

## § 209.501

the criminal penalties provided for in 49 U.S.C. 21311 (formerly codified in 45 U.S.C. 438(e)) for knowingly and willfully falsifying reports required by this subpart.

[59 FR 43676, Aug. 24, 1994, as amended at 63 FR 11619, Mar. 10, 1998; 69 FR 30592, May 28, 2004; 72 FR 51196, Sept. 6, 2007; 74 FR 79700, Dec. 30, 2008]

### **Subpart F—Enforcement, Appeal and Hearing Procedures for Rail Routing Decisions Pursuant to 49 CFR § 172.820**

#### **§ 209.501 Review of rail transportation safety and security route analysis.**

(a) *Review of route analysis.* If the Associate Administrator for Safety determines that a railroad carrier's route selection, analysis and documentation pursuant to §172.820 of chapter I of this title is deficient and fails to establish that the route chosen by the carrier poses the least overall safety and security risk, the Associate Administrator shall issue a written notice of review ("Notice") to the railroad carrier. The Notice shall specifically address each deficiency found in the railroad carrier's route analysis. The Notice may also include suggested mitigation measures that the railroad carrier may take to remedy the deficiencies found, including selection of an alternative commercially feasible routing.

(b) *Conference to resolve deficiencies.* After issuing the Notice, the Associate Administrator conferences with the railroad carrier for a thirty (30)-day period, or such longer period as provided by the Associate Administrator, to resolve the deficiencies identified in the Notice. The Associate Administrator keeps a record of all written correspondence with the railroad carrier and a summary of each meeting and telephone conversation with the railroad carrier that pertains to the Notice.

(c) *Consultation with and comment from other agencies.* If, after the close of the conference period, the Associate Administrator concludes that the issues identified have not been satisfactorily resolved, the Associate Administrator:

(1) Consults with the Transportation Security Administration ("TSA") and

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the Pipeline and Hazardous Materials Safety Administration (PHMSA) regarding the safety and security of the route proposed by the railroad carrier and any alternative route(s) over which the carrier is authorized to operate that are being considered by the Associate Administrator and prepares a written summary of the recommendations from TSA and PHMSA;

(2) Obtains the comments of the Surface Transportation Board ("STB") regarding whether the alternative route(s) being considered by the Associate Administrator would be commercially practicable; and

(3) Fully considers the input of TSA, PHMSA and the STB and renders a decision pursuant to paragraph (d) of this section which shall be administratively final.

(d) *Decision.* (1) If the Associate Administrator finds that the route analysis and documentation provided by the railroad carrier are sufficient to support the route selected by the carrier or that valid issues of commercial practicability preclude an alternative route, the Associate Administrator concludes the review without further action and so notifies the railroad carrier in writing.

(2) If the Associate Administrator concludes that the railroad carrier's route analysis does not support the railroad carrier's original selected route, that safety and security considerations establish a significant preference for an alternative route, and that the alternative route is commercially practicable, the Associate Administrator issues a second written notice (2nd Notice) to the railroad carrier that:

(i) Specifically identifies deficiencies found in the railroad carrier's route analysis, including a clear description of the risks on the selected route that have not been satisfactorily mitigated;

(ii) Explains why the available data and reasonable inferences indicate that a commercially practicable alternative route poses fewer overall safety and security risks than the route selected by the railroad carrier; and

(iii) Directs the railroad carrier, beginning within twenty (20) days of the issuance date of the 2nd Notice on the railroad carrier, to temporarily use the

alternative route that the Associate Administrator determines poses the least overall safety and security risk until such time as the railroad carrier has adequately mitigated the risks identified by the Associate Administrator on the original route selected by the carrier.

(e) *Actions following 2nd Notice and re-routing directive.* When issuing a 2nd Notice that directs the use of an alternative route, the Associate Administrator shall make available to the railroad carrier the administrative record relied upon by the Associate Administrator in issuing the 2nd Notice, including the recommendations of TSA, PHMSA and STB to FRA made pursuant to paragraphs (c)(1) and (2) of this section. Within twenty (20) days of the issuance date of the Associate Administrator's 2nd Notice, the railroad carrier may:

(1) Comply with the Associate Administrator's directive to use an alternative route while the carrier works to address the deficiencies in its route analysis identified by the Associate Administrator; or

(2) File a petition for judicial review of the Associate Administrator's 2nd Notice, pursuant to paragraph (g) of this section.

(f) *Review and decision by Associate Administrator on revised route analysis submitted in response to 2nd Notice.* Upon submission of a revised route analysis containing an adequate showing by the railroad carrier that its original selected route poses the least overall safety and security risk, the Associate Administrator notifies the carrier in writing that the carrier may use its original selected route.

(g) *Appellate review.* If a railroad carrier is aggrieved by final agency action, it may petition for review of the final decision in the appropriate United States court of appeals as provided in 49 U.S.C. 5127. The filing of the petition for review does not stay or modify the force and effect of the final agency action unless the Associate Administrator or the Court orders otherwise.

(h) *Time.* In computing any period of time prescribed by this part, the day of any act, event, or default from which the designated period of time begins to run shall not be included. The last day

of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days.

[73 FR 72199, Nov. 26, 2008]

#### APPENDIX A TO PART 209—STATEMENT OF AGENCY POLICY CONCERNING ENFORCEMENT OF THE FEDERAL RAILROAD SAFETY LAWS

The Federal Railroad Administration ("FRA") enforces the federal railroad safety statutes under delegation from the Secretary of Transportation. See 49 CFR 1.49 (c), (d), (f), (g), and (m). Those statutes include the Federal Railroad Safety Act of 1970 ("Safety Act"), 45 U.S.C. 421 et seq., and a group of statutes enacted prior to 1970 referred to collectively herein as the "older safety statutes": The Safety Appliance Acts, 45 U.S.C. 1-16; the Locomotive Inspection Act, 45 U.S.C. 22-34; the Accident Reports Act, 45 U.S.C. 38-43; the Hours of Service Act, 45 U.S.C. 61-64b; and the Signal Inspection Act, 49 App. U.S.C. 26. Regulations implementing those statutes are found at 49 CFR parts 213 through 236. The Rail Safety Improvement Act of 1988 (Pub. L. No. 100-342, enacted June 22, 1988) ("RSIA") raised the maximum civil penalties available under the railroad safety laws and made individuals liable for willful violations of those laws. FRA also enforces the Hazardous Materials Transportation Act, 49 App. U.S.C. 1801 et seq., as it pertains to the shipment or transportation of hazardous materials by rail.

#### THE CIVIL PENALTY PROCESS

The front lines in the civil penalty process are the FRA safety inspectors: FRA employs over 300 inspectors, and their work is supplemented by approximately 100 inspectors from states participating in enforcement of the federal rail safety laws. These inspectors routinely inspect the equipment, track, and signal systems and observe the operations of the nation's railroads. They also investigate hundreds of complaints filed annually by those alleging noncompliance with the laws. When inspection or complaint investigation reveals noncompliance with the laws, each noncomplying condition or action is listed on an inspection report. Where the inspector determines that the best method of promoting compliance is to assess a civil penalty, he or she prepares a violation report, which is essentially a recommendation to the FRA Office of Chief Counsel to assess a penalty based on the evidence provided in or with the report.