

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration**

49 CFR Parts 209, 213, 214, 215, 217, 218, 219, 220, 221, 222, 223, 224, 225, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 238, 239, 240, and 241

[Docket No. FRA-2006-25274, Notice No. 2]

RIN 2130-ZA00

Revised Proposal for Revisions to the Schedules of Civil Penalties for a Violation of a Federal Railroad Safety Law or Federal Railroad Administration Safety Regulation or Order

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

ACTION: Revised proposal for revisions to schedules of civil penalties, with request for comments.

SUMMARY: FRA is issuing for comment a revised proposal (New Proposal) that, if adopted, would amend, line-by-line, FRA's schedules of civil penalties ("Schedules") issued as appendices to FRA's rail safety regulations, as well as other guidance, in order to reflect more accurately the degree of safety risk associated with a violation of each regulatory requirement and to ensure that the civil monetary penalty amounts are consistent across all FRA safety regulations. The New Proposal represents a revision of FRA's December 2006 proposal to amend the Schedules for the same purposes (December 2006 Proposal or Initial Proposal).

DATES: Written comments must be received by October 21, 2010. Comments received after that date will be considered to the extent possible without incurring additional delay or expense.

ADDRESSES: *Comments:* Comments related to this Docket No. FRA 2006-25274, Notice No. 2, may be submitted by any of the following methods:

- *Fax:* 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.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the

online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to <http://www.regulations.gov> including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to <http://www.regulations.gov> at any time or to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Edward Pritchard, Director, Office of Safety Assurance and Compliance, Office of Railroad Safety, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone 202-493-6247), edward.pritchard@dot.gov; or Brian Roberts, Trial Attorney, Office of the Chief Counsel, FRA, 1200 New Jersey Avenue, SE., Mail Stop 10, Washington, DC 20590 (telephone 202-493-6052), brian.roberts@dot.gov.

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I. General Background

FRA last published comprehensive, line-by-line final revisions to the Schedules of its safety regulations on December 29, 1988. 53 FR 52918. The revisions reflected the higher maximum penalty amounts made available by the enactment of the Rail Safety Improvement Act of 1988 (Pub. L. 100-342). With the exception of the penalties relating to the hours of service laws (49 U.S.C. chapter 211), the Rail Safety Improvement Act of 1988 raised the maximum penalty for any ordinary violation from \$2,500 to \$10,000 ("the ordinary maximum") and to \$20,000 for a grossly negligent violation or a pattern of repeated violations that has created an imminent hazard of death or injury or caused death or injury ("the aggravated maximum"). Therefore, FRA published amendments to the Schedules in order to "give effect to the full range of civil penalties * * * permitted to be assessed for violation of specific regulations." 53 FR 52918. These amendments revised not only the maximum civil penalty amount for any violation, but also the individual line-item penalties for specific sections or subsections of the regulations.

The Rail Safety Enforcement and Review Act ("RSERA") (Pub. L. 102-365), which was enacted September 3, 1992, increased the maximum penalty for a violation of the hours of service laws, from \$1,000 to \$10,000 and in some cases to \$20,000, making these penalty amounts uniform with those of FRA's other regulatory provisions. RSERA also increased the minimum penalty from \$250 to \$500 for all of FRA's regulatory provisions.

Since the publication of the Schedules in 1988, FRA has periodically adjusted its minimum and its ordinary or aggravated maximum penalty to conform to the mandates of the Federal Civil Penalties Inflation Adjustment Act of 1990. 28 U.S.C. 2461 note, as amended ("Inflation Act"). The Inflation Act requires that an agency adjust by regulation each maximum penalty, or range of minimum and maximum penalties, within that agency's jurisdiction periodically to reflect inflation. In the Inflation Act, Congress found a way to counter the effect that inflation has had on the penalties by having the agencies

charged with enforcement responsibility administratively adjust the penalties. Currently FRA's minimum penalty is \$650, the ordinary maximum is \$25,000 and the aggravated maximum is \$100,000 (for when a "grossly negligent violation or pattern of repeated violations has caused an imminent hazard or death or injury to individuals, or has caused death or injury").

The Inflation Act requires only that the minimum, the ordinary maximum, and the aggravated maximum civil penalty for a violation be adjusted, not that the guideline penalty amounts for a specific type of violation (e.g., a section of a particular regulation) be adjusted. As a result, FRA has not adjusted the line-item guideline penalties found in the Schedules in conjunction with its adjustments of the minimum, maximum and aggravated maximum civil penalties. FRA's practice has been to issue Schedules assigning to each section or subsection of the regulations specific dollar

amounts for initial penalty assessments. These Schedules (and all line-item penalty amounts found within them) are statements of agency policy that specify the penalty that FRA will ordinarily assess for the violation of a particular section or subsection of a safety regulation, and are published to inform members of the regulated community of the amount that they are likely to be assessed for a given violation within the range of \$650 to \$25,000. The Schedules are "meant to provide guidance as to FRA's policy in predictable situations, not to bind FRA from using the full range of penalty authority where extraordinary circumstances warrant." 49 CFR part 209, appendix A. Thus, regardless of the amounts shown in the Schedules, FRA continues to reserve the right to assess, within the range established by the rail safety statutes (49 U.S.C. chapter 213) or by regulation pursuant to the Inflation Act, an amount other than that listed in the Schedules based on the circumstances of the

alleged violation. 73 FR 79698, Dec. 30, 2008.

II. Proceedings to Date, Provision of Opportunity for Comment, and Comparison of Initial and New Proposals

A. Initial Proposal

FRA published 25 proposed Schedules with a request for comments on December 5, 2006, which first presented the agency's intention of once again comprehensively revising the civil penalty amounts. 71 FR 70590. In this Initial Proposal, FRA explained its approach to reevaluating the Schedules and explained the severity scale that was developed for setting line-item penalty amounts in the Schedules. The severity scale's penalty amounts were assessed within the statutory range for civil penalties at that time, which was from the minimum of \$550 to the ordinary maximum of \$11,000, as follows:

Severity level (explained in the Initial Proposal and below)	Ordinary violations	Willful violations
Level A	\$8,500	\$11,000
Level B	6,500	9,000
Level C	5,000	7,500
Level D	3,000	4,500
Level E	1,500	2,500

B. Subsequent Changes in the Minimum and Ordinary Maximum Civil Penalties

Subsequently, in 2007, pursuant to the requirements of the Inflation Act, FRA recalculated the ordinary maximum penalty and raised it from \$11,000 to \$16,000. 71 FR 51194, Sept. 6, 2007. Then, on October 16, 2008, the Rail Safety Improvement Act of 2008 (Pub. L. 110-432, Div. A) ("RSIA") was enacted; Section 302 of the RSIA increased the ordinary and aggravated maximum penalty amounts to \$25,000 and \$100,000, respectively. In a final rule published on December 30, 2008, FRA adjusted its minimum penalty from \$550 to \$650 pursuant to Inflation Act requirements. 73 FR 79698. In that rule FRA also evaluated whether it needed to increase the ordinary and aggravated maximum penalties pursuant to the Inflation Act; however, the enactment of the RSIA statutorily changed the ordinary and aggravated maximum penalties to \$25,000 and \$100,000, respectively, and therefore rendered any inflationary adjustments to either figure unnecessary. Instead, FRA adopted \$25,000 as the ordinary maximum and \$100,000 as the aggravated maximum required by the RSIA. (See also correcting amendment to the Schedule

for 49 CFR part 232. 74 FR 15387, April 6, 2009.)

C. Provision of Opportunity for Comment, With Comparison of the Initial and New Proposals

Given the large statutorily mandated increase in the ordinary maximum civil penalty from \$11,000 to \$25,000 after publication of the Initial Proposal, FRA is offering the public an opportunity to review and comment on the new higher civil penalty amounts assessed for violations on each severity scale level in the New Proposal.¹ In the New

¹ For example, the severity scale in this New Proposal has five levels like the severity scale proposed in the Initial Proposal. However, the severity scale in the New Proposal differs from the severity scale in the Initial Proposal in several ways. First, FRA has adding the word "materially" to the description of what constitutes a Level E violation in the New Proposal. Therefore, Level E violations in the New Proposal are violations that do not materially increase the likelihood that a rail equipment accident/incident or other accident/incident will occur. This is a clarification from the previous definition for Level E violations in the Initial Proposal where Level E violations were defined as violations that did not increase the likelihood that a rail equipment accident/incident or other accident/incident would occur. This definition did not make sense because failure to follow any FRA safety regulation would have some direct or indirect impact on railroad safety and

Proposal, FRA is issuing another set of proposed Schedules and seeking comments from the general public. Comments on the new proposed Schedules will be useful to the agency's decision making process.

FRA has also slightly modified the severity scale in the New Proposal from the severity scale in the Initial Proposal. In the New Proposal, FRA has used a targeted enforcement approach for establishing the civil penalties for ordinary (non-willful) violations of railroad safety regulations. As part of the targeted enforcement approach,

thereby increase, even infinitesimally, the likelihood of an accident or incident. As a result, the word "materially" was added to the criteria for a Level E violation in the severity scale in this New Proposal. Second, FRA has provided more transparency and referenced the regulatory language found in 49 CFR 225.19(d) to explain what FRA means when it says "Other accident/incident" in Levels A-D in the severity scale in the New Proposal. Third, FRA has clarified in the New Proposal that civil monetary penalties associated with violations of FRA Orders or railroad safety statutes will be assessed according to severity scale criteria. Finally, as stated below, FRA has modified its approach for establishing civil penalties in the severity scale in this New Proposal. FRA is taking a graduated approach to assessing civil penalties for ordinary (non-willful) violations while increasing the civil penalty amounts in steady increments for willful violations.

ordinary violations occurring at the middle and lower levels of the severity scale are assessed smaller civil penalties in relation to the ordinary maximum while the highest penalty amounts are assessed for ordinary Level A violations where serious injuries, deaths, or other railroad accidents or incidents are most likely to occur. FRA did not take a targeted enforcement approach for establishing the civil penalty amounts for willful violations in the New Proposal. Instead, the civil penalty amounts for willful violations increase up the severity scale in steady dollar amounts, not in graduated percentage increases like the civil penalties for ordinary violations.

Higher penalty amounts for violations of Federal railroad safety laws and regulations are necessary because many of FRA's civil penalties have not been changed in real terms for many years. As a result, inflation has somewhat eroded the deterrent effects of most of FRA's civil penalties because the amounts have not been increased to account for the effects of inflation. While many of the penalty amounts in the New Proposal would represent large increases in penalty amounts even after adjusting for inflation, some penalty amounts for violations would remain unchanged (*e.g.*, 49 CFR 219.205(b), 222.49(b), 229.71, and 239.301(c)(1)) if adopted by FRA because of the uniform rating of FRA's existing penalties on the severity scale. The new penalty amounts in this New Proposal will maintain the deterrent effects of FRA's rail safety penalties, aiding the success of FRA's mission to make the United States rail system safer.

FRA has also reexamined how it had ranked individual rail safety violations on the severity scale in the Initial Proposal. Upon second review of the severity scale rankings, FRA is proposing to move certain regulatory provisions to higher or lower levels on the severity scale in order to refine the agency's application of the severity scale to the various violations. For example, FRA is proposing to raise the severity scale ranking of 49 CFR 219.3 ("Application: Railroad does not have required program"), in this New Proposal from a "C" level penalty to a "B" level penalty. This change is necessary because the failure of a railroad covered by 49 CFR part 219 to have an alcohol and drug testing program is more likely than not to cause a rail equipment accident/incident or other accident/incident involving death, injury, or occupational illness rather than just substantially increase the likelihood that one of these events could occur. Conversely, in this New Proposal,

FRA would lower the severity scale ranking of 49 CFR 225.35 ("Access to records and reports"), from an "A" level penalty to a "D" level penalty. This proposed change in severity scale level reflects FRA's judgment that denying its inspectors access to records and reports required by 49 CFR part 225 is not extremely likely to lead to a railroad accident/incident or other accident/injury including death, injury, or occupational illness, but could slightly increase the likelihood of one of the above mentioned occurrences if FRA is not provided access to accident reporting records and reports. FRA expects that these proposed changes to the severity scale rankings of some of its violations in the Initial Proposal better refine the agency's application of the Severity Scale to the various violations.

In addition, FRA is proposing minor changes to its Schedules in this New Proposal to correct errors and omissions and to reflect more accurately FRA's current enforcement practices. Such errors include obvious spelling or typographical errors that were caught during the review process. Omissions corrected include line-item penalties for any existing section or subsection that had been inadvertently omitted from an existing Schedule, such as 49 CFR 213.110. Other proposed minor revisions to the Schedules include, but are not limited to, adding or deleting a suggested penalty for a violation (*e.g.*, 49 CFR 213.109(c), 214.343(a)(2), 220.38, and 240.201(b)), rewording a line-item description for a violation (*e.g.*, 49 CFR 219.23(f) and 233.9), renumbering violation subsections (*e.g.*, 49 CFR 214.343(b)(1), 236.587, 236.905(d), and 236.913(j)), and adding or revising footnotes to the Schedules (*e.g.*, 49 CFR parts 214, 232, and 239). For example, FRA is proposing to add a footnote 3 to the Schedule for 49 CFR part 214 to clarify that FRA will consult the suggested penalty amounts under 49 CFR 214.343 ("Training and qualification, general:") when assessing penalties for the training violations in 49 CFR 214.345 through 214.355, as the suggested penalty amounts for these sections had been left blank in previous versions of part 214's penalty schedule. FRA is hopeful these proposed minor changes updating its Schedules would provide a more accurate picture to the regulated community of FRA's actual enforcement practices.

New suggested penalty amounts have also been proposed for violations of subparts that had not been mentioned in the existing penalty schedules: 49 CFR part 218, subpart E ("Protection of Occupied Camp Cars"); 49 CFR part 228, subpart D ("Electronic Recordkeeping");

49 CFR part 232, subpart G ("Electronically Controlled Pneumatic (ECP) Braking Systems"); and 49 CFR part 236, subpart I ("Positive Train Control Systems") are also included. FRA is also suggesting new penalty amounts for 49 CFR part 227 ("Occupational Noise Exposure") which was not ranked in the severity scale in the Initial Proposal because the final rule creating part 227 was published on October 27, 2006, but not effective until February 26, 2007. 71 FR 63066. In addition, FRA will also be accepting comments on the new penalties in 49 CFR part 237 that were published in a bridge safety standards final rule on July 15, 2010 and will become effective on September 13, 2010. 75 FR 41282.

Further, FRA is proposing to add language to 49 CFR part 228, appendix A, to state its proposed guideline penalty amounts for both non-willful and willful violations of the hours of service laws (49 U.S.C. chapter 211). In addition, this New Proposal would also add or change language in the portion of 49 CFR part 209, appendix A, entitled "Penalty Schedules: Assessment of Maximum Penalties," to reflect the new minimum, ordinary maximum, and aggravated maximum civil penalties of \$650, \$25,000, and \$100,000 respectively. Finally, FRA is also proposing to add the language "or orders" in two places within this portion of part 209, appendix A to update the language to reflect FRA's already existing policy of establishing civil penalty schedules and recommended civil penalty amounts applicable to violations of various orders issued by FRA (such as emergency orders under 49 U.S.C. 20104) when necessary to advance the agency's safety mission.

III. FRA's New Proposed Approach to Reevaluating the Schedules of Civil Penalties

The Federal Railroad Administrator is authorized as the delegate of the Secretary of Transportation to enforce the Federal railroad safety statutes (49 U.S.C. chapters 201–213) regulations, and orders, including the statutory civil penalty provisions at 49 U.S.C. chapter 213. 49 CFR 1.49. FRA currently has 26 parts of regulations that contain Schedules.² With this New Proposal,

² However, as previously stated, FRA recently published a final rule on bridge safety standards on July 15, 2010. 75 FR 41282. As part of that final rule, FRA created new regulations and penalties under 49 CFR part 237, which was previously an unused part of the CFR. Therefore after the September 13, 2010 effective date for the final rule, FRA will have 27 parts of regulations that contain Schedules. In this New Proposal, FRA is also accepting comments on the new penalties contained in the final rule.

FRA is proposing to amend each of the line-item guideline penalty amounts contained within the Schedules for each of the regulations and to add guideline penalty amounts for violations of the hours of service laws to 49 CFR part 228, appendix A (collectively, Penalty Guidelines). In reevaluating the penalty amounts in the Schedules, FRA has developed a new proposed severity scale ("New Proposed Severity Scale") for setting the line-item penalty amounts for each violation of the safety regulations and for violations of the hours of service laws. The severity scale FRA is proposing to adopt in this New Proposal is described in the following section.

New Proposed Severity Scale for Setting Line-Item Penalty Amounts in FRA Penalty Guidelines

FRA's rail safety regulations and the rail safety statutes are intended either to prevent a railroad accident/incident or to mitigate the consequences if one were to occur. For the most severe ratings on the scale, FRA concentrated on the *degrees of likelihood* that an accident/incident³ will occur or that graver consequences of an accident/incident will occur as a result of failing to comply with the section. The following New Proposed Severity Scale is intended to reflect this focus:

Level A—Very High Probability—Failure of a railroad to comply with this section or subsection of the Code of Federal Regulations ("CFR"), this FRA order, or this rail safety statute *is extremely likely to result* in one or more of the following events, but does not create an imminent hazard of death or injury to individuals or cause an actual death or injury⁴:

³ "Accident/incident" is defined at 49 CFR 225.5. Accidents/incidents are divided into three categories: highway-rail grade crossing accidents/incidents, rail equipment accidents/incidents; and accidents/incidents resulting in death, injury, or occupational illness. 49 CFR 225.19(c). A highway-rail grade crossing accident/incident is "[a]ny impact between railroad on-track equipment and an automobile, bus, truck, motorcycle, bicycle, farm vehicle, or pedestrian at a highway-rail grade crossing." 49 CFR 225.5, read in light of 49 CFR 225.19(c). Rail equipment accidents/incidents are defined in 49 CFR 225.19(c) to include "collisions, derailments, fires, explosions, acts of God, and other events involving the operation of on-track equipment (standing or moving) * * * that result in damage to railroad property that is greater than the reporting threshold." Currently the reporting threshold is \$9,200. 74 FR 65458 (Dec. 10, 2009).

⁴ FRA has statutory authority to assess civil penalties in the range of \$650 (minimum) to \$25,000 (ordinary maximum) for ordinary violations of its regulations. FRA may assess a penalty at the statutory aggravated maximum of \$100,000 only "when a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to individuals, or has caused death or injury." A \$100,000, statutory aggravated maximum penalty is the equivalent of a Level A Plus and is, therefore, off

1. Rail equipment accident/incident
 2. Other accident/incident (including death, injury, or occupational illness)⁵
- FRA is proposing to issue a penalty guideline for Level "A" of \$19,500 for an ordinary violation and \$25,000 for a willful violation of the regulation, order, or statute.

Level B—High Probability—Failure of railroad to comply with this section or subsection of the CFR, this FRA order, or this rail safety statute *is more likely than not to result* in the occurrence of:

1. Rail equipment accident/incident; or
2. Other accident/incident (including death, injury, or occupational illness).

FRA is proposing to issue a penalty guideline for Level "B" of \$13,000 for an ordinary violation and \$20,500 for a willful violation of the regulation, order, or statute.

For the following levels, FRA is not only addressing the likelihood that noncompliance will or could contribute to an accident or aggravated consequences if an accident occurred, but also the importance of maintaining compliance in order to prevent violations of these regulatory or statutory sections or subsections from becoming leading accident causes in the future.

Level C—Moderate Probability—Failure of railroad to comply with this section or subsection of the CFR, this FRA order, or this rail safety statute *substantially increases* the likelihood that one of the following will occur:

1. Rail equipment accident/incident; or
2. Other accident/incident (including death, injury, or occupational illness).

FRA is proposing to issue a penalty guideline for Level "C" of \$9,500 for an ordinary violation and \$17,000 for a willful violation of the regulation, order, or statute.

Level D—Minor Probability—Failure of the railroad to comply with this section or subsection of the CFR, this FRA order, or this rail safety statute *slightly increases* the likelihood that one of the following will occur:

1. Rail equipment accident/incident; or
2. Other accident/incident (including death, injury, or occupational illness).

FRA is proposing to issue a penalty guideline for Level "D" of \$5,500 for an ordinary violation and \$10,000 for a willful violation of the regulation, order, or statute.

Level E—Minimal Probability—Failure to comply with this section or subsection of the

the scale. The standard of "imminent hazard" of death or injury (the standard for a civil penalty at the aggravated maximum penalty) is different from the standard of "extremely likely" to result in death or injury (the standard for Level A penalties on the severity scale). Imminent hazards are hazards that are likely to occur without delay or that actually may be occurring at the time the violation is taken. In contrast, a hazard that is extremely likely to result in a railroad accident/incident or another accident/incident causing death, injury, or occupational disease has a high probability of causing one or more of those adverse events sooner or later, but is not necessarily likely to occur without delay or contemporaneously when the violation is taken.

⁵ See 49 CFR 225.19(d).

CFR, this FRA order, or this rail safety statute *does not materially increase the likelihood* that a rail equipment accident/incident or other accident/incident will occur, except in special circumstances, such as if the noncompliance is willful or widespread. Nevertheless, noncompliance with any one of these provisions undercuts the effectiveness of the Federal railroad safety program, and could compromise the safety of rail operations.

Example: Violation of § 225.13—Late Reports—Submitting a late accident/incident report to FRA does not increase the likelihood that a rail equipment accident/incident or other accident/incident will occur. Widespread noncompliance with that provision, however, could lead to inaccuracies in Federal accident databases, which in turn could delay FRA's response to emerging safety problems.

FRA is proposing to issue a penalty guideline for Level "E" of \$2,500 for an ordinary violation and \$5,000 for a willful violation of the regulation, order, or statute.

Like the Initially Proposed Severity Scale, the New Proposed Severity Scale shows, there are five different levels of probabilities, ranging from "A" (the most severe) to "E" (the least severe of the types of violations). In developing the rankings ("A" through "E"), FRA concentrated on the degrees of likelihood that an accident/incident will occur or that graver consequences will occur as a result of the failure to comply with the particular section or subsection of the safety regulations or with the statute. Using the New Proposed Severity Scale, FRA then assigned a ranking (from "A" to "E") to each of the provisions of the particular rail safety regulations and to the hours of service statute, which the agency has responsibility for administering and enforcing. The resulting proposed line-item penalty amounts for violations of each of the sections or subsections of the safety regulations affected and for violations of the hours of service laws reflect FRA's determination, based on safety data and industry knowledge, of how likely the violation of a particular provision is to result in a rail equipment accident/incident or another type of accident/incident. Due to the increase in the ordinary maximum from \$11,000 to \$25,000 since the Initial Proposal, the new proposed civil penalty amounts have increased in most instances, but in some cases the new proposed civil penalty amount would remain the same (e.g., 49 CFR 219.205(b), 222.49(b), 229.71, and 239.301(c)(1)) if adopted by FRA. Nonetheless, a determination by FRA that violation of a provision does not increase the likelihood that a rail equipment accident/incident or other accident will occur, however, does not mean that the provision is inconsequential to the effectiveness of

the Federal railroad safety program or to the overall safety of railroad operations.

Currently, each Schedule is in the form of a table consisting of three columns with one or more footnotes. Like the initially proposed Schedules, the new proposed Schedules would continue to be structured in this fashion and to provide guideline penalty amounts for two categories of violations: Ordinary (non-willful) and willful. Each new proposed Schedule lists the CFR section or subsection in the left-hand column, sometimes with additional designations to distinguish different types of violations (penalty codes) of the section or subsection in order to facilitate the assessment of civil penalties. The only exception continues to be 49 CFR part 231; the left-hand column of the new proposed Schedule lists the FRA defect codes⁶ for that part, and not the corresponding CFR sections. The reason for this continues to be the fact that the defect codes are organized by the type of safety appliance, which makes them easier to use, than the section numbers of part 231, which are organized primarily by car or locomotive type. Nevertheless, if necessary, every defect code can be traced to a specific regulatory provision in part 231 or statutory provision in 49 U.S.C. chapter 203, or both. The corresponding penalties for each violation are listed in the middle and right-hand columns: The guideline penalty amount for an ordinary

violation and then the guideline penalty amount for a willful violation. The ordinary penalties apply to railroads or other respondents, except individuals, while the “willful” column applies to willful violations committed by railroads or individuals.

The following chart summarizes the new proposed guideline amounts for ordinary and willful violations by severity level:

Severity level under new Proposal	Ordinary violations	Willful violations
Level A	\$19,500	\$25,000
Level B	13,000	20,500
Level C	9,500	17,000
Level D	5,500	10,000
Level E	2,500	5,000

IV. Rankings of the Rail Safety Regulatory Provisions and the Hours of Service Laws in the New Proposal

Although the railroad industry’s overall safety record has improved over the last decade, significant train accidents/incidents continue to occur. As a result, the FRA’s safety program is being guided by careful analysis of accident/incident, inspection, and other safety data. FRA has also directed both its regulatory and compliance efforts toward the areas that involve the highest of safety risks, in order to reduce the number and severity of accidents/incidents caused by a failure to comply

with those safety regulations. Therefore, the goal of the new proposed line-item penalty amounts for each of the Schedules and the new proposed penalty amount for violations of the hours of service statute is to reflect the different degrees of probability that a violation of a particular regulatory section or subsection, order, or statute will result in a rail equipment accident/incident or other accident/incident, in order to improve the overall safety of railroad operations.

A. Motive Power and Equipment Regulations (MP&E) (49 CFR Parts 215, 218 (Partially), 223, 224, 227, 229, 230, 231, 232, 238, and 239 (Partially))

In reevaluating the current line-item penalty amounts for each of the CFR sections or subsections found in 49 CFR parts 215, 218 (partially), 223, 224, 227, 229, 230, 231, 232, 238, and 239 (partially) of the CFR, FRA took into consideration, among other factors, the nationwide list of “Top 10” MP&E defects. The defects are listed in the table below, in descending order, according to the number of times that each defect was determined to have caused a rail equipment accident/incident, excluding highway-rail grade crossing accidents/incidents that are also classified as rail equipment accidents/incidents (“train accidents”), between January 2005 and December 2009.

Journal (roller bearing) overheated—(143)	Damaged flange or tread (build up)—(60)
Pantograph defect (locomotive)—(121)	Coupler retainer pin/cross key missing—(57)
Side bearing clearance insufficient—(86)	Rigging down or dragging—(49)
Broken rim—(80)	Other coupler/draft system defects; Worn Flange (tie)—(38)
Truck bolster stiff—(67)	Center sill broken or bent—(36)

The CFR sections or subsections that relate to these defects have received higher proposed rankings in the Schedules compared to other MP&E defects and as such now carry higher penalty amounts. For example, a violation of 49 CFR 215.103(d)(3), which involves a defective wheel rim with a crack of one inch or more, received a proposed “A” severity ranking (and a proposed guideline penalty amount of \$19,500) because of the high safety risk that the defect will cause a broken rim that, in turn, causes a derailment. In addition, FRA applied the New Proposed Severity Scale in order to determine the degrees of likelihood that any type of accident/incident will occur as a result of noncompliance with the regulations.

B. Track and Workplace Safety Regulations (49 CFR Parts 213 and 214)

In recent years, most of the serious accidents/incidents (train collisions or derailments resulting in a release of hazardous materials or harm to rail passengers, rail employees, or the general public) resulted from human factor or track causes. Over the last five years, 31.9 percent of train accidents were caused by track defects. In an effort to reduce track accidents, FRA is focusing its track inspections on the areas of highest risks and encouraging inspectors to recommend enforcement action on the kinds of violations that are considered leading causes of track-caused train accidents. Therefore, in evaluating the line-item penalty

amounts for all the sections or subsections, FRA took into consideration the leading causes of track-related train accidents when applying the New Proposed Severity Scale to the Track Safety Standards. For example, violations of 49 CFR 213.53 “Gage” received a new proposed “A” ranking (and new proposed penalty guideline amounts of \$19,500 for an ordinary violation and \$25,000 for a willful violation) because improper gage is one of the leading causes of track-related train accidents.

In ranking the sections or subsections of 49 CFR part 214 (“Railroad Workplace Safety”), FRA took into consideration not only the probability that an accident/incident could result if a violation occurred, but also the fact that

⁶Defect codes were developed by FRA in order to facilitate computerization of inspection data

generated by FRA inspectors by providing a digital format for every CFR section. Defect codes are

analytical tools only and are subject to change without notice.

the accident/incident could result in serious injury or death. One example of the rankings for part 214 is the ranking for the second type of violation of 49 CFR 214.103, coded 214.103(ii), "Failure to use fall protection." This violation designated 214.103(ii) received a proposed ranking of "A" (and a proposed guideline penalty of \$19,500 for an ordinary violation and \$25,000 for a willful violation) because the violation could result in serious injury or death, as evidenced by the several bridge worker fatalities in the past 10 years due to the failure to use fall protection.

C. Grade Crossing Signal Systems and Signal and Train Control Regulations (49 CFR Parts 233, 234, 235, and 236)

FRA applied the New Proposed Severity Scale to each of the sections in 49 CFR parts 233, 234, 235, and 236, in order to determine the appropriate proposed rankings for each of the sections or subsections of the regulations. In the area of signal and train control (S&TC), FRA followed the New Proposed Severity Scale, which concentrates on the potential for an accident/incident resulting from noncompliance. S&TC systems are vital to the safe functioning of the general railroad system because train crews and highway motorists rely on the accuracy of the information provided by these systems to make safe movements on the railway system and through highway-rail grade crossings. While there are relatively few train accidents and highway-rail grade crossing accidents/incidents associated with S&TC causes that have occurred in recent years, the consequences of an S&TC-caused accident can be catastrophic. Therefore, it is imperative that the Schedules put into effect by FRA reflect the levels of risks associated with the violation of these CFR sections or subsections, in order to prevent future S&TC-caused accidents.

