

## § 209.201

adequate deterrent to future violations, the Chief Counsel refers the report to the Department of Justice for criminal prosecution of the offender.

[61 FR 38647, July 25, 1996, as amended at 71 FR 77295, Dec. 26, 2006]

### Subpart C—Compliance Orders

#### § 209.201 Compliance orders generally.

(a) This subpart prescribes rules of procedure leading to the issuance of compliance orders pursuant to the Federal railroad safety laws at 49 U.S.C. 5121(a) and/or 20111(b).

(b) The FRA may commence a proceeding under this subpart when FRA has reason to believe that a person is engaging in conduct or a pattern of conduct that involves one or more violations of the Federal railroad safety laws or any regulation or order issued under those laws for which FRA exercises enforcement authority.

[61 FR 38647, July 25, 1996]

#### § 209.203 Notice of investigation.

(a) FRA begins a compliance order proceeding by serving a notice of investigation on the respondent.

(b) The notice of investigation contains:

(1) A statement of the legal authority for the proceeding;

(2) A statement of the factual allegations upon which the remedial action is being sought; and

(3) A statement of the remedial action being sought in the form of a proposed compliance order.

(c) The FRA may amend the notice of investigation at any time prior to the entry of a final compliance order. If an amendment includes any new material allegation of fact or seeks new or additional remedial action, the respondent is given an opportunity to respond.

#### § 209.205 Reply.

(a) Within thirty (30) days of service of a notice of investigation, the respondent may file a reply with the FRA. The Chief Counsel may extend the time for filing for good cause shown.

(b) The reply must be in writing, signed by the person filing it, and state with respect to each factual allegation

## 49 CFR Ch. II (10–1–07 Edition)

whether it is admitted or denied. Even though formally denied, a factual allegation set forth in a notice of investigation is considered to be admitted for purposes of the proceeding unless:

(1) Opposed by the affidavit of an individual having personal knowledge of the subject matter;

(2) Challenged as defective on its face together with a supporting explanation as to why it is believed to be defective; or

(3) Otherwise actively put at issue through the submission of relevant evidence.

(c) The reply must set forth any affirmative defenses and include a statement of the form and nature of proof by which those defenses are to be established.

(d) If it is necessary to respond to an amendment to the notice of investigation, the respondent may amend the reply concerning the substance of matters contained in the amendment to the notice at any time before the issuance of an order under § 209.211.

(e) If the respondent elects not to contest one or more factual allegations, he or she should so state in the reply. An election not to contest a factual allegation is an admission of that allegation solely for the purpose of issuing a compliance order. That election constitutes a waiver of hearing as to that allegation but does not, by itself, constitute a waiver of the right to be heard on other issues. In connection with a statement of election not to contest a factual allegation, the respondent may propose an appropriate order for issuance by the Administrator or propose the negotiation of a consent order.

(f) Failure of the respondent to file a reply within the period provided constitutes a waiver of his or her right to appear and contest the allegation and authorizes the Administrator, without further notice to the respondent, to find the facts to be as alleged in the notice of proposed violation and to issue an appropriate order directing compliance.

#### § 209.207 Consent order.

(a) At any time before the issuance of an order under § 209.211, the Chief Counsel and the respondent may execute an

## Federal Railroad Administration, DOT

## § 209.215

agreement proposing the entry by consent of an order directing compliance. The Administrator may accept the proposed order by signing it. If the Administrator rejects the proposed order, he or she directs that the proceeding continue.

(b) An agreement submitted to the Administrator under this section must include:

- (1) A proposed compliance order suitable for the Administrator's signature;
- (2) An admission of all jurisdictional facts;
- (3) An express waiver of further procedural steps and of all right to seek judicial review or otherwise challenge or contest the validity of the order; and
- (4) An acknowledgment that the notice of investigation may be used to construe the terms of the order.

### § 209.209 Hearing.

(a) When a respondent files a reply contesting allegations in a notice of investigation issued under § 209.203 or when the FRA and the respondent fail to agree upon an acceptable consent order, the hearing officer designated by the Chief Counsel convenes and presides over a hearing on the proposed compliance order.

(b) The presiding official may:

- (1) Administer oaths and affirmations;
- (2) Issue subpoenas as provided by § 209.7;
- (3) Adopt procedures for the submission of evidence;
- (4) Take or cause depositions to be taken;
- (5) Rule on offers of proof and receive relevant evidence;
- (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 no-

tice 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