K. Executive Order 13609 and International Trade Analysis

E.O. 13609, *Promoting International Regulatory Cooperation,* requires agencies consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA engages with international standards setting bodies to protect the safety of the American public. PHMSA has assessed the effects of the final rule and has determined that its regulatory amendments will not cause unnecessary obstacles to foreign trade.

L. Cybersecurity and Executive Order 14028

E.O. 14028, *Improving the Nation's Cybersecurity,* directs the Federal Government to improve its efforts to identify, deter, and respond to ''persistent and increasingly sophisticated malicious cyber campaigns.'' PHMSA has considered the effects of the final rule and has determined that its regulatory amendments will not materially affect the cybersecurity risk profile for pipeline facilities.

List of Subjects in 49 CFR Part 195

Hazardous liquid, Pipeline safety.

In consideration of the foregoing, PHMSA amends 49 CFR part 195 as follows:

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

■ 1. The authority citation for part 195 continues to read as follows:

Authority: 30 U.S.C. 185(w)(3), 49 U.S.C. 5103, 60101 *et seq.,* and 49 CFR 1.97.

■ 2. Revise § 195.9 to read as follows:

§ 195.9 Outer continental shelf pipelines.

Operators of transportation pipelines on the Outer Continental Shelf must identify on all their respective pipelines the specific points at which operating responsibility transfers to a producing operator. For those instances in which the transfer points are not identifiable by a durable marking, each operator will have until September 15, 1998, to identify the transfer points. If it is not practicable to mark durably a transfer point and the transfer point is located above water, the operator must depict the transfer point on a schematic maintained near the transfer point. If a transfer point is located subsea, the operator must identify the transfer point on a schematic which must be maintained at the nearest upstream facility and provided to PHMSA upon request. For those cases in which adjoining operators have not agreed on a transfer point by September 15, 1998, the Regional Director and the Bureau of Ocean Energy Management, Regulation and Enforcement Regional Supervisor will make a joint determination of the transfer point.

Issued in Washington, DC, on April 22, 2026, under the authority delegated in 49 CFR 1.97.

Paul J. Roberti,

Administrator.

[FR Doc. 2026–08065 Filed 4–23–26; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 209

[Docket No. FRA–2022–0085; Notice No. 2]

RIN 2130–AC93

Amendments to the Federal Railroad Administration's Procedures for Service of Documents in Railroad Safety Enforcement Proceedings

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

ACTION: Final rule.

SUMMARY: This rule updates FRA's railroad safety enforcement procedures and rules of practice to require electronic service of documents. This rule also establishes procedures to implement new authority regarding civil penalties for alleged Federal railroad safety violations. Finally, this rule makes other necessary administrative updates, such as correcting addresses.

DATES: This rule is effective May 26, 2026.

FOR FURTHER INFORMATION CONTACT: Veronica Chittim, Assistant Chief Counsel for Safety, Office of the Chief Counsel (RCC), FRA, (telephone 202–480–3410), *veronica.chittim@dot.gov;* or Lucinda Henriksen, Senior Advisor, Office of Railroad Safety (RRS), FRA (telephone 202–657–2842), *lucinda.henriksen@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Consistent with Executive Order (E.O.) 14192, Unleashing Prosperity Through Deregulation (90 FR 9065, Feb. 6, 2025), and E.O. 14219, Ensuring Lawful Governance and Implementing the President's ''Department of Government Efficiency'' Deregulatory Initiative (90 FR 10583, Feb. 25, 2025), and as described in more detail below, this rule updates FRA's railroad safety enforcement procedures and rules of practice to require electronic service of documents; establishes procedures to implement new authority regarding civil penalties for alleged Federal railroad safety violations; and makes other necessary administrative updates, such as correcting addresses.

On July 1, 2025, FRA published a notice of proposed rulemaking (NPRM) that proposed accounting for technological changes, conforming FRA's procedures for hazardous materials (hazmat) and non-hazmat assessments, aligning FRA's service provisions with those at other agencies, and helping agency operations to continue, without interruption, during emergencies. See 90 FR 28612.

As discussed in the NPRM, this rule also establishes procedures in part 209 to implement new authority regarding civil penalties provided in section 22418 of the Infrastructure Investment and Jobs Act, Pub. L. 117–58 (Nov. 15, 2021), codified at 49 U.S.C. 21301(a). This statutory authority allows FRA to resolve administratively civil penalty assessments alleging violations under FRA's railroad safety authority.

FRA received two comments in response to the NPRM that sought

clarification or changes to the proposed procedural requirements in part 209.

The Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART–TD) asserted that electronic communications ''cannot be relied upon for urgent communications,'' and ''transmission'' should not be considered ''receipt.'' [1] SMART–TD noted hurdles such as ''IT systems [that] block or reroute email,'' ''addresses go stale when workers change crafts or carriers,'' and ''spam filters bury critical notices.'' SMART–TD suggested that FRA retain personal or certified-mail service for subpoenas and other documents. In response to these concerns, FRA is not modifying the rule text but notes that issues pertaining to the accuracy of addresses may exist regardless of the method of service and emphasizes that personal or certified-mail service remain options if electronic service is not available.

In addition, SMART–TD noted concern with the NPRM's discussion of individual liability civil penalty actions. Though FRA acknowledges these concerns, the policy stated in the proposal regarding FRA's individual liability policy is almost entirely verbatim from the existing appendix A. FRA did not propose to modify the standard for individual liability actions in this rule, nor does FRA find modifying this language appropriate.

Moreover, SMART–TD requested that FRA extend the amount of time to respond to a demand letter, from 60 days, as proposed in subpart G, to 90 days, and that FRA provide the entire evidentiary record with the demand letter. In response, FRA notes that as a matter of practice, FRA has requested a response within 60 days to each notice of alleged violation of railroad safety regulations and this rule merely formalizes that period for response. In comparison, for hazmat violations (part 209, subpart B) respondents are provided 30 days to respond to a notice of probable violation (NOPV). FRA finds that the 60 days allotted in these procedures is sufficient time for a respondent to acknowledge receipt of a letter of alleged violation, at a minimum, and should additional time be necessary, the agency will allow an extension of time for cause stated. See section 209.607(b). FRA also notes that along with the demand letter, FRA will provide (as it has always done) supporting evidence of the alleged violation(s), to include a violation report, inspection report, and other relevant exhibits, such as photographs and railroad records, as applicable.