D. Operating Practices Regulations (49 CFR Parts 217, 218 (Partially), 219, 220, 221, 222, 225, 228, 239 (Partially), 240, and 241) and Hours of Service Laws (49 U.S.C. Chapter 211)

Over the five years from January 2005 to December 2009, human-factor-related causes accounted for 34.2 percent of all train accidents. A review of the FRA's Office of Railroad Safety database indicated that in 2009 the top four human factor causes contributing to train accidents were improperly lined switches; employees absent on, at, or ahead of a shoving movement; failure to control during a shoving movement; and failure to comply with restricted speed

or its equivalent when not in connection with a block or interlocking signal. These top causes are often involved in violations of such regulations as 49 CFR part 220 ("Railroad Communications"). A review of the top four causes for human factor train accidents between January 2005 and December 2009 showed that these causes accounted for 1,812 reportable train accidents/incidents (including 13 employee fatalities, 463 employee injuries, and over \$96 million in damages). Therefore, when applying the New Proposed Severity Scale to the regulatory provision or statute, FRA considered all of this safety information in order to ensure that each new proposed line-item penalty amount reflected the likelihood that noncompliance would result in a train accident/incident, or that graver consequences would occur as a result of failing to comply with the statute or section or subsection of the regulations.

V. Response to Public Comment on the Schedules Proposed in December 2006

As previously stated, the existing Schedules are statements of agency policy, which FRA has authority to amend or replace without having to provide prior notice and opportunity for comment under the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A). Nevertheless, FRA provided members and representatives of the regulated community and the general public with an opportunity to comment on the proposed line-item penalty amounts published on December 5, 2006. FRA received six comments on the Schedules proposed in December 2006. FRA has considered the comments received and now responds to the questions and concerns raised in them.

A. Concerns Related to Respondents That Are Small Businesses

The Small Railroad Business Owners of America ("SRBOA") commented that FRA's December 2006 proposed civil penalty policy does not adequately take into account the interests of small businesses. The commenter suggested that doubling certain civil penalties for smaller railroads is unfair, especially because most of the accidents/incidents occur on larger railroads. The commenter also asked that FRA provide additional training and assistance to smaller railroads in comprehension and application of the rail safety regulations.

In addition, the American Short Line and Regional Railroad Association ("ASLRRA") commented that the proposed statement of agency policy ignores the effect that proposed amounts would have on small railroads. ASLRRA

suggested that FRA move instead, towards a sliding scale system of civil penalties based on the class of track under 49 CFR part 213 that is involved in the violation. In the alternative, ASLRRA suggested that FRA take the time to codify a second, lower schedule of penalties for small railroads.

In response to these concerns, FRA would like to emphasize appendix C to 49 CFR part 209, where FRA has published its policy statement concerning small business entities. FRA understands that small entities in the rail industry have significantly different characteristics from larger carriers and shippers. Therefore, FRA has developed programs to respond to compliance-related inquiries of small entities, and to ensure proper handling of civil penalty and other enforcement actions against small businesses. FRA inspectors provide training on the requirements of all railroad safety statutes for new and existing small businesses upon request. Also, 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 has posted all of its manuals electronically for compliance with the rail safety disciplines at <http://www.fra.dot.gov>.

FRA employs an enforcement policy that addresses the unique nature of small entities in the imposition of civil penalties and resolution of those assessments. Pursuant to appendix A to 49 CFR part 209, it is FRA's policy to consider a variety of factors in determining whether to take enforcement action against persons, including small entities, who have violated the safety laws and regulations. In general, the presence of both good faith and prompt remedial action on the part of the small entity militates against taking a civil penalty action, especially if the violation is an isolated event. Once FRA has assessed a civil penalty, FRA may adjust or compromise the initial penalty claim based on a wide variety of mitigating factors. The mitigating criteria that FRA applies are found in the railroad safety statutes at 49 U.S.C. ch. 213 and in the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) ("SBREFA"); these factors include the severity of the safety or health risk presented; the existence of alternative methods of eliminating the safety hazard; the entity's culpability; the entity's compliance history; the entity's ability to pay the assessment; the impact an assessment might exact on the

entity's continued business; and evidence that the entity acted in good faith. 49 CFR part 209, appendix C.

FRA's enforcement policy with respect to small entities is flexible and comprehensive, but FRA's first priority in its compliance and enforcement activities is public and employee safety. FRA notes that an accident on a small railroad could have the same consequences as an accident on a large railroad. Therefore, small railroads are responsible for compliance with the railroad safety statutes and regulations.

Finally, the Small Railroad Business Owners' Association of America ("SRBOA") commented that FRA's civil penalties were higher than those used by the Federal Motor Carrier Safety Administration ("FMCSA") for enforcing commercial motor vehicle driver and trucking safety, and suggested that FRA should impose civil penalties for smaller railroads only if discussing the situation with them does not work first.

As explained above, FRA's rail safety inspectors take into account a variety of factors in determining whether to take enforcement actions. They have the option of citing the railroads for defects, which in their judgment do not merit civil penalties before citing them for violations, which do carry civil penalty recommendations. Also, FRA does not believe it is appropriate to compare FRA's rail safety penalties to FMCSA's penalties for driver and trucking safety. The safety considerations in the trucking and rail industries are very different. An accident involving a train is potentially far more catastrophic and costly than a similar accident involving a truck. For example, one railroad tank car could contain many truckloads of hazardous material, and one train could consist of many such railroad tank cars.

B. Concerns About Initially Proposed Penalty Amounts for Violations of 49 CFR Parts 222, 225, and 229

The Association of American Railroads ("AAR") stated that, in several cases, the penalties proposed in December 2006 are disproportionate to the severity of the violation. Specifically, AAR took exception to penalties proposed for noncompliance with 49 CFR parts 222, 225, and 229.

With regard to part 222 (the train horn rule), AAR contended that a "D" level penalty for a violation of § 222.21(b) is unsubstantiated, as the sounding of a horn for more than 20 seconds will not increase the likelihood of an accident or incident.

FRA provides that the train horn rule focuses on public and community interests. To remain true to the intention of the rule, FRA must take the interests

of the community into account when determining the penalty amount that a violation merits. FRA believes that it is important that sufficient warning be provided to the motorist who needs time to recognize the audible signal, understand its message, initiate a reaction, and take appropriate action when at a grade crossing. See 71 FR 47618, Aug. 17, 2006. If the train horn is sounded more than 25 seconds before the train enters the train crossing, motorists might well begin to doubt the credibility of the train horn as an indicator of the train's immediacy to the grade crossing. As a result, motorists will be more likely to take the risk of traveling through the crossing even when the train horn is sounded.

The rule text for § 222.21(b) also provides a "good faith" exception for the required length of time that the horn is sounded. The section permits additional flexibility by stating that the engineer shall not be in violation of § 222.21(b) if the engineer sounds the horn not more than 25 seconds before the crossing, if in good faith the engineer cannot precisely estimate the arrival time of the train at the crossing. FRA has determined that the interests of avoiding an accident or incident as well as the interests of the community have been taken into account in assessing violations of § 222.21(b) as a proposed "D" level penalty with the exception of "failure to sound the horn at least 15 seconds and less than 1/4-mile before a crossing," which is assessed as a proposed "C" level penalty.

Additionally, AAR stated that routine sounding of the horn at a grade crossing within a quiet zone, pursuant to § 222.45, will not increase the likelihood of an accident or incident.

With regard to AAR's comment on § 222.45, although sounding the train horn in a quiet zone may not substantially increase the likelihood of an accident the first time or the first few times, trains that routinely sound their horns at quiet-zone grade crossings might cause motorists to doubt the credibility of signs marking a grade crossing as a quiet-zone grade crossing and whether a particular grade crossing is actually a quiet-zone grade crossing. Therefore, if routine violations of a quiet zone continue, motorists will begin to expect the warning of a train horn when a train is preparing to enter quiet-zone grade crossings where routine violations of the quiet zone occur. That could predictably lead to fatal accidents.

In addition, violations of § 222.45 increase the annoyance level of the communities surrounding the grade crossing. A fundamental feature of this rule was to balance driver and

pedestrian safety with community noise concerns. Decreasing the civil monetary penalty would reduce the incentive to comply with the part and potentially increase noise for the surrounding communities. FRA maintains that the initial and new proposed "D" level penalty for a violation of § 222.45 sufficiently addresses the concerns that brought about the part 222 rulemaking. See 71 FR 47614, Aug. 17, 2006.

AAR also argued that a "B" level penalty for a violation of 49 CFR 225.13 was unmerited, as a railroad's filing of a report one day late would not be more likely to cause an accident or incident.

FRA has taken into consideration AAR's comments involving FRA's regulations on accident/incident reporting, 49 CFR part 225. FRA acknowledges the merits in AAR's comments with regard to § 225.13, and FRA has revised the proposed penalty ranking for a violation of § 225.13 from a "B" to an "E." Upon reevaluating how part 225 violations were ranked on the severity scale in the Initial Proposal, FRA has lowered many of the proposed severity scale rankings for violations of this part. For example, FRA has determined to change the ranking of a § 225.11 violation (failure to submit monthly report of accidents/incidents) from a proposed "B" to a proposed "D" level penalty. At the same time, FRA has determined that a violation of § 225.9, failure to report certain accidents or incidents, immediately via telephone to the National Response Center, would be more detrimental to railroad safety, because the failure could prevent FRA from learning about the event and deciding whether or not the agency should commence an investigation. Even delayed notification could compromise such an investigation and prevent FRA from obtaining information that could identify safety problems that could cause future accidents or incidents. FRA has, therefore, changed the penalty amount from a proposed "E" to a proposed "C" level penalty.

Finally, AAR stated that a "C" level penalty for a violation of a provision of the Locomotive Safety Standards, 49 CFR 229.137(a)(3), was uncalled for, as the lack of a toilet in the lead locomotive will not "substantially increase the likelihood of an accident or incident."

When FRA promulgated the notice of proposed rulemaking for the locomotive cab sanitation standards, FRA determined that serious health consequences may result if railroad employees are exposed to unsanitary conditions or lack access to facilities. In fact, it is widely known that exposure to

human fecal matter or untreated sewage waste can lead to diarrheal diseases such as amebiasis, giardiasis, shigellosis, and viral diseases such as hepatitis. See 66 FR 137, Jan. 2, 2001. FRA notes that any one of these mentioned conditions would fulfill the reporting requirements under the definition of an “occupational illness” pursuant to 49 CFR 225.19(d) and therefore be considered an accident/incident within the meaning of the initially proposed Severity Scale and the New Proposed Severity Scale. FRA also notes that an engineer who contracts one of those diseases on duty might well be unable to operate his or her train safely.

C. Concerns Related to Respondents Who Are Cited as Individuals

The Brotherhood of Locomotive Engineers and Trainmen (“BLET”) had a number of comments on civil penalties against individuals for rail safety violations. The BLET raised concern that FRA’s conclusions on the data indicate a “lack of discipline by the workers.” Also, the commenter suggested that the December 2006 proposed statement of agency policy suffers from “the same infirmity as the railroad operating rules NPRM (notice of proposed rulemaking).” Overall, the BLET seemed very concerned with the effect that a larger penalty would have on an individual as opposed to a railroad.

FRA responds that civil penalties assessed against individuals pursuant to the rail safety statutes, regulations, and orders may be assessed administratively only if FRA determines that the individual’s conduct was willful in nature. 49 U.S.C. 21304. “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.” 49 CFR part 209, appendix A. FRA continues to hold that the higher penalties for a willful violation serve to deter an individual from engaging in this type of egregious behavior. Further, FRA assesses rail safety civil penalties against railroads at a substantially higher frequency than against individuals. As neither the Initial Proposal nor the New Proposal addresses the issues covered in “Railroad Operating Rules: Program of Operational Tests and Inspections; Railroad Operating Practices: Handling Equipment, Switches and Fixed Derails,” FRA declines to respond in this proposal to comments regarding that rulemaking, in which a final rule

was published on June 16, 2008. 73 FR 33888.

D. Concerns About Effects on FRA’s Confidential Close Call Reporting Project

The BLET also provided comments exhibiting a concern as to how the proposed penalty schedule in the Initial Proposal would impact FRA’s Confidential Close Call Reporting Pilot Project (“Close Call Project”). The Close Call Project involves encouraging employees from its participating railroads to report “close call” incidents voluntarily and anonymously. A “close call” is an event in which a death, a personal injury, or property damage is narrowly averted. Thus, a “close call” presents an opportunity to improve safety practices in a situation or incident that has potential for more serious consequences by allowing the people involved to report the event in detail without fear of adverse consequences, thereby providing FRA with vital data about precursors to accidents or incidents that FRA might otherwise not receive. The information collected from the Close Call Project provides an opportunity to identify and correct weaknesses in a railroad’s safety system before an accident/incident or other unsafe event occurs. The system can also be used to monitor changes in safety over time and to uncover hidden unsafe conditions that were previously unreported.

FRA does not agree with BLET’s comment that the Initial Proposal would nullify the incentive for voluntary submission of information in this pilot program. The employees participating in the Close Call Project are protected from carrier discipline, decertification, and FRA enforcement action in the same manner regardless of whether the civil penalties are increased. Before a Close Call Project may be initiated, the employing railroad and the employees’ union representatives sign a memorandum of understanding (“MOU”) that specifies each party’s rights and responsibilities. Revising the Schedules would not impact any MOU that has been implemented, and would not affect any MOU that is to be implemented in the future, as they would not expand FRA’s enforcement authority.

E. Concerns About Proposed Monetary Increases in the Civil Penalty Amounts

Commenters measured the change between the current penalties and the initially proposed penalties in nominal terms. That is, commenters calculated the price change between the initially proposed penalties and the current

penalties without first adjusting the current penalty amounts for inflation. Inflation erodes the purchasing power of money over time. As previously stated in this New Proposal, the enforcement and deterrent effects of the current penalties have decreased over time as they had not been increased line by line to account for the effects of inflation. A better, “apples-to-apples” comparison would be to compare the proposed penalties to the inflation-adjusted, or real, current penalties. Adjusting for inflation allows comparison of the penalties using dollars with the same purchasing power.

Given that inflation-adjusted, current penalties serve as the proper baseline for measuring change, it is significant that many of the current penalties have not changed in nominal terms for many years.

As previously stated, in undertaking this effort to revise the Schedules comprehensively after many years, FRA is focusing on areas that pose greater safety risks, and maintaining enforcement in other regulatory areas per its authority to set penalty guidelines within the minimum, ordinary maximum, and aggravated maximum statutory penalties. With the New Proposal, some of the proposed penalty amounts if adopted by FRA will indeed show large increases, even after adjusting for inflation.⁷ However, as previously stated, some newly proposed penalty amounts for violations would remain unchanged (e.g., 49 CFR 219.205(b), 222.49(b), 229.71, and 239.301(c)(1)). Again, the penalty amounts in the New Proposal reflect the

⁷ For example, BLET stated that the penalty for 49 CFR 214.103(ii) (“Failure to use fall protection”) would increase 340 percent. Expressing the original penalty amounts in 2006 dollars (for consistency with the first proposed penalty schedules that were published on December 5, 2006), the increase would actually have been 204 percent; however, with the proposed penalties in this notice, the increase in real dollars would be 559 percent. Similarly, for 49 CFR 218.22(c)(5) (“Utility employees: Assignment conditions: Performing functions not listed”), BLET found an 87.5 percent increase. Measured in 2006 dollars, the difference between the current penalties and the originally-proposed revised penalties would have been 15 percent, and with the proposed penalties in this notice, the real difference would be about 46 percent. For 49 CFR 219.11(b)(1) (“General conditions for chemical tests: Employee unlawfully refuses to participate in testing”), BLET calculated a 120 percent increase, the change in real dollars from the original proposal would have been 41 percent. With the proposed penalties in this New Proposal, the increase would be about 22 percent (Upon reevaluating the severity scale rankings in the Initial Proposal, FRA lowered the severity scale ranking for violations of § 219.11(b)(1) from a proposed “A” to a proposed “D” level penalty.) In each of these examples, the rules concern areas of significant risk. Consequentially, FRA has determined that higher proposed penalties are necessary and justified.

reanalyzed risk basis for the penalty amounts and the new ordinary maximum statutory penalty. FRA believes that these new proposed Schedules will maintain and increase the effect of the civil monetary penalties, fostering a higher overall level of safety.

List of Subjects

49 CFR Part 209

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

49 CFR Part 213

Bridges, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 214

Bridges, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 215

Freight, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 217

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 218

Occupational safety and health, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 220

Penalties, Radio, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 221

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 222

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

49 CFR Part 223

Glass and glass products, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 224

Penalties, Railroad locomotive safety, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 225

Investigations, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 227

Locomotives, Noise control, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 228

Administrative practice and procedures, Buildings and facilities, Hazardous materials transportation, Noise control, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 229

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 230

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 231

Penalties, Railroad safety.

49 CFR Part 232

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 233

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 234

Highway safety, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 235

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

49 CFR Part 236

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 238

Fire prevention, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 239

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 240

Administrative practice and procedure, Penalties, Railroad

employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 241

Communications, Penalties, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, FRA proposes to amend parts 209, 213, 214, 215, 217, 218, 219, 220, 221, 222, 223, 224, 225, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 238, 239, 240, and 241 of subtitle B, chapter II of title 49 of the Code of Federal Regulations to read 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. Appendix A to part 209 is revised to read as follows:

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

Penalty Schedules: Assessment of Maximum Penalties

As recommended by the Department of Transportation in its initial proposal for rail safety legislative revisions in 1987, the RSIA raised the maximum civil penalties for violations of the safety regulations or orders. Under the Hours of Service Act, the penalty was changed from a flat \$500 to a penalty of “up to \$1,000, as the Secretary of Transportation deems reasonable.” Under all the other statutes, the maximum penalty was raised from \$2,500 to \$10,000 per violation, except that “where a grossly negligent violation or pattern of repeated violations has created an imminent hazard of death or injury,” the penalty was raised to a maximum of \$20,000 per violation.

The Rail Safety Enforcement and Review Act (RSERA), enacted in 1992, increased the maximum penalty from \$1,000 to \$10,000 and in some cases, \$20,000 for a violation of the hours of service laws, making these penalty amounts uniform with those of FRA’s other regulatory provisions and orders. RSERA also increased the minimum civil monetary penalty from \$250 to \$500 for all of FRA’s regulatory provisions and orders. The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, 104 Stat. 890, note, as amended by Section 31001(s)(1) of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321–373, April 26, 1996) (Inflation Act) required that agencies adjust by regulation each minimum and maximum civil monetary penalty within the agency’s jurisdiction for inflation and make subsequent adjustments once every four years after the initial adjustment. Accordingly, FRA’s minimum and maximum civil monetary penalties have been adjusted.

In 2008, the Rail Safety Improvement Act of 2008 (RSIA of 2008) was enacted raising

FRA's civil monetary ordinary and aggravated maximum penalties to \$25,000 and \$100,000 respectively. FRA amended the civil penalty provisions in its regulations so as to make \$25,000 the ordinary maximum penalty per violation and \$100,000 the aggravated maximum penalty per violation, as authorized by the RSIA of 2008, in a final rule published on December 30, 2008 in the **Federal Register**. 73 FR 79700. The December 30, 2008 final rule also adjusted the minimum civil penalty from \$550 to \$650 pursuant to Inflation Act requirements. *Id.* A correcting amendment to the civil penalty provisions in 49 CFR part 232 was published on April 6, 2009. 74 FR 15388.

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 is ordinarily issued as an appendix to the relevant part of the Code of Federal Regulations. For each regulation or order, the schedule shows two amounts within the \$650 to \$25,000 range in separate columns, the first for ordinary violations, the second for willful violations (whether committed by railroads or individuals). In one instance—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.

Accordingly, under each of the schedules (ordinarily in a footnote), and regardless of the fact that a lesser amount might be shown in both columns of the schedule, FRA reserves the right to assess the statutory maximum penalty of up to \$100,000 per

violation where a grossly negligent violation has created an imminent hazard of death or injury. This authority to assess a penalty for a single violation above \$25,000 and up to \$100,000 is used only in very exceptional cases to penalize egregious behavior. FRA indicates in the penalty demand letter when it uses the higher penalty amount instead of the penalty amount listed in the schedule.

PART 213—[AMENDED]

3. The authority citation for part 213 continues to read as follows:

Authority: 49 U.S.C. 20102–20114 and 20142; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

4. Appendix B to part 213 is revised to read as follows:

APPENDIX B TO PART 213—SCHEDULE OF CIVIL PENALTIES ¹

Section ^{2 3}	Violation	Willful violation
Subpart A—General		
213.4(a) Excepted track ²	\$9,500	\$17,000
213.4(b) Excepted track ²	13,000	20,500
213.4(c) Excepted track ²	13,000	20,500
213.4(d) Excepted track ²	13,000	20,500
213.4(e):		
(1) Excepted track	13,000	20,500
(2) Excepted track	13,000	20,500
(3) Excepted track	13,000	20,500
(4) Excepted track	13,000	20,500
213.4(f) Excepted track	5,500	10,000
213.7 Designation of qualified persons to supervise certain renewals and inspect track	9,500	17,000
213.9 Classes of track: Operating speed limits	19,500	25,000
213.11 Restoration or renewal of track under traffic conditions	9,500	17,000
213.13 Measuring track not under load	13,000	20,500
Subpart B—Roadbed		
213.33 Drainage	13,000	20,500
213.37 Vegetation	9,500	17,000
Subpart C—Track Geometry		
213.53 Gage	19,500	25,000
213.55 Alignment	13,000	20,500
213.57 Curves; elevation and speed limitations	13,000	20,500
213.59 Elevation of curved track; runoff	13,000	20,500
213.63 Track surface	13,000	20,500
Subpart D—Track Structure		
213.103 Ballast; general	9,500	17,000
213.109 Crossties:		
(a) Material used	5,500	10,000
(b) Distribution of ties	13,000	20,500
(d) Sufficient number of nondefective ties	9,500	17,000
(f) Joint ties	9,500	17,000
(g) Track constructed without crossties	9,500	17,000
213.110 Gage restraint measurement systems:		
(a) through (b) Notification	9,500	17,000
(c) Design requirements	13,000	20,500
(g) through (i) Exception reports	9,500	17,000
(j) Data integrity	13,000	20,500
(k) Training	9,500	17,000
(l) Remedial actions	19,500	25,000
(m) PTLF	13,000	20,500
(n) Recordkeeping	9,500	17,000
(o) Inspection frequency	19,500	25,000
213.113 Defective rails	19,500	25,000
213.115 Rail end mismatch	9,500	17,000
213.118(a) CWR plan in effect	13,000	20,500
213.118(b) CWR plan filed with FRA	13,000	20,500
213.119 Continuous welded rail:		

APPENDIX B TO PART 213—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ^{2 3}	Violation	Willful violation
(a) CWR installation/adjustment procedures	13,000	20,500
(b) CWR fastening requirements	13,000	20,500
(c) CWR joint installation/maintenance procedures	13,000	20,500
(d) CWR rail temperature requirements	13,000	20,500
(e) CWR alinement	13,000	20,500
(f) Procedures for controlling train speed on CWR track	13,000	20,500
(g) CWR track inspections	13,000	20,500
(h) CWR joint bar inspections	13,000	20,500
(i) CWR training	13,000	20,500
(j) CWR records	9,500	17,000
(k) CWR manual at job site	9,500	17,000
213.121(a) Rail joints	13,000	20,500
213.121(b) Rail joints	13,000	20,500
213.121(c) Rail joints	19,500	25,000
213.121(d) Rail joints	13,000	20,500
213.121(e) Rail joints	13,000	20,500
213.121(f) Rail joints	13,000	20,500
213.121(g) Rail joints	13,000	20,500
213.121(h) Rail joints	13,000	20,500
213.122 Torch cut rail	13,000	20,500
213.123 Tie plates	9,500	17,000
213.127 Rail fastenings	13,000	20,500
213.133 Turnouts and track crossings, generally	9,500	17,000
213.135 Switches:		
(a) through (g)	13,000	20,500
(h) chipped or worn points	13,000	20,500
213.137 Frogs	13,000	20,500
213.139 Spring rail frogs	13,000	20,500
213.141 Self-guarded frogs	9,500	17,000
213.143 Frog guard rails and guard faces; gage	13,000	20,500
Subpart E—Track Appliances and Track-Related Devices		
213.205 Derails	9,500	17,000
Subpart F—Inspection		
213.233 Track inspections	9,500	17,000
213.235 Switches, crossings, transition devices	9,500	17,000
213.237 Inspection of rail	13,000	20,500
213.239 Special inspections	9,500	17,000
213.241 Inspection records	9,500	17,000
Subpart G—Train Operations at Track Classes 6 and Higher		
213.305 Designation of qualified individuals; general qualifications	19,500	25,000
213.307 Class of track; operating speed limits	19,500	25,000
213.309 Restoration or renewal of track under traffic conditions	19,500	25,000
213.311 Measuring track not under load	13,000	20,500
213.319 Drainage	9,500	17,000
213.321 Vegetation	9,500	17,000
213.323 Track gage	19,500	25,000
213.327 Alignment	19,500	25,000
213.329 Curves, elevation and speed limits	19,500	25,000
213.331 Track surface	19,500	25,000
213.333 Automated vehicle inspection systems	19,500	25,000
213.335 Crossties:		
(a) Material used	9,500	17,000
(b) Distribution of ties	13,000	20,500
(c) Sufficient number of nondefective ties, non-concrete	9,500	17,000
(d) Sufficient number of nondefective, concrete ties	19,500	25,000
(e) Joint ties	19,500	25,000
(f) Track constructed without crossties	19,500	25,000
(g) Non-defective ties surrounding defective ties	19,500	25,000
(h) Tie plates	19,500	25,000
(i) Tie plates	19,500	25,000
213.337 Defective rails	19,500	25,000
213.339 Inspection of rail in service	19,500	25,000
213.341 Inspection of new rail	19,500	25,000
213.343 Continuous welded rail (a) through (h)	19,500	25,000
213.345 Vehicle qualification testing (a) through (b)	19,500	25,000
(c) through (e)	19,500	25,000
213.347 Automotive or railroad crossings at grade	13,000	20,500
213.349 Rail end mismatch	13,000	20,500
213.351(a) Rail joints	19,500	25,000

APPENDIX B TO PART 213—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ^{2 3}	Violation	Willful violation
213.351(b) Rail joints	19,500	25,000
213.351(c) Rail joints	19,500	25,000
213.351(d) Rail joints	19,500	25,000
213.351(e) Rail joints	13,000	20,500
213.351(f) Rail joints	19,500	25,000
213.351(g) Rail joints	19,500	25,000
213.352 Torch cut rails	9,500	17,000
213.353 Turnouts, crossovers, transition devices	19,500	25,000
213.355 Frog guard rails and guard faces; gage	13,000	20,500
213.357 Derails	9,500	17,000
213.359 Track stiffness	19,500	25,000
213.361 Right of way	9,500	17,000
213.365 Visual inspections	19,500	25,000
213.367 Special inspections	19,500	25,000
213.369 Inspections records	9,500	17,000

¹A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

²In addition to assessment of penalties for each instance of noncompliance with the requirements identified by this footnote, track segments designated as excepted track that are or become ineligible for such designation by virtue of noncompliance with any of the requirements to which this footnote applies are subject to all other requirements of part 213 until such noncompliance is remedied.

