as provided by the Associate Administrator, to resolve the deficiencies as identified in the Notice. The Associate Administrator keeps a record of all written correspondence with the railroad carrier and a summary of each meeting and telephone conversation with the railroad carrier that pertains to the Notice.

(c) *Consultation with and comment from other agencies.* If, after the close of the conference period, the Associate Administrator concludes that the issues identified have not been satisfactorily resolved, the Associate Administrator:

(1) Consults with the Transportation Security Administration (“TSA”) and the Pipeline and Hazardous Materials Safety Administration (PHMSA) regarding the safety and security of the route proposed by the railroad carrier and any alternative route(s) over which the carrier is authorized to operate that are being considered by the Associate Administrator and prepares a written summary of the recommendations from TSA and PHMSA;

(2) Obtains the comments of the Surface Transportation Board (“STB”) regarding whether the alternative route(s) being considered by the Associate Administrator would be commercially practicable; and

(3) Fully considers the input of TSA, PHMSA and the STB and renders a decision pursuant to paragraph (d) of this section which shall be administratively final.

(d) *Decision.* (1) If the Associate Administrator finds that the route analysis and documentation provided by the railroad carrier are sufficient to support the route selected by the carrier or that valid issues of commercial practicability preclude an alternative route, the Associate Administrator concludes the review without further action and so notifies the railroad carrier in writing.

(2) If the Associate Administrator concludes that the railroad carrier's route analysis does not support the railroad carrier's original selected route, that safety and security considerations establish a significant preference for an alternative route, and that the alternative route is commercially practicable, the Associate Administrator issues a second written notice (2nd Notice) to the railroad carrier that:

(i) Specifically identifies deficiencies found in the railroad carrier's route analysis, including a clear description of the risks on the selected route that have not been satisfactorily mitigated;

(ii) Explains why the available data and reasonable inferences indicate that a commercially practicable alternative route poses less safety and security risks than the route selected by the railroad carrier; and

(iii) Directs the railroad carrier, beginning within twenty (20) days of the issuance date of the 2nd Notice on the railroad carrier, to temporarily use the alternative route that the Associate Administrator determines is the safest and most secure route until such time as the railroad carrier has adequately mitigated the risks identified by the Associate Administrator on the original route selected by the carrier.

(e) *Actions following 2nd Notice and re-routing directive.* When issuing a 2nd Notice that directs the use of an alternative route, the Associate Administrator shall make available to the railroad carrier the administrative record relied upon by the Associate Administrator in issuing the 2nd Notice, including the recommendations of TSA, PHMSA and STB to FRA made pursuant to paragraphs (c)(1) and (2) of this section. Within twenty (20) days of the issuance date of the Associate

Administrator's 2nd Notice, the railroad carrier may:

(1) Comply with the Associate Administrator's directive to use an alternative route while the carrier works to address the deficiencies in its route analysis identified by the Associate Administrator; or

(2) File a petition for judicial review of the Associate Administrator's 2nd Notice, pursuant to paragraph (f) of this section.

(f) *Review and decision by Associate Administrator on revised route analysis submitted in response to 2nd Notice.*

Upon submission of a revised route analysis containing an adequate showing by the railroad carrier that its

original selected route is the safest and most secure route, the Associate Administrator notifies the carrier in writing that the carrier may use its original selected route.

(g) *Appellate review.* If a railroad carrier is aggrieved by final agency action, it may petition for review of the final decision in the appropriate United States court of appeals as provided in 49 U.S.C. 5127. The filing of the petition for review does not stay or modify the force and effect of the final agency action unless the Associate Administrator or the Court orders otherwise.

(h) *Time.* In computing any period of time prescribed by this part, the day of

any act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days.

4. In appendix B to part 209, amend the civil penalty guideline table by adding the following entries:

**Appendix B to Part 209—Federal Railroad Administration Guidelines for Initial Hazardous Material Assessments**

\* \* \* \* \*

172.820(a)–(e) .....	General failure to perform safety and security route analysis. <i>Factors to consider are the size of the railroad carrier, and the quantities of hazmat transported.</i>	5,000–10,000
172.820(a)–(e) .....	Partial failure to complete route analysis; failure to complete a component of the route analysis .....	5,000
	—Compilation of security-sensitive commodity data.	
	—Identification of practicable alternative routes.	
	—Consultation with State, local, and tribal officials, as appropriate regarding security risks to high-consequence targets along or in proximity to a route used by the carrier to transport security-sensitive materials.	
	—Safety and security route analysis of route used.	
	—Safety and security alternative route analysis.	
172.820(f) .....	Failure to complete route analyses within the prescribed time frame .....	2,000
172.820(g) .....	Failure to include one of the following components in safety and security plan .....	2,000
	—Procedure for consultation with offerors and consignees to minimize storage of security-sensitive materials incidental to movement.	
	—Measures to limit unauthorized access to the materials during storage or delays in transit.	
	—Measures to mitigate risk to population centers associated with in-transit storage of the materials.	
	—Measures to be taken in the event of escalating threat levels for the materials stored in transit ( <i>Unit of violation is the component. For a total failure to have a security plan, cite § 172.800 and use the penalties provided for that section.</i> ).	
172.820(h) .....	Failure to maintain records and make available to DOT and DHS authorized officials .....	2,000
172.820(i) .....	Failure to use route designated by FRA Associate Administrator for Safety .....	10,000

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Issued in Washington, DC, on April 10, 2008.

**S. Mark Lindsey,**  
Chief Counsel, Federal Railroad  
Administration.

[FR Doc. E8–8187 Filed 4–15–08; 8:45 am]

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