SMART–TD took issue with FRA's proposal to have hearing officers designated by the Office of the Chief Counsel, as the same office prosecutes cases. FRA notes in response that the new subpart G procedures regarding administrative hearings for rail safety cases mimics the procedures currently located in subpart B regarding hazmat cases. A hearing officer designated by the Office of the Chief Counsel is independent from the personnel prosecuting the substantive violation(s), and different Offices within the Office of the Chief Counsel perform different functions (the Office of Safety Law handles enforcement prosecution, whereas the Office of General Law handles the hearing officer function for the Office). A designated hearing officer in the Office of General Law is not involved in any rail safety enforcement activity and operates independently from all Safety Law functions, including enforcement activities. There is already established Department of Transportation policy to ensure the appropriate separation of functions during administrative enforcement proceedings; ''[i]t is in the public interest and fundamental to good government that the Department carry out its enforcement responsibilities in a fair and just manner.'' [2]

Finally, SMART–TD asked FRA to provide ''secure, accessible systems for electronic submissions.'' FRA notes that email is a standard method of communication, and submissions can be protected through encryption, in addition to routine technological safeguards. Any party making an electronic filing under this rule is encouraged to do so through secure means. For example, a party can select to encrypt and/or password protect the filing using an email provider of the party's choice. FRA does not find it necessary to modify the rule in response to this concern.

Separately, the Association of American Railroads (AAR) submitted a comment regarding the procedural requirements proposed in subpart G.[3] Specifically, AAR stated that the NPRM ''(like the existing hazmat civil penalty rule it mirrors) is ambiguous, and one possible interpretation of the rule would complicate the process and place additional burdens upon railroads by creating an unnecessary paperwork requirement.'' To address this asserted ambiguity, AAR recommends that FRA clarify that the written response and the request for a conference are available independently and requests that FRA modify language in section 209.611(b). Overall, AAR emphasized that FRA should ''allow for continued use of consolidated annual submissions for penalty mitigation'' and clarify the framework.

In response to AAR's comment, FRA has modified section 209.611 as recommended and clarifies that with the new process outlined in part 209, FRA did not intend to alter the typical process for Class 1 railroad carriers and other larger respondents that discuss numerous cases during consolidated annual settlement conferences. Moreover, FRA did not intend to require a form letter to be submitted for each case within 60 days to acknowledge receipt and deferring the informal conference. FRA is not modifying the similar provisions in part 209, subpart B, at this time, as changes to those hazmat procedures were not previously proposed in this rulemaking.

For more information, please review the SECTION-BY-SECTION ANALYSIS below.

II. Section-by-Section Analysis

Unless noted otherwise, please refer to the discussion in the NPRM, as FRA has generally adopted the rule text as proposed. *See* 90 FR 28613–28615.

Part 209

§ 209.1 Purpose; § 209.5 Service; and § 209.6 Requests for Admission

FRA adopts these provisions as proposed in the NPRM. 90 FR 28613.

§ 209.7 Subpoenas; Witness Fees

FRA adopts this provision as proposed in the NPRM. 90 FR 28613. Though SMART–TD suggested that FRA should retain the ''in person'' method of service, FRA notes that ''in person'' service remains available for subpoenas. FRA has determined that electronic service should be sufficient in most cases, and ''in person'' service should only be relied on in rare circumstances (*i.e.,* when electronic service is impossible).

§ 209.8 Depositions in Formal Proceedings; § 209.9 Filing; § 209.13 Consolidation; § 209.15 Rules of Evidence

FRA adopts these provisions as proposed in the NPRM. 90 FR 28613, 28614.

[1] *https://www.regulations.gov/comment/FRA-2022-0085-0002.*

[2] U.S. Department of Transportation, *Memorandum to Secretarial Officers and Heads of Operating Administrations: Procedural Requirements for DOT Enforcement Actions* (March 11, 2025), available at: *https://cms.dot.gov/mission/administrations/office-general-counsel/procedural-requirements-dot-enforcement-actions-0.*

[3] *https://www.regulations.gov/comment/FRA-2022-0085-0003.*

§ 209.105 Notice of Probable Violation

FRA adopts this provision as proposed in the NPRM. 90 FR 28614.

§ 209.109 Payment of Penalty; Compromise

While FRA generally adopts § 209.109(b) as proposed in the NPRM, 90 FR 28614, subsequent to the publication of the NPRM, FRA moved to electronic-only methods for payments and receipts made to or from FRA consistent with E.O. 14247, ''Modernizing Payments To and From America's Bank Account,'' issued on March 25, 2025. Thus, FRA is amending § 209.109(a) to remove the mailing and overnight delivery addresses for payments and directs payment to be made through *https://www.pay.gov/* instead.

§ 209.303 Coverage; § 209.335 Penalties; § 209.405 Reporting of Remedial Actions; § 209.407 Delayed Reports

FRA adopts these provisions as proposed in the NPRM. 90 FR 28614.

Part 209, Subpart G Enforcement, Hearing, and Appeal Procedures for Rail Safety Violations

FRA amends 49 CFR part 209 by adding a new subpart G, *Enforcement, Hearing, and Appeal Procedures for Rail Safety Violations,* generally as proposed in the NPRM, 90 FR 28614, but with minor modifications as described below.

§ 209.601 Civil Penalties Generally

FRA adopts this provision as proposed in the NPRM. 90 FR 28614.

§ 209.603 Minimum and Maximum Penalties; § 209.605 Demand Letter

FRA adopts these provisions generally as proposed in the NPRM. 90 FR 28614. FRA is making minor formatting changes in § 209.603 and § 209.605(c) to reflect comments from the Office of the Federal Register on similar language in other penalty provisions in other parts of the CFR.

§ 209.607 Reply

FRA adopts this provision as proposed in the NPRM. 90 FR 28614.

§ 209.609 Payment of Penalty; Compromise

FRA adopts § 209.609(b) as proposed in the NPRM but modifies § 209.609(a) to mirror the changes to § 209.109(a) in this rule to remove the mailing and overnight delivery addresses for payments originally proposed and directs payment to be made through *https://www.pay.gov/* instead.

§ 209.611 Informal Response and Assessment

Section 209.611 explains the process for how a respondent may respond informally to a demand letter. As discussed above, in response to AAR's comment, FRA is modifying the language in this section to clarify that the written response and the request for a conference are available independently. FRA is adding the word ''written'' in the phrase ''informal written response'' in paragraph (a). FRA is striking the sentence in proposed section 209.611(b) ''[u]pon receipt of such a request, the Office of the Chief Counsel arranges for a conference as soon as practicable,'' and is modifying the language to read ''Instead of or in addition to an informal written response as described in paragraph (a), an informal response may consist of a request for a conference.'' Overall, FRA expresses its intent to continue use of consolidated annual submissions for penalty mitigation and conferences with railroads covering more than one case.

§ 209.613 Request for Hearing; § 209.615 Hearing; § 209.617 Presiding Officer's Decision; § 209.619 Assessment Considerations; § 209.621 Appeal; Part 209, Appendix

A, Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws; Part 209, Appendix B, Federal Railroad Administration Guidelines for Initial Hazardous Materials Assessments; Part 209, Appendix C, FRA's Policy Statement Concerning Small Entities

FRA adopts these provisions and language as proposed in the NPRM. 90 FR 28614, 28615.