³The penalty schedule uses section numbers from 49 CFR part 213. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 214—[AMENDED]

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

6. Appendix A to part 214 is revised to read as follows:

5. The authority citation for part 214 continues to read as follows:

APPENDIX A TO PART 214—SCHEDULE OF CIVIL PENALTIES ¹

Section ²	Violation	Willful violation
Subpart B—Bridge Worker Safety Standards		
214.103 Fall protection:		
(i) Failure to provide fall protection	\$13,000	\$20,500
(ii) Failure to use fall protection	19,500	25,000
214.105 Standards and practices:		
(a) General:		
(1) Fall protection used for other purposes	9,500	17,000
(2) Failure to remove from service	9,500	17,000
(3) Failure to protect from deterioration	9,500	17,000
(4) Failure to inspect and remove	13,000	20,500
(5) Failure to train	13,000	20,500
(6) Failure to provide for prompt rescue	13,000	20,500
(7) Failure to prevent damage	9,500	17,000
(8) Failure to use proper connectors	9,500	17,000
(9) Failure to use proper anchorages	9,500	17,000
(b) Fall arrest system:		
(1)–(17) Failure to provide conforming equipment	9,500	17,000
(c) Safety net systems:		
(1) Failure to install close to workplace	9,500	17,000
(2) Failure to provide fall arrest if over 30 feet	13,000	20,500
(3) Failure to provide for unobstructed fall	13,000	20,500
(4) Failure to test	9,500	17,000
(5) Failure to use proper equipment	9,500	17,000
(6) Failure to prevent contact with surface below	13,000	20,500
(7) Failure to properly install	13,000	20,500
(8) Failure to remove defective nets	13,000	20,500
(9) Failure to inspect	13,000	20,500
(10) Failure to remove objects	5,500	10,000
(11)–(13) Failure to use conforming equipment	9,500	17,000
214.107 Working over water:		
(a)(i) Failure to provide life vest	13,000	20,500
(ii) Failure to use life vest	13,000	20,500
(c) Failure to inspect	9,500	17,000
(e)(i) Failure to provide ring buoys	13,000	20,500

APPENDIX A TO PART 214—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
(ii) Failure to use ring buoys		17,000
(f)(i) Failure to provide skiff	9,500	17,000
(ii) Failure to use skiff		17,000
214.109 Scaffolding:		
(a)–(f) Failure to provide conforming equipment	13,000	20,500
214.113 Head protection:		
(a)(i) Failure to provide	13,000	20,500
(ii) Failure to use	13,000	20,500
(b) or (c) Failure to provide conforming equipment	9,500	17,000
214.115 Foot protection:		
(a)(i) Failure to require use of	9,500	17,000
(ii) Failure to use	9,500	17,000
214.117 Eye and face protection:		
(a)(i) Failure to provide	9,500	17,000
(ii) Failure to use	5,500	10,000
(b) Failure to use conforming equipment	9,500	17,000
(c) Use of defective equipment	9,500	17,000
(d) Failure to provide for corrective lenses	9,500	17,000
Subpart C—Roadway Worker Protection Rule		
214.303 Railroad on-track safety programs, generally:		
(a) Failure of a railroad to implement an On-track Safety Program	19,500	25,000
(b) On-track Safety Program of a railroad includes no internal monitoring procedure	9,500	17,000
214.305 Compliance Dates:		
Failure of a railroad to comply by the specified dates	9,500	17,000
214.307 Review and approval of individual on-track safety programs by FRA:		
(a)(i) Failure to notify FRA of adoption of On-track Safety Program	2,500	5,000
(ii) Failure to designate primary person to contact for program review	2,500	5,000
214.309 On-track safety program documents:		
(1) On-track Safety Manual not provided to prescribed employees	9,500	17,000
(2) On-track Safety Program documents issued in fragments	5,500	10,000
214.311 Responsibility of employers:		
(b) Roadway worker required by employer to foul a track during an unresolved challenge	19,500	25,000
(c) Roadway workers not provided with written procedure to resolve challenges of on-track safety procedures	9,500	17,000
214.313 Responsibility of individual roadway workers:		
(a) Failure to follow railroad's on-track safety rules		25,000
(b) Roadway worker fouling a track when not necessary in the performance of duty		25,000
(c) Roadway worker fouling a track without ascertaining that provision is made for on-track safety		25,000
(d) Roadway worker failing to notify employer of determination of improper on-track safety provisions		25,000
214.315 Supervision and communication:		
(a) Failure of employer to provide job briefing	19,500	25,000
(b) Incomplete job briefing	13,000	20,500
(c)(i) Failure to designate roadway worker in charge of roadway work group	13,000	20,500
(ii) Designation of more than one roadway worker in charge of one roadway work group	9,500	17,000
(iii) Designation of non-qualified roadway worker in charge of roadway work group	13,000	20,500
(d)(i) Failure to notify roadway workers of on-track safety procedures in effect	13,000	20,500
(ii) Incorrect information provided to roadway workers regarding on-track safety procedures in effect	13,000	20,500
(iii) Failure to notify roadway workers of change in on-track safety procedures	13,000	20,500
(e)(i) Failure of lone worker to communicate with designated employee for daily job briefing	9,500	17,000
(ii) Failure of employer to provide means for lone worker to receive daily job briefing	13,000	20,500
214.317 On-track safety procedures, generally:		
On-track safety rules conflict with this part	19,500	25,000
214.319 Working limits, generally:		
(a) Nonqualified roadway worker in charge of working limits	13,000	20,500
(b) More than one roadway worker in charge of working limits on the same track segment	13,000	20,500
(c)(1) Working limits released without notifying all affected roadway workers	19,500	25,000
(2) Working limits released before all affected roadway workers are otherwise protected	19,500	25,000
214.321 Exclusive track occupancy:		
(b) Improper transmission of authority for exclusive track occupancy	9,500	17,000
(b)(1) Failure to repeat authority for exclusive track occupancy to issuing employee	9,500	17,000
(2) Failure to retain possession of written authority for exclusive track occupancy	5,500	10,000
(3) Failure to record authority for exclusive track occupancy when issued	13,000	20,500
(c) Limits of exclusive track occupancy not identified by proper physical features	19,500	25,000
(d)(1) Movement authorized into limits of exclusive track occupancy without authority of roadway worker in charge	19,500	25,000
(2) Movement authorized within limits of exclusive track occupancy without authority of roadway worker in charge	19,500	25,000
(3) Movement within limits of exclusive track occupancy exceeding restricted speed without authority of roadway worker in charge	19,500	25,000

APPENDIX A TO PART 214—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
214.323 Foul time:		
(a) Foul time authority overlapping movement authority of train or equipment	19,500	25,000
(b) Failure to repeat foul time authority to issuing employee	9,500	17,000
214.325 Train coordination:		
(a) Train coordination limits established where more than one train is authorized to operate	13,000	20,500
(b)(1) Train coordination established with train not visible to roadway worker at the time	9,500	17,000
(2) Train coordination established with moving train	9,500	17,000
(3) Coordinated train moving without authority of roadway worker in charge	13,000	20,500
(4) Coordinated train releasing movement authority while working limits are in effect	13,000	20,500
214.327 Inaccessible track:		
(a) Improper control of entry to inaccessible track	13,000	20,500
(5) Remotely controlled switch not properly secured by control operator	13,000	20,500
(b) Train or equipment moving within inaccessible track limits without permission of roadway worker in charge	13,000	20,500
(c) Unauthorized train or equipment located within inaccessible track limits	13,000	20,500
214.329 Train approach warning provided by watchmen/lookouts:		
(a) Failure to give timely warning of approaching train	19,500	25,000
(b)(1) Failure of watchman/lookout to give full attention to detecting approach of train	13,000	20,500
(2) Assignment of other duties to watchman/lookout	19,500	25,000
(c) Failure to provide proper warning signal devices	9,500	17,000
(d) Failure to maintain position to receive train approach warning signal	13,000	20,500
(e) Failure to communicate proper warning signal	13,000	20,500
(f)(1) Assignment of nonqualified person as watchman/lookout	13,000	20,500
(2) Nonqualified person accepting assignment as watchman/lookout	9,500	17,000
(g) Failure to properly equip a watchman/lookout	9,500	17,000
214.331 Definite train location:		
(a) Definite train location established where prohibited	13,000	20,500
(b) Failure to phase out definite train location by required date	9,500	17,000
(d)(1) Train location information issued by unauthorized person	13,000	20,500
(2) Failure to include all trains operated on train location list	19,500	25,000
(5) Failure to clear track 10 minutes before earliest departure time of train at last station prior to work location, or failure to remain clear until such train passed	13,000	20,500
(6) Train passing station before time shown in train location list	19,500	25,000
(7) Nonqualified person using definite train location to establish on-track safety	13,000	20,500
214.333 Informational line-ups of trains:		
(a) Informational line-ups of trains used for on-track safety where prohibited	19,500	25,000
(b) Informational line-up procedures inadequate to protect roadway workers	19,500	25,000
(c) Failure to discontinue informational line-ups by required date	9,500	17,000
214.335 On-track safety procedures for roadway work groups:		
(a) Failure to provide on-track safety for a member of a roadway work group	19,500	25,000
(b) Member of roadway work group fouling a track without authority of employee in charge	13,000	20,500
(c) Failure to provide train approach warning or working limits on adjacent track where required	19,500	25,000
214.337 On-track safety procedures for lone workers:		
(b) Failure by employer to permit individual discretion in use of individual train detection	19,500	25,000
(c)(1) Individual train detection used by nonqualified employee	13,000	20,500
(2) Use of individual train detection while engaged in heavy or distracting work	19,500	25,000
(3) Use of individual train detection in controlled point or manual interlocking	19,500	25,000
(4) Use of individual train detection with insufficient visibility	19,500	25,000
(5) Use of individual train detection with interfering noise	19,500	25,000
(6) Use of individual train detection while a train is passing	19,500	25,000
(d) Failure to maintain access to place of safety clear of live tracks	19,500	25,000
(e) Lone worker unable to maintain vigilant lookout	19,500	25,000
(f)(1) Failure to prepare written statement of on-track safety	5,500	10,000
(2) Incomplete written statement of on-track safety	2,500	5,000
(3) Failure to produce written statement of on-track safety to FRA	2,500	5,000
214.339 Audible warning from trains:		
(a) Failure to require audible warning from trains	9,500	17,000
(b) Failure of train to give audible warning where required	9,500	17,000
214.341 Roadway maintenance machines:		
(a) Failure of on-track safety program to include provisions for safety near roadway maintenance machines	19,500	25,000
(b) Failure to provide operating instructions	9,500	17,000
(1) Assignment of nonqualified employee to operate machine	13,000	20,500
(2) Operator unfamiliar with safety instructions for machine	13,000	20,500
(3) Roadway worker working with unfamiliar machine	13,000	20,500
(c) Roadway maintenance machine not clear of passing trains or operation of machine component closer than four feet to adjacent track without procedural instructions	19,500	25,000
214.343 Training and qualification, general:		
(a)(1) Assignment of roadway worker duties to employee that is not trained or qualified	13,000	20,500
(a)(2) Acceptance of roadway worker assignment by employee that is not trained or qualified	13,000	20,500
(b)(1) Failure to provide initial training	13,000	20,500

APPENDIX A TO PART 214—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
(b)(2) Failure to provide annual training	9,500	17,000
(c) Failure to provide training to employee other than a roadway worker on functions related to on-track safety	13,000	20,500
(d)(1) Failure to maintain records of qualifications	9,500	17,000
(2) Incomplete records of qualifications	5,500	10,000
(3) Failure to provide records of qualifications to FRA	2,500	5,000
214.345 Training for all roadway workers	3	3
214.347 Training and qualification for lone workers	3	3
214.349 Training and qualification of watchmen/lookouts	3	3
214.351 Training and qualification of flagmen	3	3
214.353 Training and qualification of roadway workers who provide on-track safety for roadway work groups	3	3
214.355 Training and qualification in on-track safety for operators of roadway maintenance machines	3	3
Subpart D—On-Track Roadway Maintenance Machines and Hi-Rail Vehicles		
214.503 Good-faith challenges; procedures for notification and resolution:		
(a) Failure of employee to notify employer that the machine or vehicle does not comply with this subpart or has a condition inhibiting safe operation		20,500
(b) Roadway worker required to operate machine or vehicle when good-faith challenge not resolved	19,500	25,000
(c) Failure of employer to have or follow written procedures to resolve good-faith challenges	19,500	25,000
214.505 Required environmental control and protection systems for new on-track roadway maintenance machines with enclosed cabs:		
(a) Failure to equip new machines with required systems	19,500	25,000
(b) Failure of new or existing machines to protect employees from exposure to air contaminants	19,500	25,000
(c) Failure of employer to maintain required list of machines or make list available	9,500	17,000
(d) Removal of “designated machine” from list before retired or sold	9,500	17,000
(e) Personal respiratory protective equipment not provided when ventilation system fails	19,500	25,000
(f) Personal respiratory protective equipment fails to meet required standards	19,500	25,000
(g) Other new machines with enclosed cabs not equipped with operable heating and ventilation systems	19,500	25,000
(h) Nonenclosed station not equipped with covering, where feasible	19,500	25,000
214.507 Required safety equipment for new on-track roadway maintenance machines:		
(a)(1)–(5) Failure to equip new machine or provide protection as specified in these paragraphs	19,500	25,000
(a)(6)–(7) Failure to equip new machine with first-aid kit or operative and charged fire extinguisher	13,000	20,500
(b) Position for operator to stand not properly equipped to provide safe and secure position	19,500	25,000
(c) New machine not equipped with accurate speed indicator, as required	13,000	20,500
(d) As-built light weight not conspicuously displayed on new machine	13,000	20,500
214.509 Required visual illumination and reflective devices for new on-track roadway maintenance machines	13,000	20,500
214.511 Required audible warning devices for new on-track roadway maintenance machines	19,500	25,000
214.513 Retrofitting of existing on-track roadway maintenance machines; general:		
(a) Failure to provide safe and secure position and protection from moving parts inside cab for each roadway worker transported on machine	19,500	25,000
(b) Horn or other audible warning device is missing, inoperable, or has noncompliant triggering mechanism	13,000	20,500
(c) Illumination device or portable light missing, inoperable, improperly secured, or incapable of illuminating track as required	13,000	20,500
214.515 Overhead covers for existing on-track roadway maintenance machines:		
(a) Failure to repair, reinstall, or maintain overhead cover as required	19,500	25,000
(b) Failure to provide written response to operator’s request within 60 days	9,500	17,000
214.517 Retrofitting of existing on-track roadway maintenance machines manufactured on or after January 1, 1991:		
(a) Failure to equip machine with change-of-direction alarm or rearward viewing device	19,500	25,000
(b) Failure to equip machine with operative heater	19,500	25,000
(c) Failure to display light weight of machine as required	13,000	20,500
(d) Failure to equip machine with reflective material, reflective device, or operable brake lights	19,500	25,000
(e) Failure to install or replace safety glass as required	19,500	25,000
(f) Failure to equip machine with turntable restraint device or warning light as required	19,500	25,000
214.518 Safe and secure position for riders	19,500	25,000
214.519 Floors, decks, stairs, and ladders for on-track roadway maintenance machines	19,500	25,000
214.521 Flagging equipment for on-track roadway maintenance machines and hi-rail vehicles	13,000	20,500
214.523 Hi-rail vehicles:		
(a) Failure to inspect hi-rail gear annually	19,500	25,000
(b) Failure to maintain inspection record or make record available to FRA	9,500	17,000
(c) Failure to equip new hi-rail vehicle with alarm and light or beacon as required	13,000	20,500
(d)(2) Failure of operator to tag, date, or report noncomplying condition	9,500	17,000
(d)(3) Failure to repair or replace noncomplying alarms, lights, or beacons as required	13,000	20,500
214.525 Towing with on-track roadway maintenance machines or hi-rail vehicles	19,500	25,000
214.527 On-track roadway maintenance machines; inspection for compliance and schedule for repairs:		
(a) Failure of operator to check on-track roadway maintenance machine for compliance	9,500	17,000
(b) Failure of operator to tag, date, or report noncomplying condition	9,500	17,000

APPENDIX A TO PART 214—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
(c)(1)–(4) Failure to meet requirements for operating on-track roadway maintenance machine with noncomplying headlights, work lights, horn, fire extinguisher, alarm, warning light, or beacon	13,000	20,500
(c)(5) Failure to repair or replace defective or missing operator's seat within required time period	19,500	25,000
214.529 In-service failure of primary braking system	19,500	25,000
214.531 Schedule of repairs; general	13,000	20,500
214.533 Schedule of repairs subject to availability of parts:		
(a)–(c) Failure to order necessary part(s), make repair(s), or remove on-track roadway maintenance machine or hi-rail vehicle from service as required	13,000	20,500
(d) Failure to maintain record or make record available to FRA	9,500	17,000

¹ A penalty may be assessed against an individual only for a willful violation. In addition, there are certain sections of the penalty schedule for which no penalty is listed in the ordinary violation column. These sections may only be cited as willful violations. The Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

² The penalty schedule uses section numbers from 49 CFR part 214. If more than one item is listed as a type of violation of a given section, each item is also designated by a “penalty code,” which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

³ See § 214.343 (Training and qualification, general).

PART 215—[AMENDED]

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

8. Appendix B to part 215 is revised to read as follows:

7. The authority citation for part 215 continues to read as follows:

APPENDIX B TO PART 215—SCHEDULE OF CIVIL PENALTIES ¹

Section ²	Violation	Willful Violation
Subpart A—General		
215.9 Movement for repair:		
(a), (c)	1	1
(b)	\$5,500	\$10,000
215.11 Designation of qualified persons	9,500	17,000
215.13 Pre-departure inspection	9,500	17,000
Subpart B—Freight Car Components		
Suspension System		
215.103 Defective wheel:		
(a) Flange thickness of:		
(1) $\frac{7}{8}$ " or less but more than $\frac{13}{16}$ "	9,500	17,000
(2) $\frac{13}{16}$ " or less	13,000	20,500
(b) Flange height of:		
(1) $1\frac{1}{2}$ " or greater but less than $1\frac{5}{8}$ "	9,500	17,000
(2) $1\frac{5}{8}$ " or more	13,000	20,500
(c) Rim thickness of:		
(1) $1\frac{1}{16}$ " or less but more than $\frac{5}{8}$ "	9,500	17,000
(2) $\frac{5}{8}$ " or less	13,000	20,500
(d) Wheel rim, flange plate hub width:		
(1) Crack of less than 1"	9,500	17,000
(2) Crack of 1" or more	13,000	20,500
(3) Break	19,500	25,000
(e) Chip or gouge in flange of:		
(1) $1\frac{1}{2}$ " or more but less than $1\frac{5}{8}$ " in length; and $\frac{1}{2}$ " or more but less than $\frac{5}{8}$ " in width	5,500	10,000
(2) $1\frac{5}{8}$ " or more in length; or $\frac{5}{8}$ " or more in width	9,500	17,000
(f) Slid flat or shelled spot(s):		
(1)(i) One spot more than $2\frac{1}{2}$ ", but less than 3", in length	5,500	10,000
(ii) One spot 3" or more in length	9,500	17,000
(2)(i) Two adjoining spots each of which is more than 2" but less than $2\frac{1}{2}$ " in length	5,500	10,000
(ii) Two adjoining spots both of which are at least 2" in length, if either spot is $2\frac{1}{2}$ " or more in length	9,500	17,000
(g) Loose on axle	19,500	25,000
(h) Overheated; discoloration extending:		
(1) More than 4" but less than $4\frac{1}{2}$ "	9,500	17,000
(2) $4\frac{1}{2}$ " or more	13,000	20,500
(i) Welded	13,000	20,500
215.105 Defective axle:		
(a)(1) Crack of 1" or less	9,500	17,000
(2) Crack of more than 1"	13,000	20,500
(3) Break	19,500	25,000

APPENDIX B TO PART 215—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful Violation
(b) Gouge in surface that is between the wheel seats and is more than 1/8" in depth	5,500	10,000
(c) End collar with crack or break	9,500	17,000
(d) Journal overheated	19,500	25,000
(e) Journal surface has: A ridge; a depression; a circumferential score; corrugation; a scratch; a continuous streak; pitting; rust; or etching	9,500	17,000
215.107 Defective plain bearing box: general:		
(a)(1) No visible free oil	5,500	10,000
(2) Lubricating pad dry (no expression of oil observed when pad is compressed)	13,000	20,500
(b) Box lid is missing, broken, or open except to receive servicing	5,500	10,000
(c) Contains foreign matter that can be expected to damage the bearing or have a detrimental effect on the lubrication of the journal and bearing	9,500	17,000
215.109 Defective plain bearing box: journal lubrication system:		
(a) Lubricating pad has a tear	5,500	10,000
(b) Lubricating pad scorched, burned, or glazed	9,500	17,000
(c) Lubricating pad contains decaying or deteriorating fabric	9,500	17,000
(d) Lubricating pad has an exposed center core or metal parts contacting the journal	9,500	17,000
(e) Lubricating pad is missing or not in contact with the journal	13,000	20,500
215.111 Defective plain bearing:		
(a) Missing	19,500	25,000
(b) Bearing liner is loose or has piece broken out	9,500	17,000
(c) Overheated	19,500	25,000
215.113 Defective plain bearing wedge:		
(a) Missing	19,500	25,000
(b) Cracked	9,500	17,000
(c) Broken	13,000	20,500
(d) Not located in its design position	9,500	17,000
215.115 Defective roller bearing:		
(a)(1) Overheated	19,500	25,000
(2)(i) Cap screw(s) loose	13,000	20,500
(ii) Cap screw lock broken, missing or improperly applied	5,500	10,000
(3) Seal is loose or damaged, or permits leakage of lubricant	5,500	10,000
(b)(1) Not inspected and tested after derailment	13,000	20,500
(2) Not disassembled after derailment	9,500	17,000
(3) Not repaired or replaced after derailment	13,000	20,500
215.117 Defective roller bearing adapter:		
(a) Cracked or broken	9,500	17,000
(b) Not in its design position	13,000	20,500
(c) Worn on the crown	9,500	17,000
215.119 Defective freight car truck:		
(a)(1) A side frame or bolster that is broken	19,500	25,000
(2)(i) Side frame or bolster with crack of: 1/4" or more, but less than 1"	9,500	17,000
(ii) 1" or more	13,000	20,500
(b) A snubbing device that is ineffective or missing	9,500	17,000
(c) Side bearing(s):		
(1) Assembly missing or broken	19,500	25,000
(2) In contact except by design	13,000	20,500
(3), (4) Total clearance at one end or at diagonally opposite sides of:		
(i) More than 3/4" but not more than 1"	9,500	17,000
(ii) More than 1"	13,000	20,500
(d) Truck spring(s):		
(1) Do not maintain travel or load	9,500	17,000
(2) Compressed solid	9,500	17,000
(3) Outer truck springs broken or missing:		
(i) Two outer springs	9,500	17,000
(ii) Three or more outer springs	13,000	20,500
(e) Truck bolster-center plate interference	13,000	20,500
(f) Brake beam shelf support worn	9,500	17,000
Car Bodies		
215.121 Defective car body:		
(a) Has less than 2 1/2" clearance from the top of rail	9,500	17,000
(b) Car center sill is:		
(1) Broken	19,500	25,000
(2) Cracked more than 6"	9,500	17,000
(3) Bent or buckled more than 2 1/2" in any 6' length	9,500	17,000
(c) Coupler carrier that is broken or missing	9,500	17,000
(d) Car door not equipped with operative safety hangers	19,500	25,000
(e)(1) Center plate not properly secured	19,500	25,000
(2) Portion missing	9,500	17,000
(3) Broken	19,500	25,000
(4) Two or more cracks	9,500	17,000

APPENDIX B TO PART 215—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful Violation
(f) Broken sidesill, crossbearer, or body bolster	9,500	17,000
Draft System		
215.123 Defective couplers:		
(a) Shank bent out of alignment	5,500	10,000
(b) Crack in highly stressed junction area	9,500	17,000
(c) Coupler knuckle broken or cracked	9,500	17,000
(d) Coupler knuckle pin or thrower that is missing or inoperative	9,500	17,000
(e) Coupler retainer pin lock that is missing or broken	5,500	10,000
(f) Coupler with following conditions: Locklift inoperative; no anticreep protection; or coupler lock is missing, inoperative, bent, cracked, or broken	9,500	17,000
215.125 Defective uncoupling device	9,500	17,000
215.127 Defective draft arrangement:		
(a) Draft gear that is inoperative	9,500	17,000
(b) Yoke that is broken	9,500	17,000
(c) End of car cushioning unit is leaking or inoperative	9,500	17,000
(d) Vertical coupler pin retainer plate missing or has missing fastener	19,500	25,000
(e) Draft key or draft key retainer that is inoperative or missing	19,500	25,000
(f) Follower plate that is missing or broken	9,500	17,000
215.129 Defective cushioning device	9,500	17,000
Subpart C—Restricted Equipment		
215.203 Restricted cars	9,500	17,000
Subpart D—Stenciling		
215.301 General	5,500	10,000
215.303 Stenciling of restricted cars	5,500	10,000
215.305 Stenciling of maintenance-of-way	5,500	10,000

¹ A penalty may be assessed against an individual only for a willful violation. Generally, when two or more violations of these regulations are discovered with respect to a single freight car that is placed or continued in service by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of \$25,000 per day. A failure to perform, with respect to a particular freight car, the predeparture inspection required by § 215.13 of this part will be treated as a violation separate and distinct from, and in addition to, any substantive violative conditions found on the car. The Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A. Failure to observe any condition for movement set forth in paragraphs (a) and (c) of § 215.9 will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the freight car at the time of movement. Maintenance-of-way equipment not stenciled in accordance with § 215.305 is subject to all requirements of this part. See § 215.3(c)(3).

² The penalty schedule uses section numbers from 49 CFR part 215. If more than one item is listed as a type of violation of a given section, each item is also designated by a “penalty code,” which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 217—[AMENDED]

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

Appendix A to Part 217—Schedule Of Civil Penalties ¹

9. The authority citation for part 217 continues to read as follows:

10. Appendix A to part 217 is revised to read as follows:

Section ²	Violation	Willful Violation
Subpart A—General		
217.7 Operating Rules:		
(a)	\$5,500	\$10,000
(b)	5,500	10,000
(c)	5,500	10,000
217.9 Operational tests and inspections:		
(a) Failure to implement a program	9,500– 19,500	17,000– 25,000
(b) Railroad and railroad testing officer responsibilities:		
(1) Failure to provide instruction, examination, or field training, or failure to conduct tests in accordance with program	13,000	20,500
(2) Records	9,500	17,000
(c) Record of program; program incomplete	9,500– 19,500	17,000– 25,000
(d) Records of individual tests and inspections	9,500	17,000
(e) Failure to retain copy of or conduct:		
(1)(i) Quarterly review	13,000	20,500
(1)(ii) and (2) Six month review	13,000	20,500
(3) Records	9,500	17,000

Section ²	Violation	Willful Violation
(f) Annual summary	9,500	17,000
(h) Failure to timely or appropriately amend program after disapproval	13,000– 19,500	20,500– 25,000
217.11 Program of instruction on operating rules:		
(a)	5,500– 13,000	10,000– 20,500
(b)	5,500– 13,000	10,000– 20,500

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

² The penalty schedule uses section numbers from 49 CFR part 217. If more than one item is listed as a type of violation of a given section, each item is also designated by a “penalty code,” which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 218—[AMENDED]

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

12. Appendix A to part 218 is revised to read as follows:

11. The authority citation for part 218 continues to read as follows:

APPENDIX A TO PART 218—SCHEDULE OF CIVIL PENALTIES¹

Section ²	Violation	Willful violation
Subpart B—Blue Signal Protection of Workmen		
218.22 Utility employees:		
(a) Employee qualifications	\$5,500	\$10,000
(b) Concurrent service	9,500	17,000
(c) Assignment conditions:		
(1) No controlling locomotive	9,500	17,000
(2) Empty cab	9,500	17,000
(3)(4) Improper communication	9,500	17,000
(5) Performing functions not listed	5,500	10,000
(d) Improper release	5,500	10,000
(f) More than three utility employees with one crew	5,500	10,000
218.23 Blue signal display	9,500	17,000
218.24 One-person crew:		
(a)(1) Equipment not coupled or insufficiently separated	5,500	10,000
(a)(2) Unoccupied locomotive cab not secured	9,500	17,000
(b) Helper service	5,500	10,000
218.25 Workmen on a main track	9,500	17,000
218.27 Workmen on track other than main track:		
(a) Protection provided except that signal not displayed at switch	5,500	10,000
(b) through (e)	9,500	17,000
218.29 Alternate methods of protection:		
(a)(1) Protection provided except that signal not displayed at switch	5,500	10,000
(a)(2) through (a)(8)	9,500	17,000
(b)(1) Protection provided except that signal not displayed at switch	5,500	10,000
(b)(2) through (b)(4)	9,500	17,000
(c) Use of derails	9,500	17,000
(d) Emergency repairs	9,500	17,000
218.30 Remotely controlled switches:		
(a) and (b)	9,500	17,000
(c)	2,500	5,000
Subpart C—Protection of Trains and Locomotives		
218.35 Yard limits:		
(a) and (b)	9,500	17,000
(c)	2,500	5,000
218.37 Flag protection:		
(a)	9,500	17,000
(b) and (c)	9,500	17,000
218.39 Hump operations	9,500	17,000
218.41 Noncompliance with hump operations rule	9,500	17,000
Subpart D—Prohibition against Tampering with Safety Devices		
218.55 Tampering		17,000
218.57		
(i) Knowingly operating or permitting operation of disabled equipment	5,500
(ii) Willfully operating or permitting operation of disabled equipment		10,000
218.59 Operation of disabled equipment	5,500	10,000

APPENDIX A TO PART 218—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
Subpart E—Protection of Occupied Camp Cars		
218.71 Warning Signal Display:		
(a) Warning signals	5,500	10,000
(1) Cars may not be moved	9,500	17,000
(2) Rolling equipment may not be on same track reducing view of warning signal	5,500	10,000
(3) Rolling equipment may not pass a warning signal	9,500	17,000
(4) Signal will be displayed immediately and only removed prior to departure	5,500	10,000
218.75 Methods of protection for camp cars on main track:		
(a) Warning signals near each switch with access	5,500	10,000
(b) Immediate notification of occupation	9,500	17,000
(c) Alerting affected personnel of cars	5,500	10,000
(d) Manual switched lined and locked	9,500	17,000
(e) Remote switches protected	9,500	17,000
218.77 Remotely controlled switches:		
(a) Remote switch lined and locked	9,500	17,000
(b) Operator may not remove locking device without permission	9,500	17,000
(c) Recordkeeping	2,500	5,000
(d) Derail and signal when located on main track	9,500	17,000
218.79 Alternative methods for protection:		
(a) Other than main track:		
(1) Warning signal at each switch providing access	9,500	17,000
(2) Switches lined and locked	9,500	17,000
(3) Derails 50 feet away when speed is 5MPH	9,500	17,000
(b) Except as provided in (a) on other than main track:		
(1) Derails 150 feet away from equipment	9,500	17,000
(2) Derails must be locked in derailing position with signal	9,500	17,000
Subpart F—Handling Equipment, Switches and Derails		
218.95 Instruction, Training and Examination:		
(a) Program	9,500–13,000	17,000–20,500
(b) Records	9,500	17,000
(c) Failure to timely or appropriately amend program after disapproval	9,500–13,000	17,000–20,500
218.97 Good Faith Challenge Procedures:		
(a) Employee Responsibility Failure		5,000
(b) through (d) Failure to adopt or implement procedures	9,500	17,000
218.99 Shoving or Pushing Movements:		
(a) Failure to implement required operating rule	13,000	20,500
(b) Failure to conduct job briefing, use a qualified employee, or establish proper protection	9,500–13,000	17,000–20,500
(c) Failure to observe equipment direction	9,500	17,000
(d) Failure to properly establish point protection within a remote control zone	9,500	17,000
(e) Failure to abide by operational exception requirements	9,500	17,000
218.101 Leaving Equipment in the Clear:		
(a) Failure to implement required operating rule	9,500	17,000
(b) Equipment left improperly fouling	9,500	17,000
(c) Failure to implement procedures for identifying clearance points	9,500	17,000
218.103 Hand-operated switches, including crossover switches:		
(a) Failure to implement required operating rule	9,500	17,000
(b) through (d) Railroad employee failures	9,500	17,000
218.105 Additional operational requirements for hand-operated main track switches:		
(a) Failure to implement required operating rule	13,000	20,500
(b) and (c) Railroad and employee failures	9,500	17,000
(d) Failure to properly release authority limits	13,000	20,500
218.107 Additional operational requirements for hand-operated crossover switches:		
(a) Failure to implement required operating rule	9,500	17,000
(b) and (c) Railroad and employee failures	9,500	17,000
218.109 Hand-operated fixed derails:		
(a) Failure to implement required operating rule	9,500	17,000
(b) and (c) Railroad and employee failures	9,500	17,000

¹ Except as provided for in §218.57, a penalty may be assessed against an individual only for a willful violation. In addition, there are certain sections of the penalty schedule for which no penalty is listed in the ordinary violation column. These sections may only be cited as willful violations. The Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where the circumstances warrant. See 49 CFR part 209, appendix A.

