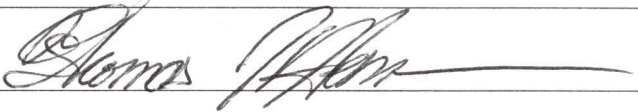


HAZARDOUS MATERIALS GUIDANCE

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Approved: Thomas J. Herrmann Director, Office of Technical Oversight	

Summary:

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

Discussion:

The Federal railroad safety laws authorize an "officer, employee, or agent" of the Secretary of Transportation access "at reasonable times and in a reasonable way" to "railroad equipment, facilities, rolling stock, operations, and relevant records." *See* 49 U.S. Code (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. *See* 49 U.S.C. § 5121(c)(1)(A).

The standard for access to emergency response information is clear. Under 49 CFR §172.600(c)(2), 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.

In other words, 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 must 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 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 are intended 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(d), shipping papers must 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 from the Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590.