III. Regulatory Impact and Notices

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FRA has considered the impact of this final rule under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, and DOT Regulatory Policies and Procedures. The Office of Information and Regulatory Affairs within Office of Management and Budget (OMB) determined that this final rule is not a significant regulatory action under section 3(f) of E.O. 12866.

FRA analyzed the potential costs and benefits of this final rule. This final rule will allow electronic methods of serving documents, such as email, whenever possible. This will expedite the speed at which documents are delivered while also reducing costs that would otherwise exist from having to print and mail documents. In addition, this rule makes miscellaneous changes such as reflecting updated web and email addresses. This rule will reduce burdens on regulated entities and provide some qualitative benefits to regulated entities and the U.S. government, by clarifying, simplifying, and updating the language of part 209.

B. Executive Order 14192 (Unleashing Prosperity Through Deregulation)

E.O. 14192, Unleashing Prosperity Through Deregulation, requires that for ''each new [E.O. 14192 regulatory action] issued, at least ten prior regulations be identified for elimination.'' [4] Implementation guidance for E.O. 14192 issued by OMB (Memorandum M–25–20, March 26, 2025) defines two different types of E.O. 14192 actions: an E.O. 14192 deregulatory action, and an E.O. 14192 regulatory action.[5]

An E.O. 14192 deregulatory action is defined as ''an action that has been finalized and has total costs less than zero.'' This final rule will have total costs less than zero, and therefore it will be considered an E.O. 14192 deregulatory action upon issuance of this final rule. FRA affirms that each amendment proposed in this final rule has a cost that is negligible or ''less than zero'' consistent with E.O. 14192.

C. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 ((RFA), 5 U.S.C. 601 *et seq.*) and E.O. 13272 (67 FR 53461, Aug. 16, 2002), Proper Consideration of Small Entities in Agency Rulemaking, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions).

No regulatory flexibility analysis is required, however, if the head of an Agency or an appropriate designee certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule will not preclude small entities from continuing existing practices that comply with part 209; it merely offers clarification that could result in cost savings, if a small entity

[4] Executive Office of the President, *Executive Order 14192 of January 31, 2025, Unleashing Prosperity Through Deregulation,* 90 FR 9065–9067 (Feb. 6, 2025).

[5] Executive Office of the President, Office of Management and Budget, Guidance Implementing Section 3 of Executive Order 14192, Titled ''Unleashing Prosperity Through Deregulation,'' Memorandum M–25–20 (Mar. 26, 2025).

or other regulated entity chooses to utilize the flexibilities. Consequently, FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

This final rule offers regulatory flexibilities, and it contains no new collection of information requirements in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* therefore, an information collection submission to OMB is not required.

E. Environmental Assessment

FRA has analyzed this rule for the purposes of the National Environmental Policy Act of 1969 (NEPA). In accordance with 42 U.S.C. 4336 and DOT NEPA Order 5610.1D, FRA has determined that this rule is categorically excluded pursuant to 23 CFR 771.116(c)(15). This rulemaking is not anticipated to result in any environmental impacts, and there are no unusual or extraordinary circumstances present in connection with this rulemaking.

F. Federalism Implications

This final rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with E.O. 13132, Federalism (64 FR 43255, Aug. 10, 1999), preparation of a Federalism Assessment is not warranted.

G. Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure, in the aggregate, of $100,000,000 or more, adjusted for inflation, in any one year by State, local, or Indian Tribal governments, or the private sector. Thus, consistent with section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1532), FRA is not required to prepare a written statement detailing the effect of such an expenditure.

H. Energy Impact

E.O. 13211 (66 FR 28355, May 22, 2001), Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' [6] FRA has evaluated this final rule in accordance with E.O. 13211 and determined that this final rule is not a ''significant energy action'' within the meaning of E.O. 13211.

I. Executive Order 13175 (Tribal Consultation)

FRA has evaluated this final rule in accordance with the principles and criteria contained in E.O. 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, Nov. 6, 2000). The final rule will not have a substantial direct effect on one or more Indian tribes, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal laws. Therefore, the funding and consultation requirements of E.O. 13175 do not apply, and a tribal summary impact statement is not required.

J. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. This final rule is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

List of Subjects in 49 CFR Part 209

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

The Final Rule

For the reasons discussed in the preamble, FRA amends part 209 of chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

PART 209—RAILROAD SAFETY ENFORCEMENT PROCEDURES

■ 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 1.89.

■ 2. Revise § 209.1 to read as follows:

§ 209.1 Purpose.

Appendix A to this part contains a statement of agency policy concerning enforcement of those laws. This part describes certain procedures employed by the Federal Railroad Administration in its enforcement of statutes and regulations related to railroad safety. By delegation from the Secretary of Transportation, the Administrator has responsibility for:

(a) Enforcement of subchapters B and C of chapter I, subtitle B, title 49, CFR, and 49 U.S.C. ch. 51 and uncodified provisions, with respect to the transportation or shipment of hazardous materials by railroad (49 CFR 1.89(j)); and

(b) Exercise of the authority vested in the Secretary by 49 U.S.C. Subtitle V, Part A (Safety, chapter 201 *et seq.*) and uncodified provisions of the Rail Safety Improvement Act of 2008 (Pub. L. 110–432, Div. A, 122 Stat. 4848) (49 CFR 1.89(a), (b)).

■ 3. Revise § 209.5 to read as follows:

§ 209.5 Service.

(a) Each order, notice, or other document required to be served under ch. II of subtitle B of title 49 of the Code of Federal Regulations must be served by the following method:

(1) Any electronic method of delivery so long as there was no indication received that any transmission had failed; or

(2) In the event an electronic method of delivery is impossible, service may be made by U.S. mail.

(b) Service upon a person's duly authorized representative constitutes service upon that person.

(c) The date of service will be:

(1) If sent by an electronic method of delivery, the date of electronic transmission to the party to be served.

(2) In the event an electronic method of delivery is impossible, and mailing is used, the postmark date. An official U.S. Postal Service receipt from a registered or certified mailing constitutes prima facie evidence of service.

(d) Each pleading must be accompanied by a certificate of service specifying how and when service was made.

(e) When service must occur within a particular timeframe, the date certain when service must be completed will be determined in accordance with the computation of time provisions in Rule 6 of the Federal Rules of Civil Procedure, as amended.

■ 4. Revise § 209.6(a) to read as follows:

§ 209.6 Requests for admission.

(a) A party to any proceeding under subpart B, C, D, or G of this part may serve upon any other party written requests for the admission of the genuineness of any relevant documents identified within the request, the truth

[6] 66 FR 28355 (May 22, 2001).

of any relevant matters of fact, and the application of law to the facts as set forth in the request.

* * * * *

■ 5. Amend § 209.7 by revising paragraphs (a), (c), (d)(1), (d)(2), and (j) to read as follows:

§ 209.7 Subpoenas; witness fees.