² The penalty schedule uses section numbers from 49 CFR part 218. If more than one item is listed as a type of violation of a given section, each item is also designated by a “penalty code,” which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 219—[AMENDED]

Authority: 49 U.S.C. 20103, 20107, 20140,
21301, 21304, 21311; 28 U.S.C. 2461, note;
and 49 CFR 1.49(m).

14. Appendix A to part 219 is revised
to read as follows:

13. The authority citation for part 219
continues to read as follows:

APPENDIX A TO PART 219—SCHEDULE OF CIVIL PENALTIES¹

Section ²	Violation	Willful violation
Subpart A—General		
219.3 Application: Railroad does not have required program	\$13,000	\$20,500
219.11 General conditions for chemical tests:		
(b)(1) Employee unlawfully refuses to participate in testing	5,500	10,000
(b)(2) Employer fails to give priority to medical treatment	13,000	20,500
(b)(3) Employee fails to remain available	5,500	10,000
(b)(4) Employee tampers with specimen	5,500	10,000
(d) Employee unlawfully required to execute a waiver of rights	5,500	10,000
(e) Railroad used or authorized the use of coercion to obtain specimens	5,500	10,000
(g) Failure to meet supervisory training requirements or program of instruction not available or program not complete	9,500	17,000
(h) Urine or blood specimens provided for Federal testing were used for nonauthorized testing	5,500	10,000
219.23 Railroad policies:		
(a) Failure to provide written notice of FRA test	5,500	10,000
(b) Failure to provide written notice of basis for FRA test	2,500	5,000
(c) Use of Subpart C form for other test	2,500	5,000
(d) Failure to provide educational materials	2,500	5,000
(e) Educational materials fail to explain requirements of this part and/or include required content	2,500	5,000
(f) Non-Federal provisions are not clearly described as independent authority	5,500	10,000
Subpart B—Prohibitions		
219.101 Alcohol and drug use prohibited:		
Employee violates prohibition(s)	19,500	25,000
219.103 Prescribed and over-the-counter drugs:		
(a) Failure to train employee properly on requirements	5,500	10,000
219.104 Responsive action:		
(a) Failure to remove employee from covered service immediately	19,500	25,000
(b) Failure to provide notice for removal	5,500	10,000
(c) Failure to provide prompt hearing	5,500	10,000
(d) Employee improperly returned to service	13,000	20,500
219.105 Railroad's duty to prevent violations:		
(a) Employee improperly permitted to remain in covered service	19,500	25,000
(b) Failure to exercise due diligence to assure compliance with prohibition	9,500	17,000
219.107 Consequences of unlawful refusal:		
(a) Failure to disqualify an employee for nine months following a refusal	13,000	20,500
(e) Employee unlawfully returned to service	13,000	20,500
Subpart C—Post-Accident Toxicological Testing		
219.201 Events for which testing is required:		
(a) Failure to test after qualifying event (each employee not tested is a violation)	13,000	20,500
(c)(1)(i) Failure to make good faith determination	5,500	10,000
(c)(1)(ii) Failure to provide requested decision report to FRA	2,500	5,000
(c)(2) Testing performed after nonqualifying event	9,500	17,000
219.203 Responsibilities of railroads and employees:		
(a)(1)(i) and (a)(2)(i) Failure to properly test/exclude from testing	5,500	10,000
(a)(1)(ii) and (a)(2)(ii) Noncovered service employee tested	5,500	10,000
(b)(1) Delay in obtaining specimens due to failure to make every reasonable effort	5,500	10,000
(c) Independent medical facility not utilized	5,500	10,000
(d) Failure to report event or contact FRA when intervention required	2,500	5,000
219.205 Specimen collection and handling:		
(a) Failure to observe requirements with respect to specimen collection, marking and handling	5,500	10,000
(b) Failure to provide properly prepared forms with specimens	2,500	5,000
(d) Failure to promptly or properly forward specimens	5,500	10,000
219.207 Fatality:		
(a) Failure to test	13,000	20,500
(a)(1) Failure to ensure timely collection and shipment of required specimens	2,500	5,000
(b) Failure to request assistance when necessary	5,500	10,000
219.209 Reports of tests and refusals:		
(a)(1) Failure to provide telephonic report	2,500	5,000
(b) Failure to provide written report of refusal to test	2,500	5,000
(c) Failure to maintain report explaining why test not conducted within four hours	2,500	5,000
219.211 Analysis and follow-up:		
(c) Failure of MRO to report review of positive results to FRA	5,500	10,000
Subpart D—Testing for Cause		
219.300 Mandatory reasonable suspicion testing:		
(a)(1) Failure to test when reasonable suspicion criteria met	19,500	25,000

APPENDIX A TO PART 219—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
(a)(2) Tested when reasonable suspicion criteria not met	9,500	17,000
219.301 Testing for reasonable cause:		
(a) Event did not occur during daily tour	5,500	10,000
(b)(2) Tested when accident/incident criteria not met	9,500	17,000
(b)(3) Tested when operating rules violation criteria not met	9,500	17,000
219.302 Prompt specimen collection:		
(a) Specimen collection not conducted promptly	5,500	10,000
Subpart E—Identification of Troubled Employees		
219.401 Requirement for policies:		
(b) Failure to publish and/or implement required policy	5,500	10,000
219.407 Alternate policies:		
(c) Failure to file agreement or other document or provide timely notice or revocation	5,500	10,000
Subpart F—Pre-Employment Tests		
219.501 Pre-employment tests:		
(a) Failure to perform pre-employment drug test before first time employee performs covered service	13,000	20,500
Subpart G—Random Testing Programs		
219.601 Railroad random drug programs:		
(a)(1) Failure to file a random program	13,000	20,500
(a)(2) Failure to file amendment to program	5,500	10,000
(b) Failure to meet random testing criteria	9,500	17,000
(b)(1)(i) Failure to use a neutral selection process	9,500	17,000
(b)(2)(i)(B) Testing not spread throughout the year	5,500	10,000
(b)(3) Testing not distributed throughout the day	5,500	10,000
(b)(4) Advance notice provided to employee	9,500	17,000
(b)(6) Testing when employee not on duty	5,500	10,000
219.601 A Failure to include covered service employee in pool	9,500	17,000
219.602 Administrator's determination of drug testing rate:		
(f) Total number of tests below minimum random drug testing rate	13,000	20,500
219.603 Participation in drug testing:		
Failure to document reason for not testing selected employee	5,500	10,000
219.607 Railroad random alcohol programs:		
(a)(1) Failure to file a random alcohol program	13,000	20,500
(a)(2) Failure to file amendment to program	5,500	10,000
(b) Failure to meet random testing criteria	9,500	17,000
(b)(1) Failure to use a neutral selection process	9,500	17,000
(b)(5) Testing when employee not on duty	5,500	10,000
(b)(8) Advance notice provided to employee	9,500	17,000
219.607 A Failure to include covered service employee in pool	9,500	17,000
219.608 Administrator's determination of random alcohol testing rate:		
(e) Total number of tests below minimum random alcohol testing rate	13,000	20,500
219.609 Participation in alcohol testing: Failure to document reason for not testing selected employee	5,500	10,000
Subpart H—Drug and Alcohol Testing Procedures		
219.701 Standards for drug and alcohol testing:		
(a) Failure to comply with part 40 procedures in Subpart B, D, F, or G testing	5,500	10,000
(b) Testing not performed in a timely manner	5,500	10,000
Subpart I—Annual Report		
219.800 Reporting alcohol and drug misuse prevention program results in a management information system:		
(a) Failure to submit MIS report on time	5,500	10,000
(c) Failure to submit accurate MIS report	5,500	10,000
(d) Failure to include required data	5,500	10,000
Subpart J—Recordkeeping Requirements		
219.901 Retention of Alcohol Testing Records:		
(a) Failure to maintain records required to be kept by part 40	5,500	10,000
(b) Failure to maintain records required to be kept for five years	5,500	10,000
(c) Failure to maintain records required to be kept for two years	5,500	10,000
219.903 Retention of Drug Testing Records:		
(a) Failure to maintain records required to be kept by part 40	5,500	10,000
(b) Failure to maintain records required to be kept for five years	5,500	10,000
(c) Failure to maintain records required to be kept for two years	5,500	10,000
219.905 Access to facilities and records:		
(a) Failure to release records in this subpart in accordance with part 40	9,500	17,000
(b) Failure to permit access to facilities	9,500	17,000
(c) Failure to provide access to results of railroad alcohol and drug testing programs	9,500	17,000

¹ A penalty may be assessed against an individual only for a willful violation. The FRA Administrator reserves the right to assess a penalty of up to \$100,000 for any violation, including ones not listed in this penalty schedule, where circumstances warrant. See 49 CFR part 209, appendix A.

²The penalty schedule uses section numbers from 49 CFR part 219. If more than one item is listed as a type of violation of a given section, each item is also designated by a “penalty code,” which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 220—[AMENDED]

Authority: 49 U.S.C. 20102–20103, 20107, 21301–21302, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

16. Appendix C to part 220 is revised to read as follows:

15. The authority citation for part 220 continues to read as follows:

APPENDIX C TO PART 220—SCHEDULE OF CIVIL PENALTIES¹

Section ²	Violation	Willful violation
Subpart A—General		
220.9 Requirements for trains	\$13,000	\$20,500
220.11 Requirements for roadway workers	13,000	20,500
Subpart B—Radio and Wireless Communication Procedures		
220.21 Railroad operating rules; radio communications:		
(a)	9,500	17,000
(b)	9,500	17,000
220.23 Publication of radio information	9,500	17,000
220.25 Instruction of employees	9,500	17,000
220.27 Identification	9,500	17,000
220.29 Statement of letters and numbers	9,500	17,000
220.31 Initiating a transmission	5,500	10,000
220.33 Receiving a transmission	9,500	17,000
220.35 Ending a transmission	9,500	17,000
220.37 Voice test	13,000	20,500
220.38 Failed equipment	2,500	5,000
220.39 Continuous monitoring	9,500	17,000
220.41 [Reserved].		
220.43 Communication consistent with the rules	13,000	20,500
220.45 Complete communications	13,000	20,500
220.47 Emergencies	19,500	25,000
220.49 Switching, backing or pushing	19,500	25,000
220.51 Signal indications	13,000	20,500
220.61 Radio transmission of mandatory directives	19,500	25,000

¹ A penalty may be assessed against and only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

²The penalty schedule uses section numbers from 49 CFR part 220. If more than one item is listed as a type of violation of a given section, each item is also designated by a “penalty code,” which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 221—[AMENDED]

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

18. Appendix C to part 221 is revised to read as follows:

17. The authority citation for part 221 continues to read as follows:

APPENDIX C TO PART 221—SCHEDULE OF CIVIL PENALTIES¹

Section ²	Violation	Willful violation
Subpart B—Marking Devices		
221.13 Marking device display:		
(a) Device not present, not displayed, or not properly illuminated	\$9,500	\$17,000
(d) Device too close to rail	2,500	5,000
221.14 Marking devices: Use of unapproved or noncomplying device	5,500	10,000
221.15 Marking device inspection:		
(a) Failure to inspect at crew change	5,500	10,000
(b), (c) Improper inspection	5,500	10,000
221.16 Inspection procedure:		
(a) Failure to obtain protection	9,500	17,000
(b) Improper protection	5,500	10,000
221.17 Movement of defective equipment	(1)	(1)

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A. Where the conditions for movement of defective equipment set forth in §221.17 of this part are not met, the movement constitutes a violation of §221.13 of this part.

²The penalty schedule uses section numbers from 49 CFR part 221. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 222—[AMENDED]

Authority: 49 U.S.C. 20103, 20107, 20153, 21301, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

20. Appendix H to part 222 is revised to read as follows:

19. The authority citation for part 222 continues to read as follows:

APPENDIX H TO PART 222—SCHEDULE OF CIVIL PENALTIES¹

Section ²	Violation	Willful violation
Subpart B—Use of Locomotive Horns		
222.21 Use of locomotive horn:		
(a) Failure to sound horn at grade crossing	\$9,500	\$17,000
Failure to sound horn in proper pattern	5,500	10,000
(b) Failure to sound horn at least 15 seconds and less than ¼ mile before crossing	9,500	17,000
Sounding the horn more than 25 seconds before the crossing	5,500	10,000
Sounding the horn more than ¼ mile in advance of crossing	5,500	10,000
Subpart C—Exceptions to the Use of the Locomotive Horn		
Silenced Horns at Individual Crossings		
222.33 Failure to sound horn when conditions of § 222.33 are not met	9,500	17,000
Silenced Horns at Groups of Crossings—Quiet Zones		
222.45 Routine sounding of the locomotive horn at a quiet zone crossing	5,500	10,000
222.49(b) Failure to provide Grade Crossing Inventory Form information	2,500	5,000
222.59(d) Routine sounding of the locomotive horn at a grade crossing equipped with wayside horn	2,500	5,000

¹A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

²The penalty schedule uses section numbers from 49 CFR part 222. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 223—[AMENDED]

Authority: 49 U.S.C. 20102–03, 20133, 20701–20702, 21301–02, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

22. Appendix B to part 223 is revised to read as follows:

21. The authority citation for part 223 continues to read as follows:

APPENDIX B TO PART 223—SCHEDULE OF CIVIL PENALTIES¹

Section ²	Violation	Willful violation
Subpart B—Specific Requirements		
223.9 New or rebuilt equipment:		
(a) Locomotives	\$5,500	\$10,000
(b) Cabooses	5,500	10,000
(c) Passenger cars	5,500	10,000
223.11(c) Existing locomotives	5,500	10,000
(d) Repair of window	2,500	5,000
223.13(c) Existing cabooses	5,500	10,000
(d) Repair of window	2,500	5,000
223.15(c) Existing passenger cars	5,500	10,000
(d) Repair of window	2,500	5,000
223.17 Identification of units	2,500	5,000

¹A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where circumstances warrant. See 49 U.S.C. 21301, 21304, and 49 CFR part 209, appendix A.

²The penalty schedule uses section numbers from 49 CFR part 223. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 224—[AMENDED]

Authority: 49 U.S.C. 20103, 20107, 20148 and 21301; 28 U.S.C. 2461; and 49 CFR 1.49.

24. Appendix A to part 224 is revised to read as follows:

23. The authority citation for part 224 continues to read as follows:

APPENDIX A TO PART 224—SCHEDULE OF CIVIL PENALTIES ¹

Section ²	Violation	Willful violation
Subpart B—Application, Inspection, and Maintenance of Retroreflective Material		
224.103 Characteristics of retroreflective sheeting:		
(a)–(d) Retroreflective sheeting applied does not meet the requirements of § 224.103	\$5,500	\$10,000
224.105 Sheeting dimensions and quantity:		
(a) Failure to apply minimum amount of retroreflective sheeting in accordance with Table 2	5,500	10,000
(b) Applying retroreflective sheeting of wrong dimensions	5,500	10,000
224.106 Location of retroreflective sheeting:		
(a), (b) Applying retroreflective sheeting in nonconforming pattern	5,500	10,000
224.107 Implementation schedule:		
(a)(1), (b)(1) Failure to apply retroreflective sheeting to new freight car or locomotive before equipment placed in service	5,500	10,000
(a)(2), (b)(2), (b)(4) Failure to apply retroreflective sheeting to existing freight car or locomotive in accordance with minimum schedule of paragraphs (a)(2), (b)(2), or (b)(4)	5,500	10,000
224.109 Inspection, repair, and replacement:		
(1) Failure to perform inspection	5,500	10,000
(2) Failure to properly notify car owner of defect	5,500	10,000
(3) Failure to retain written notification of defect for two years	2,500	5,000
(4) Failure to repair defect after notification	5,500	10,000

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

² The penalty schedule uses section numbers from 49 CFR part 224. If more than one item is listed as a type of violation of a given section, each item is also designated by a “penalty code,” which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 225—[AMENDED]

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–02, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

26. Appendix A to part 225 is revised to read as follows:

25. The authority citation for part 225 continues to read as follows:

APPENDIX A TO PART 225—SCHEDULE OF CIVIL PENALTIES ¹

Section ²	Violation	Willful violation
225.9 Telephonic reports of certain accidents/incidents	\$9,500	\$17,000
225.11 Reports of accidents/incidents	5,500	10,000
225.12(a): Failure to file Railroad Employee Human Factor Attachment properly:		
(1) Employee identified	2,500	5,000
(2) No employee identified	2,500	5,000
225.12(b):		
(1) Failure to notify employee properly	5,500	10,000
(2) Notification of employee not involved in accident	2,500	5,000
225.12(c): Failure of employing railroad to provide requested information properly	2,500	5,000
225.12(d):		
(1) Failure to revise report when identity becomes known	2,500	5,000
(2) Failure to notify after late identification	5,500	10,000
225.12(f)(1): Submission of notice if employee dies as result of the reported accident	2,500	5,000
225.12(g): Willfully false accident statement by employee		20,500
225.13 Late reports	2,500	5,000
225.17(d) Alcohol or drug involvement	9,500	17,000
225.23 Joint operations	(1)	(1)
225.25 Recordkeeping	5,500	10,000
225.27 Retention of records	2,500	5,000
225.33:		
(1) Failure to adopt the Internal Control Plan	9,500	17,000
(2) Inaccurate reporting due to failure to comply with the Internal Control Plan	9,500	17,000
(3) Failure to comply with the intimidation/harassment policy in the Internal Control Plan	9,500	17,000

APPENDIX A TO PART 225—SCHEDULE OF CIVIL PENALTIES¹—Continued

Section ²	Violation	Willful violation
225.35 Access to records and reports	5,500	10,000

¹A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A. A failure to comply with § 225.23 constitutes a violation of § 225.11. For purposes of §§ 225.25 and 225.27 of this part, each of the following constitutes a single act of noncompliance: (1) A missing or incomplete log entry for a particular employee's injury or illness; or (2) a missing or incomplete log record for a particular rail equipment accident or incident. Each day a violation continues is a separate offense.

²The penalty schedule uses section numbers from 49 CFR part 225. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 227—[AMENDED]

Authority: 49 U.S.C. 20103, 20103 (note), 20701–20702; and 49 CFR 1.49.

28. Appendix G to part 227 is revised to read as follows:

27. The authority citation for part 227 continues to read as follows:

APPENDIX G TO PART 227—SCHEDULE OF CIVIL PENALTIES¹

Section ²	Violation	Willful violation
Subpart A—General		
227.3 Application:		
(b)(4) Failure to meet the required conditions for foreign railroad operations	\$5,500	\$10,000
Subpart B—Occupational Noise Exposure for Railroad Operating Employees		
227.103 Noise monitoring program:		
(a) Failure to develop and/or implement a noise monitoring program	19,500	25,000
(b) Failure to use sampling as required	5,500	10,000
(c) Failure to integrate sound levels and/or make noise measurements as required	5,500	10,000
(d) Failure to repeat noise monitoring where required	5,500	10,000
(e) Failure to consider work environments where hearing protectors may be omitted	5,500	10,000
(f) Failure to provide opportunity to observe monitoring	2,500	5,000
(g) Reporting of monitoring results:		
(1) Failure to notify monitored employee	5,500	10,000
(2) Failure to post results as required	5,500	10,000
227.105 Protection of employees:		
(a) Failure to provide appropriate protection to exposed employee	19,500	25,000
(b) Failure to observe and document sources of noise exposure	5,500	10,000
(c)–(d) Failure to protect employee from impermissible continuous noise	13,000	20,500
227.107 Hearing conservation program:		
(a) Failure to administer an HCP	19,500	25,000
(b) Failure to compute noise exposure as required	9,500	17,000
227.109 Audiometric testing program:		
(a) Failure to establish and/or maintain an audiometric testing program	19,500	25,000
(b) Failure to provide audiometric test at no cost to employee	5,500	10,000
(c) Failure to have qualified person perform audiometric test	5,500	10,000
(d) [Reserved]		
(e) Failure to establish baseline audiogram as required	9,500	17,000
(f) Failure to offer and/or require periodic audiogram as required	5,500	10,000
(g) Failure to evaluate audiogram as required	5,500	10,000
(h) Failure to comply with follow-up procedures as required	5,500	10,000
(i) Failure to use required method for revising baseline audiograms	5,500	10,000
227.111 Audiometric test requirements:		
(a) Failure to conduct test as required	5,500	10,000
(b) Failure to use required equipment	5,500	10,000
(c) Failure to administer test in room that meets requirements	5,500	10,000
(d) Complete failure to calibrate	13,000	20,500
(1) Failure to perform daily calibration as required	2,500	5,000
(2) Failure to perform annual calibration as required	2,500	5,000
(3) Failure to perform exhaustive calibration as required	2,500	5,000
227.115 Hearing protectors (HP):		
(a) Failure to comply with general requirements	9,500	17,000
(b) Failure to make HP available as required	5,500	10,000
(c) Failure to require use of HP at action level	13,000	20,500
(d) Failure to require use of HP at TWA of 90 dB(A)	13,000	20,500
227.117 Hearing protector attenuation:		
(a) Failure to evaluate attenuation as required	2,500	5,000
(b)–(c) Failure to attenuate to required level	2,500	5,000
(d) Failure to reevaluate attenuation	2,500	5,000

APPENDIX G TO PART 227—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
227.119 Training program:		
(a) Failure to institute a training program as required	9,500	17,000
(b) Failure to provide training within required time frame	2,500	5,000
(c) Failure of program and/or training materials to include required information	2,500	5,000
227.121 Recordkeeping:		
(a) General Requirements:		
(1) Failure to make record available as required	2,500	5,000
(3) Failure to transfer or retain records as required	2,500	5,000
(b)–(f) Records:		
(1) Failure to maintain record or failure to maintain record with required information	2,500	5,000
(2) Failure to retain records for required time period	2,500	5,000

¹A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

²The penalty schedule uses section numbers from 49 CFR part 227. If more than one item is listed as a type of violation of a given section, each item is also designated by a “penalty code,” which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 228—[AMENDED]

29. The authority citation for part 228 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21101–21109; Sec. 108, Div. A, Pub. L. 110–432, 122 Stat. 4860–4866; 49 U.S.C. 21301, 21303, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49; and 49 U.S.C. 103.

30. In appendix A to part 228, the ninth paragraph below the heading “General Provisions”, entitled “Penalty” is revised to read as follows:

Appendix A to Part 228—Requirements of the Hours of Service Act: Statement of Agency Policy and Interpretation

* * * * *

General Provisions

* * * * *

Penalty. * * * Effective October 9, 2007, the ordinary maximum penalty of \$11,000 was raised to \$16,000 as required under law. Effective March 2, 2009, the minimum penalty, ordinary maximum penalty and aggravated maximum penalty were raised again. The minimum penalty was increased from \$550 to \$650 pursuant to the law’s requirement. Meanwhile, the ordinary maximum penalty was increased from

\$16,000 to \$25,000 and the aggravated maximum was increased from \$27,000 to \$100,000 in accordance with the authority provided under the Rail Safety Improvement Act of 2008. FRA’s guideline civil penalty amounts for violations of the substantive hours of service statute are \$9,500 for an ordinary violation of the hours of service statute and \$17,000 for a willful violation of the hours of service statute. The Administrator reserves the right to assess a penalty of up to \$100,000 for a violation where circumstances warrant. See 49 CFR part 209, appendix A.

* * * * *

31. Appendix B to part 228 is revised to read as follows:

APPENDIX B TO PART 228—SCHEDULE OF CIVIL PENALTIES ¹

Section ²	Violation	Willful violation
Subpart B—Records and Reporting		
228.9 Railroad records	\$5,500	\$10,000
228.11 Hours of duty records	2,500	5,000
Error on record reflect pattern of inaccurate recordkeeping	13,000	20,500
228.17 Dispatcher’s record	2,500	5,000
228.19 Monthly reports of excess service	9,500	17,000
Subpart D—Electronic Recordkeeping		
228.203 Program components	9,500	17,000
228.205 Access to electronic records	9,500	17,000
228.207 Training	5,500	10,000

¹A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

²The penalty schedule uses section numbers from 49 CFR part 228. If more than one item is listed as a type of violation of a given section, each item is also designated by a “penalty code,” which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 229—[AMENDED]

32. The authority citation for part 229 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20137–20138, 20143, 20701–20703, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49(c), (m).

