

Federal Railroad Administration, DOT

§ 209.109

above apply to violations occurring on or after August 10, 2005.

[71 FR 77294, Dec. 26, 2006]

§ 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;

(3) Notice of the maximum amount of civil penalty for which the respondent may be liable;

(4) Notice of the amount of the civil penalty proposed to be assessed;

(5) A description of the manner in which the respondent should make payment of any money to the United States;

(6) A statement of the respondent's right to present written explanations, information or any materials in answer to the charges or in mitigation of the penalty; and

(7) A statement of the respondent's right to request a hearing and the procedures for requesting a hearing.

(c) The FRA may amend the notice of probable violation at any time prior to the entry of an order assessing a civil penalty. If the amendment contains any new material allegation of fact, the respondent is given an opportunity to respond. In an amended notice, FRA may change the civil penalty amount proposed to be assessed up to and including the maximum penalty amount of \$50,000 for each violation, except that if the violation results in death, serious illness or severe injury to any person, or substantial destruction of property, FRA may change the penalty amount proposed to be assessed up to

and including the maximum penalty amount of \$100,000.

[42 FR 56742, Oct. 28, 1977, as amended at 61 FR 38646, July 25, 1996; 69 FR 30591, May 28, 2004; 71 FR 77295, Dec. 26, 2006]

§ 209.107 Reply.

(a) Within thirty (30) days of the service of a notice of probable violation issued under § 209.105, the respondent may—

(1) Pay as provided in § 209.109(a) and thereby close the case;

(2) Make an informal response as provided in § 209.111; or

(3) Request a hearing as provided in § 209.113.

(b) The Chief Counsel may extend the thirty (30) days period for good cause shown.

(c) Failure of the respondent to reply by taking one of the three actions described in paragraph (a) of this section within the period provided constitutes a waiver of his or her right to appear and contest the allegations and authorizes the Chief Counsel, without further notice to the respondent, to find the facts to be as alleged in the notice of probable violation and to assess an appropriate civil penalty.

§ 209.109 Payment of penalty; compromise.

(a) Payment of a civil penalty may be made by certified check, money order, or credit card. Payments made by certified check or money order should be made payable to the Federal Railroad Administration and sent to DOT/FRA, Mike Monroney Aero Center, General Accounting Division, AMZ-300, P.O. Box 25082, Oklahoma City, OK 73125. Overnight express payments may be sent to DOT/FRA, Mike Monroney Aero Center, General Accounting Division, AMZ-300, 6500 South MacArthur Blvd. Headquarters Building, Room 176, Oklahoma City, OK 73169. Payment by credit card must be made via the Internet at <https://www.pay.gov/paygov/>. Instructions for online payment are found on the Web site.

(b) At any time before an order assessing a penalty is referred to the Attorney General for collection, the respondent may offer to compromise for