(a) The Chief Counsel may issue a subpoena on the Chief Counsel's own initiative in any matter related to enforcement of the railroad safety laws. However, where a proceeding under subpart B, C, D, or G of this part has been initiated, only the presiding officer may issue subpoenas, and only upon the written request of any party to the proceeding who makes an adequate showing that the information sought will materially advance the proceeding.

* * * * *

(c) A subpoena may be served by any electronic method of delivery so long as there was no indication received that any transmission had failed. In the event an electronic method of delivery is impossible, service may be made by U.S. mail or in person.

(d) * * *

(1) To a natural person by:

(i) Any electronic method of delivery so long as there was no indication received that the transmission failed; or

(ii) Any method whereby actual notice of the issuance and content is given (and the fees are made available) prior to the return date.

(2) To an entity other than a natural person by:

(i) Any electronic method of delivery so long as there was no indication received that the transmission failed; or

(ii) Any method whereby actual notice of the issuance and content is given (and the fees are made available) to a registered agent for service or to any officer, director, or agent in charge of any office of the person, prior to the return date.

* * * * *

(j) Attendance of any FRA employee engaged in an investigation which gave rise to a proceeding under subpart B, C, or G of this part for the purpose of eliciting factual testimony may be assured by filing a request with the Chief Counsel at least fifteen (15) days before the date of the hearing. The request must indicate the present intent of the requesting person to call the employee as a witness and state generally why the witness will be required.

■ 6. Revise § 209.8(a) to read as follows:

§ 209.8 Depositions in formal proceedings.

(a) Any party to a proceeding under subpart B, C, D, or G of this part may take the testimony of any person, including a party, by deposition upon oral examination on order of the presiding officer following the granting of a motion under paragraph (b) of this section. Depositions may be taken before any disinterested person who is authorized by law to administer oaths. The attendance of witnesses may be compelled by subpoena as provided in § 209.7 and, for proceedings under subpart D of this part, § 209.315.

* * * * *

■ 7. Revise § 209.9 to read as follows:

§ 209.9 Filing.

All materials filed with FRA or any FRA officer in connection with a proceeding under subpart B, C, D, or G of this part shall be submitted to the Assistant Chief Counsel for Safety, Office of the Chief Counsel, Federal Railroad Administration, to *FRALegal@dot.gov,* except that documents produced in accordance with a subpoena shall be presented at the place and time specified by the subpoena.

■ 8. Revise § 209.13 to read as follows:

§ 209.13 Consolidation.

At the time a matter is set for hearing under subpart B, C, D, or G of this part, the Chief Counsel may consolidate the matter with any similar matter(s) pending against the same respondent or with any related matter(s) pending against other respondent(s) under the same subpart. However, on certification by the presiding officer that a consolidated proceeding is unmanageable or otherwise undesirable, the Chief Counsel will rescind or modify the consolidation.

■ 9. Revise § 209.15 to read as follows:

§ 209.15 Rules of evidence.

The Federal Rules of Evidence for United States Courts and Magistrates shall be employed as general guidelines for proceedings under subparts B, C, D, and G of this part. However, all relevant and material evidence shall be received into the record.

■ 10. Revise § 209.105(a) to read as follows:

§ 209.105 Notice of probable violation.

(a) FRA, through the Office of the Chief Counsel, begins a civil penalty proceeding by serving a notice of probable violation on a person charging him or her with having violated one or more provisions of subchapter A or C of chapter I, subtitle B of this title. FRA's website at *https://railroads.dot.gov/* contains guidelines used by the Office of the Chief Counsel in making initial penalty assessments.

* * * * *

■ 11. Revise § 209.109 to read as follows:

§ 209.109 Payment of penalty; compromise.

(a) Payment of a civil penalty must be made via the internet at *https://www.pay.gov/paygov/.* Instructions for online payment are found on the website.

(b) At any time before an order assessing a penalty is referred to the Attorney General for collection, the respondent may offer to compromise for a specific amount by contacting the Office of the Chief Counsel.

■ 12. Amend § 209.303 by revising paragraph (c)(3) to read as follows:

§ 209.303 Coverage.

* * * * *

(c) * * *

(3) Are in a position to direct the commission of violations of any of the requirements of parts 213 through 299 of this title, or any of the requirements of 49 U.S.C. ch. 51, or any regulation or order prescribed thereunder.

■ 13. Revise § 209.335 to read as follows:

§ 209.335 Penalties.

(a) Any individual who violates § 209.331(c) or § 209.333(a) may be permanently disqualified from performing the safety-sensitive functions described in § 209.303. Any individual who willfully violates § 209.331(c) or § 209.333(a) may also be assessed a civil penalty of at least the minimum civil monetary penalty and not more than the ordinary maximum civil monetary penalty per violation. See 49 CFR part 209, appendix A.

(b) Any railroad that violates § 209.331(a) or (b) or § 209.333(b) may be assessed a civil penalty of at least the minimum civil monetary penalty and not more than the ordinary maximum civil monetary penalty per violation. See 49 CFR part 209, appendix A.

(c) Each day a violation continues shall constitute a separate offense.

■ 14. Revise § 209.405(a)(3) to read as follows:

§ 209.405 Reporting of remedial actions.

(a) * * *

(3) *Submission of Form FRA F 6180.96.* The railroad must return the form via email to the FRA Safety Inspector whose name and email address appear on the form.

* * * * *

■ 15. Revise § 209.407(a)(2) to read as follows:

§ 209.407 Delayed reports.

(a) * * *

(2) Sign, date, and submit such written explanation and estimate via email, to the FRA Safety Inspector whose name and email address appear on the notification, within 30 days after the end of the calendar month in which the notification is received.

* * * * *

■ 16. Add subpart G, consisting of §§ 209.601 through 209.621, to read as follows:

Subpart G—Enforcement, Hearing, and Appeal Procedures for Rail Safety Violations

Sec.

§ 209.601 Civil penalties generally.

(a) Sections 209.601 through 209.621 prescribe rules of procedure for the assessment of civil penalties pursuant to the Federal railroad safety laws, 49 U.S.C. chapters 201 through 213.

(b) When FRA has reason to believe that a person has committed an act which is a violation of any provision of chapter II, subtitle B of this title, or title 49, subtitle V, part A, of the United States Code, for which FRA exercises enforcement responsibility or any waiver or order issued thereunder, it may conduct a proceeding to assess a civil penalty.

§ 209.603 Minimum and maximum penalties.

A person who violates a requirement of the Federal railroad safety laws, an order issued thereunder, chapter II, subtitle B, of this title, or title 49, subtitle V, part A, of the United States Code, is subject to a civil penalty of at least the minimum civil monetary penalty and not more than the ordinary maximum civil monetary penalty per violation. However, penalties may be assessed against individuals only for willful violations, and a penalty not to exceed the aggravated maximum civil monetary penalty per violation may be assessed, where a grossly negligent violation, or a pattern of repeated violations, has created an imminent hazard of death or injury to persons, or a death or injury has occurred. See 49 CFR part 209, appendix A. Each day a violation continues shall constitute a separate offense. See FRA's website at *https://railroads.dot.gov/*for a statement of agency civil penalty policy.