33. Appendix B to part 229 is revised to read as follows:

APPENDIX B TO PART 229—SCHEDULE OF CIVIL PENALTIES¹

Section ²	Violation	Willful violation
Subpart A—General		
229.7 Prohibited acts: Safety deficiencies not governed by specific regulations: To be assessed on relevant facts	\$2,500–13,000	\$5,000–20,500
229.9 Movement of noncomplying locomotives	(¹)	(¹)
229.11 Locomotive identification	2,500	5,000
229.13 Control of locomotives	9,500	17,000
229.17 Accident reports	15,500	10,000
219.19 Prior waivers	(¹)	(¹)
Subpart B—Inspection and Tests		
229.21 Daily inspection:		
(a)(b):		
(1) Inspection overdue	5,500	10,000
(2) Inspection report not made, improperly executed, or not retained	2,500	5,000
(c) Inspection not performed by a qualified person	2,500	5,000
229.23 Periodic inspection General		
(a)(b):		
(1) Inspection overdue	5,500	10,000
(2) Inspection performed improperly or at a location where the underneath portion cannot be safely inspected	5,500	10,000
(c)(d):		
(1) Form missing	2,500	5,000
(2) Form not properly displayed	2,500	5,000
(3) Form improperly executed	2,500	5,000
(e) Replace Form FRA F 6180–49A by April 2	2,500	5,000
(f) Secondary record of the information reported on Form FRA F 6180.49A	2,500	5,000
229.25:		
(a) through (e)(4) Tests: Every periodic inspection	5,500	10,000
(e)(5) Ineffective maintenance	13,000	20,500
229.27 Annual tests	5,500	10,000
229.29 Biennial tests	5,500	10,000
229.31:		
(a) Biennial hydrostatic tests of main reservoirs	5,500	10,000
(b) Biennial hammer tests of main reservoirs	5,500	10,000
(c) Drilled telltale holes in welded main reservoirs	5,500	10,000
(d) Biennial tests of aluminum main reservoirs	5,500	10,000
229.33 Out-of-use credit	2,500	5,000
Subpart C—Safety Requirements		
General Requirements		
229.41 Protection against personal injury	9,500	17,000
229.43 Exhaust and battery gases	9,500	17,000
229.45 General condition: To be assessed based on relevant facts	2,500–13,000	5,000–20,500
Brake System		
229.46 Brakes: General	9,500	17,000
229.47 Emergency brake valve	9,500	17,000
229.49 Main reservoir system:		
(a)(1) Main reservoir safety valve	9,500	17,000
(2) Pneumatically actuated control reservoir	9,500	17,000
(b)(c) Main reservoir governors	9,500	17,000
229.51 Aluminum main reservoirs	9,500	17,000
229.53 Brake gauges	9,500	17,000
229.55 Piston travel	9,500	17,000
229.57 Foundation brake gear	9,500	17,000
229.59 Leakage	9,500	17,000
Draft System		
229.61 Draft system	5,500	10,000
Suspension System		
229.63 Lateral motion	5,500	10,000
229.64 Plain bearing	5,500	10,000
229.65 Spring rigging	5,500	10,000
229.67 Trucks	9,500	17,000
229.69 Side bearings	9,500	17,000
229.71 Clearance above top of rail	2,500	5,000
229.73 Wheel sets	9,500	17,000
229.75 Wheel and tire defects:		
(a), (d) Slid flat or shelled spot(s):		
(1) One spot ² / ₁ 2" or more but less than 3" in length	9,500	17,000
(2) One spot 3" or more in length	13,000	20,500
(3) Two adjoining spots each of which is 2" or more in length but less than ² / ₁ 2" in length	9,500	17,000

APPENDIX B TO PART 229—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
(4) Two adjoining spots each of which are at least 2" in length, if either spot is $2\frac{1}{2}$ " or more in length	13,000	20,500
(b) Gouge or chip in flange of:		
(1) More than $1\frac{1}{2}$ " but less than $1\frac{5}{8}$ " in length; and more than $\frac{1}{2}$ " but less than $\frac{5}{8}$ " in width	9,500	17,000
(2) $1\frac{5}{8}$ " or more in length and $\frac{5}{8}$ " or more in width	13,000	20,500
(c) Broken rim	19,500	25,000
(e) Seam in tread	9,500	17,000
(f) Flange thickness of:		
(1) $\frac{7}{8}$ " or less but more than $1\frac{3}{16}$ "	9,500	17,000
(2) $1\frac{3}{16}$ " or less	13,000	20,500
(g) Tread worn hollow	9,500	17,000
(h) Flange height of:		
(1) $1\frac{1}{2}$ " or greater but less than $1\frac{5}{8}$ "	9,500	17,000
(2) $1\frac{5}{8}$ " or more	13,000	20,500
(i) Tire thickness	9,500	17,000
(j) Rim thickness:		
(1) Less than 1" in road service and $\frac{3}{4}$ " in yard service	9,500	17,000
(2) $1\frac{5}{16}$ " or less in road service and $1\frac{1}{16}$ " in yard service	13,000	20,500
(k):		
(1) Crack of less than 1"	9,500	17,000
(2) Crack of 1" or more	13,000	20,500
(3) Break	19,500	25,000
(l) Loose wheel or tire	19,500	25,000
(m) Welded wheel or tire	9,500	17,000
Electrical System		
229.77 Current collectors	5,500	10,000
229.79 Third rail shoes and beams	5,500	10,000
229.81 Emergency pole; shoe insulation	9,500	17,000
229.83 Insulation or grounding	13,000	20,500
229.85 Door and cover plates marked "Danger"	5,500	10,000
229.87 Hand operated switches	5,500	10,000
229.89 Jumpers; cable connections:		
(a) Jumpers and cable connections; locked and guarded	9,500	17,000
(b) Condition of jumpers and cable connections	9,500	17,000
229.91 Motors and generators	9,500	17,000
Internal Combustion Equipment		
229.93 Safety cut-off device	9,500	17,000
229.95 Venting	9,500	17,000
229.97 Grounding fuel tanks	9,500	17,000
229.99 Safety hangers	9,500	17,000
229.101 Engines:		
(a) Temperature and pressure alarms, controls, and switches	5,500	10,000
(b) Warning notice	9,500	17,000
(c) Wheel slip/slide protection	5,500	10,000
Steam Generators		
229.103 Safe working pressure; factor of safety	9,500	17,000
229.105 Steam generator number	2,500	5,000
229.107 Pressure gauge	9,500	17,000
229.109 Safety valves	9,500	17,000
229.111 Water-flow indicator	9,500	17,000
229.113 Warning notice	9,500	17,000
Cabs and Cab Equipment		
229.115 Slip/slide alarms	9,500	17,000
229.117 Speed indicators	9,500	17,000
229.119 Cabs, floors, and passageways:		
(a)(1) Cab set not securely mounted or braced	5,500	10,000
(2) Insecure or improper latching device	5,500	10,000
(b) Cab windows of lead locomotive	5,500	10,000
(c) Floors, passageways, and compartments	5,500	10,000
(d) Ventilation and heating arrangement	9,500	17,000
(e) Continuous barrier	9,500	17,000
(f) Containers for fuses and torpedoes	9,500	17,000
229.121 Locomotive cab noise:		
(a) Performance Standards		
(1) Failure to meet sound level	13,000	20,500
(2) Improper maintenance alterations	5,500	10,000
(3) Failure to comply with static test protocols	5,500	10,000
(b) Maintenance of Locomotives:		
(1) Failure to maintain excessive noise report record or respond to report as required	5,500	10,000

APPENDIX B TO PART 229—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
(3) Failure to make good faith effort as required	5,500	10,000
(4) Failure to maintain record as required	2,500	5,000
229.123 Pilots, snowplows, end plates	5,500	10,000
229.125:		
(a) Headlights	9,500	17,000
(d) Auxiliary lights	9,500	17,000
229.127 Cab lights	5,500	10,000
229.129 Locomotive horn:		
(a) Prescribed sound levels	9,500	17,000
Arrangement of horn	9,500	17,000
(b) Failure to perform sound level test	9,500	17,000
(c) Sound level test improperly performed	9,500	17,000
Record of sound level test improperly executed, or not retained	5,500	10,000
229.131 Sanders	2,500	5,000
229.135 Event Recorders:		
(a) Lead locomotive without in-service event recorder	9,500	17,000
(b) Failure to meet equipment requirements	9,500	17,000
(c) Unauthorized removal or failure to remove from service	9,500	17,000
(d) Improper response to out of service event recorder	9,500	17,000
(e) Failure to preserve data or unauthorized extraction of data	9,500	17,000
(g) Tampering with device or data	9,500	17,000
229.137 Sanitation, general:		
(a) Sanitation compartment in lead unit, complete failure to provide required items	9,500	17,000
(1) Ventilation	5,500	10,000
(2) Door missing	5,500	10,000
(2)(i) Door doesn't close	5,500	10,000
(2)(ii) No modesty lock	2,500	5,000
(3) Not equipped with toilet in lead	9,500	17,000
(4) Not equipped with washing system	5,500	10,000
(5) Lack of paper	5,500	10,000
(6) Lack of trash receptacle	5,500	10,000
(b) Exceptions:		
(1)(i) Commuter service, failure to meet conditions of exception	2,500	5,000
(1)(ii) Switching service, failure to meet conditions of exception	2,500	5,000
(1)(iii) Transfer service, failure to meet conditions of exception	2,500	5,000
(1)(iv) Class III, failure to meet conditions of exception	2,500	5,000
(1)(v) Tourist, failure to meet conditions of exception	2,500	5,000
(1)(vi) Control cab locomotive, failure to meet conditions of exception	2,500	5,000
(2) Noncompliant toilet	5,500	10,000
(c) Defective/unsanitary toilet in lead unit	5,500	10,000
(1)–(5) Failure to meet conditions of exception	5,500	10,000
(d) Defective/unsanitary unit; failure to meet conditions for trailing position	5,500	10,000
(e) Defective/sanitary unit; failure to meet conditions for switching/transfer service	5,500	10,000
(f) Paper, washing, trash holder; failure to equip prior to departure	5,500	10,000
(g) Inadequate ventilation; failure to repair or move prior to departure	5,500	10,000
(h) Door closure/modesty lock; failure to repair or move	2,500	5,000
(i) Failure to retain/maintain of equipped units	5,500	10,000
(j) Failure to equip new units/in-cab facility	5,500	10,000
(k) Failure to provide potable water	5,500	10,000
229.139 Servicing requirements:		
(a) Lead occupied unit not sanitary	5,500	10,000
(b) Components not present/operating	2,500	5,000
(c) Occupied unit in switching, transfer service, in trailing position not sanitary	2,500	5,000
(d) Defective unit used more than ten days	5,500	10,000
(e) Failure to repair defective modesty lock	2,500	5,000
Subpart D—Locomotive Crashworthiness Design Requirements		
229.141 Body structure, MU locomotives	9,500	17,000
229.205 General requirements:		
(a)(1) Wide-nose locomotive not designed in compliance with AAR S-580-2005	19,500	25,000
(2) Wide-nose locomotive not designed in compliance with new approved design standard	19,500	25,000
(3) Wide-nose locomotive not designed in compliance with alternate approved design standard ..	19,500	25,000
(b) Monocoque or semi-monocoque locomotive not in compliance with design requirements	19,500	25,000
(c) Narrow-nose not in compliance with design requirements	19,500	25,000
229.206 Design requirements:		
Locomotive fails to meet—		
(1) Emergency egress requirements	19,500	25,000
(2) Emergency interior lighting requirements	19,500	25,000
(3) Interior configuration requirements	19,500	25,000
229.213 Locomotive manufacturing information:		
(a) Failure to retain required information	9,500	17,000
(b) Failure to produce required information	9,500	17,000

APPENDIX B TO PART 229—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
229.215 Retention and inspection of designs:		
(a) Failure to retain required design records	9,500	17,000
(b) Failure to retain required repair or modification records	9,500	17,000
(c) Failure to make records available when requested	9,500	17,000
229.217 Fuel tank:		
(a) External fuel tank	19,500	25,000
(b) Internal fuel tank	19,500	25,000

¹ A penalty may be assessed against an individual only for a willful violation. Generally, when two or more violations of these regulations are discovered with respect to a single locomotive that is used by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of \$25,000 per day. However, a failure to perform, with respect to a particular locomotive, any of the inspections and tests required under subpart B of this part will be treated as a violation separate and distinct from, and in addition to, any substantive violative conditions found on that locomotive. Moreover, the Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A. Failure to observe any condition for movement set forth in § 229.9 will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the locomotive at the time of movement. Failure to comply with § 229.19 will result in the lapse of any affected waiver.

² The penalty schedule uses section numbers from 49 CFR part 229. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 230—[AMENDED]

Authority: 49 U.S.C. 20103, 20107, 20702;
28 U.S.C. 2461, note; and 49 CFR 1.49.

35. Appendix D to part 230 is revised
to read as follows:

34. The authority citation for part 230
continues to read as follows:

APPENDIX D TO PART 230—SCHEDULE OF CIVIL PENALTIES

Section ²	Violation	Willful violation
Subpart A—General		
General Inspection Requirements		
230.11 Repair of non-complying conditions:		
(a) Failure to repair noncomplying steam locomotive prior to use in service	\$5,500	\$10,000
(b) Failure of owner and/or operator to approve repairs made prior to use of steam locomotive	5,500	10,000
230.12 Movement of noncomplying steam locomotive	(1)	(1)
230.13 Daily inspection:		
(a)(b):		
(1) Inspection overdue	9,500	17,000
(2) Inspection not performed by qualified person	5,500	10,000
(c) Inspection report not made, improperly executed or not retained	5,500	10,000
230.14 Thirty-one service day inspection:		
(a):		
(1) Inspection overdue	9,500	17,000
(2) Inspection not performed by qualified person	5,500	10,000
(b) Failure to notify FRA	5,500	10,000
(c) Inspection report not made, improperly executed, not properly filed	5,500	10,000
230.15 Ninety-two service day inspection:		
(a):		
(1) Inspection overdue	9,500	17,000
(2) Inspection not performed by qualified person	5,500	10,000
(b) Inspection report not made, improperly executed, not properly filed	5,500	10,000
230.16 Annual inspection:		
(a):		
(1) Inspection overdue	9,500	17,000
(2) Inspection not performed by qualified person	5,500	10,000
(b) Failure to notify FRA	5,500	10,000
(c) Inspection report not made, improperly executed, not properly filed	5,500	10,000
230.17 One thousand four hundred seventy-two service day inspection:		
(a):		
(1) Inspection overdue	9,500	17,000
(2) Inspection not performed by qualified person	5,500	10,000
(b) Inspection report not made, improperly executed, not properly maintained, not properly filed	5,500	10,000
Recordkeeping Requirements		
230.18 Service days:		
(a) Service day record not available for inspection	5,500	10,000
(b) Failure to file service day report with FRA Regional Administrator	5,500	10,000
(c) Failure to complete all 1,472 service day inspection items prior to returning retired steam locomotive to service	9,500	17,000

APPENDIX D TO PART 230—SCHEDULE OF CIVIL PENALTIES—Continued

Section ²	Violation	Willful violation
230.19 Posting of forms:		
(a) FRA Form No. 1:		
(1) FRA Form No. 1 not properly filled out	5,500	10,000
(2) FRA Form No. 1 not properly displayed	5,500	10,000
(b) FRA Form No. 3:		
(1) FRA Form No. 3 not properly filled out	5,500	10,000
(2) FRA Form No. 3 not properly displayed	5,500	10,000
230.20 Alteration and repair reports:		
(a) Alterations:		
(1) Failure to properly file FRA Form No. 19 with FRA Regional Administrator	5,500	10,000
(2) FRA Form No. 19 not properly filled out	5,500	10,000
(3) FRA Form No. 19 not properly maintained	5,500	10,000
(b) Repairs to unstayed portions of the boiler:		
(1) FRA Form No. 19 not properly filled out	5,500	10,000
(2) FRA Form No. 19 not properly maintained	5,500	10,000
(c) Repairs to stayed portions of the boiler:		
(1) FRA Form No. 19 not properly filled out	5,500	10,000
(2) FRA Form No. 19 not properly maintained	5,500	10,000
230.21 Failure to properly document steam locomotive number change	5,500	10,000
230.22 Failure to properly report accident resulting from failure of steam locomotive boiler or part or appurtenance thereof	9,500	17,000
Subpart B—Boilers and Appurtenances		
230.23 Responsibility for general construction and safe working pressure:		
(a) Failure to properly establish safe working pressure for steam locomotive boiler	19,500	25,000
(b) Placing steam locomotive in service before safe working pressure for boiler has been established	19,500	25,000
Allowable Stress		
230.24 Maximum allowable stress values on boiler components:		
(a) Use of materials not of sufficient tensile strength	5,500	10,000
(b) Use of a safety factor value of less than four when using the code of original construction in boiler calculations	13,000	20,500
230.25 Maximum allowable stresses on stays and braces:		
(a) Exceeding allowable stress values on fire box and/or combustion chamber	5,500	10,000
(b) Exceeding allowable stress values on round, rectangular or gusset braces	5,500	10,000
Inspection and Repair		
230.29 Inspection and repair:		
(a):		
(1) Failure of owner and/or operator to inspect and repair any steam locomotive boiler and/or appurtenance under control thereof	9,500	17,000
(2) Failure to remove steam locomotive from service when considered necessary to do so	13,000	20,500
(b):		
(1) Failure of perform repairs in accordance with accepted industry standards	13,000	20,500
(2) Owner and/or operator returning steam locomotive boiler and/or appurtenances to service before they are in good condition and safe and suitable for service	13,000	20,500
230.30 Lap-joint seam boilers, failure to properly inspect	13,000	20,500
230.31 Flues to be removed:		
(a):		
(1) Failure to remove all flues when inspecting boiler	9,500	17,000
(2) Failure to enter boiler and clean and inspect	9,500	17,000
(b) Failure to remove superheater flues when deemed necessary to do so	5,500	10,000
230.32 Time and method of inspection:		
(a) Failure to perform 1,472 service day inspection when required to do so	9,500	17,000
(b) Failure to properly inspect boiler during 1,472 service day inspection	9,500	17,000
230.33 Welded repairs and alterations:		
(a) Failure to obtain permission before welding on unstayed portions of boiler containing alloy or carbon steel with carbon content over .25 percent carbon	9,500	17,000
(b) Failure to perform welding on unstayed portions of boiler containing carbon steel not exceeding .25 percent carbon in accordance with a nationally accepted standard for boiler repairs	9,500	17,000
(c):		
(1) Failure to submit written request for approval before performing weld buildup on wasted areas of unstayed boiler surfaces that exceed 100 square inches or the smaller of 25 percent of minimum required wall thickness or 1/2 inch	9,500	17,000
(2) Repairing wasted sheets	9,500	17,000
230.34 Riveted repairs and alterations:		
(a) Failure to obtain approval before making riveted alterations on unstayed portions of the boiler; failure to do riveting in accordance with established railroad practices or accepted national standards for boiler repairs	9,500	17,000
(b) Failure to perform riveted repairs on unstayed boiler portions in accordance with established railroad practices or accepted national standards for boiler repairs	9,500	17,000

APPENDIX D TO PART 230—SCHEDULE OF CIVIL PENALTIES—Continued

Section ²	Violation	Willful violation
(c) Failure to perform riveted repairs on stayed boiler portions in accordance with established railroad practices or accepted national standards for boiler repairs	5,500	10,000
Pressure Testing of Boilers		
230.35 Failure to raise temperature of steam locomotive boiler to 70 degrees F. before applying hydrostatic pressure to the boiler	5,500	10,000
230.36 Hydrostatic testing of boilers:		
(a) Failure to perform hydrostatic test of boiler as required	9,500	17,000
(b) Failure to properly perform hydrostatic test	9,500	17,000
(c) Failure to properly inspect boiler after conducting hydrostatic test above MAWP	9,500	17,000
230.37 Failure to perform proper steam test or inspection of boiler after completion of repair or alteration to boiler	5,500	10,000
Staybolts		
230.38 Telltale holes:		
(a) Failure to have telltale holes as required in staybolts	5,500	10,000
(b) Failure to have proper telltale holes in reduced body staybolts	5,500	10,000
(c) Failure to keep telltale holes when so required	5,500	10,000
230.39 Broken staybolts:		
(a) Boiler in service with excess number of broken staybolts	9,500	17,000
(b) Failure to replace staybolts when required to do so; to properly replace staybolts when so required; to inspect adjacent staybolts when replacing broken staybolts	9,500	17,000
(c) Failure to count leaking, plugged, or missing telltale holes as broken staybolts	9,500	17,000
(d) Closing telltale holes by prohibited means	9,500	17,000
230.40 Time and method of staybolt testing:		
(a) Failure to hammer test staybolts when so required	5,500	10,000
(b) Failure to properly hammer test staybolts	5,500	10,000
230.41 Flexible staybolts with caps:		
(a) Failure to inspect flexible staybolts as required	5,500	10,000
(b) Failure to replace broken flexible staybolts; failure to close inner ends of telltale holes as required	5,500	10,000
(c) Failure to report removal of flexible staybolts caps and other tests on FRA Form No. 3 when so required	5,500	10,000
(d) Failure to remove staybolt caps or otherwise test when FRA inspector or steam locomotive owner and/or operator consider it necessary to do so	5,500	10,000
Steam Gauges		
230.42 Failure to have accurate boiler steam gauge where engine crew can conveniently read	13,000	20,500
230.43 Failure to have gauge siphon of proper capacity on steam gauge supply pipe; failure to properly clean, maintain the steam gauge supply pipe	5,500	10,000
230.44 Failure to test steam gauge when so required	5,500	10,000
230.45 Failure to properly test and/or set steam gauge	5,500	10,000
230.46 Failure to attach to boiler backhead metal badge plate showing allowable steam pressure	5,500	10,000
230.47 Boiler Number:		
(a) (b) (c) Failure to stamp builder's number on boiler when number is known	5,500	10,000
Safety Relief Valves		
230.48 Number and capacity of safety relief valves:		
(a) Failure to equip steam locomotive boiler with proper safety relief valves	13,000	20,500
(b) Failure to provide additional safety relief valve capacity when so required	13,000	20,500
230.49 Setting of safety relief valves:		
(a) Safety relief valve(s) set and/or adjusted by person not competent to do so	13,000	20,500
(b) Safety relief valve(s) not set to open at prescribed pressure(s)	13,000	20,500
(c) Safety relief valve(s) not properly set	13,000	20,500
(d) Set pressure of lowest safety relief valve not properly indicated	5,500	10,000
230.50 Failure to test and adjust safety relief valves when required to do so	9,500	17,000
Water Glasses and Gauge Cocks		
230.51 Failure to equip steam locomotive boiler with at least two properly installed water glasses	5,500	10,000
230.52 Failure to properly equip water glasses	13,000	20,500
230.53 Failure to properly clean water glass valves and/or gauge cocks when required to do so	5,500	10,000
230.54 Testing and maintenance:		
(a) Failure to properly test water glasses and/or gauge cocks	5,500	10,000
(b) Failure to properly maintain gauge cocks, water column drain valves, and/or water glass valves	9,500	17,000
230.55 Tubular type water and lubricator glasses and shields:		
(a) Failure to renew tubular type water glasses as required	5,500	10,000
(b) Failure to properly shield tubular water glasses and/or lubricator glasses	5,500	10,000
(c) Failure to properly locate and/or maintain water glasses and/or water glass shields	5,500	10,000
230.56 Failure to equip water glass with suitable lamp	5,500	10,000
Injectors, Feedwater Pumps, and Flue Plugs		
230.57 Injectors and feedwater pumps:		
(a) Failure to equip steam locomotive with proper means for delivering water to the boiler	13,000	20,500

APPENDIX D TO PART 230—SCHEDULE OF CIVIL PENALTIES—Continued

Section ²	Violation	Willful violation
(b) Failure to properly test and/or maintain injectors, feedwater pumps, boiler checks, delivery pipes, feed water pipes, tank hose, tank valves	13,000	20,500
(c) Failure to properly brace injectors, feedwater pumps, and/or associated piping	5,500	10,000
230.58 Flue plugs:		
(a) Plugging flue plugs when not otherwise permitted	5,500	10,000
(b) Improperly plugging flue plugs, when otherwise permitted	5,500	10,000
Fusible Plugs		
230.59 Failure to remove and properly clean fusible boiler plugs when required to do so; failure to properly note removal	9,500	17,000
Washing Boilers		
230.60 Time of washing:		
(a) Failure to thoroughly wash boiler when required to do so	5,500	10,000
(b) Failure to remove washout plugs, arch tube plugs, thermic siphon plugs, circulator plugs, water bar plugs when washing locomotive boiler	9,500	17,000
(c) Failure to examine and/or properly maintain washout plugs washout plug sleeves, threaded openings	9,500	17,000
(d) Failure to clean fusible plugs when required to do so	9,500	17,000
230.61 Arch tubes, water bar tubes, circulators and thermic siphons:		
(a) Failure to clean, wash, inspect arch tubes, water bar tubes, circulators and thermic siphons as required	5,500	10,000
(b) Failure to renew arch tubes, water bar tubes; failure to repair or renew circulators, thermic siphons when required	9,500	17,000
(c) Failure to properly inspect and/or replace as necessary arch tubes, water bar tubes, circulators ..	9,500	17,000
Steam Pipes		
230.62 Failure to properly inspect and/or repair or replace as necessary dry pipes subject to pressure ...	13,000	20,500
230.63 Failure to properly inspect smoke box, steam pipes, pressure parts when required to do so	9,500	17,000
Steam Leaks		
230.64 Failure to remove from service steam locomotive boiler leaking under lagging from condition which may reduce safety and/or repair the boiler before returning to service	9,500	17,000
230.65 Failure to keep steam locomotive boiler, piping, appurtenances in repair so steam does not obscure vision	5,500	10,000
Subpart C—Steam Locomotives and Tenders		
230.66 Failure to properly oversee general design, construction, maintenance of steam locomotive(s) and tender(s)	5,500	10,000
230.67 Failure to ensure all steam locomotives and tenders are properly inspected and repaired and/or all defects are properly repaired and steam locomotive and/or tender are in good condition, safe and suitable for service before being returned to service	13,000	20,500
Speed Indicators		
230.68 Failure to equip steam locomotive that operates in excess of 20 miles per hour over the general system with speed indicator maintained to ensure accurate functioning	5,500	10,000
Ash Pans		
230.69 Failure to equip steam locomotive with properly supported ash pan with operating mechanism that may be safely operated and securely closed	5,500	10,000
Brake and Signal Equipment		
230.70 Safe condition:		
(a) Failure to perform proper pre-departure inspection when so required	5,500	10,000
(b) Failure to properly equip steam locomotive with brake pipe valve clearly identified as “Emergency Brake Valve”	5,500	10,000
230.71 Orifice testing of air compressors:		
(a)(b):		
Failure to properly test and/or maintain air compressor(s) capacity	5,500	10,000
230.72 Testing main reservoirs:		
(a) Failure to properly test main reservoir(s) when required	5,500	10,000
(b) Impermissibly or improperly drilling main reservoir	5,500	10,000
(c) Impermissibly using NDE method to measure wall thickness of main reservoir	5,500	10,000
(d) Failure to use appropriate method of NDE testing of wall thickness of welded or riveted longitudinal lap seam main reservoir(s); failure to withdraw main reservoir(s) from service when testing reveals insufficient wall thickness	9,500	17,000
230.73 Air gauges:		
(a) Failure to equip steam locomotive with properly located air gauge(s) that are no more than three psi in error	5,500	10,000
(b) Failure to test air gauge(s) when so required	5,500	10,000
(c) Failure to properly test air gauge(s)	5,500	10,000
230.74 Failure to properly clean and/or test all air brake valves, related dirt collectors, filters when required to do so	5,500	10,000

APPENDIX D TO PART 230—SCHEDULE OF CIVIL PENALTIES—Continued

Section ²	Violation	Willful violation
230.75 Failure to properly stencil or display date of testing and cleaning and initials of shop or station performing work	5,500	10,000
230.76 Piston travel:		
(a) Insufficient minimum piston travel	5,500	10,000
(b) Excessive piston travel when steam locomotive is stationary	5,500	10,000
230.77 Foundation brake gear:		
(a) Failure to properly maintain foundation brake gear	5,500	10,000
(b) Foundation brake gear less than 2.5 inches above rail	5,500	10,000
230.78 Leakage:		
(a):		
(1) Failure to test for leakage from main reservoir or related piping as required	5,500	10,000
(2) Failure to repair excessive leakage from main reservoir or related piping leakage	5,500	10,000
(b) Failure to test for brake cylinder as required	5,500	10,000
(c):		
(1) Failure to test for leakage from steam locomotive brake pipe as required	5,500	10,000
(2) Failure to repair excessive brake pipe leakage	5,500	10,000
230.79 Train signal system:		
(1) Failure to test the train signal system or other form of on-board communication as required	5,500	10,000
(2) Failure to repair train signal system or other on-board communication when not safe or suitable for service	5,500	10,000
Cabs, Warning Signals, Sanders and Lights		
230.80 Cabs:		
(a) Steam locomotive cab not safe and suitable for service	5,500	10,000
(b) Steam pipes: Construction, attachment	5,500	10,000
(c) Oil-burning steam locomotive, cab-enclosed	5,500	10,000
230.81 Cab aprons:		
(a) Cab apron, general provisions	5,500	10,000
(b) Cab apron, insufficient width	5,500	10,000
230.82 Fire doors:		
(a) Safe and suitable for service, general provisions	5,500	10,000
(b) Construction and maintenance of mechanically operated fire doors	5,500	10,000
(c) Construction and maintenance of hand-operated fire doors	5,500	10,000
230.83 Cylinder cocks:		
(1) Failure to properly equip with cylinder cocks	5,500	10,000
(2) Failure to properly maintain cylinder cocks	5,500	10,000
230.84 Sanders:		
(1) Inoperable sanders	5,500	10,000
(2) Failure to test sanders	5,500	10,000
230.85 Audible warning devices:		
(a) General provisions	5,500	10,000
(b) Sound level measurements, Failure to properly take	5,500	10,000
230.86 Required illumination:		
(a) General provisions	5,500	10,000
(b) Dimming device, failure to properly equip with	5,500	10,000
(c) Multiple locomotives, failure of lead locomotive to display headlight	5,500	10,000
230.87 Cab lights: Failure to properly equip with	5,500	10,000
Throttles and Reversing Gear		
230.88 Throttles: Failure to properly maintain, equip	5,500	10,000
230.89 Reverse gear:		
(a) General provisions	5,500	10,000
(b) Air-operated power reverse gear	5,500	10,000
(c) Power reverse gear reservoirs	5,500	10,000
Draw Gear and Draft Systems		
230.90 Draw gear and draft systems:		
(a) Maintenance and testing	5,500	10,000
(b) Safety bars and chains, general	5,500	10,000
(c) Safety bars and chains, minimum length	5,500	10,000
(d) Lost motion between steam locomotive and tender	5,500	10,000
(e) Spring buffers: Improper application, compression	5,500	10,000
230.91 Chafing irons: Improper application, maintenance	5,500	10,000
230.92 Draw gear, draft systems: Improperly maintained, fastened	5,500	10,000
Driving Gear		
230.93 Pistons and piston rods:		
(a) Failure to properly inspect, maintain, renew	5,500	10,000
(b) Fasteners: Failure to keep tight, properly equip	5,500	10,000
230.94 Crossheads: Improperly maintained, excess clearance	5,500	10,000
230.95 Guides: Failure to securely fasten, properly maintain	5,500	10,000
230.96 Main, side, valve motion rods:	5,500	10,000

