

## § 209.13

may assume that there is no objection to public disclosure of the document in its entirety.

(e) FRA retains the right to make its own determination with regard to any claim of confidentiality. Notice of a decision by the FRA to deny a claim, in whole or in part, and an opportunity to respond shall be given to a person claiming confidentiality of information no less than five days prior to its public disclosure.

### § 209.13 Consolidation.

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

[54 FR 42906, Oct. 18, 1989]

### § 209.15 Rules of evidence.

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

[54 FR 42907, Oct. 18, 1989]

### § 209.17 Motions.

Motions shall be in writing, filed with the presiding officer, and copies served upon the parties in accordance with § 209.5, except that oral motions may be made during the course of any hearing or appearance before the presiding officer. Each motion shall state the particular order, ruling, or action desired and the grounds therefor. Unless otherwise specified by the presiding officer, any objection to a written motion must be filed within 10 days after receipt of the motion.

[54 FR 42907, Oct. 18, 1989]

## 49 CFR Ch. II (10–1–03 Edition)

### Subpart B—Hazardous Materials Penalties

#### CIVIL PENALTIES

#### § 209.101 Civil penalties generally.

(a) Sections 209.101 through 209.121 prescribe rules of procedure for the assessment of civil penalties pursuant to the Federal hazardous materials transportation safety law, 49 U.S.C. Chapter 51.

(b) When the FRA has reason to believe that a person has knowingly committed an act which is a violation of any provision of subchapter B or C of chapter I, subtitle B of this title for which the FRA exercises enforcement responsibility or any waiver or order issued thereunder, it may conduct a proceeding to assess a civil penalty.

[42 FR 56742, Oct. 28, 1977, as amended at 61 FR 38646, July 25, 1996]

#### § 209.103 Minimum and maximum penalties.

A person who knowingly violates a requirement of subchapter A or C of chapter I, Subtitle B of this title is liable for a civil penalty of at least \$250 but not more than \$27,500 for each violation. When the violation is a continuing one, each day of the violation constitutes a separate offense. 49 U.S.C. 5123.

[61 FR 38646, July 25, 1996, as amended at 63 FR 11619, Mar. 10, 1998]

#### § 209.105 Notice of probable violation.

(a) FRA, through the Chief Counsel, begins a civil penalty proceeding by serving a notice of probable violation on a person charging him or her with having violated one or more provisions of subchapter A or C of chapter I, subtitle B of this title. Appendix B to this part contains guidelines used by the chief counsel in making initial penalty assessments.

(b) A notice of probable violation issued under this section includes:

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

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