

## § 209.115

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

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

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

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

(c) The Chief Counsel or the hearing officer appointed under §209.115 may grant extensions of the time of the commencement of the hearing for good cause shown.

### § 209.115 Hearing.

(a) When a hearing is requested and scheduled under §209.113, a hearing officer designated by the Chief Counsel convenes and presides over the hearing. If requested by respondent and if practicable, the hearing is held in the general vicinity of the place where the alleged violation occurred, or at a place convenient to the respondent. Testimony by witnesses shall be given under oath and the hearing shall be recorded verbatim.

(b) The presiding official may:

(1) Administer oaths and affirmations;

(2) Issue subpoenas as provided by §209.7;

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

(4) Take or cause depositions to be taken;

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

(6) Examine witnesses at the hearing;

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

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

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

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

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

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

[42 FR 56742, Oct. 28, 1977; 42 FR 59755, Nov. 21, 1977]

### § 209.117 Presiding officer's decision.

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

(b) If, within twenty (20) days after service of an order assessing a civil penalty, the respondent does not pay the civil penalty or file an appeal as provided in §209.121, the case may be referred to the Attorney General with a request that an action to collect the penalty be brought in the appropriate United States District Court.

### § 209.119 Assessment considerations.

The assessment of a civil penalty under §209.117 is made only after considering:

(a) The nature and circumstances of the violation;

(b) The extent and gravity of the violation;

(c) The degree of the respondent's culpability;

(d) The respondent's history of prior offenses;

(e) The respondent's ability to pay;

(f) The effect on the respondent's ability to continue in business; and

(g) Such other matters as justice may require.

#### § 209.121 Appeal.

(a) Any party aggrieved by a presiding officer's decision or order issued under § 209.117 assessing a civil penalty may file an appeal with the Administrator. The appeal must be filed within twenty (20) days of service of the presiding officer's order.

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

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

#### CRIMINAL PENALTIES

#### § 209.131 Criminal penalties generally.

The Federal hazardous materials transportation safety laws (49 U.S.C. 5124) provide a criminal penalty of a fine under title 18, United States Code, and imprisonment for not more than 5 years, or both, for any person who knowingly violates 49 U.S.C. 5104(b) or who willfully violates chapter 51 of title 49, United States Code, or a regulation prescribed or order issued under that chapter.

[61 FR 38647, July 25, 1996]

#### § 209.133 Referral for prosecution.

If an inspector, including a certified state inspector under Part 212 of this chapter, or other employee of FRA becomes aware of a possible willful violation of the Federal hazardous materials transportation safety laws (49 U.S.C. Chapter 51) or a regulation issued under those laws for which FRA exer-

cises enforcement responsibility, he or she reports it to the Chief Counsel. If evidence exists tending to establish a prima facie case, and if it appears that assessment of a civil penalty would not be an adequate deterrent to future violations, the Chief Counsel refers the report to the Department of Justice for criminal prosecution of the offender.

[61 FR 38647, July 25, 1996]

### Subpart C—Compliance Orders

#### § 209.201 Compliance orders generally.

(a) This subpart prescribes rules of procedure leading to the issuance of compliance orders pursuant to the Federal railroad safety laws at 49 U.S.C. 5121(a) and/or 20111(b).

(b) The FRA may commence a proceeding under this subpart when FRA has reason to believe that a person is engaging in conduct or a pattern of conduct that involves one or more violations of the Federal railroad safety laws or any regulation or order issued under those laws for which FRA exercises enforcement authority.

[61 FR 38647, July 25, 1996]

#### § 209.203 Notice of investigation.

(a) FRA begins a compliance order proceeding by serving a notice of investigation on the respondent.

(b) The notice of investigation contains:

(1) A statement of the legal authority for the proceeding;

(2) A statement of the factual allegations upon which the remedial action is being sought; and

(3) A statement of the remedial action being sought in the form of a proposed compliance order.

(c) The FRA may amend the notice of investigation at any time prior to the entry of a final compliance order. If an amendment includes any new material allegation of fact or seeks new or additional remedial action, the respondent is given an opportunity to respond.

#### § 209.205 Reply.

(a) Within thirty (30) days of service of a notice of investigation, the respondent may file a reply with the FRA. The Chief Counsel may extend