APPENDIX D TO PART 230—SCHEDULE OF CIVIL PENALTIES—Continued

Section ²	Violation	Willful violation
(a) General	5,500	10,000
(b) Repairs	5,500	10,000
(1) Failure to make in accordance with accepted national standard	5,500	10,000
(2) Failure to submit written request for approval prior to welding	5,500	10,000
(c) Bearings and bushings	5,500	10,000
(d) Rod side motion: Excessive motion	5,500	10,000
(e) Oil, grease cups: Failure to securely fasten, properly equip	5,500	10,000
(f) Main rod bearings:		
(1) Excessive bore	5,500	10,000
(2) Excessive lost motion	5,500	10,000
(g) Side rod bearings, excessive bore	5,500	10,000
230.97 Crank pins:		
(a) General provisions	5,500	10,000
(b) Maintenance: Failure to maintain in safe, suitable condition	5,500	10,000
Running Gear		
230.98 Driving, trailing, engine truck axles:		
(a) Condemning defects	5,500	10,000
(b) Journal diameter: Failure to stamp on end of axle	2,500	5,000
230.99 Tender truck axle: Insufficient diameter	5,500	10,000
230.100 Defects in tender truck axles and journals:		
(a) Tender truck axle condemning defects	5,500	10,000
(b) Tender truck journal condemning defects	5,500	10,000
230.101 Steam locomotive driving journal boxes:		
(a) Driving journal boxes: Failure to properly maintain	5,500	10,000
(b) Broken bearings: Failure to renew	5,500	10,000
(c) Loose bearings: Failure to repair or renew	5,500	10,000
230.102 Tender plain bearing journal boxes: Failure to repair	5,500	10,000
230.103 Tender roller bearing journal boxes: Failure to properly maintain	5,500	10,000
230.104 Driving box shoes and wedges: Failure to properly maintain	5,500	10,000
230.105 Lateral motion:		
(a) Condemning limits: Total lateral motion in excess of	5,500	10,000
(b) Limits exceeded, failure to demonstrate conditions require additional lateral motion	5,500	10,000
(c) Interferes with other parts of steam locomotive	5,500	10,000
Trucks, Frames and Equalizing System		
230.106 Steam locomotive frame:		
(a) Failure to properly inspect and/or maintain	5,500	10,000
(b) Broken frames, not properly patched or secured	13,000	20,500
230.107 Tender frame and body:		
(a) Failure to properly maintain	5,500	10,000
(b) Height difference between tender deck and steam locomotive cab floor or deck excessive	5,500	10,000
(c) Gangway minimum width excessive	5,500	10,000
(d) Tender frame condemning defects	9,500	17,000
230.108 Steam locomotive leading and trailing trucks:		
(a) Failure to properly maintain	5,500	10,000
(b) Safety chain, suitable safety chain not provided	5,500	10,000
(c) Insufficient truck clearance	5,500	10,000
230.109 Tender trucks:		
(a):		
(1) Tender truck frames	5,500	10,000
(2) Tender truck center plate	5,500	10,000
(b) Tender truck bolsters: Failure to properly maintain	9,500	17,000
(c) Condemning defects, springs and/or spring rigging	5,500	10,000
(d) Truck securing arrangement: Not properly maintained	5,500	10,000
(e) Side bearings, truck centering devices	5,500	10,000
(f) Friction side bearings: Run in contact	5,500	10,000
(g):		
(1) Side bearings, failure to equip rear trucks with	5,500	10,000
(2) Insufficient clearance of	5,500	10,000
230.110 Pilots:		
(a) General provisions	5,500	10,000
(b) Clearance, insufficient or excessive	5,500	10,000
230.111 Spring rigging:		
(a) Arrangement of springs and equalizers	5,500	10,000
(b) Spring or spring rigging condemning defects	5,500	10,000
Wheels and Tires		
230.112 Wheels and tires:		
(a) Improperly mounted, excess variance in axle diameter	9,500	17,000
(b) Out of gage	5,500	10,000
(c) Flange distance variance, excessive	5,500	10,000

APPENDIX D TO PART 230—SCHEDULE OF CIVIL PENALTIES—Continued

Section ²	Violation	Willful violation
(d) Tire thickness, insufficient	5,500	10,000
(e) Tire width, insufficient	5,500	10,000
230.113 Wheels and tire defects:		
(1) Failure to repair	5,500	10,000
(2) Welding on, except as otherwise provided for	9,500	17,000
(a) Cracks or breaks in	5,500	10,000
(b) Flat spots	5,500	10,000
(c) Chipped flange	5,500	10,000
(d) Broken rim	5,500	10,000
(e) Shelled-out spots	5,500	10,000
(f) Seams	5,500	10,000
(g) Worn flanges, excessive wear	5,500	10,000
(h) Worn treads, excessive wear	5,500	10,000
(i) Flange height, insufficient or excessive	5,500	10,000
(j) Rim thickness, insufficient	5,500	10,000
(k) Wheel diameter, excessive variance	5,500	10,000
230.114 Wheel centers:		
(a) Filling blocks and shims	5,500	10,000
(b) Wheel center condemning limits, failure to repair	5,500	10,000
(c) Wheel center repairs	5,500	10,000
(d) Counterbalance maintenance	5,500	10,000
Steam Locomotive Tanks		
230.115 Feed water tanks:		
(a) General provisions	5,500	10,000
(b) Inspection frequency, failure to inspect as required	5,500	10,000
(c) Top of tender: Improperly maintained and/or equipped	5,500	10,000
230.116 Oil tanks:		
(1) Failure to properly maintain	13,000	20,500
(2) Failure to equip with complying safety cut-off device	19,500	25,000

¹A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A. Failure to observe any condition for movement set forth in §230.12 will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the locomotive at the time of movement. Failure to comply with §230.12 will result in the lapse of any affected waiver. Generally, when two or more violations of these regulations are discovered with respect to a single locomotive that is used by a railroad, the appropriate penalties set forth are aggregated up to a maximum of \$25,000 per day. However, a failure to perform, with respect to a particular locomotive, any of the inspections and tests required under this part, will be treated as a violation separate and distinct from, and in addition to, any substantive violative conditions found on that locomotive.

²The penalty schedule uses section numbers from 49 CFR part 230. If more than one item is listed as a type of violation of a given section, each item is also designated by a “penalty code,” which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 231—[AMENDED]

Authority: 49 U.S.C. 20103, 20107, 20702; 28 U.S.C. 2461, note; and 49 CFR 1.49.

37. Appendix A to part 231 is revised to read as follows:

36. The authority citation for part 231 continues to read as follows:

APPENDIX A TO PART 231—SCHEDULE OF CIVIL PENALTIES¹

Section ²	Violation	Willful violation
110.A1 Hand brake or hand brake part missing	\$13,000	\$20,500
110.A2 Hand brake or hand brake part broken	13,000	20,500
110.A3 Hand brake or hand brake part loose or worn	9,500	17,000
110.B1 Hand brake inoperative	13,000	20,500
110.B2 Hand brake inefficient	9,500	17,000
110.B3 Hand brake improperly applied	9,500	17,000
110.B4 Hand brake incorrectly located	5,500	10,000
110.B5 Hand brake shaft welded or wrong dimension	5,500	10,000
110.B6 Hand brake shaft not retained in operating position	5,500	10,000
110.B8 Hand brake or hand brake parts wrong design	5,500	10,000
114.B2 Hand brake wheel or lever has insufficient clearance around rim or handle	5,500	10,000
114.B3 Hand brake wheel/lever clearance insufficient to vertical plane through inside face of knuckle	5,500	10,000
120.A1 Brake step missing except by design	13,000	20,500
120.A2 Brake step or brace broken or decayed	13,000	20,500
120.A3 Brake step or brace loose	9,500	17,000
120.B1 Brake step or brace bent	9,500	17,000

APPENDIX A TO PART 231—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation	
120.B2	Brake step or brace wrong dimensions	5,500	10,000
120.C1	Brake step improperly applied	5,500	10,000
120.C2	Brake step improperly located	5,500	10,000
120.C3	Brake step with less than 4" clearance to vertical plane through inside face of knuckle	5,500	10,000
120.C4	Brake step obstructed or otherwise unsafe	9,500	17,000
124.A1	Running board missing or part missing except by design	13,000	20,500
124.A2	Running board broken or decayed	13,000	20,500
124.A3	Running board loose presents a tripping hazard or other unsafe condition	9,500	17,000
124.A4	Running board wrong material	5,500	10,000
124.B1	Running board bent to the extent that it is unsafe	9,500	17,000
124.B2	Running board wrong dimensions	5,500	10,000
124.B3	Running board wrong location	5,500	10,000
124.C1	Running board improperly applied	5,500	10,000
124.C2	Running board obstructed	9,500	17,000
126.A1	End platform missing or part except by design	13,000	20,500
126.A2	End platform broken or decayed	13,000	20,500
126.A3	End platform loose	9,500	17,000
126.B1	End platform or brace bent	5,500	10,000
126.B2	End platform wrong dimensions	5,500	10,000
126.C1	End platform improperly applied	5,500	10,000
126.C2	End platform with less than required clearance to vertical plane through inside knuckle	5,500	10,000
126.C3	End platform improperly located	5,500	10,000
126.C4	End platform obstructed	9,500	17,000
128.A1	Platform or switching step missing	13,000	20,500
128.A2	Platform or switching step broken or decayed	13,000	20,500
128.A3	Platform or switching step loose	9,500	17,000
128.B1	Platform or switching step bent	9,500	17,000
128.B2	Platform or switching step does not meet the required location or dimensions	5,500	10,000
128.C1	Platform or switching step improperly applied or repaired	9,500	17,000
128.C2	Platform or switching step obstructed	9,500	17,000
128.D1	Switching step back stop or kick plate missing	5,500	10,000
128.D2	Switching step not illuminated when required	5,500	10,000
128.D3	Non-illuminated step not painted contrasting color	5,500	10,000
130.A1	Sill step or additional tread, missing	13,000	20,500
130.A2	Sill step or additional tread, broken	13,000	20,500
130.A3	Sill step or additional tread, loose	9,500	17,000
130.B1	Sill step or additional tread, bent	9,500	17,000
130.B2	Sill step or additional tread, having wrong dimensions or improperly located	5,500	10,000
130.B3	Sill step improperly applied	5,500	10,000
132.A1	Side door step missing step	13,000	20,500
132.A2	Side door step broken	13,000	20,500
132.A3	Side door step loose	9,500	17,000
132.B1	Side door step bent	9,500	17,000
132.B2	Side door step having wrong dimensions	5,500	10,000
134.A1	Ladder missing	13,000	20,500
134.A2	Ladder broken	13,000	20,500
134.A3	Ladder loose	9,500	17,000
134.B1	Ladder bent	9,500	17,000
134.B2	Ladder having wrong dimensions	5,500	10,000
134.C1	Ladder improperly applied	5,500	10,000
134.C2	Ladder having insufficient clearance or improperly located	5,500	10,000
134.C3	Ladder wrong design	5,500	10,000
134.C4	Ladder wrong material	5,500	10,000
134.D1	End clearance insufficient	5,500	10,000
136.A1	Ladder tread or handholds missing	13,000	20,500
136.A2	Ladder tread or handhold broken	13,000	20,500
136.A3	Ladder tread or handhold loose except by design	9,500	17,000
136.B1	Ladder tread or handhold bent to the extent that it may be unsafe	9,500	17,000
136.B2	Ladder tread or handhold wrong dimensions	5,500	10,000
136.C1	Ladder tread or handhold improperly applied	5,500	10,000
136.C2	Ladder tread or handhold having wrong clearance	5,500	10,000
136.C3	Ladder or handhold improperly located	5,500	10,000
136.C4	Ladder tread or handhold obstructed	9,500	17,000
136.C5	Ladder tread without footguards	9,500	17,000
138.A1	Hand or safety railing missing	13,000	20,500
138.A2	Hand or safety railing broken	13,000	20,500
138.A3	Hand or safety railing loose except by design	9,500	17,000
138.B1	Hand or safety railing bent	9,500	17,000
138.B2	Hand or safety railing wrong dimensions	5,500	10,000
138.C1	Hand or safety railing improperly applied	5,500	10,000
138.C2	Hand or safety railing having less than the required clearance	5,500	10,000

APPENDIX A TO PART 231—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
138.C3 Hand or safety railing improperly located	5,500	10,000
140.A1 Uncoupling lever missing	9,500	17,000
140.A2 Uncoupling lever broken or disconnected	9,500	17,000
140.B1 Uncoupling lever bent will not safely and reasonably function as intended	9,500	17,000
140.C1 Uncoupling lever bracket bent lever will not function properly	9,500	17,000
140.C2 Uncoupling lever bracket broken or missing	9,500	17,000
140.D1 Uncoupling lever wrong dimension	5,500	10,000
140.D2 Uncoupling lever with improper handle clearance	5,500	10,000
144.A1 Coupler missing	13,000	20,500
144.B1 Coupler height incorrect	5,500	10,000
144.C1 Coupler inoperative	9,500	17,000
145.A1 Kick plates missing	5,500	10,000
145.A2 Kick plates broken	5,500	10,000
145.B1 Kick plates wrong dimensions	5,500	10,000
145.B2 Kick plates improper clearance	5,500	10,000
145.B3 Kick plates insecure or improperly applied	5,500	10,000
146.A Notice or stencil not posted on cabooses with running boards removed	2,500	5,000
146.B Safe means not provided to clean or maintain windows of caboose	2,500	5,000
231.31 Drawbars, standard height	9,500	17,000

¹ A penalty may be assessed against an individual only for a willful violation. Generally, when two or more violations of these regulations are discovered with respect to a single unit of equipment that is used by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of \$25,000 per day. The Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

² This schedule uses section numbers from FRA's Safety Appliance Defect Code, a restatement of the CFR text in a reorganized format. For convenience, and as an exception to FRA's general policy, penalty citations will cite the defect code rather than the CFR. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR and/or statutory citation in place of the defect code section cited in the penalty demand letter.

PART 232—[AMENDED]

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20301–20303, 20306, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

39. Appendix A to part 232 is revised to read as follows:

38. The authority citation for part 232 continues to read as follows:

APPENDIX A TO PART 232—SCHEDULE OF CIVIL PENALTIES ¹

Section ²	Violation	Willful violation
Subpart A—General		
232.15 Movement of power brake defects:		
(a) Improper movement, general	(¹)	(¹)
(1) Failure to make determinations and provide notification of en route defect	\$9,500	\$17,000
(b) Complete failure to tag	9,500	17,000
(1) Insufficient tag or record	2,500	5,000
(2), (4) Improper removal of tag	9,500	17,000
(3) Failure to retain record of tag	9,500	17,000
(c) Improper loading or purging	9,500	17,000
(e) Improper placement of defective equipment	9,500	17,000
232.19 Availability of records	(¹)	(¹)
Subpart B—General Requirements		
232.103 All train brake systems:		
(a)–(c), (h)–(i) Failure to meet general design requirements	9,500	17,000
(d) Failure to have proper percentage of operative brakes from Class I brake test	13,000	20,500
(e) Operating with less than 85 percent operative brakes	13,000	20,500
(f) Improper use of car with inoperative or ineffective brakes	9,500	17,000
(g) Improper display of piston travel	9,500	17,000
(m) Failure to stop train with excess air flow or gradient	9,500	17,000
(n) Securement of unattended equipment:		
(1) Failure to apply sufficient number of hand brakes; failure to develop or implement procedure to verify number applied	13,000	20,500
(2) Failure to reduce to zero or vent brake pipe	9,500	17,000
(3) Failure to apply hand brakes on locomotives	9,500	17,000
(4) Failure to adopt or comply with procedures for securing unattended locomotive	13,000	20,500
(o) Improper adjustment of air regulating devices	9,500	17,000
(p) Failure to hold supervisors jointly responsible	9,500	17,000
232.105 Locomotives:		
(a) Air brakes not in safe and suitable condition	13,000	20,500
(b) Not equipped with proper hand or parking brake	13,000	20,500

APPENDIX A TO PART 232—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
(c)(1) Failure to inspect/repair hand or parking brake	9,500	17,000
(2) Failure to properly stencil, tag, or record	5,500	10,000
(d) Excess leakage from equalizing reservoir	9,500	17,000
(e) Improper use of feed or regulating valve braking	9,500	17,000
(f) Improper use of passenger position	9,500	17,000
(g) Brakes in operative condition	13,000	20,500
232.107 Air sources/cold weather operations:		
(a)(1), (2) Failure to adopt or comply with monitoring program for yard air sources	13,000	20,500
(3) Failure to maintain records	9,500	17,000
(b) Failure to blow condensation	13,000	20,500
(c) Use of improper chemicals	13,000	20,500
(d) Failure to equip or drain yard air reservoirs	13,000	20,500
(e) Failure to adopt or comply cold weather operating procedures	13,000	20,500
232.109 Dynamic brakes:		
(a) Failure to provide information	9,500	17,000
(b) Failure to make repairs	9,500	17,000
(c) Failure to properly tag	5,500	10,000
(d) Failure to maintain record of repair	2,500	5,000
(e) Improper deactivation	9,500	17,000
(f) Improper use of locomotive as controlling unit	9,500	17,000
(g) Locomotive not properly equipped with indicator	9,500	17,000
(h) Rebuilt locomotive not properly equipped	9,500	17,000
(j) Failure to adopt or comply with dynamic brake operating rules	13,000	20,500
(k) Failure to adopt or comply with training on operating procedures	13,000	20,500
232.111 Train handling information:		
(a) Failure to adopt and comply with procedures	13,000	20,500
(b) Failure to provide specific information	9,500	17,000
Subpart C—Inspection and Testing Requirements		
232.203 Training requirements:		
(a) Failure to develop or adopt program	19,500	25,000
(b)(1)–(9) Failure to address or comply with specific required item or provision of program	9,500	17,000
(c) Failure to adopt or comply with two-way EOT program	13,000	20,500
(d) Failure to adopt or comply with retaining valve program	13,000	20,500
(e) Failure to maintain adequate records	13,000	20,500
(f) Failure to adopt and comply with periodic assessment plan	19,500	25,000
232.205 Class I brake test—initial terminal inspection:		
(a) Complete failure to perform inspection	(1) 19,500	25,000
(c)(1)–(4), (6)–(8) Partial failure to perform inspection	13,000	20,500
(c)(5) Failure to properly adjust piston travel (per car)	9,500	17,000
(d) Failure to use carman when required	5,500	10,000
(e) Failure to provide proper notification	9,500	17,000
(f) Failure to void compressed air	9,500	17,000
232.207 Class IA brake tests—1,000-mile inspection:		
(a) Complete failure to perform inspection	(1) 13,000	20,500
(b)(1)–(6) Partial failure to perform inspection	9,500	17,000
(c) Failure to properly designate location	9,500	17,000
(c)(1) Failure to perform at designated location	9,500	17,000
(c)(2) Failure to provide notification	9,500	17,000
232.209 Class II brake tests—intermediate inspection:		
(a) Complete failure to perform inspection	(1) 13,000	20,500
(b)(1)–(5), (c) Partial failure to perform inspection	9,500	17,000
(c) Failure to conduct Class I after Class II pick-up	(1)	(1)
232.211 Class III brake tests—trainline continuity inspection:		
(a) Complete failure to perform inspection	13,000	20,500
(b)(1)–(4), (c) Partial failure to perform inspection	9,500	17,000
(d) Failure to restore air pressure at rear	9,500	17,000
232.213 Extended haul trains:		
(a)(1) Failure to properly designate an extended haul train	13,000	20,500
(a)(2)–(3), (5)(i), (8) Failure to perform inspections	(1)	(1)
(a)(4) Failure to remove defective car (per car)	5,500	10,000
(a)(5)(ii), (6) Failure to conduct inbound inspection	13,000	20,500
(a)(7) Failure to maintain record of defects (per car)	5,500	10,000
(b) Improper movement or use of extended haul train	13,000	20,500
232.215 Transfer train brake tests:		
(a) Failure to perform inspection	13,000	20,500
(b) Failure to perform on cars added	9,500	17,000
232.217 Train brake system tests conducted using yard air:		
(a) Failure to use suitable device	9,500	17,000
(b) Improper connection of air test device	13,000	20,500
(c) Failure to properly perform inspection	(1)	(1)

APPENDIX A TO PART 232—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
(d) Failure to calibrate test device	9,500	17,000
(e) Failure to use accurate device	9,500	17,000
232.219 Double heading and helper service:		
(a) Failure to perform inspection or inability to control brakes	9,500	17,000
(b) Failure to make visual inspection	9,500	17,000
(c) Use of improper helper link device	9,500	17,000
Subpart D—Periodic Maintenance and Testing Requirements		
232.303 General requirements:		
(b)–(d) Failure to conduct inspection or test when car on repair track	9,500	17,000
(e) Improper movement of equipment for testing	9,500	17,000
(e)(1) Failure to properly tag equipment for movement	5,500	10,000
(e)(2)–(4) Failure to retain record or improper removal of tag or card	5,500	10,000
(f) Failure to stencil or track test information	9,500	17,000
232.305 Single car tests:		
(a) Failure to test in accord with required procedure	9,500	17,000
(b)–(c) Failure to perform test	9,500	17,000
232.309 Single car air brake test equipment and devices:		
(a)–(f) Failure to properly test or calibrate	9,500	17,000
Subpart E—End-of-Train Devices		
232.403 Design standards for one-way devices:		
(a)–(g) Failure to meet standards	9,500	17,000
232.405 Design standards for two-way devices:		
(a)–(i) Failure to meet standards	9,500	17,000
232.407 Operating requirements for two-way devices:		
(b) Failure to equip a train	13,000	20,500
(c) Improper purchase	9,500	17,000
(f)(1) Failure of device to be armed and operable	13,000	20,500
(f)(2) Insufficient battery charge	9,500	17,000
(f)(3) Failure to activate the device	9,500	17,000
(g) Improper handling of en route failure, freight or other non-passenger	13,000	20,500
(h) Improper handling of en route failure, passenger	13,000	20,500
232.409 Inspection and testing of devices:		
(a) Failure to have unique code	9,500	17,000
(b) Failure to compare quantitative values	9,500	17,000
(c) Failure to test emergency capability	13,000	20,500
(d) Failure to properly calibrate	9,500	17,000
Subpart F—Introduction of New Brake System Technology		
232.503 Process to introduce new technology:		
(b) Failure to obtain FRA approval	19,500	25,000
232.505 Pre-revenue service acceptance testing plan:		
(a) Failure to obtain FRA approval	13,000	20,500
(b) Failure to comply with plan	9,500	17,000
(f) Failure to test previously used technology	13,000	20,500
Subpart G—Electronically Controlled Pneumatic (ECP) Braking Systems		
232.603 Design, interoperability, and configuration management requirements:		
(a) Failure to meet minimum standards	5,500	10,000
(b) Using ECP brake equipment without approval	9,500	17,000
(c) Failure to adopt and comply with a proper configuration management plan	13,000	20,500
232.605 Training Requirements:		
(a) Failure to adopt and comply with a proper training, qualification, and designation program for employees that perform inspection, testing or maintenance	(1)	(1)
(b) Failure to amend operating rules	13,000	20,500
(c) Failure to adopt and comply with proper training criteria for locomotive engineers	13,000	20,500
232.607 Inspection and testing requirements:		
(a)(1), (b), (c)(1) Complete or partial failure to perform inspection	(1)	(1)
(a)(2) Complete or partial failure to perform pre-departure inspection	9,500	17,000
(c)(1)(iv), (c)(2) Failure to perform visual inspection on a car added en route	9,500	17,000
(d) Failure to perform inspection	(1)	(1)
(e)(1), (2) Failure to properly initialize the train	9,500	17,000
(e)(3) Failure to ensure identical consist and system information	9,500	17,000
(f)(1) Failure to apply a proper brake pipe service reduction	(1)	(1)
(f)(2) Failure to properly adhere to the proper piston travel ranges	(1)	(1)
(g)(1)–(4) Improperly located and guarded cable	13,000	20,500
(g)(5) Condition of cable and connections	9,500	17,000
232.609 Handling of defective equipment with ECP brake systems:		
(a) Failure to have proper percentage of operative brakes from Class I brake test	(1)	(1)
(b) Failure to prevent a car known to arrive with defective brakes to depart location where a Class I brake test is required	9,500	17,000

APPENDIX A TO PART 232—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
(c) Improper movement of a car equipped with conventional pneumatic brakes	9,500	17,000
(d) Operating with less than 85 percent operative brakes	(1)	(1)
(f)(2)(i) Improper placement of defective conventional brake equipment	(1)	(1)
(f)(2)(ii) Improper placement of defective ECP brake equipment	9,500	17,000
(g) Improper movement of defective stand-alone ECP brake equipment in a train operating with conventional pneumatic brakes	(1)	(1)
(h) Improper movement from initial terminal of stand-alone ECP brake equipment in a conventional brake operated train	(1)	(1)
(i) Failure to tag equipment	(1)	(1)
(j)(1) Failure to adopt and comply with procedures for the movement of defective equipment	5,500	10,000
(j)(2) Failure to submit list of ECP brake system repair locations	9,500	17,000
232.611 Periodic maintenance:		
(a) Failure to ensure the proper and safe condition of car	9,500	17,000
(b)–(d) Failure to perform test	9,500	17,000
232.613 End-of-train devices:		
(a) Failure to meet design standards for ECP–EOT devices	9,500	17,000
(b) Moving with an improper or improperly connected ECP–EOT device	9,500	17,000

¹ A penalty may be assessed against an individual only for a willful violation. Generally, when two or more violations of these regulations are discovered with respect to a single unit of equipment that is placed or continued in service by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of \$25,000 per day. Although the penalties listed for failure to perform the brake inspections and tests under § 232.205 through § 232.209 may be assessed for each train that is not properly inspected, failure to perform any of the inspections and tests required under those sections will be treated as a violation separate and distinct from, and in addition to, any substantive violative conditions found on the equipment contained in the train consist. Moreover, the Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

Failure to observe any condition for movement of defective equipment set forth in § 232.15(a) will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the equipment at the time of movement.

Failure to provide any of the records or plans required by this part pursuant to § 232.19 will be considered a failure to maintain or develop the record or plan and will make the railroad liable for penalty under the particular regulatory section(s) concerning the retention or creation of the document involved.

Failure to properly perform any of the inspections specifically referenced in §§ 232.209, 232.213, and 232.217 may be assessed under each section of this part or this chapter, or both, that contains the requirements for performing the referenced inspection.

² The penalty schedule uses section numbers from 49 CFR part 232. If more than one item is listed as a type of violation of a given section, each item is also designated by a “penalty code,” which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 233—[AMENDED]

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

41. Appendix A to part 233 is revised to read as follows:

40. The authority citation for part 233 continues to read as follows:

APPENDIX A TO PART 233—SCHEDULE OF CIVIL PENALTIES ¹

Section ²	Violation	Willful violation
233.5 Accidents resulting from signal failure	\$9,500	\$17,000
233.7 Signal failure reports	5,500	10,000
233.9 Reports	2,500	5,000

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

² The penalty schedule uses section numbers from 49 CFR part 233. If more than one item is listed as a type of violation of a given section, each item is also designated by a “penalty code,” which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 234—[AMENDED]

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

43. Appendix A to part 234 is revised to read as follows:

42. The authority citation for part 234 continues to read as follows:

APPENDIX A TO PART 234—SCHEDULE OF CIVIL PENALTIES¹

Section ²	Violation	Willful violation
Subpart B—Reports		
234.7 Accidents involving grade crossing signal failure	\$9,500	\$17,000
234.9 Grade crossing signal system failure reports	5,500	10,000
Subpart C—Response to Reports of Warning System Malfunction		
234.101 Employee notification rules	5,500	10,000
234.103 Timely response to report of malfunction	13,000	20,500
234.105 Activation failure:		
(a) Failure to notify—train crews	19,500	25,000
Other railroads	19,500	25,000
(b) Failure to notify law enforcement agency	5,500	10,000
(c) Failure to comply with—flagging requirements	13,000	20,500
Speed restrictions	13,000	20,500
(d) Failure to activate horn or whistle	5,500	10,000
234.106 Partial activation:		
(a) Failure to notify—train crews	9,500	17,000
Other railroads	9,500	17,000
(b) Failure to notify law enforcement agency	5,500	10,000
(c) Failure to comply with—flagging requirements speed restrictions	9,500	17,000
(d) Failure to activate horn or whistle	5,500	10,000
234.107 False activation:		
(a) Failure to notify—train crews	13,000	20,500
Other railroads	13,000	20,500
(b) Failure to notify law enforcement agency	5,500	10,000
(c) Failure to comply with—flagging requirements	9,500	17,000
Speed restrictions	9,500	17,000
(d) Failure to activate horn or whistle	5,500	10,000
234.109 Recordkeeping	2,500	5,000
Subpart D—Maintenance, Inspection, and Testing		
Maintenance Standards		
234.201 Location of plans	5,500	10,000
234.203 Control circuits	9,500	17,000
234.205 Operating characteristics of warning system apparatus	13,000	20,500
234.207 Adjustment, repair, or replacement of component	13,000	20,500
234.209 Interference with normal functioning of system	19,500	25,000
234.211 Locking of warning system apparatus	5,500	10,000
234.213 Grounds	9,500	17,000
234.215 Standby power system	19,500	25,000
234.217 Flashing light units	5,500	10,000
234.219 Gate arm lights and light cable	5,500	10,000
234.221 Lamp voltage	9,500	17,000
234.223 Gate arm	5,500	10,000
234.225 Activation of warning system	19,500	25,000
234.227 Train detection apparatus	19,500	25,000
234.229 Shunting sensitivity	19,500	25,000
234.231 Fouling wires	13,000	20,500
234.233 Rail joints	13,000	20,500
234.235 Insulated rail joints	19,500	25,000
234.237 Switch equipped with circuit controller	5,500	10,000
234.239 Tagging of wires and interference of wires or tags with signal apparatus	5,500	10,000
234.241 Protection of insulated wire; splice in underground wire	9,500	17,000
234.243 Wire on pole line and aerial cable	9,500	17,000
234.245 Signs	5,500	10,000
Inspections and Tests		
234.247 Purpose of inspections and tests; removal from service of relay or device failing to meet test requirements	13,000	20,500
234.249 Ground tests	13,000	20,500
234.251 Standby power	9,500	17,000
234.253 Flashing light units and lamp voltage	5,500	10,000
234.255 Gate arm and gate mechanism	5,500	10,000
234.257 Warning system operation	13,000	20,500
234.259 Warning time	9,500	17,000
234.261 Highway traffic signal pre-emption	9,500	17,000
234.263 Relays	9,500	17,000
234.265 Timing relays and timing devices	9,500	17,000
234.267 Insulation resistance tests, wires in trunking and cables	9,500	17,000
234.269 Cut-out circuits	19,500	25,000
234.271 Insulated rail joints, bond wires, and track connections	9,500	17,000
234.273 Results of tests	2,500	5,000

APPENDIX A TO PART 234—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
Requirements for Processor-Based Systems		
234.275 Processor-Based Systems	13,000	20,500

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

² The penalty schedule uses section numbers from 49 CFR part 234. If more than one item is listed as a type of violation of a given section, each item is also designated by a “penalty code,” which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 235—[AMENDED]

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

45. Appendix A to part 235 is revised to read as follows:

44. The authority citation for part 235 continues to read as follows:

APPENDIX A TO PART 235—SCHEDULE OF CIVIL PENALTIES ¹

Section ²	Violation	Willful violation
235.5 Changes requiring filing of application	\$5,500	\$10,000

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

² The penalty schedule uses section numbers from 49 CFR part 235. If more than one item is listed as a type of violation of a given section, each item is also designated by a “penalty code,” which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 236—[AMENDED]

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note and 49 CFR 1.49.