§ 209.605 Demand letter.

(a) FRA, through the Office of the Chief Counsel, begins a civil penalty proceeding by serving a demand letter on a person charging the person with having violated one or more provisions of chapter II, subtitle B of this title, or title 49, subtitle V, part A, of the United States Code. FRA's website at *https://railroads.dot.gov/* contains guidelines used by the Office of the Chief Counsel in making initial penalty assessments.

(b) A demand letter issued under this section includes:

(1) A statement of the provision(s) which the respondent is believed to have violated;

(2) A statement of the factual allegations upon which the proposed civil penalty is being sought;

(3) Notice of the maximum amount of civil penalty for which the respondent may be liable;

(4) Notice of the amount of the civil penalty proposed to be assessed;

(5) A description of the manner in which the respondent should make payment of any money to the United States;

(6) A statement of the respondent's right to present written explanations, information or any materials in answer to the charges or in mitigation of the penalty; and

(7) A statement of the respondent's right to request a hearing and the procedures for requesting a hearing.

(c) FRA may amend the demand letter at any time prior to completion of a fully executed settlement agreement or the entry of an order assessing a civil penalty. If the amendment contains any new material allegation of fact, the respondent is given an opportunity to respond. In an amended demand letter, FRA may change the civil penalty amount proposed to be assessed, up to the maximum penalty amount for each violation. However, if the violation is a grossly negligent violation, or a pattern of repeated violations, that has caused an imminent hazard of death or injury to individuals, or has caused death or injury, FRA may change the penalty amount proposed to be assessed up to the aggravated maximum penalty amount.

§ 209.607 Reply.

(a) Within sixty (60) days of the service of a demand letter issued under § 209.605, the respondent may—

(1) Pay as provided in § 209.609(a) and thereby close the case;

(2) Make an informal response as provided in § 209.611; or

(3) Request a hearing as provided in § 209.613.

(b) The Office of the Chief Counsel may extend the sixty (60) days period for good cause shown.

(c) Failure of the respondent to reply by taking one of the three actions described in paragraph (a) of this section, within the period provided, constitutes a waiver of the right to appear and contest the allegations, and authorizes the Office of the Chief Counsel, without further notice to the respondent, to find the facts to be as alleged in the demand letter and to assess an appropriate civil penalty.

§ 209.609 Payment of penalty; compromise.

(a) Payment of a civil penalty must be made via the internet at *https://www.pay.gov/paygov/.* Instructions for online payment are found on the website.

(b) At any time before an order assessing a penalty is referred to the Attorney General for collection, the respondent may offer to compromise for a specific amount by contacting the Office of the Chief Counsel.

§ 209.611 Informal response and assessment.

(a) If a respondent elects to make an informal written response to a demand letter, respondent must submit to the Office of the Chief Counsel such written explanations, information, or other materials as respondent may desire in answer to the charges or in mitigation of the proposed penalty.

(b) Instead of or in addition to an informal written response as described in paragraph (a), an informal response may consist of a request for a conference.

(c) Written explanations, information, or materials submitted by the respondent, and relevant information presented during any conference held under this section, are considered by the Office of the Chief Counsel in reviewing the demand letter and determining the fact of violation and the amount of any penalty to be assessed.

(d) After consideration of an informal response, including any relevant information presented at a conference, the Office of the Chief Counsel may dismiss the demand letter in whole or in part. If the Office of the Chief Counsel does not dismiss it in whole, the Office of the Chief Counsel may enter into a settlement agreement or enter an order assessing a civil penalty.

§ 209.613 Request for hearing.

(a) If a respondent elects to request a hearing, the respondent must submit a

written request to the Office of the Chief Counsel referring to the case number which appeared on the demand letter. The request must—

(1) State the name and email address of the respondent and of the person signing the request, if different from the respondent;

(2) State with respect to each allegation whether it is admitted or denied; and

(3) State with particularity the issues to be raised by the respondent at the hearing.

(b) After a request for hearing that complies with the requirements of paragraph (a) of this section, the Office of the Chief Counsel schedules a hearing for the earliest practicable date.

(c) The Office of the Chief Counsel, or the hearing officer appointed under § 209.615, may grant extensions of the time of the commencement of the hearing for good cause shown.

§ 209.615 Hearing.

(a) When a hearing is requested and scheduled under § 209.613, a hearing officer designated by the Office of the Chief Counsel convenes and presides over the hearing. If requested by respondent, and if practicable, the hearing is held in the general vicinity of the place where the alleged violation occurred, at a place convenient to the respondent, or virtually. Testimony by witnesses shall be given under oath and the hearing shall be recorded verbatim.

(b) The presiding official may:

(1) Administer oaths and affirmations;

(2) Issue subpoenas as provided by § 209.7;

(3) Adopt procedures for the submission of evidence in written form;

(4) Take or cause depositions to be taken;

(5) Rule on offers of proof and receive relevant evidence;

(6) Examine witnesses at the hearing;

(7) Convene, recess, reconvene, and adjourn and otherwise regulate the course of the hearing;

(8) Hold conferences for settlement, simplification of the issues or any other proper purpose; and

(9) Take any other action authorized by, or consistent with, the provisions of this subpart pertaining to civil penalties and permitted by law that may expedite the hearing or aid in the disposition of an issue raised, therein.

(c) The Office of the Chief Counsel has the burden of providing the facts alleged in the demand letter and may offer such relevant information as may be necessary to inform the presiding officer fully as to the matter concerned.

(d) The respondent may appear and be heard on the respondent's own behalf or through counsel of the respondent's choice. The respondent or respondent's counsel may offer relevant information, including testimony, which they believe should be considered in defense of the allegations, or that may bear on the penalty proposed to be assessed, and conduct such cross-examination as may be required for a full disclosure of the material facts.

(e) At the conclusion of the hearing, or as soon thereafter as the hearing officer shall provide, the parties may file proposed findings and conclusions, together with supporting reasons.

§ 209.617 Presiding officer's decision.

(a) After consideration of the evidence of record, the presiding officer may dismiss the demand letter in whole or in part. If the presiding officer does not dismiss it in whole, the presiding officer will issue and serve on the respondent an order assessing a civil penalty. The decision of the presiding officer will include a statement of findings and conclusions as well as the reasons therefor on all material issues of fact, law, and discretion.

(b) If, within twenty (20) days after service of an order assessing a civil penalty, the respondent does not pay the civil penalty or file an appeal as provided in § 209.621, the case may be referred to the Attorney General with a request that an action to collect the penalty be brought in the appropriate United States District Court. In the civil action, the amount and appropriateness of the civil penalty shall not be subject to review.

§ 209.619 Assessment considerations.

