

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.

A person who knowingly violates 49 U.S.C. 5104(b) or § 171.2(1) of this title or willfully or recklessly violates a requirement of the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued thereunder shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both, except the maximum amount of imprisonment shall be 10 years in any case in which the violation involves the release of a hazardous material which results in death or bodily injury to any person.

[71 FR 77295, Dec. 26, 2006]

§ 209.133 Referral for prosecution.

If an inspector, including a certified state inspector under part 212 of this chapter, or another employee of FRA becomes aware of a possible knowing violation of 49 U.S.C. 5104(b) or a willful or reckless violation of the Federal hazardous materials transportation law or a regulation issued under those laws for which FRA exercises enforcement responsibility, he or she shall report 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