



Frequently Asked Questions

DHS ANNOUNCES SECURITY STANDARDS FOR FREIGHT AND PASSENGER RAIL SYSTEMS

New Regulations Will Ensure Better Tracking of Toxic Materials

What are poisonous by inhalation hazard (PIH) materials, and why do they need to be anywhere near cities?

PIH materials are gases or liquids which present a health risk if inhaled. PIH materials include chlorine, which is used for water purification and plastics production, and anhydrous ammonia, which is used primarily as a fertilizer. Together, chlorine and anhydrous ammonia comprise nearly 80 percent of all PIH shipments. There are roughly 126,000 PIH materials rail shipments each year.

What authority does the final rule give TSA?

The rule gives TSA new regulatory authorities in the following key areas:

- *Secure chain of custody.* Shippers will physically inspect security-sensitive rail cars prior to shipment. Freight railroad carriers will establish positive and secure handoff procedures for security-sensitive materials shipments at points of origin, delivery and interchange. The chain of custody requirement applies to the transportation of any PIH shipment, certain explosive materials, and certain high-level radioactive material shipments. It covers receivers in the 46 key urban areas.
- *Communication.* The rule requires freight and passenger railroad carriers, rail transit systems and certain rail hazardous materials facilities to designate a rail security coordinator. The coordinator will serve as the liaison to DHS for intelligence information, security-related activities, and ongoing communications with TSA.
- *Reporting Security Concerns.* The rule requires freight and passenger railroads to immediately report incidents, potential threats, and significant security concerns to TSA.
- *Location tracking.* The rule requires freight railroad carriers and certain rail hazardous materials shippers and receivers, at the request of TSA, to report the location of individual security-sensitive materials cars within minutes, and the locations of all cars containing security-sensitive materials within 30 minutes.

- *Inspection Authority.* The rule codifies TSA's authority to inspect freight and passenger railroad carriers, rail transit systems and certain facilities that ship or receive hazardous materials by rail.

What are the high threat urban areas where this rule applies?

Based on the Urban Area Security Initiative (UASI), which studied the nation's largest urban areas, 46 areas were determined in 2006 to have a combination of the highest populations with the most critical infrastructure. We used the 2006 figures, because when we overlaid the nation's freight network, the traffic flows of PIH went through the original 46 areas.

What is the threat?

While poisonous by inhalation (PIH) hazard materials represent less than one percent of all hazardous materials rail shipments, an airborne toxic plume from an attack against a chemical facility or toxic chemicals in transit is among the most serious risks facing America's high population-density areas. TSA's rail security rule establishes safeguards designed to prevent terrorists from exploiting this potential risk.

Why not just reroute the trains?

DOT has published a regulation that will require railroads to analyze safety and security concerns when determining the route for a freight train carrying certain types of hazardous materials.

How do these measures reduce risk?

This initiative addresses the complete transportation process of PIH materials. A secure chain of custody closes gaps at the predictable stopping points, and the industry agreement to aggressively reduce unattended dwell time reduces the risk of interference between those hand-offs, reducing risk across the system.

How do the security action items reduce dwell time of PIH rail cars?

Dwell time is the length of time that a loaded rail car is within the boundaries of one or more high threat urban areas. Dwell time is reduced with the development of site-specific security plans for operations in high threat urban areas. Plans will address reducing the number of hours PIH material rail cars are unattended and not moving, reducing potential exposure to surrounding communities, and developing procedures for a secure chain of custody.

The railroads are looking at operational efficiencies and changes that they can make to reduce dwell time of PIH material rail cars. TSA is contracting with a third party to measure the dwell time of PIH material cars across the country. TSA inspectors are in the field and actively seeking out and documenting those locations where loaded PIH material railcars occupy railroad controlled track within the boundaries of high threat urban areas. Such PIH material cars, once observed, are then assessed for their level of "attendance" and their population proximity, enabling TSA to look for trends and monitor improvement.

How will the secure handoff of PIH material rail cars be assured?

Each freight rail carrier will initiate chain-of-custody documentation, and freight rail shippers and receivers are required to keep the documentation to produce upon request from TSA inspectors. The

freight rail shipper must also establish a rail secure areas in which to store the rail car after performing a security inspection until the rail carrier picks up the car. The receiver must keep the rail car in a rail secure area until it unloads the rail car.

Did TSA already have regulatory authority over rail?

Under the Aviation and Transportation Security Act TSA has the primary federal role for security in all modes of transportation. (See: 49 U.S.C. 114(d))

What are the repercussions for rail carriers, shippers, or receivers who do not follow the rules?