The assessment of a civil penalty under § 209.617 is made only after considering:

(a) the nature, circumstances, extent, and gravity of the violation;

(b) with respect to the violator, the degree of culpability, any history of violations, the ability to pay, and any effect on the ability to continue to do business; and

(c) other matters that justice requires.

§ 209.621 Appeal.

(a) Any party aggrieved by a presiding officer's decision or order issued under § 209.617 assessing a civil penalty may file an appeal with the Administrator. The appeal must be filed within twenty (20) days of service of the presiding officer's order.

(b) Prior to rendering a final determination on an appeal, the Administrator may remand the case for further proceedings before the hearing officer.

(c) In the case of an appeal by a respondent, if the Administrator affirms the assessment and the respondent does not pay the civil penalty within twenty (20) days after service of the Administrator's decision on appeal, the matter may be referred to the Attorney General with a request that an action to collect the penalty be brought in the appropriate United States District Court. In the civil action, the amount and appropriateness of the civil penalty shall not be subject to review.

■ 17. Amend appendix A to part 209 by:

■ a. Revising the first paragraph;

■ b. Revising the section under the heading ''The Civil Penalty Process;''

■ c. Revising the section under the heading ''Civil Penalties Against Individuals;''

■ d. Revising the seventh paragraph under the heading ''Penalty Schedules; Assessment of Maximum Penalties;'' and

■ e. Revising the section under the heading ''Extraordinary Remedies.''

The revisions read as follows:

Appendix A to Part 209—Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws

The Federal Railroad Administration (''FRA'') enforces the Federal railroad safety statutes under delegation from the Secretary of Transportation. See 49 CFR 1.88 and 1.89. Those statutes include 49 U.S.C. ch. 201–213 and uncodified provisions of the Rail Safety Improvement Act of 2008 (Pub. L. 110–432, Div. A, 122 Stat. 4848), the Fixing America's Surface Transportation Act (Pub. L. 114–94, Dec. 4, 2015), and the Infrastructure Investment and Jobs Act (Pub. L. 117–58, Nov. 15, 2021). On July 4, 1994, the day before the enactment of Public Law 103–272, 108 Stat. 745, the Federal railroad safety statutes included the Federal Railroad Safety Act of 1970 (''Safety Act''), and a group of statutes enacted prior to 1970 referred to herein collectively as the ''older safety statutes:'' the Safety Appliance Acts; the Locomotive Inspection Act; the Accident Reports Act; the Hours of Service Act; and the Signal Inspection Act. Effective July 5, 1994, Public Law 103–272 repealed certain general and permanent laws related to transportation, including these rail safety laws (the Safety Act and the older safety statutes), and reenacted them as revised by that law but without substantive change in title 49 of the U.S.C., ch. 201–213. Regulations implementing the Federal rail safety laws are found at 49 CFR parts 209–299. The Rail Safety Improvement Act of 1988 (Pub. L. 100–342, enacted June 22, 1988) (''RSIA'') raised the maximum civil penalties available under the railroad safety laws and made individuals liable for willful violations of those laws.

FRA also enforces the hazardous materials transportation laws (49 U.S.C. ch. 51 and uncodified provisions) (formerly the Hazardous Materials Transportation Act, which was also repealed by Public Law 103–272, July 5, 1994, and reenacted as revised but without substantive change) as it pertains

to the shipment or transportation of hazardous materials by rail.

The Civil Penalty Process

The front lines in the civil penalty process are the FRA safety inspectors: FRA employs over 300 inspectors, and their work is supplemented by approximately 200 inspectors from States participating in enforcement of the Federal rail safety laws. These inspectors routinely inspect the equipment, track, and signal systems and observe the operations of the Nation's railroads. They also investigate hundreds of complaints filed annually by those alleging noncompliance with the laws. When an inspection or complaint investigation reveals noncompliance with the laws, each noncomplying condition or action is listed on an inspection report. Where the inspector determines that the best method of promoting compliance is to assess a civil penalty, the inspector prepares a violation report, which is essentially a recommendation to the FRA Office of the Chief Counsel to assess a penalty based on the evidence provided in or with the report.

In determining which instances of noncompliance merit penalty recommendations, the inspector considers:

(1) The inherent seriousness of the condition or action;

(2) The kind and degree of potential safety hazard the condition or action poses in light of the immediate factual situation;

(3) Any actual harm to persons or property already caused by the condition or action;

(4) The offending person's (*i.e.,* railroad's or individual's) general level of current compliance as revealed by the inspection as a whole;

(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;

(6) Whether a remedy other than a civil penalty (ranging from a warning on up to an emergency order) is more appropriate under all of the facts; and

(7) Such other factors as the immediate circumstances make relevant.

The civil penalty recommendation is reviewed at the district level by a specialist in the subject matter involved, who requires correction of any technical flaws and determines whether the recommendation is consistent with national enforcement policy in similar circumstances. Guidance on that policy in close cases is sometimes sought from Office of Railroad Safety headquarters. Violation reports that are technically and legally sufficient and in accord with FRA policy are sent from the district office to the Office of the Chief Counsel.

The exercise of this discretion at the field and headquarters levels is a vital part of the enforcement process, ensuring that the exacting and time-consuming civil penalty process is used to address those situations most in need of the deterrent effect of penalties. FRA exercises that discretion with regard to individual violators in the same manner it does with respect to railroads.

The Office of the Chief Counsel's Office of Safety Law reviews each violation report it receives from the district offices for legal sufficiency and assesses penalties based on those allegations that survive that review.

Where the violation was committed by a railroad, penalties are assessed by issuance of a penalty demand letter that summarizes the claims, encloses the violation report with a copy of all evidence on which FRA is relying in making its initial charge, and explains that the railroad may pay in full or submit, orally or in writing, information concerning any defenses or mitigating factors. The railroad safety statutes, in conjunction with the Federal Claims Collection Act, authorize FRA to adjust or compromise the initial penalty claims based on a wide variety of mitigating factors. This system permits the efficient collection of civil penalties in amounts that fit the actual offense without resort to time-consuming and expensive litigation.

Once penalties have been assessed, the railroad is given a reasonable amount of time to investigate the charges. Larger railroads usually make their case before FRA in an informal conference covering a number of case files that have been issued and investigated since the previous conference. Thus, in terms of the negotiating time of both sides, economies of scale are achieved that would be impossible if each case were negotiated separately. The settlement conferences include technical experts from both FRA and the railroad as well as lawyers for both parties. In addition to allowing the two sides to make their cases for the relative merits of the various claims, these conferences also provide a forum for addressing current compliance problems. Smaller railroads usually prefer to handle negotiations through email or over the phone, often on a single case at a time. Once the two sides have agreed to an amount on each case, that agreement is put in writing and a payment is submitted to FRA's accounting division covering the full amount agreed on.

Civil Penalties Against Individuals

The RSIA amended the penalty provisions of the railroad safety statutes to make them applicable to any ''person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad)'' who fails to comply with the regulations or statutes, *e.g.,* section 3 of the RSIA, amending section 209 of the Safety Act. However, the RSIA also provided that civil penalties may be assessed against individuals ''only for willful violations.''

