

§ 212.5 Filing.

Each State agency desiring to conduct investigative and surveillance activities must submit to the Associate Administrator for Safety, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590, the documentation which contains the information prescribed by §§ 212.105 and 212.107.

Subpart B—State/Federal Roles**§ 212.101 Program principles.**

(a) The purpose of the national railroad safety program is to promote safety in all areas of railroad operations in order to reduce deaths, injuries and damage to property resulting from railroad accidents.

(b)(1) The national railroad safety program is carried out in part through the issuance of mandatory Federal safety requirements and through inspection efforts designed to monitor compliance with those requirements. FRA and State inspections determine the extent to which the railroads, shippers, and manufacturers have fulfilled their obligations with respect to inspection, maintenance, training, and supervision. The FRA and participating States do not conduct inspections of track, equipment, signal systems, operating practices, and hazardous materials handling for the railroads, shippers, and manufacturers.

(2) The national railroad safety program is also carried out through routine inspections, accident investigations, formal and informal educational efforts, complaint investigations, safety assessments, special inquiries, regulatory development, research and similar initiatives.

(c) It is the policy of the FRA to maintain direct oversight of railroad, shipper, and manufacturer conditions and practices relevant to safety by conducting inspections and investigations in concert with participating State agencies.

(d) The principal role of the State Safety Participation Program in the national railroad safety effort is to provide an enhanced investigative and surveillance capability through assumption, by participating State agen-

cies, of responsibility for planned routine compliance inspections. The FRA encourages further State contributions to the national railroad safety program consistent with overall program needs, individual State capabilities, and the willingness of the States to undertake additional investigative and surveillance activities.

(e) It is the policy of the FRA to promote the growth and vitality of the State Safety Participation Program through liaison with State government, coordination of Federal and State investigative and surveillance activities, and training of inspection personnel.

[47 FR 41051, Sept. 16, 1982, as amended at 57 FR 28115, June 24, 1992]

§ 212.103 Investigative and surveillance authority.

(a) Subject to the requirements of this part, a State agency with jurisdiction under State law may participate in investigative and surveillance activities concerning Federal railroad safety laws and regulations by entering into an agreement under § 212.105 for the exercise of specified authority.

(b) Subject to requirements of this part, a State agency with jurisdiction under State law may participate in investigative and surveillance activities with respect to particular rules, regulations, orders or standards issued under the regulatory authority of the Federal Railroad Safety Act of 1970 by filing an annual certification under § 212.107.

§ 212.105 Agreements.

(a) *Scope.* The principal method by which States may participate in investigative and surveillance activities is by agreement with FRA. An agreement may delegate investigative and surveillance authority with respect to all or any part of the Federal railroad safety laws.

(b) *Duration.* An agreement may be for a fixed term or for an indefinite duration.

(c) *Amendments.* An agreement may be amended to expand or contract its scope by consent of FRA and the State.

(d) *Common terms.* Each agreement entered into under this section provides that:

§212.107

49 CFR Ch. II (10-1-05 Edition)

(1) The State agency is delegated certain specified authority with respect to investigative and surveillance activities;

(2) The delegation is effective only to the extent it is carried out through personnel recognized by the State and the FRA (pursuant to subpart C of this part) to be qualified to perform the particular investigative and surveillance activities to which the personnel are assigned; and

(3) The State agency agrees to provide the capability necessary to assure coverage of facilities, equipment, and operating practices through planned routine compliance inspections for all, or a specified part of, the territory of the State.

(e) *Request for agreement.* A request for agreement shall contain the following information:

(1) An opinion of the counsel for the State agency stating that:

(i) The agency has jurisdiction over the safety practices of the facilities, equipment, rolling stock, and operations of railroads in that State and whether the agency has jurisdiction over shippers and manufacturers;

(ii) The agency has the authority and capability to conduct investigative and surveillance activities in connection with the rules, regulations, orders, and standards issued by the Administrator under the Federal railroad safety laws; and

(iii) State funds may be used for this purpose.

(2) A statement that the State agency has been furnished a copy of each Federal safety statute, rule, regulation, order, or standard pertinent to the State's participation;

(3) The names of the railroads operating in the State together with the number of miles of main and branch lines operated by each railroad in the State;

(4) The name, title and telephone number of the person designated by the agency to coordinate the program; and

(5) A description of the organization, programs, and functions of the agency with respect to railroad safety.

(f) *Developmental agreement.* Consistent with national program requirements, the Associate Administrator may enter into an agreement under

this section prior to the qualification of inspection personnel of the State under subpart C of this part. In such a case, the agreement shall (1) specify the date at which the State will assume investigative and surveillance duties, and (2) refer to any undertaking by the FRA to provide training for State inspection personnel, including a schedule for the training courses that will be made available.

(g) *Action on request.* The Associate Administrator responds to a request for agreement by entering into an agreement based on the request, by declining the request, or by suggesting modifications.

(Approved by the Office of Management and Budget under control number 2130-0509)

[47 FR 41051, Sept. 16, 1982, as amended at 57 FR 28115, June 24, 1992]

§212.107 Certification.

(a) *Scope.* In the event the FRA and the State agency do not agree on terms for the participation of the State under §212.105 of this part and the State wishes to engage in investigative and surveillance activities with respect to any rule, regulation, order, or standard issued under the authority of the Federal Railroad Safety Act of 1970, the State shall file an annual certification with respect to such activities.

(b) *Content.* The annual certification shall be filed not less than 60 days before the beginning of the Federal fiscal year to which it applies, shall contain the information required by §212.105(e) of this part and, in addition, shall certify that:

(1) The State agency has the authority and capability to conduct investigative and surveillance activities under the requirements of this part with respect to each rule, regulation, order or standard for which certification is submitted; and

(2) The State agency will, at a minimum, conduct planned compliance inspections meeting the level of effort prescribed in the applicable appendix to this part.

(c) *Action on certification.* The Associate Administrator responds to the filing of an annual certification within 60 days of its receipt by accepting it or by rejecting it for cause stated.