47. Appendix A to part 236 is revised to read as follows:

46. The authority citation for part 236 continues to read as follows:

APPENDIX A TO PART 236—SCHEDULE OF CIVIL PENALTIES ¹

Section ²	Violation	Willful violation
236.0 Applicability, minimum requirements	\$9,500	\$17,000
Subpart A—Rules and Instructions—All Systems		
General		
236.1 Plans, where kept	13,000	20,500
236.2 Grounds	13,000	20,500
236.3 Locking of signal apparatus housings:		
Power interlocking machine cabinet not secured against unauthorized entry	5,500	10,000
Other violations	5,500	10,000
236.4 Interference with normal functioning of device	19,500	25,000
236.5 Design of control circuits on closed circuit principle	19,500	25,000
236.6 Hand-operated switch equipped with switch circuit controller	13,000	20,500
236.7 Circuit controller operated by switch-and-lock movement	13,000	20,500
236.8 Operating characteristics of electro-magnetic, electronic, or electrical apparatus	9,500	17,000
236.9 Selection of circuits through indicating or annunciating instruments	5,500	10,000
236.10 Electric locks, force drop type; where required	5,500	10,000
236.11 Adjustment, repair, or replacement of component	13,000	20,500
236.12 Spring switch signal protection; where required	9,500	17,000
236.13 Spring switch; selection of signal control circuits through circuit controller	9,500	17,000
236.14 Spring switch signal protection; requirements	9,500	17,000
236.15 Timetable instructions	5,500	10,000
236.16 Electric lock, main track releasing circuit:		
Electric lock releasing circuit on main track extends into fouling circuit where turnout not equipped with derail at clearance point either pipe-connected to switch or independently locked, electrically ..	13,000	20,500
Other violations	13,000	20,500
236.17 Pipe for operating connections, requirements	5,500	10,000
236.18 Software management control plan:		
(a) Failure to develop and adopt a plan	9,500	17,000
(b) Failure to fully implement plan	9,500	17,000
(c) Inadequate plan	9,500	17,000

APPENDIX A TO PART 236—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
Roadway Signals and Cab Signals		
236.21 Location of roadway signals	13,000	20,500
236.22 Semaphore signal arm; clearance to other objects	5,500	10,000
236.23 Aspects and indications	9,500	17,000
236.24 Spacing of roadway signals	13,000	20,500
236.26 Buffering device, maintenance	13,000	20,500
Track Circuits		
236.51 Track circuit requirements:		
(a) Shunt fouling circuit used where permissible speed through turnout greater than 45 m.p.h	13,000	20,500
(b) Track relay not in de-energized position or device that functions as track relay not in its most restrictive state when train, locomotive, or car occupies any part of track circuit, except fouling section of turnout of hand-operated main-track crossover	19,500	25,000
Other violations	13,000	20,500
236.52 Relayed cut-section	13,000	20,500
236.53 Track circuit feed at grade crossing	13,000	20,500
236.54 Minimum length of track circuit	13,000	20,500
236.55 Dead section; maximum length	13,000	20,500
236.56 Shunting sensitivity	13,000	20,500
236.57 Shunt and fouling wires:		
(a) Shunt or fouling wires do not consist of at least two discrete conductors	13,000	20,500
Other violations	9,500	17,000
236.58 Turnout, fouling section:		
Rail joint in shunt fouling section not bonded	13,000	20,500
Other violations	9,500	17,000
236.59 Insulated rail joints	13,000	20,500
236.60 Switch shunting circuit; use restricted	13,000	20,500
Wires and Cables		
236.71 Signal wires on pole line and aerial cable	13,000	20,500
236.73 Open-wire transmission line; clearance to other circuits	9,500	17,000
236.74 Protection of insulated wire; splice in underground wire	9,500	17,000
236.76 Tagging of wires and interference of wires or tags with signal apparatus	5,500	10,000
Inspections and Tests; All Systems		
236.101 Purpose of inspection and tests; removal from service or relay or device failing to meet test requirements	9,500	17,000
236.102 Semaphore or search-light signal mechanism	13,000	20,500
236.103 Switch circuit controller or point detector	13,000	20,500
236.104 Shunt fouling circuit	9,500	17,000
236.105 Electric lock	9,500	17,000
236.106 Relays	9,500	17,000
236.107 Ground tests	9,500	17,000
236.108 Insulation resistance tests, wires in trunking and cables:		
(c) Circuit permitted to function on a conductor having insulation resistance value less than 200,000 ohms	13,000	20,500
Other violations	9,500	17,000
236.109 Time releases, timing relays and timing devices	9,500	17,000
236.110 Results of tests	2,500	5,000
Subpart B—Automatic Block Signal Systems		
Standards		
236.201 Track circuit control of signals	13,000	20,500
236.202 Signal governing movements over hand-operated switch	13,000	20,500
236.203 Hand-operated crossover between main tracks; protection	13,000	20,500
236.204 Track signaled for movements in both directions, requirements	13,000	20,500
236.205 Signal control circuits; requirements	19,500	25,000
236.206 Battery or power supply with respect to relay; location	9,500	17,000
236.207 Electric lock on hand-operated switch; control:		
Approach or time locking of electric lock on hand-operated switch can be defeated by unauthorized use of emergency device which is not kept sealed in the non-release position	13,000	20,500
Other violations	9,500	17,000
Subpart C—Interlocking		
Standards		
236.301 Where signals shall be provided	9,500	17,000
236.302 Track circuits and route locking	13,000	17,000
236.303 Control circuits for signals, selection through circuit controller operated by switch points or by switch locking mechanism	13,000	20,500
236.304 Mechanical locking or same protection effected by circuits	13,000	20,500
236.305 Approach or time locking	13,000	20,500
236.306 Facing point lock or switch-and-lock movement	9,500	17,000
236.307 Indication locking:	13,000	20,500

APPENDIX A TO PART 236—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
236.308 Mechanical or electric locking or electric circuits; requisites	13,000	20,500
236.309 Loss of shunt protection; where required:		
Loss of shunt of five seconds or less permits release of route locking of power-operated switch, movable point frog, or derail	13,000	20,500
Other violations	9,500	17,000
236.310 Signal governing approach to home signal	9,500	17,000
236.311 Signal control circuits, selection through track relays or devices functioning as track relays and through signal mechanism contacts and time releases at automatic interlocking	13,000	20,500
236.312 Movable bridge, interlocking of signal appliances with bridge devices:		
Emergency bypass switch or device not locked or sealed	13,000	20,500
Other violations	13,000	20,500
236.314 Electric lock for hand-operated switch or derail:		
Approach or time locking of electric lock at hand-operated switch or derail can be defeated by unau- thorized use of emergency device which is not kept sealed in non-release position	13,000	20,500
Other violations	13,000	20,500
Rules and Instructions		
236.326 Mechanical locking removed or disarranged; requirement for permitting train movements through interlocking	9,500	17,000
236.327 Switch, movable-point frog or split-point derail	13,000	20,500
236.328 Plunger of facing-point	9,500	17,000
236.329 Bolt lock	13,000	20,500
236.330 Locking dog of switch and lock movement	9,500	17,000
236.334 Point detector	13,000	20,500
236.335 Dogs, stops and trunnions of mechanical locking	5,500	10,000
236.336 Locking bed	5,500	10,000
236.337 Locking faces of mechanical locking; fit	5,500	10,000
236.338 Mechanical locking required in accordance with locking sheet and dog chart	5,500	10,000
236.339 Mechanical locking; maintenance requirements	5,500	10,000
236.340 Electromechanical interlocking machine; locking between electrical and mechanical levers	5,500	10,000
236.341 Latch shoes, rocker links, and quadrants	5,500	10,000
236.342 Switch circuit controller	13,000	20,500
Inspection and Tests		
236.376 Mechanical locking	9,500	17,000
236.377 Approach locking	9,500	17,000
236.378 Time locking	9,500	17,000
236.379 Route locking	9,500	17,000
236.380 Indication locking	9,500	17,000
236.381 Traffic locking	9,500	17,000
236.382 Switch obstruction test	13,000	20,500
236.383 Valve locks, valves, and valve magnets	9,500	17,000
236.384 Cross protection	9,500	17,000
236.386 Restoring feature on power switches	9,500	17,000
236.387 Movable bridge locking	13,000	20,500
Subpart D—Traffic Control Systems Standards		
Standards		
236.401 Automatic block signal system and interlocking standards applicable to traffic control systems:		
236.402 Signals controlled by track circuits and control operator	19,500	25,000
236.403 Signals at controlled point	19,500	25,000
236.404 Signals at adjacent control points	19,500	25,000
236.405 Track signaled for movements in both directions, change of direction of traffic	19,500	25,000
236.407 Approach or time locking; where required	19,500	25,000
236.408 Route locking	19,500	25,000
236.410 Locking, hand-operated switch; requirements:		
(a) Hand-operated switch on main track not electrically or mechanically locked in normal position where signal not provided to govern movement to main track, movements made at speeds in ex- cess of 20 m.p.h., or train and engine movements may clear main track	13,000	20,500
Hand-operated switch on signaled siding not electrically or mechanically locked in normal position where maximum authorized speed on the siding exceeds 30 m.p.h.	13,000	20,500
(b) Approach or time locking of electric lock at hand-operated switch can be defeated by use of emergency release device of electric lock which is not kept sealed in non-release position	13,000	20,500
Other violations	9,500	17,000
Rules and Instructions		
236.426 Interlocking rules and instructions applicable to traffic control systems	2,500	5,000
Inspection and Tests		
236.476 Interlocking inspections and tests applicable to traffic control systems	2,500	5,000
Subpart E—Automatic Train Stop, Train Control and Cab Signal Systems Standards		
Standards		
236.501 Forestalling device and speed control	9,500	17,000

APPENDIX A TO PART 236—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²		Violation	Willful violation
236.502	Automatic brake application, initiation by restrictive block conditions stopping distance in advance	13,000	20,500
236.503	Automatic brake application; initiation when predetermined rate of speed exceeded	13,000	20,500
236.504	Operations interconnected with automatic block-signal system	9,500	17,000
236.505	Proper operative relation between parts along roadway and parts on locomotive	5,500	10,000
236.506	Release of brakes after automatic application	13,000	20,500
236.507	Brake application; full service	9,500	17,000
236.508	Interference with application of brakes by means of brake valve	9,500	17,000
236.509	Two or more locomotives coupled	5,500	10,000
236.511	Cab signals controlled in accordance with block conditions stopping distance in advance	9,500	17,000
236.512	Cab signal indication when locomotive enters blocks	13,000	20,500
236.513	Audible indicator	9,500	17,000
236.514	Interconnection of cab signal system with roadway signal system	5,500	10,000
236.515	Visibility of cab signals	9,500	17,000
236.516	Power supply	5,500	10,000
Rules and Instructions; Roadway			
236.526	Roadway element not functioning properly	5,500	10,000
236.527	Roadway element insulation resistance	5,500	10,000
236.528	Restrictive condition resulting from open hand-operated switch; requirement	9,500	17,000
236.529	Roadway element inductor; height and distance from rail	5,500	10,000
236.531	Trip arm; height and distance from rail	5,500	10,000
236.532	Strap iron inductor; use restricted	5,500	10,000
236.534	Entrance to equipped territory; requirements	9,500	17,000
Rules and Instructions; Locomotives			
236.551	Power supply voltage	5,500	10,000
236.552	Insulation resistance	5,500	10,000
236.553	Seal, where required	5,500	10,000
236.554	Rate of pressure reduction; equalizing reservoir or brake pipe	9,500	17,000
236.555	Repaired or rewound receiver coil	2,500	5,000
236.556	Adjustment of relay	5,500	10,000
236.557	Receiver; location with respect to rail	5,500	10,000
236.560	Contact element, mechanical trip type; location with respect to rail	5,500	10,000
236.562	Minimum rail current required	5,500	10,000
236.563	Delay time	9,500	17,000
236.564	Acknowledging time	5,500	10,000
236.565	Provision made for preventing operation of pneumatic brake-applying apparatus by double-heading clock; requirement	5,500	10,000
236.566	Locomotive of each train operating in train stop, train control or cab signal territory; equipped ...	5,500	10,000
236.567	Restrictions imposed when device fails and/or is cut out en route: Report not made to designated officer at next available point of communication after automatic train stop, train control, or cab signal device fails and/or is cut en route	9,500	17,000
	Trains permitted to proceed at speed exceeding 79 m.p.h. where automatic train stop, train control, or cab signal device fails and/or is cut out en route when absolute block established in advance of train on which device is inoperative	9,500	17,000
	Other violations	5,500	10,000
236.568	Difference between speeds authorized by roadway signal and cab signal; action	5,500	10,000
Inspection and Tests; Roadway			
236.576	Roadway element	5,500	10,000
236.577	Test, acknowledgement, and cut-in circuits	5,500	10,000
Inspection and Tests; Locomotive			
236.586	Daily or after trip test	9,500	17,000
236.587	Departure test: (b) Test of automatic train stop, train control, or cab signal apparatus on locomotive not made on departure of locomotive from initial terminal if equipment on locomotive not cut out between initial terminal and equipped territory	13,000	20,500
	Test of automatic train stop, train control, or cab signal apparatus on locomotive not made immediately on entering equipped territory, if equipment on locomotive cut out between initial terminal and equipped territory	13,000	20,500
	(c) Automatic train stop, train control, or cab signal apparatus on locomotive making more than one trip within 24-hour period not given departure test within corresponding 24-hour period	13,000	20,500
	(d) Failure to certify, post, or retain test results as required	2,500	5,000
	Other violations	2,500	5,000
236.588	Periodic test	13,000	20,500
236.589	Relays	9,500	17,000
236.590	Pneumatic apparatus: Automatic train stop, train control, or cab signal apparatus not inspected and cleaned at least once every 736 days	9,500	17,000
	Other violations	9,500	17,000

APPENDIX A TO PART 236—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
Subpart F—Dragging Equipment and Slide Detectors and Other Similar Protective Devices; Standards		
Standards		
236.601 Signals controlled by devices; location	13,000	20,500
Subpart H—Standards for Processor-Based Signal and Train Control Systems		
236.905 Railroad Safety Program Plan (RSPP):		
(a) Failure to develop and submit RSPP when required	9,500	17,000
(d) Failure to obtain FRA approval for a modification to RSPP	9,500	17,000
236.907 Product Safety Plan (PSP):		
(a) Failure to address required PSP elements	9,500	17,000
(b) Failure to identify or implement product configuration/revision control measures	9,500	17,000
(d) Failure to communicate identified safety critical hazard	19,500	25,000
236.909 Minimum Performance Standard:		
(a) Failure to make analyses or documentation available	9,500	17,000
(b) Failure to determine or demonstrate that the minimum performance standard has been met	13,000	20,500
236.913 Notification to FRA of PSPs:		
(a) Failure to prepare a PSP or PSP amendment as required	9,500	17,000
(b) Failure to submit a PSP or PSP amendment as required	9,500	17,000
(c) Failure to submit an informational filing	9,500	17,000
(j) Field testing without authorization or approval	19,500	25,000
236.915 Implementation and operation:		
(a) Operation of product without authorization or approval	19,500	25,000
(b) Failure to comply with PSP	9,500	17,000
(c) Interference with normal functioning safety-critical product	19,500	25,000
(d) Failure to determine cause and adjust, repair or replace without undue delay or take appropriate action pending repair	9,500	17,000
236.917 Retention of records:		
(a) Failure to maintain records as required	9,500	17,000
(b)(1) Failure to report inconsistency	13,000	20,500
(b)(2) Failure to take prompt countermeasures	5,500	10,000
(b)(3) Failure to provide final report	5,500	10,000
236.919 Operations and Maintenance Manual	5,500	10,000
236.921 Training and qualification program, general	9,500	17,000
236.923 Task analysis and basic requirements:		
(a) Failure to develop an acceptable training program	9,500	17,000
(a)(6) Failure to train persons as required	9,500	17,000
(a)(8) Failure to conduct evaluation of training program as required	5,500	10,000
(b) Failure to maintain records as required	2,500	5,000
236.925 Training specific to control office personnel	9,500	17,000
236.927 Training specific to locomotive engineers and other operating personnel	9,500	17,000
236.929 Training specific to roadway workers	9,500	17,000
Subpart I—Positive Train Control Systems		
236.1005 Positive Train Control System Requirements:		
Failure to complete PTC system installation on track segment where PTC is required prior to 12/31/2015	5,500	10,000
Commencement of revenue service prior to obtaining PTC System Certification	13,000	20,500
Failure of the PTC system to perform a safety-critical function required by this section	19,500	25,000
Failure to provide notice, obtain approval, or follow a condition for temporary rerouting when required	13,000	20,500
Exceeding the allowed percentage of controlling locomotives operating out of an initial terminal after receiving a failed initialization	2,500	5,000
236.1006 Equipping locomotives operating in PTC territory:		
Operating in PTC territory a controlling locomotive without a required and operative PTC onboard apparatus	19,500	25,000
Failure to report as prescribed by this section	2,500	5,000
Non-compliant operation of unequipped trains in PTC territory	13,000	20,500
236.1007 Additional requirements for high-speed service:		
Operation of passenger trains at a speed equal to or greater than 60 m.p.h. on non-PTC-equipped territory where required	9,500	17,000
Operation of freight trains at a speed equal to or greater than 50 m.p.h. on non-PTC-equipped territory where required	9,500	17,000
Failure to fully implement incursion protection where required	9,500	17,000
236.1009 Procedural requirements:		
Failure to file PTCIP when required	2,500	5,000
Failure to amend PTCIP when required	2,500	5,000
Failure to obtain Type Approval when required	2,500	5,000
Failure to update NPI	2,500	5,000
Operation of PTC system prior to system certification	13,000	20,500
236.1011 PTCIP content requirements:		
Failure to install a PTC system in accordance with subpart I when so required	2,500	5,000
236.1013 PTCIP content requirements and Type Approval:		

APPENDIX A TO PART 236—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
Failure to maintain quality control system	2,500	5,000
Inappropriate use of Type Approval	2,500	5,000
236.1015 PTCSP content requirements and PTC System Certification:		
Failure to implement PTC system in accordance with the associated PTCSP and resultant system certification	9,500	17,000
Failure to maintain PTC system in accordance with the associated PTCSP and resultant system certification	9,500	17,000
Failure to maintain required supporting documentation	2,500	5,000
236.1017 Independent third party Verification and Validation:		
Failure to conduct independent third party Verification and Validation when ordered	13,000	20,500
236.1019 Main line track exceptions:		
Revenue operations conducted in non-compliance with the passenger terminal exception	5,500	10,000
Revenue operations conducted in non-compliance with the limited operations exception	5,500	10,000
Failure to request modification of the PTCIP or PTCSP when required	5,500	10,000
Revenue operations conducted in violation of (c)(2)	9,500	17,000
Revenue operations conducted in violation of (c)(3)	9,500	17,000
236.1021 Discontinuances, material modifications, and amendments:		
Failure to update PTCDP when required	2,500	5,000
Failure to update PTCSP when required	2,500	5,000
Failure to immediately adopt and comply with approved RFA	2,500	5,000
Discontinuance or modification of a PTC system without approval when required	2,500	5,000
236.1023 Errors and malfunctions:		
Railroad failure to provide proper notification of PTC system error or malfunction	2,500	5,000
Failure to maintain PTCPVL	2,500	5,000
Supplier failure to provide proper notification of previously identified PTC system error or malfunction	2,500	5,000
Failure to provide timely notification	2,500	5,000
Failure to provide appropriate protective measures in the event of PTC system failure	5,500	10,000
236.1027 Exclusions:		
Integration of primary train control system with locomotive electronic system without approval	9,500	17,000
236.1029 PTC system use and en route failures:		
Failure to determine cause of PTC system component failure without undue delay	5,500	10,000
Failure to adjust, repair, or replace faulty PTC system component without undue delay	5,500	10,000
Failure to take appropriate action pending adjustment, repair, or replacement of faulty PTC system component	5,500	10,000
Non-compliant train operation within PTC-equipped territory with inoperative PTC onboard apparatus	9,500	17,000
Interference with the normal functioning of safety-critical PTC system	9,500	17,000
Improper arrangement of the PTC system onboard apparatus	5,500	10,000
236.1033 Communications and security requirements:		
Failure to provide cryptographic message integrity and authentication	2,500	5,000
Improper use of revoked cryptographic key	2,500	5,000
Failure to protect cryptographic keys from unauthorized disclosure, modification, or substitution	2,500	5,000
Failure to establish prioritized service restoration and mitigation plan for communication services	2,500	5,000
236.1035 Field testing requirements:		
Field testing without authorization or approval	5,500	10,000
236.1037 Records retention:		
Failure to maintain records and databases as required	2,500	5,000
Failure to report inconsistency	5,500	10,000
Failure to take prompt countermeasures	5,500	10,000
Failure to provide final report	2,500	5,000
236.1039 Operations and Maintenance Manual:		
Failure to implement and maintain Operations and Maintenance Manual as required	2,500	5,000
236.1043 Task analysis and basic requirements:		
Failure to develop and maintain an acceptable training program	5,500	10,000
Failure to train persons as required	2,500	5,000
Failure to conduct evaluation of training program as required	2,500	5,000
Failure to maintain records as required	2,500	5,000
236.1045 Training specific to office control personnel:		
Failure to conduct training unique to office control personnel	2,500	5,000
236.1047 Training specific to locomotive engineers and other operations personnel:		
Failure to conduct training unique to locomotive engineers and other operating personnel	2,500	5,000
236.1049 Training specific to roadway workers:		
Failure to conduct training unique to roadway workers	2,500	5,000

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

² The penalty schedule uses section numbers from 49 CFR part 236. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 238—[AMENDED]

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; 49 CFR 1.49.

49. Appendix A to part 238 is revised to read as follows:

48. The authority citation for part 238 continues to read as follows:

APPENDIX A TO PART 238—SCHEDULE OF CIVIL PENALTIES¹

Section ²	Violation	Willful violation
Subpart A—General		
238.15 Movement of power brake defects:		
(b) Improper movement from Class I or IA brake test	\$13,000	\$20,500
(c) Improper movement of en route defect	9,500	17,000
(2), (3) Insufficient tag or record	2,500	5,000
(4) Failure to determine percent operative brakes	9,500	17,000
(d) Failure to follow operating restrictions	13,000	20,500
(e) Failure to follow restrictions for inoperative front or rear unit	9,500	17,000
238.17 Movement of other than power brake defects: ¹		
(c)(4), (5) Insufficient tag or record	2,500	5,000
(d) Failure to inspect or improper use of roller bearings	9,500	17,000
(e) Improper movement of defective safety appliances	9,500	17,000
238.19 Reporting and tracking defective equipment:		
(a) Failure to have reporting or tracking system	19,500	25,000
(b) Failure to retain records	5,500	10,000
(c) Failure to make records available	2,500	5,000
(d) Failure to list power brake repair points	5,500	10,000
Subpart B—Safety Planning and General Requirements		
238.103 Fire protection plan/fire safety:		
(a) Failure to use proper materials	13,000	20,500
(b) Improper certification	5,500	10,000
(c) Failure to consider fire safety on new equipment	13,000	20,500
(d) Failure to perform fire safety analysis	13,000	20,500
(e) Failure to develop, adopt or comply with procedures	13,000	20,500
238.105 Train electronic hardware and software safety:		
(a), (b), (c) Failure to develop and maintain hardware and software safety	13,000	20,500
(d) Failure to include required design features	13,000	20,500
(e) Failure to comply with hardware and software safety program	9,500	17,000
238.107 Inspection, testing, and maintenance plan:		
(b) Failure to develop plan	13,000	20,500
(b)(1)–(5) Failure of plan to address specific item	9,500	17,000
(d) Failure to conduct annual review	9,500	17,000
238.109 Training, qualification, and designation program:		
(a) Failure to develop or adopt program	13,000	20,500
(b)(1)–(4) Failure of plan to address specific item	9,500	17,000
(b)(5)–(12) Failure to comply with specific required provisions of the program	9,500	17,000
(b)(13) Failure to maintain adequate records	5,500	10,000
238.111 Pre-revenue service acceptance testing plan:		
(a) Failure to properly test previously used equipment	13,000	20,500
(b)(1) Failure to develop plan	13,000	20,500
(b)(2) Failure to submit plan to FRA	9,500	17,000
(b)(3) Failure to comply with plan	9,500	17,000
(b)(4) Failure to document results of testing	5,500	10,000
(b)(5) Failure to correct safety deficiencies or impose operating limits	9,500	17,000
(b)(6) Failure to maintain records	5,500	10,000
(b)(7) Failure to obtain FRA approval	9,500	17,000
238.113 Emergency window exits	9,500	17,000
238.114 Rescue access windows	9,500	17,000
238.115 Emergency lighting	9,500	17,000
238.117 Protection against personal injury	9,500	17,000
238.119 Rim-stamped straight-plate wheels	9,500	17,000
238.121 Emergency communication	9,500	17,000
238.123 Emergency roof access	9,500	17,000
Subpart C—Specific Requirements for Tier I Passenger Equipment		
238.203 Static end strength	9,500	17,000
238.205 Anti-climbing mechanism	9,500	17,000
238.207 Link between coupling mechanism and car body	9,500	17,000
238.209 Forward end structure of locomotives	9,500	17,000
238.211 Collision posts	9,500	17,000
238.213 Corner posts	9,500	17,000
238.215 Rollover strength	9,500	17,000
238.217 Side structure	9,500	17,000
238.219 Truck-to-car-body attachment	9,500	17,000
238.221 Glazing	9,500	17,000
238.223 Fuel tanks	9,500	17,000
238.225 Electrical system	9,500	17,000

APPENDIX A TO PART 238—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
238.227 Suspension system	9,500	17,000
238.229 Safety appliances—general:		
(e) Failure to properly identify equipment (per car)	9,500	17,000
(g) Failure to adopt or comply with inspection plan	9,500	17,000
(h) Failure to use qualified person (per car)	9,500	17,000
(i) Failure to properly conduct initial or periodic inspection (per car)	9,500	17,000
(j) Failure to take proper remedial action (per car)	9,500	17,000
(k) Failure to maintain records (per car)	5,500	10,000
238.230 Safety appliances—new equipment:		
(b)(2) Failure to identify welded appliance (per car)	9,500	17,000
(b)(3) Failure to receive approval for use (per car)	9,500	17,000
(c)(2) Failure to make proper repair (per car)	9,500	17,000
238.231 Brake System (a)–(g), (i)–(n)	9,500	17,000
(h)(1), (2) Hand or parking brake missing or inoperative	13,000	20,500
(h)(3) Hand or parking brake inspection or record (per car)	5,500	10,000
(h)(4) Hand or parking brake not applied to hold equipment unattended on grade or prematurely released	13,000	20,500
238.233 Interior fittings and surfaces	9,500	17,000
238.235 Doors	9,500	17,000
238.237 Automated monitoring	9,500	17,000
Subpart D—Inspection, Testing, and Maintenance Requirements for Tier I Passenger Equipment		
238.303 Exterior mechanical inspection of passenger equipment:		
(a)(1) Failure to perform mechanical inspection	¹ 9,500	17,000
(a)(2) Failure to inspect secondary brake system	9,500	17,000
(b) Failure to perform inspection on car added to train	¹ 9,500	17,000
(c) Failure to utilize properly qualified personnel	9,500	17,000
(e)(1) Products of combustion not released outside cab	9,500	17,000
(e)(2) Battery not vented or gassing excessively	9,500	17,000
(e)(3) Coupler not in proper condition	9,500	17,000
(e)(4) No device under drawbar pins or connection pins	9,500	17,000
(e)(5) Suspension system and spring rigging not in proper condition	9,500	17,000
(e)(6) Truck not in proper condition	9,500	17,000
(e)(7) Side bearing not in proper condition	9,500	17,000
(e)(8) Wheel not in proper condition:		
(i), (iv) Flat spot(s) and shelled spot(s):		
(A) One spot 2½" or more but less than 3" in length	9,500	17,000
(B) One spot 3" or more in length	13,000	20,500
(C) Two adjoining spots each of which is 2" or more in length but less than 2½" in length ...	9,500	17,000
(D) Two adjoining spots each of which are at least 2" in length, if either spot is 2½" or more in length	13,000	20,500
(ii) Gouge or chip in flange:		
(A) More than 1½" but less than 1⅝" in length; and more than ½" but less than ⅝" in width	9,500	17,000
(B) 1⅝" or more in length and ⅝" or more in width	13,000	20,500
(iii) Broken rim	13,000	20,500
(v) Seam in tread	9,500	17,000
(vi) Flange thickness of:		
(A) ⅞" or less but more than	9,500	17,000
(B) 1⅜" or less	13,000	20,500
(vii) Tread worn hollow	9,500	17,000
(viii) Flange height of:		
(A) 1½" or greater but less than 1⅝"	9,500	17,000
(B) 1⅝" or more	13,000	20,500
(ix) Rim thickness:		
(A) Less than 1"	9,500	17,000
(B) 1⅜" or less	13,000	20,500
(x) Crack or break in flange, tread, rim, plate, or hub:		
(A) Crack of less than 1"	9,500	17,000
(B) Crack of 1" or more	13,000	20,500
(C) Break	13,000	20,500
(xi) Loose wheel	13,000	20,500
(xii) Welded wheel	13,000	20,500
(e)(10) Improper grounding or insulation	13,000	20,500
(e)(11) Jumpers or cable connections not in proper condition	9,500	17,000
(e)(12) Door or cover plate not properly marked	9,500	17,000
(e)(13) Buffer plate not properly placed	9,500	17,000
(e)(14) Diaphragm not properly placed or aligned	9,500	17,000
(e)(15) Secondary braking system not in operating mode or contains known defect	9,500	17,000
(e)(16) Roller bearings:		
(i) Overheated	13,000	20,500
(ii) Cap screw loose or missing	9,500	17,000