TSA has the authority to impose fines – up to \$10,000 per violation.

What role did private industry play in developing the regulations?

TSA met with industry representatives prior to the issuance of the proposed rule to discuss rail security issues. TSA worked regularly and closely with the entire spectrum of operators, including the Association of American Railroads (AAR) and the American Short Line & Regional Railroad Association (ASLRRA) to ensure we balanced the needs of commerce with the demands of security. This ongoing collaboration allows us to significantly enhance security in the rail sector without stopping the free flow of commerce.

How much will the federal government spend on these measures? How much will private companies spend?

There is no additional cost to taxpayers or the federal government beyond the cost of existing inspectors and analysts. Our 10-year estimate for the cost to the rail industry of these measures is \$163.3 million, with a cost of approximately \$22 million for the first year.

What is TSA's role vs. the Federal Railroad Administration's (FRA) role in rail security?

While the U.S. Department of Transportation (DOT) has authority to prescribe regulations for the safe transportation, including security, of hazardous materials in commerce, DHS has the lead authority and primary responsibility for security activities in all modes of transportation, including rail. DOT agencies, such as the Federal Railroad Administration (FRA) and Pipelines and Hazardous Materials Safety Administration (PHMSA), are involved in promulgating and enforcing DOT safety and security regulations related to rail and hazardous materials. TSA, however, is the lead federal entity for transportation security.

DHS and DOT have a Memorandum of Understanding (MOU) that addresses each agency's roles and responsibilities for rail transportation security, and both Departments work in close partnership to ensure that the highest safety and security standards are met. For example, FRA hazardous materials inspectors work closely with carriers to ensure they comply with existing safety and security regulations, and TSA rail inspectors work with carriers and provide their unique security expertise to address potential threats.

Do any other government agencies have oversight for rail security?

DOT requires persons who offer for transportation in commerce or transport in commerce certain hazardous materials to develop a security plan. DOT issued an interim final rule in April 2008 that

requires railroads to analyze safety and security concerns when determining the route for a freight train carrying certain types of hazardous materials.

What is the rail industry doing now to secure PIH shipments?

The freight rail industry has implemented several key security action items, such as tracking and aggressively reducing the dwell time for unattended freight cars transporting PIH materials in high threat urban areas. Dwell time is the length of time that a loaded railcar is within the boundaries of one or more high threat urban areas. Many carriers are also developing site-specific security plans with provisions for access controls and providing security training for employees.

What are the security action items issued in 2006?

The June 23, 2006, security action items and the supplemental items issued Nov. 21, 2006, address three general areas: system security, access control, and en-route security. The majority of the security action items focused on raising the overall baseline of security. Four action items targeted the reduction and measurement of PIH risk by:

- Developing site-specific security plans for operations in high threat urban areas. The plans will address reducing the number of hours PIH cars are unattended and not moving; reducing potential exposure to surrounding communities; and developing procedures for a secure chain of custody.
- Ceasing operations near public venues during a National Special Security Event.
- Protecting PIH cars. Rail carriers will identify and select areas throughout their systems where cars containing PIH can be moved and held when threat conditions warrant.
- Providing TSA with the necessary data to objectively measure the reduction of PIH-car dwell time in high threat urban areas.

Why were the action items from 2006 not mandatory?

As part of a layered approach to security we sometimes employ negotiated measures as a starting point to improve security. Often, negotiated measures can be implemented faster than a final rule can be issued. There was some overlap between the negotiated measures and the NPRM. This allowed us to get important security measures to the industry early and assess their implementation.

In the interim, the security action items –which the larger freight rail carriers agreed to implement– quickly raised the level of security in the freight rail sector. This stepwise process is one we have utilized in the past on other security initiatives.

Attacks have occurred on passenger rail systems in Madrid, Moscow, London, and Mumbai.

What requirements in the rule pertain to passenger rail systems?

There are three provisions applicable to passenger rail systems:

- Designation of a rail security coordinator;
- Reporting of security concerns; and
- Inspection authority for TSA inspectors and DHS officials.

These provisions build upon an ongoing engagement with the mass transit and passenger rail industry to enhance security. These efforts include the development of security and emergency preparedness action items, assessments by TSA inspectors, targeted security training programs conducted in coordination with DOT's Federal Transit Administration, risk-based grant funding for security enhancements, installment of TSA-certified explosives detection canine teams, deployment of resources and equipment in exercises through the Visible Intermodal Prevention and Response (VIPR) program and technology development pilot initiatives.