Thus, any individual meeting the statutory description of ''person'' is liable for a civil penalty for a willful violation of, or for willfully causing the violation of, the safety statutes or regulations. Of course, as has traditionally been the case with respect to acts of noncompliance by railroads, the FRA field inspector exercises discretion in deciding which situations call for a civil penalty assessment as the best method of ensuring compliance. The inspector has a range of options, including an informal warning, a more formal warning letter issued by the Office of the Chief Counsel, recommendation of a civil penalty assessment, recommendation of disqualification or suspension from safety-sensitive service, or, under the most extreme circumstances, recommendation of emergency action.

The threshold question in any alleged violation by an individual will be whether that violation was ''willful.'' (Note that section 3(a) of the RSIA, which authorizes suspension or disqualification of a person whose violation of the safety laws has shown the person to be unfit for safety-sensitive service, does not require a showing of willfulness. Regulations implementing that provision are found at 49 CFR part 209, subpart D.) FRA proposed this standard of liability when, in 1987, it originally proposed a statutory revision authorizing civil penalties against individuals. FRA believed then that it would be too harsh a system to collect fines from individuals on a strict liability basis, as the safety statutes permit FRA to do with respect to railroads. FRA also believed that even a reasonable care standard (*e.g.,* the Hazardous Materials Transportation Act's standard for civil penalty liability, 49 U.S.C. 5123) would subject individuals to civil penalties in more situations than the record warranted. Instead, FRA wanted the authority to penalize those who violate the safety laws through a purposeful act of free will.

Thus, FRA considers a ''willful'' violation to be 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. Accordingly, neither a showing of evil purpose (as is sometimes required in certain criminal cases) nor actual knowledge of the law is necessary to prove a willful violation, but a level of culpability higher than negligence must be demonstrated. *See Trans World Airlines, Inc.* v. *Thurston,* 469 U.S. 111 (1985); *Brock* v. *Morello Bros. Constr., Inc.,* 809 F.2d 161 (1st Cir. 1987); and *Donovan* v. *Williams Enterprises, Inc.,* 744 F.2d 170 (D.C. Cir. 1984).

Reckless disregard for the requirements of the law can be demonstrated in many ways. Evidence that a person was trained on or made aware of the specific rule involved—or, as is more likely, its corresponding industry equivalent—would suffice. Moreover, certain requirements are so obviously fundamental to safe railroading (*e.g.,* the prohibition against disabling an automatic train control device) that any violation of them, regardless of whether the person was actually aware of the prohibition, should be seen as reckless disregard of the law. *See Brock, supra,* 809 F.2d 164. Thus, a lack of subjective knowledge of the law is no impediment to a finding of willfulness. If it were, a mere denial of knowledge of the content of the particular regulation would provide a defense. Having proposed use of the word ''willful,'' FRA believes it was not intended to insulate from liability those who simply claim—contrary to the established facts of the case—they had no reason to believe their conduct was wrongful.

A willful violation entails knowledge of the facts constituting the violation, but actual, subjective knowledge need not be demonstrated. It will suffice to show objectively what the alleged violator must have known of the facts based on reasonable inferences drawn from the circumstances. For example, a person shown to have been responsible for performing an initial terminal

air brake test that was not in fact performed would not be able to defend against a charge of a willful violation simply by claiming subjective ignorance of the fact that the test was not performed. If the facts, taken as a whole, demonstrated that the person was responsible for doing the test and had no reason to believe it was performed by others, and if that person was shown to have acted with actual knowledge of or reckless disregard for the law requiring such a test, the person would be subject to a civil penalty.

This definition of ''willful'' fits squarely within the parameters for willful acts laid out by Congress in the RSIA and its legislative history. Section 3(a) of the RSIA amends the Safety Act to provide:

For purposes of this section, an individual shall be deemed not to have committed a willful violation where such individual has acted pursuant to the direct order of a railroad official or supervisor, under protest communicated to the supervisor. Such individual shall have the right to document such protest.

As FRA made clear when it recommended legislation granting individual penalty authority, a railroad employee should not have to choose between liability for a civil penalty or insubordination charges by the railroad. Where an employee (or even a supervisor) violates the law under a direct order from a supervisor, the employee does not do so of the employee's free will. Thus, the act is not a voluntary one and, therefore, not willful under FRA's definition of the word. Instead, the action of the person who has directly ordered the commission of the violation is itself a willful violation subjecting that person to a civil penalty. As one of the primary sponsors of the RSIA said on the Senate floor:

This amendment also seeks to clarify that the purpose of imposing civil penalties against individuals is to deter those who, of their free will, decide to violate the safety laws. The purpose is not to penalize those who are ordered to commit violations by those above them in the railroad chain of command. Rather, in such cases, the railroad official or supervisor who orders the others to violate the law would be liable for any violations his order caused to occur. One example is the movement of railroad cars or locomotives that are actually known to contain certain defective conditions. A train crew member who was ordered to move such equipment would not be liable for a civil penalty, and that his participation in such movements could not be used against him in any disqualification proceeding brought by FRA.

133 Cong. Rec. S.15899 (daily ed. Nov. 5, 1987) (remarks of Senator Exon).

It should be noted that FRA will apply the same definition of ''willful'' to corporate acts as is set out here with regard to individual violations. Though railroads are strictly liable for violations of the railroad safety laws and deemed to have knowledge of those laws, FRA's penalty schedules contain, for each regulation, a separate amount earmarked as the initial assessment for willful violations. Where FRA seeks such an extraordinary penalty from a railroad, it will apply the definition of ''willful'' set forth above. In such cases—as in all civil penalty cases brought by FRA—the aggregate knowledge and actions of the railroad's managers, supervisors, employees, and other agents will be imputed to the railroad. Thus, in situations that FRA decides warrant a civil penalty based on a willful violation, FRA will have the option of citing the railroad and/or one or more of the individuals involved. In cases against railroads other than those in which FRA alleges willfulness or in which a particular regulation imposes a special standard, the principles of strict liability and presumed knowledge of the law will continue to apply.

The RSIA gives individuals the right to protest a direct order to violate the law and to document the protest. FRA will consider such protests and supporting documentation in deciding whether and against whom to cite civil penalties in a particular situation. Where such a direct order has been shown to have been given as alleged, and where such a protest is shown to have been communicated to the supervisor, the person or persons communicating it will have demonstrated their lack of willfulness. Any documentation of the protest will be considered along with all other evidence in determining whether the alleged order to violate was in fact given.