APPENDIX A TO PART 238—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
(iii) Cap screw lock broken or missing	5,500	10,000
(iv) Seal loose, damaged, or leaks lubricant	9,500	17,000
(e)(17) Air compressor inoperative	9,500	17,000
(g) Record of inspection:		
(1), (4) Failure to maintain record of inspection	5,500	10,000
(2) Record contains insufficient information	2,500	5,000
238.305 Interior mechanical inspection of passenger cars:		
(a) Failure to perform inspection	¹ 5,500	10,000
(b) Failure to utilize properly qualified personnel	5,500	10,000
(c)(1) Failure to protect against personal injury	9,500	17,000
(c)(2) Floors not free of condition that creates hazard	9,500	17,000
(c)(3) Access to manual door release not in place	5,500	10,000
(c)(4) Emergency equipment not in place	5,500	10,000
(c)(5) Emergency brake valve not stenciled or marked	5,500	10,000
(c)(6) Door or cover plates not properly marked	5,500	10,000
(c)(7) Safety signage not in place or legible	5,500	10,000
(c)(8) Trap door unsafe or improperly secured	9,500	17,000
(c)(9) Vestibule steps not illuminated	5,500	10,000
(c)(10) Door does not safely operate as intended	9,500	17,000
(c)(11) Seat broken, loose, or not properly attached	9,500	17,000
(e) Record of inspection:		
(1), (4) Failure to maintain record of inspection	5,500	10,000
(2) Record contains insufficient information	2,500	5,000
(f) Record of inspection:		
(1), (4) Failure to maintain record of inspection	5,500	10,000
(2) Record contains insufficient information	2,500	5,000
238.307 Periodic mechanical inspection of passenger cars and unpowered vehicles:		
(a) Failure to perform periodic mechanical inspection	¹ 9,500	17,000
(b) Failure to utilize properly qualified personnel	9,500	17,000
(c)(1) Seat or seat attachment broken or loose	9,500	17,000
(c)(2) Luggage rack broken or loose	9,500	17,000
(c)(3) Bed, bunks, or restraints broken or loose	9,500	17,000
(c)(4) Emergency window exit does not properly operate	9,500	17,000
(c)(5) Emergency lighting not operational	9,500	17,000
(c)(6) Switches not in proper condition	9,500	17,000
(c)(7) Coupler not in proper condition	9,500	17,000
(c)(8) Truck not equipped with securing arrangement	9,500	17,000
(c)(9) Truck center casting cracked or broken	13,000	20,500
(c)(10) General conditions endangering crew, passengers	9,500	17,000
(c)(13) Hand or parking brake test not performed	9,500	17,000
(d)(1) Manual door release does not operate as intended	9,500	17,000
(d)(2) Hand or parking brake inspection not performed	9,500	17,000
(e)(1) Failure to maintain record of inspection	5,500	10,000
(i)–(iv) Record contains insufficient information	2,500	5,000
(f)(1) Record of inspection:		
(i) Failure to maintain record of inspection	5,500	10,000
(ii) Record contains insufficient information	2,500	5,000
238.309 Periodic brake equipment maintenance:		
(b) Failure to perform on MU locomotive	9,500	17,000
(c) Failure to perform on conventional locomotive	9,500	17,000
(d) Failure to perform on passenger coaches or other unpowered vehicle	9,500	17,000
(e) Failure to perform on cab car	9,500	17,000
(f) Record of periodic maintenance:		
(1), (2) Failure to maintain record or stencil	5,500	10,000
238.311 Single car tests:		
(a) Failure to test in accord with required procedure	9,500	17,000
(b) Failure to utilize properly qualified personnel	9,500	17,000
(c), (e) Failure to perform single car test	9,500	17,000
(f) Improper movement of car for testing	5,500	10,000
(g) Failure to test after repair or replacement of component	5,500	10,000
238.313 Class I brake test:		
(a) Failure to perform on commuter or short-distance intercity passenger train	¹ 19,500	25,000
(b) Failure to perform on long-distance intercity passenger train	¹ 19,500	25,000
(c) Failure to perform on cars added to passenger train	¹ 13,000	20,500
(d) Failure to utilize properly qualified personnel	13,000	20,500
(f) Passenger train used from Class I brake test with less than 100% operative brakes	13,000	20,500
(g) Partial failure to perform inspection on a passenger train	13,000	20,500
(3) Failure to adjust piston travel (per car)	9,500	17,000
(h) Failure to maintain record	5,500	10,000
(j) Failure to perform additional Class I brake test	13,000	20,500
(j)(3) Failure to maintain record	5,500	10,000
238.315 Class IA brake test:		

APPENDIX A TO PART 238—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
(a) Failure to perform inspection	1 13,000	20,500
(d) Failure to utilize properly qualified personnel	9,500	17,000
(e) Passenger train used from Class IA brake test with improper percentage of operative brakes	13,000	20,500
(f) Partial failure to perform inspection on passenger train	9,500	17,000
238.317 Class II brake test:		
(a) Failure to perform inspection	1 9,500	17,000
(b) Failure to utilize properly qualified personnel	9,500	17,000
(c) Improper use of defective equipment from Class II brake test	9,500	17,000
238.319 Running brake test:		
(a), (b) Failure to perform test	5,500	10,000
238.321 Out-of-service credit	5,500	10,000
Subpart E—Specific Requirements for Tier II Passenger Equipment		
238.403 Crash energy management	9,500	17,000
238.405 Longitudinal static compressive strength	9,500	17,000
238.407 Anti-climbing mechanism	9,500	17,000
238.409 Forward end structures of power car cabs:		
(a) Center collision post	9,500	17,000
(b) Side collision posts	9,500	17,000
(c) Corner posts	9,500	17,000
(d) Skin	9,500	17,000
238.411 Rear end structures of power car cabs:		
(a) Corner posts	9,500	17,000
(b) Collision posts	9,500	17,000
238.413 End structures of trailer cars	9,500	17,000
238.415 Rollover strength	9,500	17,000
238.417 Side loads	9,500	17,000
238.419 Truck-to-car-body and truck component attachment	9,500	17,000
238.421 Glazing:		
(b) End-facing exterior glazing	9,500	17,000
(c) Alternate glazing requirements	9,500	17,000
(d) Glazing securement	9,500	17,000
(e) Stenciling	5,500	10,000
238.423 Fuel tanks:		
(a) External fuel tanks	9,500	17,000
(b) Internal fuel tanks	9,500	17,000
238.425 Electrical system:		
(a) Circuit protection	9,500	17,000
(b) Main battery system	9,500	17,000
(c) Power dissipation resistors	9,500	17,000
(d) Electromagnetic interference and compatibility	9,500	17,000
238.427 Suspension system	9,500	17,000
238.429 Safety Appliances:		
(a) Couplers	13,000	20,500
(b) Hand/parking brakes	13,000	20,500
(d) Handrail or handhold missing	9,500	17,000
(d)(1)–(8) Handrail or handhold improper design	9,500	17,000
(e) Sill step missing	13,000	20,500
(e)(1)–(11) Sill step improper design	9,500	17,000
(g) Optional safety appliances	9,500	17,000
238.431 Brake system	9,500	17,000
238.433 Draft System	9,500	17,000
238.435 Interior fittings and surfaces	9,500	17,000
238.437 [Reserved].		
238.439 Doors:		
(a) Exterior side doors	9,500	17,000
(b) Manual override feature	9,500	17,000
(c) Notification to crew of door status	9,500	17,000
(d) Emergency back-up power	9,500	17,000
(f) End door kick-out panel or pop-out window	9,500	17,000
238.441 Emergency roof access	9,500	17,000
238.443 Headlights	9,500	17,000
238.445 Automated monitoring	9,500	17,000
238.447 Train operator's controls and power car cab layout	9,500	17,000
Subpart F—Inspection, Testing, and Maintenance Requirements for Tier II Passenger Equipment		
238.503 Inspection, testing, and maintenance requirements:		
(a) Failure to develop inspection, testing, and maintenance program or obtain FRA approval	19,500	25,000
(b) Failure to comply with provisions of the program	13,000	20,500
(c) Failure to ensure equipment free of conditions which endanger safety of crew, passengers, or equipment	9,500	17,000
(d) Specific safety inspections:		
(1)(i) Failure to perform Class I brake test or equivalent	19,500	25,000

APPENDIX A TO PART 238—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
(1)(ii) Partial failure to perform Class I brake test or equivalent	13,000	20,500
(2)(i) Failure to perform exterior mechanical inspection	¹ 9,500	17,000
(2)(ii) Failure to perform interior mechanical inspection	¹ 5,500	10,000
(g) Failure to perform scheduled maintenance as required in program	9,500	17,000
(h) Failure to comply with training, qualification and designation program	13,000	20,500
(i) Failure to develop or comply with standard procedures for performing inspection, tests, and maintenance	9,500	17,000
(j) Failure to conduct annual review	13,000	20,500
(k) Failure to establish or utilize quality control program	13,000	20,500
Subpart G—Specific Safety Planning Requirements for Tier II Passenger Equipment		
238.603 Safety plan:		
(a) Failure to develop safety operating plan	13,000	20,500
(b) Failure to develop procurement plan	13,000	20,500
(1)–(7) Failure to develop portion of plan	9,500	17,000
(c) Failure to maintain documentation	5,500	10,000

¹ A penalty may be assessed against an individual only for a willful violation. Generally when two or more violations of these regulations are discovered with respect to a single unit of passenger equipment that is placed or continued in service by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of \$25,000 per day. However, failure to perform, with respect to a particular unit of passenger equipment, any of the inspections and tests required under subparts D and F of this part will be treated as a violation separate and distinct from, and in addition to, any substantive violative conditions found on that unit of passenger equipment. Moreover, the Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A. Failure to observe any condition for movement of defective equipment set forth in §238.17 will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the unit of passenger equipment at the time of movement. Failure to observe any condition for the movement of passenger equipment containing defective safety appliances, other than power brakes, set forth in §238.17(e) will deprive the railroad of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) contained in part 231 of this chapter or §238.429 concerning the substantive defective condition. The penalties listed for failure to perform the exterior and interior mechanical inspections and tests required under §238.303 and §238.305 may be assessed for each unit of passenger equipment contained in a train that is not properly inspected. Whereas, the penalties listed for failure to perform the brake inspections and tests under §238.313 through §238.319 may be assessed for each train that is not properly inspected.

² The penalty schedule uses section numbers from 49 CFR part 238. If more than one item is listed as a type of violation of a given section, each item is also designated by a “penalty code,” which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 239—[AMENDED]

Authority: 49 U.S.C. 20102–20103, 20105–20114, 20133, 21301, 21304, and 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49(c), (g), (m).

51 Appendix A to Part 239 is advised to read as follows:

50. The authority citation for part 239 continues to read as follows:

APPENDIX A TO PART 239—SCHEDULE OF CIVIL PENALTIES ¹

Section ²	Violation	Willful violation
Subpart B—Specific Requirements		
239.101:		
(a) Failure of a railroad to adopt ³ a written emergency preparedness plan	\$19,500	\$25,000
(a)(1) Failure of the plan to provide for:		
(i) Initial or on-board notifications by an on-board crewmember	9,500	17,000
(ii) Notification of outside emergency responders by control center	9,500	17,000
(a)(2) Failure of the plan to provide for:		
(i) Initial or periodic training of on-board personnel	9,500	17,000
(ii) Initial or periodic training of control center personnel	9,500	17,000
(iii) Completion of initial training of all on-board and control center personnel by the specified date	9,500	17,000
(iv) Completion of initial training of all newly hired on-board and control center personnel by the specified date	9,500	17,000
(v) Adequate procedures to evaluate and test on-board and control center personnel for qualification under the emergency preparedness plan	9,500	17,000
(vi) Adequate on-board staffing	9,500	17,000
(a)(3) Failure of a host railroad involved in joint operations to coordinate applicable portions of the emergency preparedness plan with the railroad or railroads providing or operating a passenger train service operation	9,500	17,000
(a)(4) Failure of the plan to address:		
(i) Readiness procedures for emergencies in tunnels	9,500	17,000
(ii) Readiness procedures for emergencies on an elevated structure or in electrified territory	9,500	17,000
(iii) Coordination efforts involving adjacent rail modes of transportation	9,500	17,000
(a)(5) Failure of the plan to address relationships with on-line emergency responders by providing for:		
(i) The development and availability of training programs	9,500	17,000

APPENDIX A TO PART 239—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
(ii) Invitations to emergency responders to participate in emergency simulations	9,500	17,000
(iii) Distribution of applicable portions of the current emergency preparedness plan	9,500	17,000
(a)(6) Failure of the plan to provide for, or the railroad to include on board each train and maintain and replace:		
(i) Emergency equipment	9,500	17,000
(ii) First-aid kits	9,500	17,000
(iii) Emergency lighting	9,500	17,000
(a)(7) Failure of the plan to provide for emergency instructions inside each passenger car or to include additional safety awareness information	9,500	17,000
239.103 Failure to conduct a required full-scale simulation in accordance with the frequency schedule ...	9,500	17,000
239.105 Debriefing and critique:		
(a) Failure to conduct a debriefing and critique session after an emergency or full-scale simulation ...	9,500	17,000
(d)(1) Failure to maintain a record	5,500	10,000
(i) Failure to include date or location of the emergency or simulation	2,500	5,000
(ii) Failure to include date or location of the debriefing and critique session	2,500	5,000
(iii) Failure to include names of participants in the debriefing and critique session	2,500	5,000
(d)(2) Failure to make record available	2,500	5,000
239.107 Emergency exits:		
(a)(1), (a)(2):		
(i) Door not marked or instructions not posted	9,500	17,000
(ii) Door improperly marked or instructions improperly posted	9,500	17,000
(b)(1) Failure to provide for scheduled inspection, maintenance, and repair of emergency windows and doors	9,500	17,000
(b)(2):		
(i) Failure to test a representative sample of emergency windows	9,500	17,000
(ii) Emergency windows tested too infrequently	5,500	10,000
(b)(3) Failure to repair an inoperative emergency window or door exit	9,500	17,000
(c):		
(i) Failure to maintain a record	5,500	10,000
(ii) Failure to make record available	2,500	5,000
(d)(1) Insufficient limits or controls on accessibility to records	5,500	10,000
(d)(2) Missing terminal	2,500	5,000
(d)(3) Inability of railroad to produce information in a usable format for immediate review	2,500	5,000
(d)(4) Failure by railroad to designate an authorized representative	2,500	5,000
(d)(5) Failure to make record available	2,500	5,000
Subpart C—Review, Approval, and Retention of Emergency Preparedness Plans		
239.201 Filing and approval:		
(a):		
(i) Failure of a railroad to file a written emergency preparedness plan	13,000	20,500
(ii) Failure to designate a primary person to contact for plan review	2,500	5,000
(iii) Failure of a railroad to file an amendment to its plan	2,500	5,000
(b)(1), (b)(2):		
(i) Failure of a railroad to correct a plan deficiency	9,500	17,000
(ii) Failure to provide FRA with a corrected copy of the plan	2,500	5,000
(b)(3):		
(i) Failure of a railroad to correct an amendment deficiency	9,500	17,000
(ii) Failure to file a corrected plan amendment with FRA	2,500	5,000
239.203 Retention of emergency preparedness plan:		
(1) Failure to retain a copy of the plan or an amendment to the plan	9,500	17,000
(2) Failure to make record available	2,500	5,000
Subpart D—Operational (Efficiency) Tests; Inspection of Records and Recordkeeping		
239.301 Operational (efficiency) tests:		
(a) Failure to periodically conduct operational (efficiency) tests of its on-board and control center employees	9,500	17,000
(b)(1) Failure to maintain a record	5,500	10,000
(b)(2) Record improperly completed	2,500	5,000
(c)(1) Failure to retain a copy of the record	2,500	5,000
(c)(2) Failure to make record available	2,500	5,000
239.303 Electronic recordkeeping:		
(a) Insufficient limits or controls on accessibility to records	5,500	10,000
(b) Missing terminal	2,500	5,000
(c) Inability of railroad to produce information in a usable format for immediate review	2,500	5,000
(d) Failure by railroad to designate an authorized representative	2,500	5,000
(e) Failure to make record available	2,500	5,000

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where circumstances warrant. See 49 U.S.C. 21301, 21304, and 49 CFR part 209, appendix A.

² The penalty schedule uses section numbers from 49 CFR part 239. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

³ This section also requires each railroad (subject to part 239) to comply with the adopted emergency preparedness plan. As the severity of a violation for a railroad's failure to comply with an emergency preparedness plan varies depending upon the provision with which the railroad failed to comply, please see the guideline penalty for the particular section of the regulation requiring that provision.

PART 240—[AMENDED]

Authority: 49 U.S.C. 20103, 20107, 20135,
21301, 21304, 21311; 28 U.S.C. 2461, note;
and 49 CFR 1.49.

53. Appendix A to part 240 is revised
to read as follows:

52. The authority citation for part 240
continues to read as follows:

APPENDIX A TO PART 240—SCHEDULE OF CIVIL PENALTIES ¹

Section ²	Violation	Willful violation
Subpart B—Component Elements of the Certification Process		
240.101 Program failures:		
(a) Failure to have program	\$19,500	\$25,000
(b) Program that fails to address a subject	9,500	17,000
240.103 Failure to:		
(a) Follow Appendix B	2,500	5,000
(d) Resubmit, when directed by FRA	2,500	5,000
240.104 Allowing uncertified person to operate nontraditional locomotives	13,000	20,500
240.105 Failure to have or execute adequate procedure for selection of supervisors	9,500	17,000
240.107 Classes of service:		
(a) Failure to designate classes of service	9,500	17,000
240.109 Limitations on considering prior conduct records:		
(a) Failure to have procedure for determining eligibility	9,500	17,000
(e) Considering excluded data	9,500	17,000
(f), (g) Failure to provide timely review opportunity	9,500	17,000
240.111 Furnishing motor vehicle records:		
(a) Failure to action required to make information available	2,500	5,000
(b) Failure to request:		
(1) Local record	2,500	5,000
(2) NDR record	2,500	5,000
(f) Failure to request additional record	2,500	5,000
(g) Failure to notify of absence of license	2,500	5,000
(h) Failure to submit request in timely manner	2,500	5,000
(i) Failure to report within 48 hours or railroad taking certification action for not reporting earlier than 48 hours	2,500	5,000
240.113 Furnishing prior employment information:		
(a) Failure to take action required to make information available	2,500	5,000
(b) Failure to request record	2,500	5,000
240.115 Criteria for considering prior motor vehicle conduct:		
(b) Considering excluded data	9,500	17,000
(c) Failure to:		
(1) Consider data	19,500	25,000
(3)–(4) Properly act in response to data	5,500	10,000
240.117 Consideration of operational rules compliance records:		
(a) Failure to have program and procedures	19,500	25,000
(b)–(j) Failure to have adequate program or procedure	9,500	17,000
240.119 Consideration of substance abuse/rules compliance records:		
(a) Failure to have program and procedures	19,500	25,000
(b)–(e) Failure to have adequate program or procedure	9,500	17,000
240.121 Failure to have adequate procedure for determining acuity	9,500	17,000
(f) Failure of engineer to notify	9,500	17,000
240.123 Failure to have:		
(b) Adequate procedures for continuing education	9,500	17,000
(c) Adequate procedures for training new engineers	9,500	17,000
240.125 Failure to have:		
(a) Adequate procedures for testing knowledge	9,500	17,000
(d) Adequate procedures for documenting testing	9,500	17,000
240.127 Failure to have:		
(a) Adequate procedures for evaluating skill performance	9,500	17,000
(c) Adequate procedures for documenting skills testing	9,500	17,000
240.129 Failure to have:		
(a)–(b) Adequate procedures for monitoring performance	9,500	17,000
Subpart C—Implementation of the Certification Process		
240.201 Schedule for implementation:		
(a) Failure to select supervisors by specified date	2,500	5,000
(c) Failure to issue certificate to engineer	2,500	5,000
(d) Allowing uncertified person to operate	19,500	25,000
(e)–(g) Certifying without complying with subpart C	9,500	17,000
(h)–(i) Failure to issue certificate to engineer	2,500	5,000
240.203		

APPENDIX A TO PART 240—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
(a) Designating a person as a supervisor without determining that		
(1) Person knows and understands this part	9,500	17,000
(2) Person can test and evaluate engineers	19,500	25,000
(3) Person has experience to prescribe remedies	9,500	17,000
(b) Certifying a person without determining that:		
(1) Person meets the eligibility criteria	19,500	25,000
(2) Person meets the medical criteria	9,500	17,000
(3) Person has demonstrated knowledge	9,500	17,000
(4) Person has demonstrated skills	9,500	17,000
(c) Certifying a person without determining that:		
(1) Person has completed training program	9,500	17,000
(2) Person meets the eligibility criteria	9,500	17,000
(3) Time has elapsed	9,500	17,000
240.205 Procedures for determining eligibility based on prior safety conduct:		
(a) Selecting person lacking eligibility	19,500	25,000
(d) Failure to have basis for taking action	9,500	17,000
240.207 Ineligibility based on medical condition:		
(a) Selecting person lacking proper acuity	13,000	20,500
(b) Failure to have basis for finding of proper acuity	2,500	5,000
(c) Acuity examinations performed by unauthorized person	2,500	5,000
(d) Failure to note need for device to achieve acuity	2,500	5,000
(e) Failure to use device needed for proper acuity	2,500	5,000
240.209 Demonstrating knowledge:		
(b) Failure to properly determine knowledge	13,000	20,500
(c) Improper test procedure	9,500	17,000
(d) Failure to document test results	2,500	5,000
(e) Allowing person to operate despite test failure	9,500	17,000
240.211 Demonstrating skills:		
(b) Failure to properly determine knowledge	9,500	17,000
(c) Improper test procedure	5,500	10,000
(d) Failure to document test results	2,500	5,000
(e) Allowing person to operate despite test failure	9,500	17,000
240.213 Completion of approved training program:		
(a) Failure to properly determine	9,500	17,000
(b) Failure to document successful program completion	5,500	10,000
240.215 Supporting information:		
(a), (f)–(h) Failure to have a record	2,500	5,000
(b) Failure to have complete record	2,500	5,000
(i) Falsification of record		25,000
240.217 Time limits for making determinations:		
(a), (c) Exceeding time limit	5,500	10,000
240.219 Denial of certification:		
(a) Failure to notify or provide opportunity for comment	5,500	10,000
(c) Failure to notify, provide data, or untimely notification	5,500	10,000
240.221 Identification of persons:		
(a)–(c) Failure to have a record	5,500	10,000
(d) Failure to update a record	5,500	10,000
(e)–(f) Failure to make a record available	2,500	5,000
240.223 Certificate criteria:		
(a) Improper certificate	2,500	5,000
(b) Failure to designate those with signatory authority	2,500	5,000
(d) Falsification of certificate		25,000
240.225 Railroad relying on determination of another:		
(a) Failure to address in program or failure to require newly hired engineer to take entire training program	19,500	25,000
(2) Reliance on wrong class of service	5,500	10,000
(3) Failure to familiarize person with new operational territory	5,500	10,000
(4) Failure to determine knowledge	5,500	10,000
(5) Failure to determine performance skills	5,500	10,000
240.227 Railroad relying on requirements of a different country:		
(a) Joint operator reliance:		
(1) On person not employed	2,500	5,000
(2) On person who fails to meet Canadian requirements	2,500	5,000
(b) Canadian railroad reliance:		
(1) On person not employed	2,500	5,000
(2) On person who fails to meet Canadian requirements	2,500	5,000
240.229 Requirements for joint operations territory:		
(a) Allowing uncertified person to operate	5,500	10,000
(b) Certifying without making determinations or relying on another railroad	13,000	20,500
(c) Failure of		
(1) Controlling railroad certifying without determining certification status, knowledge, skills, or familiarity with physical characteristics	19,500	25,000

APPENDIX A TO PART 240—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
(2) Employing railroad to determine person's certified and qualified status for controlling railroad	19,500	25,000
(3) Person to notify employing railroad of lack of qualifications	19,500	25,000
(d) Failure to provide qualified person	5,500	10,000
240.231 Persons qualified on physical characteristics in other than joint operations:		
(a) Person unqualified, no exception applies or railroad does not adequately address in program	19,500	25,000
(b) Failure to have a pilot:		
(1) For engineer who has never been qualified	19,500	25,000
(2) For engineer previously qualified	9,500	17,000
Subpart D—Administration of the Certification Programs		
240.301 Failure to have system for certificate replacement	5,500	10,000
240.303 Monitoring operations:		
(a) Failure to have program	19,500	25,000
(b) Failure to observe each person annually	2,500	5,000
(c) Failure to test each person annually	2,500	5,000
(d) Failure to test properly	2,500	5,000
240.305 Prohibited conduct:		
(a) Unlawful:		
(1) Passing of stop signal	19,500	25,000
(2) Control of speed	19,500	25,000
(3) Brake tests	19,500	25,000
(4) Occupancy of main track	19,500	25,000
(5) Tampering or operation with disabled safety device	19,500	25,000
(6) Supervisor, pilot, or instructor fails to take appropriate action	19,500	25,000
(b) Failure of engineer to:		
(1) Carry certificate	2,500	5,000
(2) Display certificate when requested	2,500	5,000
(c) Failure of engineer to notify railroad of limitations or railroad requiring engineer to exceed limitations	19,500	25,000
(d) Failure of engineer to notify railroad of denial or revocation	19,500	25,000
240.307 Revocation of certification:		
(a) Failure to withdraw person from service	13,000	20,500
(b) Failure to notify, provide hearing opportunity, or untimely procedures	5,500	10,000
(c)–(h) Failure of railroad to comply with hearing or waiver procedures	5,500	10,000
(j) Failure of railroad to make record	5,500	10,000
(k) Failure of railroad to conduct reasonable inquiry or make good faith determination	13,000	20,500
240.309 Oversight Responsibility Report:		
(a) Failure to report or to report on time	2,500	5,000
(b)–(h) Incomplete or inaccurate report	5,500	10,000

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

² The penalty schedule uses section numbers from 49 CFR part 240. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 241—[AMENDED]

Authority: 49 U.S.C. 20103, 20107, 21301, 21304, 21311; 28 U.S.C. 2461, note; 49 CFR 1.49.

55. Appendix B to part 241 is revised to read as follows:

54. The authority citation for part 241 continues to read as follows:

APPENDIX B TO PART 241—SCHEDULE OF CIVIL PENALTIES ¹

Section ²	Violation	Willful violation
241.9:		
(a) Requiring or permitting extraterritorial dispatching of a railroad operation	\$9,500	\$17,000
(c) Failing to notify FRA about extraterritorial dispatching of a railroad operation in an emergency situation	5,500	10,000
241.11 Conducting a railroad operation that is extraterritorially dispatched:		
(a)(1) Generally	9,500	17,000
(c) In an emergency situation—where dispatching railroad fails to notify FRA of the extraterritorial dispatching	2,500	5,000
241.13 Requiring or permitting track to be used for the conduct of a railroad operation that is extraterritorially dispatched:		
(a)(1) Generally	9,500	17,000

APPENDIX B TO PART 241—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
(c) In an emergency situation—where dispatching railroad fails to notify FRA of the extraterritorial dispatching	2,500	5,000

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where circumstances warrant. See 49 U.S.C. 21301, 21304 and 49 CFR part 209, appendix A.

² The penalty schedule uses section numbers from 49 CFR part 241. If more than one item is listed as a type of violation of a given section, each item is also designated by a “penalty code,” which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

Issued in Washington, DC, on August 23, 2010.

Karen J. Rae,

Deputy Administrator.

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