

(6) Examine witnesses at the hearing;
(7) Convene, recess, reconvene, 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 compliance orders and permitted by law which may expedite the hearing or aid in the disposition of an issue raised therein.

(c) The Chief Counsel has the burden of providing the facts alleged in the notice of investigation 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 remedial action being sought, 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 therefor.

§ 209.211 Presiding officer's decision.

(a) After consideration of evidence, the presiding officer may dismiss the notice of investigation or issue a compliance order. 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) A compliance order issued under this section is effective twenty (20) days from service on the respondent unless otherwise provided therein.

§ 209.213 Appeal.

(a) Any party aggrieved by a presiding officer's decision may file an appeal with the Administrator. The appeal must be filed within twenty (20) days after service of the presiding officer's decision.

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

(c) The filing of an appeal does not stay the effectiveness of a compliance order unless the Administrator expressly so provides.

§ 209.215 Time limitation.

A proceeding for the issuance of a compliance order under the Federal Railroad Safety Act of 1970, as amended, shall be completed within twelve (12) months after issuance of the notice of investigation.

Subpart D—Disqualification Procedures

SOURCE: 54 FR 42907, Oct. 18, 1989, unless otherwise noted.

§ 209.301 Purpose and scope.

(a) This subpart prescribes the rules of practice for administrative proceedings relating to the determination of an individual's fitness for performing safety-sensitive functions under section 209(f) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438(f)).

(b) The purpose of this subpart is to prevent accidents and casualties in railroad operations that result from the presence in the work force of railroad employees, including managers and supervisors, and agents of railroads who have demonstrated their unfitness to perform the safety-sensitive functions described in § 209.303 by violating any rule, regulation, order or standard prescribed by FRA. Employees and agents who evidence such unfitness may be disqualified, under specified terms and conditions, temporarily or permanently, from performing such safety-sensitive functions.

(c) This subpart does not preempt a railroad from initiating disciplinary proceedings and imposing disciplinary sanctions against its employees, including managers and supervisors, under its collective bargaining agreements or in the normal and customary manner. Disqualification determinations made under this subpart shall have no effect on prior or subsequent