However, the absence of such a protest will not be viewed as warranting a presumption of willfulness on the part of the employee who might have communicated it. The statute says that a person who communicates such a protest shall be deemed not to have acted willfully; it does not say that a person who does not communicate such a protest will be deemed to have acted willfully. FRA would have to prove from all the pertinent facts that the employee willfully violated the law. Moreover, the absence of a protest would not be dispositive with regard to the willfulness of a supervisor who issued a direct order to violate the law. That is, the supervisor who allegedly issued an order to violate will not be able to rely on the employee's failure to protest the order as a complete defense. Rather, the issue will be whether, in view of all pertinent facts, the supervisor intentionally and voluntarily ordered the employee to commit an act that the supervisor knew would violate the law or acted with reckless disregard for whether it violated the law.

FRA exercises the civil penalty authority over individuals through procedures very similar to those used with respect to railroad violations. However, FRA varies those procedures somewhat to account for differences that may exist between the railroad's ability to defend itself against a civil penalty charge and an individual's ability to do so. First, when the field inspector decides that an individual's actions warrant a civil penalty recommendation and drafts a violation report, the Office of Railroad Safety informs the individual in writing of its intention to seek assessment of a civil penalty and the fact that a violation report has been transmitted to the Office of the Chief Counsel. This ensures that the individual has the opportunity to seek counsel, preserve documents, or take any other necessary steps to aid the individual's defense at the earliest possible time.

Second, if the Office of the Chief Counsel concludes that the case is meritorious and issues a penalty demand letter, that letter makes clear that FRA encourages discussion of any defenses or mitigating factors the individual may wish to raise. That letter also advises the individual that the individual may wish to obtain representation by an attorney and/or labor representative. During the negotiation stage, FRA considers each case individually on its merits and gives due weight to whatever information the alleged violator provides.

Finally, in the unlikely event that a settlement cannot be reached, the individual may request an administrative hearing, or FRA may issue an order assessing civil penalty, per the enforcement, hearing, and appeal procedures for rail safety violations in part 209, subpart G.

FRA believes that the intent of Congress would be violated if individuals who agree to pay a civil penalty or are ordered to do so by a court are indemnified for that penalty by the railroad or another institution (such as a labor organization). Congress intended that the penalties have a deterrent effect on individual behavior that would be lessened, if not eliminated, by such indemnification.

Penalty Schedules; Assessment of Maximum Penalties

* * * * *

FRA's traditional practice has been to issue penalty schedules assigning to each particular regulation or order specific dollar amounts for initial penalty assessments. The schedule (except where issued after notice and an opportunity for comment) constitutes a statement of agency policy and was issued historically as an appendix to the relevant part of the Code of Federal Regulations. Schedules are now published on FRA's website at *https://railroads.dot.gov/,* and they are adjusted yearly for inflation. As of December 30, 2024, for each regulation in this part or order, the schedule shows two amounts within the $1,114 to $36,439 range in separate columns, the first for ordinary violations, the second for willful violations (whether committed by railroads or individuals). In one instance—49 CFR part 231—the schedule refers to sections of the relevant FRA defect code rather than to sections of the CFR text. Of course, the defect code, which is simply a reorganized version of the CFR text used by FRA to facilitate computerization of inspection data, is substantively identical to the CFR text.

* * * * *

Extraordinary Remedies

While civil penalties are the primary enforcement tool under the Federal railroad safety laws, more extreme measures are available under certain circumstances. FRA has authority to issue orders directing compliance with the Federal Railroad Safety Act, the Hazardous Materials Transportation Act, the older safety statutes, or regulations issued under any of those statutes. Such an order may issue only after notice and opportunity for a hearing in accordance with the procedures set forth in 49 CFR part 209,

subpart C. FRA inspectors also have the authority to issue a special notice requiring repairs where a locomotive or freight car is unsafe for further service or where a segment of track does not meet the standards for the class at which the track is being operated. Such a special notice may be appealed in accordance with 49 CFR part 216, subpart B.

FRA may, through the Attorney General, also seek injunctive relief in Federal district court to restrain violations or enforce rules issued under the railroad safety laws. See 49 U.S.C. 20112.

FRA also has the authority to issue, after notice and an opportunity for a hearing, an order prohibiting an individual from performing safety-sensitive functions in the rail industry for a specified period. This disqualification authority is exercised under procedures found at 49 CFR part 209, subpart D.

Criminal penalties are available for knowing violations of 49 U.S.C. 5104(b), or for willful or reckless violations of the Federal hazardous materials transportation law or a regulation issued under that law. See 49 U.S.C. ch. 51, and 49 CFR 209.131, 209.133. Criminal penalties may also be available for certain record and report violations. 49 U.S.C. 21311.

Perhaps FRA's most sweeping enforcement tool is its authority to issue emergency safety orders where ''an unsafe condition or practice, or a combination of unsafe conditions or practices, causes an emergency situation involving a hazard of death, personal injury, or significant harm to the environment . . . .'' See 49 U.S.C. 20104. After its issuance, such an order may be reviewed in a trial-type hearing. See 49 CFR 211.47 and 216.21 through 216.27. The emergency order authority is unique because it can be used to address unsafe conditions and practices whether or not they contravene an existing regulatory or statutory requirement. Given its extraordinary nature, FRA has used the emergency order authority sparingly.

■ 18. Amend appendix B to part 209 by revising the sixth sentence of the third paragraph. The revisions read as follows:

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

* * * * *

* * * FRA periodically makes minor updates and revisions to these guidelines, and the most current version may be found on FRA's website at *https://railroads.dot.gov/*.

■ 19. Amend appendix C to part 209, by:
■ a. Under the heading ''Small Entity Communication Policy,''
■ i. Revising the third paragraph; and
■ ii. Revising the last sentence of the fourth paragraph.
■ b. Under the heading ''Small Entity Enforcement Policy,'' revising the third paragraph.

The revisions read as follows:

Appendix C to Part 209—FRA's Policy Statement Concerning Small Entities

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Small Entity Communication Policy

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It is FRA's policy to maintain frequent and open communications with the national representatives of the primary small entity associations and to consult with these organizations before embarking on new policies that may impact the interests of small businesses. Additionally, FRA's Office of Railroad Safety has two Safety Management Teams dedicated to short line railroads and staff from those Safety Management Teams regularly meet with short line railroads that meet FRA's definition of ''small entities'' to discuss new regulations, persistent safety concerns, emerging technology, compliance issues, and any other relevant issues related to railroad safety. Contact information for each of FRA's Safety Management Teams is available online at *https://railroads.dot.gov*.

* * * Finally, FRA's website (*https://railroads.dot.gov/*) makes pertinent agency information available to the public.

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Small Entity Enforcement Policy

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Finally, FRA works to identify systemic safety hazards that continue to occur in carrier or shipper operations, including small business operations. Often FRA personnel will work to assist the subject operations to develop a plan to address those hazards and often, the plan provides small entities with a reasonable timeframe in which to make improvements without the threat of civil penalty. If FRA determines that the entity has failed to comply with the improvement plan, however, enforcement action is initiated.

* * * * *

Issued in Washington, DC, under authority delegated in 49 CFR 1.89.

David A. Fink,

Administrator.

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